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## Costs Decision

Site visit made on 12 October 2016

**by Beverley Doward BSc BTP MRTPI**

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

**Decision date: 23 November 2016**

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### **Costs application in relation to Appeal Ref: APP/G5180/W/16/3151769 Land opposite 27-33 Chelsfield Road, Orpington, BR5 4DW**

- 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 CTIL, Vodafone Ltd and Telefónica UK Ltd for a full award of costs against the Council of the London Borough of Bromley.
  - The appeal was against the refusal of the Council of the London Borough of Bromley to grant approval under Part 16 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for the installation of 10.0m T-Range replica Telegraph Pole on a new root foundation and ancillary development.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party applying for costs to incur unnecessary or wasted expense in the appeal process. It also advises that costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible.
  3. The application for costs is made on the basis that the Council acted unreasonably in relation to both procedural and substantive matters.
  4. The applicant contends that the Council behaved unreasonably by referring in its Statement of Case to two Supplementary Planning Guidance (SPG) documents which were not referred to in its reason for refusal and that therefore they had no choice but to respond to these documents which in effect introduced a new reason for refusal. The Council indicated that the SPGs supported its development plan policies and, notwithstanding that it did not indicate which specific policies the respective guidance supported or my finding that one of the documents referred to did not appear relevant to the appeal proposal, I am not persuaded that in referring to these documents the Council either introduced substantial new evidence or a new reason for refusal or provided information that is manifestly untrue or inaccurate so as to constitute unreasonable behaviour in a procedural context.
  5. The Council did not accept the recommendation of its Officers that prior approval should be granted. However, planning authorities are not bound to
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accept the recommendations of their Officers so long as they show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision.

6. I have found against the Council in relation to the main issues in this case. However, I accept that where planning decisions relate to issues such as the effect of a proposal on the character and appearance of an area and/or the living conditions of nearby residents there is an element of subjectivity in this judgement.
7. Whilst each prior approval case must be considered on its merits. The courts have held that the principle of permission is granted by the Town and Country Planning (General Permitted Development) (England) Order 2015, subject only, in cases such as this, to the siting and appearance of the development. The Council sought in its appeal statement to substantiate its decision by reference to the character and appearance of the area, the living conditions of nearby residents and relevant development plan policies in so far as they relate to siting and appearance. Nevertheless, there is no explicit reference in either the Officer's report or indeed the minutes of the Council's Plans Sub-Committee to indicate that the need for additional telecommunications equipment in the area or the implications of a lack of alternative sites were weighed in the balance in the Council's consideration of the proposal and its subsequent decision to refuse to grant prior approval.
8. The somewhat cursory reference in the Council's appeal statement stating that it was not considered that the need outweighed the material harms identified is not sufficient evidence to indicate that an appropriate balancing exercise had been undertaken to support its decision. Without any evidence to demonstrate that this had been done therefore I consider that for the Council to have refused to grant prior approval and to continue to pursue the appeal amounts to unreasonable behaviour. The applicants' costs in bringing the appeal flow directly from this unreasonable behaviour and a full award of costs is therefore justified. In the light of this conclusion I do not need to consider the contention that the Council acted unreasonably in other ways with respect to the substance of the matter under appeal.

### **Costs Order**

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Bromley shall pay to CTIL, Vodafone Ltd and Telefónica UK Ltd, the costs of the appeal proceedings described in the heading of this decision.
10. The applicant is now invited to submit to the Council of the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Beverley Doward*

INSPECTOR