



Costs Decision

Site visit made on 2 December 2020

by Thomas Shields MA DipURP MRTPI

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

Decision date: 29 April 2021

Costs Application in relation to Appeal Refs: APP/B1550/C/19/3238175, APP/Y2620/W/20/3246615

Cley Automatic Telephone Exchange, Hall Lane, Wiveton, NR25 7TG

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Arqiva Limited against the North Norfolk District Council for a full award of costs.
 - The application was in connection with an appeal against an enforcement notice (Appeal A) alleging the erection of a 15 metre telecommunications monopole with attached transmission dish and 3 antenna and the siting of a ground based equipment cabinet, and against the refusal of planning permission (Appeal B).
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Decision

1. The application is refused.

Reasons

2. The costs application and arguments advanced from both parties were set out in written submissions. As such, I need not repeat them in detail here.
3. The Planning Practice Guidance (PPG)¹ advises that irrespective of the outcome of an appeal, costs may only 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. The PPG lists some examples of behaviour whereby a procedural or substantive award of costs may be justified. The applicant alleges unreasonable behaviour by the Council on both substantive and procedural grounds as follows:
 - *Introducing new issues that are not listed as in the reasons for refusal of planning application reference PF/19/0856*
 - *Preventing development which should clearly have been permitted having regard to the development plan, national policy, and any other material considerations*
 - *Failing to produce evidence to substantiate each reason for refusal*
 - *Vague, generalised, or inaccurate assertions about a proposal's visual and other impacts, which are unsupported by any objective analysis*

¹ Paragraph 030 ref 16-030-20140306

Appeal A - ground (c)

4. For the reasons I have set out in full in the appeal Decision the CTIL base station equipment did not benefit from planning permission, and hence was unauthorised operational development constituting a breach of planning control. The breach was properly described as such in the allegation at Section 3 of the notice. I acknowledge that in their appeal submissions the Council addressed their interpretation of the prior approval in relation to Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, while it was unnecessary for them to do so, I find it does not amount to unreasonable behaviour since they were simply responding to the appellant's own appeal submissions on this matter.
5. The notice requirements taken as a whole were clearly aimed at removing all of the CTIL base station equipment but incorrectly included the "transmission dish" which is on the BT mast. Rather than being unreasonable behaviour, I consider this was a simple drafting error which did not add any significant burden for the appellant to address in their submissions, and both parties agreed to my correcting the notice accordingly.

Appeal A - ground (a), and Appeal B

6. As to the merits of whether planning permission should be granted for the development, the Council set out their arguments² in more detail in their statement for Appeal A than they did in their statement for Appeal B. However, the appeals were conjoined and I note that the references on the front page of the Appeal A statement refers to both appeals. In coming to their decisions and balancing the matters before them the Council clearly placed greater weight to the level of resulting harm to the surrounding landscape and heritage assets, and that this was not outweighed by public benefits. It is not the case that their reasons for issuing the notice and for refusing planning permission were vague, generalised, and unsubstantiated evidentially. Although I came to a different overall conclusion in allowing the appeals I can find no evidence that the Council acted unreasonably in making such a judgement or in defending their case.
7. Investigation and discounting of potential alternative locations is a reasonable requirement in demonstrating evidentially that any harm caused in sensitive areas is kept to a minimum. This would accord with the provisions of paragraphs 113 and 115 of the Framework³ and Policy CT4 of the North Norfolk Core Strategy (2008). The Council's comment in its statement to "propose further investigation" placed no additional burden on the appellant because such evidence of investigating possible alternative locations had previously been undertaken, and submitted and relied upon by the appellant in the appeals. Moreover, the Council did not dispute that evidence.
8. I agree that the Council's questioning of need for the CTIL base station in the context of the local demographic was of little relevance, particularly given their acceptance of submitted evidence of poor signal coverage in the area which would be remedied by the proposed development. However, this was a very minor point in the Council's statement which had already been addressed evidentially by the appellant in respect of public benefits. As such, this matter

² Council Statement of Case (Appeal A) paras. 3.2.5 – 3.2.7, 3.2.12, 3.2.13,

³ National Planning Policy Framework (2019)

did not form a matter of any real consequence in either party's cases requiring substantial additional evidence.

9. For all these reasons, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Thomas Shields

INSPECTOR