



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 EE (UK) Ltd for a full award of costs against the London Borough of Ealing.
 - 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 local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
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 applicant's claim for costs is on the basis that the Council included a reference to the effect of the reduction in the width of the pavement at the appeal site as a result of the proposal on future cycle users and a subsequent reference to a policy relating directly to cycling. As the pavement is not a cycle way the Council withdrew their comment in their appeal statement as they recognised that cycling on the footpath in this location would technically be unlawful.
5. I accept that this reference to the effect of the proposal on cyclists could be considered unreasonable and that the applicant had to spend time setting out the reasons why this aspect of the Council's refusal was incorrect. However, the Council did not pursue this element of the reason for refusal once this error was noted. I note the applicant's view that they have incurred additional expense in having to appeal against an unnecessary reason for refusal. However, this reference to cyclists was a very small part of a number of wider

concerns set out by the Council. Due to the number and nature of the other reasons for refusal I do not consider that the appeal could have been avoided altogether. Moreover, any expense incurred in refuting this aspect of the second reason for refusal would have been minimal in the context of the wider appeal process.

6. As such, based on the evidence before me, I do not consider that unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. Therefore, an award of costs is not justified.

Conclusion

7. 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