The Planning Inspectorate

Costs Decision

Site visit made on 8 August 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 17th September 2019

Costs application in relation to Appeal Ref: APP/D1590/W/19/3230390 Southern Footway Belton Gardens, Leigh on Sea, SS9 2EJ

- 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 EE Ltd for a full award of costs against Southend-on-Sea Borough Council.
- The appeal was against the refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for installation of 12m high Alpha 8 slimline telecommunications street-pole and 3No. equipment cabinets and ancillary apparatus within footway.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The 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.

3. The Council came to a view that the siting and appearance of the proposed development would cause harm to the character and appearance of the area. However, having arrived at that view I have seen no substantive evidence that it properly considered whether the identified harm caused would be outweighed by the need to site the installation in the location proposed or the benefits that it would provide.

4. The report did not apportion any weight to the specific locational, technical and operational requirements of the proposal. Consequently, there was no balancing of harm against the need to site the installation in the location proposed or against the merits of the site relative to alternative sites.

5. Further, Paragraph 112 of the National Planning Policy Framework (the Framework) requires that planning decisions should support the expansion of electronic communications networks. It notes that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being. The Council's omission of any substantive assessment of the benefits of the proposal within this context meant that its decision was not made in full regard of the Framework.

Conclusion

6. The applicant has been put to the expense of making an appeal, which would not have been necessary had the appeal proposal been determined properly after an appropriate balancing exercise. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

7. 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 Southend-on-Sea Borough Council shall pay to EE Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

8. The applicant is now invited to submit to Southend-on-Sea Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR