

Costs Decision

Site visit made on 17 January 2017

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th February 2017

Costs application in relation to Appeal Refs: APP/J1860/W/16/3153756 & APP/J1860/Y/16/3153771

Belle Vue Fitness, 41 Wells Road, Malvern, Worcs, WR14 4RJ

- 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 appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The application is made by Malvern Hills District Council for a partial award of costs against Mr Andrew Beever.
 - The appeals were against the refusal of planning permission and listed building consent for the change of use of gym (D2 use) to four residential units (C3) including alteration, re-introduction of glazing to blocked up east window and repairs to external fabric of building including spire.
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Decision

1. I refuse the application for a partial award of costs.

Submissions

2. Malvern Hills District Council (the applicant) made the application orally at the hearing for the following reasons. It said that the viability information was provided by the appellant at a late stage in the process, that is, during the appeal and not with the application. The Council was unaware if it had asked for that information at an earlier stage.
3. Mr Andrew Beever (the appellant) responded that The Planning Practice Guidance (PPG) advises that parties normally meet their own expenses in appeals unless unreasonable behaviour has been demonstrated. He said that the marketing information provided with the application referred to the fact that a scheme for less than four flats was considered unviable. The viability information provided at the appeal stage was a response to the Council's decision which referred to viability. There was no previous request for that information. The only correspondence following the Case Officer's comments was regarding the opportunity to withdraw the application. He considers therefore that unreasonable behaviour has not been demonstrated.

Reasons

4. The PPG states 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. It also advises that the aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice both in timeliness and in the presentation of full and detailed evidence to support their case.
5. It is clear to me that some limited marketing/viability information was submitted at the application stage. The Council should have been aware that its decision would necessitate further viability information if an appeal were made. The fundamental differences between the parties regarding viability could not have been resolved other than by an appeal and I consider that the appeal could not have been avoided.
6. Further viability information was submitted during the course of the appeal with the appeal documents and further information was provided with the appellant's further comments. The further information was a timely response to the reference in the Council's decision to viability.

Conclusion

7. For these reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated and the need for the Council's response to the appellant's viability information could not have been avoided.

Sarah Colebourne

Inspector