



Costs Decision

Site visit made on 30 November 2017

by Beverley Wilders BA (Hons) PgDurp MRTPI

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

Decision date: 26 January 2018

Costs application in relation to Appeal Ref: APP/W4325/W/17/3181440 SW junction of Telegraph Road/Oldfield Drive, Upper Heswall, Wirral, Merseyside CH60 6RP

- 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 Cornerstone Telecommunications Infrastructure Limited (CTIL) and Vodafone Limited for a full award of costs against Wirral Metropolitan Borough Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the installation of a 17.5m streetworks telecommunications installation, supporting 3no. shrouded antennas and 2no. 0.3m transmission dishes. In addition, the installation of 2no. small equipment cabinets plus a meter pillar at the base of the pole, with ancillary telecommunication development thereto.
-

Decision

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

Reasons

2. Paragraph 030 of the National Planning Practice Guidance (NPPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 046 states that awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
3. Paragraph 049 of the NPPG states that examples of unreasonable behaviour by local planning authorities with respect to the substance of the matter under appeal includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellants consider that the Council behaved unreasonably as in their view the Council did not have due regard to the fact that the application was for prior approval and not planning permission, that the Council failed to undertake an appropriate balancing exercise once it found harm resulting from the

- proposal and that Council officers failed to engage with the appellants both during the course of the application and after it had been determined.
5. The appellants cite the Council's reference to superseded legislation and to the sites location in the Green Belt as evidence that the Council failed to determine the prior approval application correctly. I note that the Council's Officer Report is fairly succinct and that it incorrectly makes reference to Part 24 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However despite this I consider it is clear from the Officer Report that the Council considered the application as one for prior approval and not for planning permission with the officer stating that the local planning authority cannot object to the principle of a mast. In addition no Green Belt policies were referred to and no assessment as to whether or not the proposal was inappropriate development was carried out.
 6. Whilst the reason for refusal refers to the Green Belt and to the Area of Special Landscape Value, no policies relevant to these designations are referred to. From the evidence it seems to me therefore that it is likely that the Council made reference to these designations in an attempt to denote the landscape character and value of the area and that this does not demonstrate that the Council considered matters that it ought not to have given the type of application before it.
 7. It appears from the evidence that a large amount of supporting information was submitted by the appellants with the application including various appeal decisions for similar proposals and information regarding the lack of coverage in the area and the benefits that the proposal would bring.
 8. Policies TE1 and TEL1 of the Wirral Unitary Development Plan (UDP) require proposals for telecommunications development to be assessed having regard to the strategic requirements of the telecommunications network and to other technical constraints. Whilst the Council's Officer Report notes that other locations have been explored and discounted by the appellants, no comments are made as to the suitability or otherwise of the discounted sites and no reference is made to any benefits of the proposal or to the appeal decisions provided by the appellants. There is no evidence that in determining the application the Council carried out an appropriate balancing exercise before reaching a conclusion on the proposal, as was the case with a number of the appeal decisions referred to.
 9. However whilst I consider that this amounts to unreasonable behaviour by the Council, even if this balancing exercise had been carried out, there is no evidence to suggest that the Council would have reached a different conclusion and approved the application. As can be seen from my decision letter, I have concluded that the proposal is unacceptable notwithstanding the technical constraints and benefits associated with it. It has not therefore been demonstrated that the unreasonable behaviour has led to unnecessary expense for the appellants.
 10. I note from the evidence that the appellants sought to engage with the Council regarding the proposal prior to submitting the application and it being determined and afterwards but that there was a limited response from the Council. Whilst the lack of engagement is unfortunate and whilst further dialogue may have prevented the appeal being submitted, I have not been

presented with any evidence of unreasonable behaviour by the Council relating to the appeal process itself.

11. Taking the above matters into consideration, whilst I acknowledge that the Council has behaved unreasonably by not carrying out a balancing exercise in relation to the proposal, I am nevertheless satisfied that the Council has not prevented or delayed development which should clearly be permitted and that it has produced sufficient evidence to substantiate the reason for refusal.
12. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award of costs is not justified.

Beverley Wilders

INSPECTOR