

Costs Decision

Site visit made on 10 June 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 16th June 2025

Costs application by Mrs B Wakelam

Appeal ref: APP/C3430/X/24/3345415

10 Rushford Avenue, Wombourne, Wolverhampton WV5 0HZ

- The application was made under the Town and Country Planning Act 1990, Sections 174, 322 and Schedule 6, and the Local Government Act 1972 Section 250(5).
- The application was made by Mrs B Wakelam for an award of costs against South Staffordshire District Council.
- The appeal was made under section 195 of the Town and Country Planning Act 1990, (the Act), as amended by the Planning and Compensation Act 1991 against the refusal of South Staffordshire District Council grant a certificate of lawful use or development.

Decision: The application for an award of costs is not allowed.

Application - submissions made by Mr B Wakelam

1. The site had planning history, including 22/00486/LUP which proposed the building of a single storey outbuilding with a gym. That application, prior to the subject of this appeal was refused by the Council on the basis that (the gym element): "... is excessive in size and scale to support a dwelling of this size, with the applicant failing to demonstrate any justifiable need for facilities on the scale proposed..."
 2. Whilst each case should be considered on its own merits, the previous refusal reason and appeal made no reference to the utilisation of facilities at Wombourne Leisure Centre being considered by the Council as a viable alternative for use by the Appellant. But it was here introduced as a new consideration and used as a basis for refusal of the current application.
 3. The new refusal resulted in the Appellant having to incur further costs to proceed to appeal. Introduction of inconsistent, new assessment criteria was unreasonable behaviour. The Council's refusal reason stated that no medical evidence had been provided to justify the need for the specific type of facilities proposed, yet the Council's delegated report said evidence of that nature had been provided.
 4. The proposals were considered by the Council to be "convenient" for the Appellant to exercise at home. That was a functional relationship with the primary use of the host dwelling. Home gyms in outbuildings and similar leisure facilities were not abnormal for residential dwellings with Class E permitting "(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse..."
 5. The Council failed to substantiate the refusal reason for refusal. They made vague, generalised and inaccurate assertions about the proposal's impact unsupported by any objective analysis. They introduced new, inconsistent, matters into the assessment of the proposal compared to previous applications of this nature. Their unreasonable behaviour resulted in unnecessary and wasted expense, as described in Planning Practice Guidance. A full award of costs was justified.
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Response by South Staffordshire District Council

6. As noted by Mrs Wakelam, planning applications were assessed on their own merit subject to the evaluation of specific details and circumstances. Each refused application on this site differed from the next in terms of design, scale, proposed use and submitted evidence. Refusal to issue a certificate of lawfulness was not due to the introduction of a new reason for refusal. It was part of the refusal reasoning, but several factors were assessed. All of which amounted to the decision that the development did not meet the criteria to be development permitted by virtue of Class E.
7. Proximity to leisure facilities was used as a reason for refusal as no substantive evidence was submitted which demonstrated the proposed facilities were the only means of meeting the Applicants' needs.
8. Class E proposed developments were assessed against standard criteria as well as the Test of Reasonableness which measured proposals against:
 - [1] - Is the size of the proposed buildings and their intended uses in relation to the existing dwellinghouse too excessive to be considered incidental to the main use of the dwellinghouse; and
 - [2] - Is there a genuine need for the size of the buildings and the intended uses proposed, and furthermore would the scale of the activities in the proposed buildings be incidental to the enjoyment of the main dwellinghouse.
9. As described in the delegated report, the proposed development would occupy nearly the same footprint as the existing dwelling. It would not be considered a subservient or proportionate addition in relation to the size of the existing dwelling. For the size to be considered proportionate and reasonable it required justification. Whilst the Council did not doubt the medical needs of the Appellant, the submitted evidence failed to show that an outbuilding of this size was needed to cater to them.

Inspector's conclusions

10. Irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party or parties applying for costs to incur unnecessary or wasted expense in the appeal process. Parties in planning appeals normally meet their own expenses. Costs do not, as a rule, follow the result. However, where a party has – (1) behaved unreasonably and – (2) this has directly caused another party to incur unnecessary or wasted expense, they may be subject to an award of costs.
11. The power to award costs is limited to those necessarily and reasonably incurred in the appeal process. Expense incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs in any event.
12. Costs applications may relate to events before the appeal or other proceeding was brought, but costs unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from an alleged delay in obtaining planning permission - *Para: 032 Reference ID: 16-032-20140306 Planning Practice Guidance: Appeals (PPG)*.
13. This costs application appears to arise from a complaint suggesting that the Council had unreasonably added another reason to refuse to issue a certificate of lawfulness to that attached to earlier 22/00235/LUP and 22/00486/LUP LDC applications. But those applications were described as "Proposed single storey outbuilding containing garage and gym", with no reference to a rehab pool. The 'added' reason for refusal on the later 23/01046/LUP current appeal application referred to "...single storey outbuilding to provide rehab pool and gymnasium as described and illustrated on the plans submitted would not benefit from planning permission ...". The additional reason for refusal did not

deal only with the gym element. The 23/01046/LUP application before me was not a resubmission of the earlier 22/00486/LUP LDC application refused on appeal 17 November 2023, (our ref: APP/C3430/X/22/3305195). It was a materially different application. Not surprisingly, it produced different reasons for refusal.

14. Unreasonable behaviour during the planning application process can be taken into account, but that might only have applied here had the Council's reasons for the refusal to issue a certificate of lawfulness been hopelessly inadequate. However, the Council's case was pertinent and suitably considered.
15. I find nothing in this costs application that suggests the Council acted unfairly or improperly in the handling of the 23/01046/LUP application and APP/C3430/X/24/3345415 appeal.
16. Unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, was not demonstrated. An award of costs against South Staffordshire District Council is not justified.

COSTS ORDER

17. No order as to costs is made.

John Whalley

INSPECTOR