

Costs Decision

Site visit made on 12 June 2017

by Peter Rose BA MRTPI DMS MCMi

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

Decision date: 30th June 2017

Costs application in relation to Appeals Ref: APP/X5990/Y/17/3170311 and APP/X5990/W/17/3170310

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- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5), and under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6.
 - The application is made by Cornerstone Telecommunications Infrastructure Limited (CTIL) and Vodafone Limited for a partial award of costs against the City of Westminster Council.
 - The appeals were against the refusal of listed building consent and of planning permission for the installation of 6no. face mounted antennas, 12no. remote radio units (RRU's) with the addition of 3no. cabinets within the existing enclosure and 2no. dishes with ancillary development thereto.
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Decision

1. The application for a partial award of costs is refused.

The submissions for Cornerstone Telecommunications Infrastructure Limited (CTIL) and Vodafone Limited

2. The applicants' case is that the Council's appeal statement introduced new arguments relating to alternative sites which did not form part of its reasons for refusal, and nor were such matters formally considered within its determination of the applications. The rebuttal of these arguments also incurred the applicants further expense.

The response by the City of Westminster Council

3. The Council rejects the suggestion that it acted unreasonably, and maintains that no unnecessary or wasted expense was incurred by the applicants as a consequence of the authority's appeal submission.

Reasons

4. The government's Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
 5. The Guidance identifies a range of possible circumstances in which an award of costs may be made against a local planning authority. These include introducing fresh and substantial evidence at a late stage necessitating,
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- amongst other things, extra expense for preparatory work that would not otherwise have arisen.
6. The Guidance further advises that where a local authority has exercised its duty to determine an application in a reasonable manner, it should not be liable for an award of costs.
 7. The Council's reasons for refusal did not refer to the availability of other alternative sites but this was, however, a relevant and legitimate matter raised in some detail by the applicants in their Written Statement dated 24 February 2017¹. In particular, this is a material consideration which appears to have been advanced by the applicants as a factor in favour of the scheme.
 8. In accordance with the Planning Inspectorate's Procedural Guide Planning Appeals - England, published 5 August 2016, it is proper for the authority to respond to such matters as may be set out in the applicants' case. In this specific regard, the Council's subsequent statement of 16 May 2017 generally confines such comments to the specifics of the matters as previously raised by the applicants. Whilst the applicants found it necessary to respond by way of their further written representations, that rebuttal, as it relates to the matter of alternative sites, would also seem to largely reflect a re-statement of previous evidence set out in the site selection extracts of their earlier submission.
 9. I also do not accept that any concerns the Council may have harboured towards alternative sites should necessarily have been a reason for refusal. Rather, a more considered and measured approach is required as a matter of planning judgement, and I find the authority's position to have been both reasonable and consistent in that respect. In particular, the authority's appeal submission indicated that it was not satisfied regarding the applicants' arguments towards the availability of alternative sites, but the Council would also appear not to have found this factor to have been of such substance and weight at the point of its decision as to constitute grounds for refusal.
 10. I am satisfied that the authority was entitled to respond to the matter of alternative sites, and that the particular manner and detailed content of its actions in this regard were appropriate.

Conclusion

11. I therefore consider that unreasonable behaviour on the part of the authority resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has not been demonstrated. Accordingly, I conclude that a partial award of costs is not justified in this instance and the application is refused.

Peter Rose
INSPECTOR

¹ Paragraph 3.66