



Costs Decision

Site visit made on 22 October 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2019

Costs application in relation to Appeal Ref: APP/A3655/W/19/3234027 Highway Land at Egley Road, Hook Heath, Woking, GU22 0NG

- 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 Woking Borough Council.
 - The appeal was against the refusal of the Council 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 the installation of a telecommunications base station on a highway-adopted grass verge on Egley Road, Hook Heath, Woking, GU22 0NG.
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Decision

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

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the consideration of whether or not costs should be awarded.
3. The appeal follows the refusal to grant approval required under the provisions of 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 the installation of a telecommunications base station. Following the call in of the application by a member of the Council's Planning Committee, Councillor Ashall, for determination by the Planning Committee, approval was refused by the Committee against the recommendation of the planning officers.
4. The applicant accepts that a Councillor has the right to call in an application for determination by the Planning Committee for material planning matters and that the members of the Planning Committee are entitled to make a decision contrary to the recommendation of the planning officers.
5. However, the applicant contends that the reason for Councillor Ashall calling the application in is not a material planning matter relating to siting and appearance. Furthermore, the applicant contends that the decision of the members of the Planning Committee was based on an incorrect consideration

- of the planning merits of the proposed development, specifically matters of health, proximity to schools and the operational need for the development. Accordingly, the applicant maintains, the Council acted unreasonably in allowing the application to be called in and determined by the Planning Committee for non-planning reasons, leading to unnecessary expense in having to submit the appeal.
6. The reason given for referral to the Committee, as stated in the Planning Officer's Report, is "The application has been called to the Planning Committee at the request of Councillor Ashall who has concerns over the siting as the proposal is very close to the Primary School and is also just 3km from the mast at the Mayford Centre". The applicant suggests that Councillor Ashall's concerns may have been a perceived health risk from the mast near the school and a questioning of the operational need for the development, neither of which are material to the siting and appearance in terms of amenity issues.
 7. However, the email from Councillor Ashall to the applicant dated 5 December 2018, appended to the costs application, gives no indication that Councillor Ashall was concerned about health issues or the operational need for the development. Rather, the Councillor appears to be simply flagging up the proposed area of green separation between Woking and Mayford and the potential opposition from residents as an issue, which is not unreasonable.
 8. Although the call in may have come late in the process and the applicant was not afforded the opportunity to address the concerns or attend the Planning Committee meeting, the Council has confirmed that these were in accordance with its usual procedures.
 9. Whilst the minutes of the Planning Committee do indicate that Councillor Ashall raised 'major concerns' when consulted, the minutes indicate that these relate to the proposed area of separation between Woking and Mayford rather than health issues or the operational need for the development, which is a relevant planning matter for this application.
 10. At the Planning Committee meeting, from the minutes of that meeting, the discussion included health matters but it is clear that the members were properly advised by their officers as to the correct matters to consider in determining the application. The actual reason for refusal relates principally to the matter of character and appearance and the potential for alternative sites indicating that the application was primarily refused having regard to the correct planning matters. I am not persuaded, from the evidence before me, that the Committee's decision was based on concerns about health or proximity to schools.
 11. However, the reason for refusal does also include "fully justify the need for the telecommunications mast". The applicant rightly points out that as permitted development 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), the need for the installation is not a matter for consideration by the Council. This is confirmed by paragraph 116 of the National Planning Policy Framework (the Framework).
 12. Although the Council maintains that it meant the need for the mast in this location this is not what the reason for refusal says and it is understandable that the applicant felt a need to respond to this matter in the grounds of

appeal. However, although I consider that this loose wording amounts to unreasonable behaviour by the Council, the applicant deals with the matter very briefly in a single paragraph (5.3) of the Statement of Case. Accordingly, the additional expense incurred in dealing with this matter, in the context of the appeal as a whole, would be negligible and does not warrant an award of costs.

Conclusion

13. From the evidence before me, I am not persuaded that the Council acted unreasonably in determining this application other than in the reference to the need for the development in the decision notice, which I consider resulted in negligible unnecessary expense.
14. Accordingly, reasons given above, the application for the award of costs is refused.

Martin Small

INSPECTOR