



Costs Decision

Site visit made on 9 February 2022

by R E Jones BSc (Hons) DipTP MRTPI

An Inspector appointed by the Secretary of State

Decision date: 4 March 2022

Costs application in relation to Appeal Ref: APP/L5810/W/21/3276993 Land at Petersham Road, Ham, Twickenham, London TW10 7AP

- 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 MBNL and H3G UK Ltd for a partial award of costs against the Council of the London Borough of Richmond-upon-Thames.
 - The appeal was against the refusal of the Council to grant prior approval for what is described as: "installation of a new 16 metre high monopole supporting 6no. antennas with a wrap around equipment cabinet at the base of the column, the installation of 4no. new equipment cabinets, and ancillary development thereto. The proposed colour of pole is grey, equipment cabinets will be coloured green".
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Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant considers that the Council acted unreasonably by including in its reasons for refusal that the proposal failed to demonstrate that existing trees would be protected. This led to the unnecessary expense, at the appeal stage, in the applicant having to prepare additional information to establish that trees would not be impacted upon.
4. In determining applications for the prior approval of mobile telecommunications the GPDO 2015¹, Local Planning Authorities must assess proposals solely based on their siting and appearance. It would be reasonable to assume that features in the vicinity of the site could be considered. In this case there are trees located a short distance to the east, while the area in which they are situated is also designated as a Conservation Area, where trees are afforded greater protection.
5. Policies within the development plan can also be considered in this assessment but only insofar as they are material considerations to the matters of siting and appearance. In this regard Policy LP16 of the Local Plan (2018) indicates that development which results in the damage or loss of trees of amenity value will be resisted.

¹ Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO 2015).

6. Therefore, given the requirements under the GDPO 2015, the policy background and the proposal's proximity to trees that form a feature of the adjacent Conservation Area (CA), the proposal's effect on trees is a material consideration when determining such applications.
7. The application was not accompanied by an arboriculture report or drawing showing the exact distance from adjacent tree canopies, trunks or root protection areas (RPA). The absence of this information did not give the Council sufficient certainty that there would not be harm caused to those trees, for example through root damage caused by the monopole's foundation. Therefore, the Council was not unreasonable in highlighting the lack of assessment in relation to trees in the refusal notice.
8. The applicant considers that it should have been clear from the ground that the proposed mast would maintain sufficient distance from nearby trees, while the Council should have made a judgement using generic satellite mapping. Yet it is for the appellant to confirm such matters of detail particularly if they involve technical issues such as the proximity of proposals to RPAs. It was later confirmed in evidence submitted with the appeal that the nearest tree was around 11.75m from the proposed monopole. This distance is not excessive, especially given that certain trees species can have root areas that extend beyond their above ground growth. Therefore, in the absence of sufficient details at the application stage, the Council did not act unreasonably in exercising caution with regard to its assessment of nearby trees.
9. It is understood that in determining the approved telecommunication installations nearby the effect on trees was not highlighted as a concern. However, those schemes are in different locations to the appeal proposal and cannot therefore be regarded as directly comparable.
10. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. Given the absence of sufficient information at the application stage, I have found that the Council had reasonable concerns about the impact of the proposed development on nearby trees which justified its decision. The appellant had to address those concerns in any event.
11. 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 other matters raised, an award for costs is therefore not justified.

R E Jones

INSPECTOR