
Costs Decision

Site visit made on 27 September 2016

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 16 December 2016

**Costs application in relation to Appeal Ref: APP/G5180/W/16/3153202
Frankswood Avenue Bus Stop, Frankswood Avenue, London BR5 1BN
(NGR 543947, 167543)**

- 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 prior approval for installation of 10m T-Range Replica Telegraph Pole on a new root foundation and associated 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 thereby caused another party to incur unnecessary or wasted expense in the appeal process.
 3. The Council has chosen to rely upon its officer report to committee rather than submit a formal statement of case. This in itself is not unreasonable, providing that the report contains the necessary evidence to substantiate the reason for refusal. The officer assessment within the report was brief and there was no objective analysis of the context for the proposed development. As such, there was insufficient explanation as to why the street scene would be harmed. Nevertheless, the authority's objections were set out in broad terms and I accept that there is an element of subjectivity when dealing with character and appearance issues. The Council's evidence on this point was therefore not so poor as to amount to unreasonable behaviour.
 4. That said, the appellants put forward a significant amount of additional evidence as part of the appeal process, including photomontages and a number of relevant appeal decisions. There is nothing to indicate that the Council reconsidered its position in light of this new information. Neither is there anything to suggest that the case was reviewed following the receipt of appeal decisions for sites elsewhere in the borough where Inspectors had accepted the new style of T-Range Replica Telegraph Pole. The PPG advises local planning authorities to review their case promptly following the lodging of an appeal, as part of sensible on-going case management. The Council was under no obligation to modify its stance but I regard its failure to respond to the supplementary material as being unreasonable.
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5. The National Planning Policy Framework (the Framework) makes clear the Government's support for high quality communications infrastructure. Such is the importance of telecommunications to sustainable economic growth that monopolies of the style proposed are permitted development. Local planning authorities have the opportunity to consider siting and appearance, not dissimilar to an application for approval of reserved matters following the grant of outline planning permission.
6. A decision-maker must therefore have regard to the fact that the principle of development is established. The Framework makes clear that local planning authorities must not question the need for the telecommunications system. However, in the context of considering siting it is legitimate to take into account whether there are any other means of achieving the required coverage, for example by using an existing building, mast or structure.
7. Although the officer report notes the technical justification for the proposal, it does not explicitly acknowledge the lack of any suitable and available alternative sites. The Council does not put forward any suggestions of its own for addressing the deficiencies in network coverage. Clearly any assessment should be a balanced judgement, and I am not suggesting for one moment that technical considerations should always override visual harm. However, in the circumstances of this particular case I am satisfied that had the appropriate balancing exercise been carried out, prior approval should have been granted.
8. I therefore conclude that the appellants have been put to the unnecessary expense of lodging this appeal. Unreasonable behaviour, as described in the PPG, has been demonstrated and therefore a full award of costs is appropriate.

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 applicants are 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.

Robert Parker

INSPECTOR