
Costs Decision

Site visit made on 28 November 2022

by C Harding BA(Hons) PGDipTRP PGCert MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th January 2023

**Costs application in relation to Appeal Ref: APP/T5150/W/22/3304150
Land on the southern side of Engineers Way, to the east of its junction
with Wembley Park Boulevard, Wembley, London HA9 0FJ**

- 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 an award of costs against the Council of the London Borough of Brent.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the installation of an 8m high slimline smart pole hosting three small cell antennas and ancillary electronic communication apparatus.
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Decision

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

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 applicant submits that the Council has acted unreasonably in refusing to grant prior approval on the basis that the incorrect notice was served as additional clarification and information were provided during the application determination period but not considered by the Council. It is also submitted that the Council acted unreasonably in failing to substantiate its concerns with regards to the effect of the proposed development upon public safety.
4. With regards to the first issue, I have concluded that ambiguity exists with regards to the precise location of the proposed smart pole. Accordingly, the Council was reasonable in its concern.
5. However, I appreciate that the applicant was proactive in attempting to clarify the situation, and I also accept that although there is a specified time limit for the consideration of prior notification application, that this time limit could have been extended with the agreement of parties. There was no legislative reason why the Council could not have agreed to extend the time limit for determination and carried out relevant publicity on the additional information.

6. However, equally, there was no obligation for the Council to accept or consider amended plans or clarifications. The onus is on the applicant to ensure that applications are correctly made, that plans are sufficiently accurate and that submissions meet the requirements of the GPDO. Accordingly, I do not consider that the Council acted unreasonably in refusing to grant prior approval on this basis.
7. The second issue relates to whether the Council substantiated its concerns with regards to the effect of the proposed development upon public safety due to its siting.
8. The issue of the effect of the siting of the proposed development upon public safety in the vicinity of a large football stadium is a legitimate one for the Council to have raised. It is clear that the area around Wembley Stadium will be busy at certain times, and that crowd safety and movement are important matters.
9. Although it was not necessary for me to consider this particular issue in detail in my decision, the Council provided sufficient evidence to enable an understanding of it, insofar as was possible given the ambiguity surrounding the precise location of the proposed smart pole.
10. The Council consulted the Highway Authority regarding the application, however it did not consult the other organisations cited by the applicant, including the Metropolitan Police Service and the Football Association. Whilst these organisations could have potentially provided evidence that would have assisted with the consideration of the issue of public safety, they were not statutory consultees.
11. Although it may have been good practice to consult these organisations on the proposed development, given the ambiguity with regard to the specific location of the proposed smart pole, it is probable that the usefulness of any such responses would have been restricted by such uncertainty.
12. Therefore, it was not unreasonable for the Council to choose not to do so, and it was entitled to reach the conclusion that it did on the basis of its own assessment. Additionally, as set out in the Council's evidence, the uncertainty surrounding the precise location of the proposed development prevented full consideration of the matter, and therefore the level of evidence that could be provided.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

C Harding
INSPECTOR