

Costs Decisions

Site visit made on 22 December 2016

by Phillip J G Ware BSc(Hons) DipTP MRTPI

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

Decision date: 23 January 2017

Costs application in relation to Appeal Ref: APP/G5180/W/16/3152451 Site at the junction of Park Road and Southend Road, Beckenham BR3 1PH

Costs Application A

- 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 Telefonica 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 to grant planning permission for a "12.5m replica telegraph pole style monopole supporting 6. No. VF/TEF antennas (3 no. for further install), one cabinet".
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Costs application in relation to Appeal Ref: APP/G5180/W/16/3152451 The junction of Park Road and Southend Road, Beckenham BR3 1PH

Costs Application B

- 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 the Council of the London Borough of Bromley for a partial award of costs against CTIL, Vodafone Ltd and Telefonica UK Ltd.
 - The appeal was against the refusal of the Council to grant planning permission for a "12.5m replica telegraph pole style monopole supporting 6. No. VF/TEF antennas (3 no. for further install), one cabinet".
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Decisions

1. Application A for an award of costs is refused.
2. Application B for an award of costs is refused.

Reasons

3. 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. This applies to both costs applications.

Costs application A – the appellants' application

4. The appellants raised a number of procedural matters as part of the costs claim, and I will deal with these first. In particular the appellants stressed the fact that the Council issued a decision notice without any reasons for refusal. This was clearly an administrative error, and there is no suggestion that the appellants were unaware of the issues on which the Council opposed the
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scheme, as these were clearly set out in the officer's report. Indeed the appellant engaged with the highways issue well before the revised notice was produced – and were clearly aware of the reasons which the Council has intended to include on the decision notice. I dealt with the validity of the first 'decision notice' in my decision on the s78 appeal.

5. The resolution to the highway issue resulted in the appellant requesting that the appeal plans be amended, which the Council opposed. This opposition formed part of the appellants' costs claim. However, as the normal position is that the scheme which was decided by the Council is the proposal considered on appeal, the authority had good reason for resisting the change. The fact that I decided to allow the submission of the substitute plans does not mean that the Council acted unreasonably in taking the stance which it did.
6. The appellant complains that the Council did not engage in pre-application discussions and that its overall stance is effectively 'planning by appeal'. Various appeal decisions were put in to support the latter point. The Council stated that no formal request for pre-application discussions had been made, and suggested that the applicant was unwilling to pay the Council's fee for this service. I do not have the information to conclude on the matter of the pre-application discussions, nor do I have a full breakdown of the Council's decisions on telecommunications proposals across the Borough over a period of time. In any event these are not matters on which this costs decision would turn.
7. The essence of the appellants' substantive costs claim is that the Council has prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. In addition the appellants state that the Council's position on appeal was generalised and unsupported by any objective analysis.
8. It is certainly true that the Council's evidence on the main issue, related to the Conservation Area, was far less detailed than that submitted by the appellant. However matters such as this inevitably call for the exercise of professional judgement and the Council put forward a sufficiently substantial case to explain its position. In this respect it did not act unreasonably.
9. The appellant also criticised the Council for not following other appeal decisions. However this was not unreasonable as each case must be decided on its merits, especially as this appeal focussed on the particular characteristics of the area. The Council's approach does not conflict with the advice in Planning Practice Guidance, which deals with the position where a party does not follow well-established case law.
10. Finally the appellant states that the Council should have reviewed its position once the appeal was lodged. However there is no requirement to do so and, as set out above, the Council put forward a substantial, if not persuasive case.

Costs application B – the Council's application

11. The Council made an administrative error in not including any reasons for refusal on the decision notice which it initially issued. This was subsequently corrected.

12. The Council's claim for partial costs relates to what it characterises as the appellants' repeated and unnecessary pursuit of this matter during the appeal process. It was stated that this wasted Council time in having to respond to emails.
13. It is true that the appellant pursued this point on a number of occasions and the Council responded accordingly. There was certainly an element of repetition in this correspondence. The appellants' position was that the Council had no authority to correct the notice and subsequently include reasons for refusal or to submit a statement, and that the notification of neighbours had been flawed. These are important matters stemming from the Council's initial error.
14. In the event, as set out in my decision on the appeal, I did not agree with the appellants' position. But this does not mean that the appellant acted unreasonably in pursuing such an important matter. Certainly the Council would have had to spend time replying to the appellant on this point but, especially given that the problem arose from the initial error by the authority, this was not unreasonable.

Conclusions

15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in relation to Application A.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in relation to Application B.

P. J. G. Ware

Inspector