
Costs Decision

Site visit made on 8th February 2023

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2023

Costs application in relation to Appeal Ref: APP/M4320/W/22/3308968

56 Mersey Road, Crosby L23 6SS

- 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 Mrs Ann McLaughlin for a partial award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for construction of 2no. parking spaces with EV charging and associated access from Mersey Road.
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Decision

1. The application for a partial award of costs is refused.

Reasons

1. The Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
2. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The appellant states that the Council has acted unreasonably in relation to the third reason for refusal, which relates to the effect of the proposed development on telecommunications coverage. The appellant states that the Council has mis-understood paragraph 116 b) of the National Planning Policy Framework (the NPPF) in applying this to land within the appellant's control, on the basis that the appellant could cease any private arrangement with a telecommunications operator, such that the communications equipment would no longer be operative in any event. The appellant therefore considers that the inclusion of this third reason for refusal was unreasonable.
4. Paragraph 114 of the NPPF recognises that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being, requiring planning decisions to support the expansion of electronic communications networks. NPPF Paragraph 116 requires that in decision making, Local Planning Authorities should ensure that they have considered the possibility of the construction of new buildings or other structures interfering with broadcast and electronic communications services. The NPPF makes no explicit distinction in relation to land ownership.

5. In considering the impact of the proposed development on broadcast and electronic communications services, the Council has given due regard to section 10 of the NPPF, including paragraph 116b), as a material consideration in the determination of the application. In doing so, the Council has not acted unreasonably, as the policy of the NPPF is a material planning consideration.
6. That the appellant owns the land on which the telecommunications equipment is located, is a further material consideration, as is the fact that the appellant could cease the private arrangement with the telecommunications operator in any event. However, these material considerations do not negate the need to consider Section 10 of the NPPF, rather, they all require consideration in the overall planning balance.
7. The Officers Report (OR) demonstrates that the Council has given consideration to the issue of ownership by seeking clarification of the appellant's intentions in relation to the telecommunications equipment. The appellant's response as set out within the OR, confirms that notice has been given to the Telecommunications Company stating that subject to planning approval, the works to create the spaces will go ahead, and the telecommunications equipment would need to be removed. On this basis, the Council has then afforded weight to the removal of the equipment as a consequence of any planning permission, as well as applying weight to the timeframe of finding an alternative. The weight to be afforded to each of these matters is a matter of planning judgement and based on the evidence at that time, I do not consider that the Council has acted unreasonably in reaching the conclusions it did.
8. At the appeal stage, the appellant has indicated a firm intention to cease the private arrangement with the telecommunications operator, regardless of the outcome of the planning application. This is a different stance to that presented to the Council at the application stage and one which could have impacted on their decision making. I do not find that the Council acted unreasonably in concluding as part of their consideration of the planning application, that the proposal itself would result in the removal of the telecommunications equipment, thereby impacting on coverage, and including this as a reason for refusal.
9. Accordingly, the Council has not acted unreasonably in reaching the conclusions that it did and refusing the application in relation to the third reason for refusal. The Council has exercised its duty to determine this planning application in a reasonable manner. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and a partial award of costs is not justified.

S Brook

INSPECTOR