



Costs Decision

Site visit made on 28 February 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Costs application in relation to Appeal Ref: APP/M5450/W/21/3284530 Wemborough Road, Honeypot Lane, Canons Park, Stanmore, London HA7 1AJ

- 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 the Council of the London Borough of Harrow for a full award of costs against CK Hutchison Networks (UK) Ltd.
 - The appeal was against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A, A.3(4) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a proposed 15m Phase 8 Monopole C/W wraparound cabinet at base and associated ancillary works.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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 Grounds of Appeal indicate that pre-application advice was sought, with no responses by the Council or Ward Councillors being received prior to the submission of the application. I also note that the height of the proposed installation was reduced subsequent to a previous planning application. However, the Council have stated that despite the appellant asking for pre-application advice, the requisite fee for the pre-application advice service was not paid. This has not been disputed by the appellant.
4. Nevertheless, there is no obligation upon a planning applicant to continue to seek pre-application advice once the amount of the fee is known. Therefore, whilst the appellant's version of events has omitted to mention the required fee, in my view these matters do not constitute unreasonable behaviour. Furthermore, even if pre-application advice was provided, the appellant would still have been able to exercise their right of appeal, if they wished. Hence, it has also not been proven that unnecessary or wasted expense has occurred.
5. I note that the Council's technical support team officers spent time setting up a case in relation to the pre-application advice service, which was then closed. However, these actions mainly stem from the Council's own internal operational procedures, rather than being a direct cause of the appellant's actions. Thus, taking all of the above into account, the Council's application for costs does not succeed in relation to the pre-application advice service element.

6. As there was a fundamental disagreement between the parties about the merits of the case, I am unconvinced that an appeal would not have been made even if the pre-application process had been pursued. On that basis the Council's application for costs also does not succeed in relation to the Council's completion of the appeal questionnaire and validating and processing the appeal documents, as the Council is required to undertake these actions during the normal course of an appeal.
7. The matter of whether a robust and comprehensive search for potentially less harmful alternative sites was undertaken by the appellant is a matter that is addressed in the associated planning appeal. As it involves matters of planning judgement, it has not influenced this costs decision.
8. In relation to potentially less harmful alternative sites for the proposed installation, the appellant to the planning appeal provided 2 sets of discounted options. One set is within the Site Specific Supplementary Information document (SSSI), and one set is within the appellant's Grounds of Appeal. The set within the appellant's Grounds of Appeal contains some options which are in different locations to those found in the SSSI document. Additionally, for some of the options for locations which have remained the same in each set, different justifications have been put forward.
9. No adequate explanation has been provided, as to why potential options have been put forward in the appellant's Ground of Appeal which are in different locations to those found within the SSSI document.
10. Furthermore, although the appellant has argued that the set within the Grounds of Appeal provides additional clarity regarding the discounted options, some of the differing justifications relate to factual matters. For example, the justification given for discounting option D6 in the SSSI is due to large tree canopies which would require pruning, with the Grounds of Appeal including an additional factual reason in relation to an insufficient pavement width. As such, it has not been substantiated that these factual justifications could not have been specified within the SSSI document, at application stage.
11. On this basis, although the appellant is entitled to provide further clarity at appeal stage, I consider that by introducing both new discounted options and additional factual justifications, the appellant has introduced fresh and substantial evidence at the appeal stage, in conflict with the advice given in the PPG¹. This unreasonable behaviour caused unnecessary and wasted expense for the Council in relation to the assessment of the new and updated information in the appellant's Grounds of Appeal and in the completion of an additional planning statement at appeal stage (as opposed to relying on the Officer's Report). Thus, the Council's application for costs succeeds to that extent only.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

¹ Paragraph 16-052-20140306

Costs Order

13. 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 CK Hutchison Networks (UK) Ltd shall pay the Council of the London Borough of Harrow, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the assessment of the new and updated information in the appellant's Grounds of Appeal and in the completion of an additional planning statement at appeal stage; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to CK Hutchison Networks (UK) Ltd, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander O'Doherty

INSPECTOR