

Costs Decision

Site visit made on 24 February 2023

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Costs application in relation to Appeal Ref: APP/K0425/W/22/3301741 Kimble Farm, Dudley Lane, Southend RG9 6JP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Shlewet for a partial award of costs against Buckinghamshire Council - West Area (Wycombe).
 - The appeal was against the refusal of an application for planning permission for the 'Erection of building to cover existing manege and the creation of a tennis court, including the erection of glass/mesh walls'.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application has been made on substantive grounds, with the applicant deeming that the Council has failed to provide suitable reasons to justify its first reason for refusal. Notably, it is claimed that the Council has applied a significantly higher policy test, through a requirement to demonstrate that the proposal was 'essential' rather than being a 'genuine need' as required under Policy DM44 B) of the Wycombe District Local Plan (adopted 2019) (the Local Plan).
4. The applicant also claims that the Council has not correctly identified and applied the definition of previously developed land (PDL) as detailed within the National Planning Policy Framework (the Framework), and as established through appeal decisions. Had the Council done so, the appellant considers that the first reason refusal would not have been applicable.
5. The first reason for refusal, as set out in the decision notice, is complete precise, specific, and relevant to the application. It also clearly states the policy of the Local Plan that the proposal would be in conflict with. The reason for refusal has also been further detailed and substantiated upon by the Council in its officer report.
6. Both the officer report and decision notice do include the term 'essential' when considering the proposal against Local Plan Policy DM44 B). However, the term has been used in the context of whether there is a 'genuine need' for the proposed development. For example, 'essential' is referenced alongside matters

- of necessity or desirability in determining whether the proposal is a genuine need.
7. Furthermore, as will be seen from my main decision, I consider that the definition of the term 'genuine need' requires that the need not only be real, but must be essential or very important, as opposed to merely desirable. Based on the evidence presented, I therefore do not find that the Council through its use of the term 'essential' has considered the application proposals against a more stringent policy test than that prescribed under Local Plan Policy DM44 B).
 8. Although subject of dispute, the Council has also put forward logical arguments why the proposal may not constitute PDL. The Council's arguments have regard to the site's specific context and the Framework's definition of PDL.
 9. I also note the appellant's contention that the Council failed to correctly identify the manège at the appeal site as 'development' as set out in the Town and Country Planning Act 1990 (as amended) (the Act). However, from the information before me, there is no evidence that the Council did not consider the existing manège to be development. Instead, the Council has acknowledged that it is development, as per the Act, but this was not fundamental to its interpretation of whether it was PDL.
 10. In any event, as will be seen from my appeal decision I have found that the LPA had reasonable concerns regarding the impact of the proposed development on the character and appearance of the area. As such, even if the site were to be consider PDL, the first reason for refusal would still be justified having regard to Local Plan Policy DM44.
 11. I therefore consider that the Council has not behaved unreasonably in evaluating the application proposal and has provided appropriate justification for its first reason for refusal.
 12. Consequently, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Lewis Condé

INSPECTOR