



Costs Decision

Site visit made on 29 November 2022

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2023

Costs application in relation to Appeal Ref: APP/A5270/W/22/3296321 Windmill Lane, Southall, UB2 4UA, 514300, 180110

- 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 London Borough of Ealing for a partial and full award of costs against EE (UK) Ltd.
 - The appeal was against the refusal of Installation of a 20.0m monopole phase 5 on a new root foundation with 8 port wideband antennas; installation of one Mk5 cabinet, one Wiltshire cabinet and Huawei cabinet (56 Day Prior Notification Process).
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Decision

1. The application for a full 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. The PPG also states that examples of unreasonable behaviour by appellants include providing information that is shown to be manifestly inaccurate or untrue.
3. The PPG indicates that costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, however, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded.
4. The Council's claim for costs is on the basis that the appellant acted unreasonably by submitting erroneous photomontage images at appeal stage. The first set submitted with the initial appeal documents was said to have been corrected by the appellant on 15 August 2022 after the Council raised the issue. However, the second set was also considered inaccurate. The appellant then submitted a third set at final comments stage on 16 September 2022. The Council considers that these actions have resulted in wasted expenses for the Council in defending their decision at appeal stage.
5. I accept that the information provided was, on two occasions, inaccurate and that the Council had to spend time illustrating the reasons why the photomontages were erroneous.
6. As set out in my appeal decision the submitted photomontages are simply one element of a range of evidence submitted as part of the appeal and I have no reason to doubt the appellant's statement that the errors were not intentional

and, indeed, a final set of images was submitted prior to my consideration of the appeal. In any event, though photomontages can provide a useful indication as to the potential effect of a development, they show only certain angles and view points and do not provide any definitive answers as to any potential effect of a proposal such that the positions of either party would have been altered had they been submitted accurately in the first instance.

7. Given the nature and number of the reasons for refusal and the arguments submitted by the appellant I do not consider that the appeal could have been avoided altogether should the accurate images have been submitted at the outset. Moreover, any expense incurred in respect of the inaccurate photomontages would have been minimal in the context of the wider appeal process.
8. As such, based on the evidence before me, I do not consider the appellant behaved unreasonably in such a way so as to cause the Council unnecessary or wasted expense, as described in the Planning Practice Guidance. Therefore, an award of costs is not justified.

Conclusion

9. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted 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 not justified.

L J O'Brien

INSPECTOR