

Costs Decision

Site visit made on 19 September 2016

by Elizabeth Lawrence BTP MRTPI

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

Decision date: 10 October 2016

**Costs application in relation to Appeal Ref: APP/G5180/W/16/3152947
Land in the highway verge, Crofton Road, close to its junction with Crofton
Avenue, Orpington, BR6 8JD.**

- 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 Vodafone Ltd and Telefonica UK Ltd for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal to grant approval required under a development order for the installation of 1No. 10m Hutchinson Engineering T-Range streetpole and associated ancillary development.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. Examples of potentially unreasonable behaviour by a local authority include preventing or delaying development which should clearly be permitted; failing to produce evidence to substantiate all reasons for refusal; making vague, generalised or inaccurate assertions about a proposals impact, which are unsupported by objective analysis; concealing relevant evidence; providing inaccurate information; or not following well established case law.
3. Planning committees do have to take into account any valid planning concerns raised by local residents and are not bound to accept the advice and recommendations of their officers. However their assertions do need to be based on objective analysis and at Appeal they need to produce evidence to substantiate each reason for refusal.
4. It is noted that the Council did not include a copy of the Committee minutes with their questionnaire. However, they did include a copy of the officer's report which clearly outlines the officer's support for the scheme. In addition, the Council would have been aware that a copy of the minutes was included with the Appellants full statement of case. As such, although the Committee minute was not included with the Council's questionnaire, it did not result in any prejudice, or confusion relating to the handling and determination of the Appeal application.

5. The fact that the Council's officers and I reached a different view regarding the impact of and acceptability of the proposed development does not, in itself, mean that the Council acted unreasonably in refusing planning permission and in defending their decision at appeal.
6. The impact of a development on the character and appearance of an area is a matter which requires judgment. In this instance the Council's reason for refusal is clear and their Appeal statement is specific and objective. It clearly sets out the concerns of local residents, all planning policies considered relevant to the proposal and describes the setting of the Appeal site. The statement then goes on to clearly explain the Council's concerns relating to the impact of the proposed scheme on the surrounding area. There was no need for the Council's statement to address or refer to the views of their officers, which were in any case set out clearly in the submitted officer report.
7. Although policy BE22 of the Unitary Development Plan pre-dates the National Planning Policy Framework (NPPF), in relation to the Appeal scheme I found it to be broadly consistent with the NPPF. As part of the development plan for the area policy BE22 was a material consideration in the determination of the Appeal application and it was reasonable for the Council to refer to it in their decision notice. This is irrespective of whether or not certain aspects of policy BE22 may not be consistent with the NPPF.
8. Finally, the Appellants have raised concerns regarding the failure of the Council to enter into pre-application discussions. However, in this instance the appeal application followed a previous refusal and so the concerns of the Council were known. In addition, the scheme received officer support and so any pre-application advice would have been unlikely to have obviated the need for the Appeal.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Elizabeth Lawrence

INSPECTOR