



Costs Decision

Site visit made on 4 May 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2022

**Costs application in relation to Appeal Ref: APP/R5510/W/22/3292326
Cherry Lane Cemetery, Shepiston Lane, West Drayton, Hillingdon,
London UB7 9DL**

Easting (x): 507950 Northing (y): 179055

- 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 Cellnex UK Limited for a full award of costs against the Council of the London Borough of Hillingdon.
 - 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 a 2.5m extension to the existing 22.5m lattice tower, the removal of six antennas and the installation of twelve antennas, twenty-four Remote Radio Units (RRUs), additional ancillary apparatus and the relocation of three transmission dishes.
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Decision

1. The application for an award of costs is allowed in part as set out below.

Reasons

2. Planning Practice Guidance (the 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 or wasted expense in the appeal process. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it.
3. It is clear that under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) in prior approval cases for telecommunications equipment the principle of development is already established. Considerations are limited to those of siting and appearance and thus full consideration against the planning merits, as if an application for planning permission, are not appropriate.
4. Whilst the Council's reason for refusal refers to the open character of the green belt and wider area around the appeal site, it does not state that the proposed development would amount to inappropriate development within the Green Belt. Nor does it purport to conclude whether or not very special circumstances exist in the terms set out within the Framework.
5. Although it is clear that such matters formed part of the Council's reasoning as set out within the officer report, it is also clear that the appellant's 'Town

Planning Statement'¹, submitted in support of the original application, adopted much the same approach in respect of Green Belt policy. I accept that the Council's Appeal Statement seeks to rely largely upon the officer report, but it is nevertheless clear in its consideration of the open character of the site's surroundings, to which the area's green belt status is no doubt a contributory, if not determinative, factor.

6. Indeed, I am satisfied that the Council's case at appeal is concisely set out in considering the matters of siting and appearance at the heart of an application for prior approval. Whilst the green belt is referred to, I accept that its status as such is likely to have been a contributing factor in their assessment of the surrounding area's open character, rather than forming the basis for refusal as set out by the appellant.
7. As the assessment of the effect of the proposal's siting and appearance is a subjective matter my disagreement with the Council's conclusion on the relevant grounds does not render their decision to have been one which prevented development that should otherwise have clearly been permitted. Although the reason for refusal relies in part upon Local Plan Part 1 (LP1) policy EM2, Local Plan Part 2 (LP2) policy DMEI4 and London Plan policy G2, it does not do so exclusively, and LP2 policy DMHB21 provides sufficient scope for the refusal reason.
8. Nevertheless, and despite the appellant's initial application submission also setting the proposal in the context of these policies, reference even in part to these Green Belt policies was not relevant because the Green Belt matters to which they refer are themselves not relevant to the determination of the prior approval. Whilst the necessity of the appeal could not have been avoided, the Council's reliance, even in part, upon Green Belt policies amounts to unreasonable behaviour which has resulted in the appellant incurring unnecessary additional expense in responding to the matters and considerations raised by those Green Belt policies.

Costs Order

9. 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 the Council of the London Borough of Hillingdon shall pay to Cellnex UK Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the Green Belt policies; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the Council of the London Borough of Hillingdon, to whom a copy of this decision has been sent, details of those costs with a view to reaching Costs Decision agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

G Robbie

INPSECTOR

¹ September 2021