
Costs Decision

Site visit made on 20 February 2018

by Stephen Hawkins MA MRTPI

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

Decision date: 13 March 2018

Costs application in relation to Appeal Ref: APP/D0840/W/17/3181357 Penhallow Farm, Mount Hawke, Truro TR4 8BD

- 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 Cornwall Council for a full award of costs against Vodafone Ltd.
 - The appeal was against the refusal of planning permission for 1 no 17.5m high Swann 1 S lattice tower with delta headframe, 3 no antennae on headframe support poles, 2 no 0.3m transmission dishes on headframe support poles, 1 Huawei BTS3900AL equipment cabinet, 1 no CTIL TSC cabinet & associated ancillary equipment.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing in accordance with the guidance at paragraph 035.
3. Paragraph 001 advises that potential appellants should first consider re-engaging with the Council to discuss whether any changes to the proposal would make it more acceptable and thus more likely to gain permission. They should give consideration to the merits of the case, and whether there are strong grounds to contest the reasons for refusal of permission before submitting an appeal. Paragraph 053 advises that appellants should exercise the right of appeal in a reasonable manner and that they are at risk of an award of costs being made against them if the appeal had no reasonable prospect of succeeding.
4. The award of costs is sought on substantive grounds. In summary, the Council considers that the appeal was unnecessary and it has resulted in them incurring wasted expense, as a monopole mast has recently been erected in a similar location to the appeal scheme which met the appellant's operational requirements without causing visual harm. This was following a decision by the Council on 5 September 2017 that prior approval was not required¹. In response, the appellant argued that the appeal scheme would offer much

¹ Council Ref: PA17/06779.

better network coverage and greater operational flexibility compared with the recently erected monopole.

5. The appellant clearly set out the significant benefits to their operations that would be offered by the appeal scheme compared with the existing structure. As a result, whilst I have had regard to the information which accompanied the application for the monopole, I am satisfied that the appellant has substantiated the reasons for believing that the existing structure did not fully meet their operational requirements. The monopole application also demonstrated that the appellant was prepared to engage with the Council regarding changes to the proposal to make it more likely to obtain approval.
6. The Council refused the appeal scheme on the basis of its unacceptable visual impact, which it considered outweighed the benefits of improved mobile telecommunications within the area, and the consequent conflicts with the Development Plan and national policy. I shared their conclusions. Even so, the appellant's own assessment of the appeal scheme against the Development Plan and national policy is supported by a substantial and relevant body of evidence. A weighing up of the relevant planning considerations in favour of the proposal and those pulling against it was therefore required in order to reach a balanced judgment on its merits.
7. Consequently, in my view the appellant has demonstrated that they had strong grounds for contesting the Council's reasons for refusal and I am not persuaded that there was no reasonable prospect of the appeal succeeding. None of the examples of unreasonable behaviour listed in paragraph 053 or behaviour similar to those examples has been demonstrated in this case. Neither have I been satisfied that the appellant has otherwise acted in an irresponsible manner at odds with the advice in paragraph 001 in pursuing this appeal.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR