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## Costs Decision

Site visit made on 26 June 2017

**by Alison Partington BA (Hons) MA MRTPI**

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

**Decision date: 13 July 2017**

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### **Costs application in relation to Appeal Ref: APP/W4705/W/17/3172415 Beacon House, Riverside Business Park, Dansk Way, Ilkley LS29 8JZ**

- 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 Peter Billington for a full award of costs against City of Bradford Metropolitan District Council.
  - The appeal was against the refusal of planning permission for the change of use from business (B1) to assembly and leisure (D2) without complying with condition 2 attached to planning permission 15/02269/FUL, dated 21 July 2015.
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### **Decision**

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

### **Reasons**

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
3. The applicant has claimed that the Council has acted unreasonably as it only considered implications of removing the condition entirely, and thus allowing an unfettered D2 use to operate from the unit. Whilst the application form did seek the removal of the condition, it also highlighted that a variation of the condition to prevent any other D2 use operating would be acceptable. This was acknowledged in the Officer's Report, and I understand that the applicant was also able to address the Planning Committee. As such, I am satisfied that the Committee were aware that the variation of the condition was an option as well as its complete removal.
4. Moreover, given that the applicant applied for the removal of the condition, thus allowing an unfettered D2 use to operate from the unit, I consider that it was not unreasonable for the Council to consider the implications of allowing this as part of the process of determining the application.
5. The applicant has also argued that the reasons for refusal rely on vague and generalised assertions about the impact of the proposal that are unsupported by objective analysis.
6. As detailed in my decision letter, I have found that the extended use of the gym would not be detrimental to highway safety. However, I reached this decision on the basis of the evidence before me which includes survey data

carried out on 4 separate weeks in 4 different months. It appears that only one week of this survey data was available to the Council at the application stage. At the same time they had also received a number of objections from the occupiers of the adjacent unit, which highlighted issues relating to parking that they considered had occurred since the gym had been used for classes as well.

7. The Council, in both the Officer's report and appeal statement, has substantiated its reasoning for why it considers the extended use of the gym for fitness classes would result in an increase demand for parking which would be likely to have a detrimental impact on highway safety. For example, it has assessed the locational characteristics of the site and the surrounding area, and the likely increase in numbers using the gym. Given the more limited evidence before them, and its conflicting nature, in my opinion it was not unreasonable for the local planning authority to give different weight to the material considerations, than I have, in reaching their decision, and so make a different decision regarding highway safety.
8. Although I have been made aware of various comments made by the Highways Officer during the application process, these represent the view of an Officer, and not the formal decision of the Council on the application. In any case the Council have explained that the revised comments from the Highways Officer were made in the light of clarification over the level of parking available on site. Given this it is not unreasonable for an opinion to be revised.
9. The second reason for refusal relates to the fact that the proposal would be contrary to the Council's adopted planning policy which seeks to direct D2 uses to existing centres. Although, as set out in my decision letter, I have concluded the proposal would not be contrary to this policy, this is primarily a matter of planning judgement. The Council in their statement have substantiated the reasons why they consider the proposal would be contrary to the policy; for example they indicate why they consider that the use may attract a people from a wide area. In the light of this, I am not persuaded that the Council has acted in an unreasonable manner.
10. I note that the applicant considers that it is unreasonable that the Council have served a breach of condition notice whilst the appeal process is on-going. Be that as it may, I am not aware that this has resulted in an additional or wasted expense for the applicant in the appeal process.
11. In conclusion, although in this case I have found against the Council, it does not mean the Council has acted unreasonably in coming to a different conclusion. Therefore, I am satisfied that the Council has met its obligation to give proper consideration to the planning application. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

*Alison Partington*

INSPECTOR