
Costs Decision

Site visit made on 3 June 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 June 2025

Costs application in relation to Appeal Ref: APP/C5690/W/25/3361291 Network Rail Land, behind Thriffwood, Upper Sydenham, London SE23 2NU

- 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 Connectivity Solutions Ltd for a full award of costs against the Council of the London Borough of Lewisham.
 - The appeal was against the refusal of planning permission for the installation of a distributed antenna system base station consisting of an 8.1m high monopole mast with attached antennas and an equipment cabinet installed on steel grillage.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. Unreasonable behaviour on the part of a Council may include failure to produce evidence to substantiate each reason for refusal, preventing or delaying development which should clearly be permitted or not determining cases in a consistent manner.
4. The costs application is made on the basis that the Council has acted unreasonably in refusing the prior approval application. The applicant suggests that the Council has (1) incorrectly interpreted the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), under Article 3(1) and Schedule 2, Part 16, Class A and has therefore prevented or delayed development which should have been granted, (2) failed to provide evidence to substantiate its reason for refusal, (3) not determined similar cases in a consistent manner as three other schemes for base stations along the Brighton Main Line have been granted prior approval, and (4) failed to engage constructively post decision to avoid the need for appeal.
5. In relation to (1), my main decision required a judgement to be made on the interpretation of the disputed parts of the GPDO. This was not a clear case and in the absence of any well-established case law on this specific issue being drawn to the attention of the decision maker, the Council was perfectly entitled to reach a different view. Whilst I do not agree with the Council's view, I do not find its decision to constitute unreasonable behaviour as the Council's reason for refusal set out in its decision notice is complete, precise, specific and relevant to the prior approval

application. Furthermore, the Officer report accompanying its decision, provides a comprehensive assessment of the proposed development against the requirements of the Part 16, Class A of the GPDO. Whilst the Council did not submit an appeal statement or provide any commentary on the applicant's case, in this particular instance this was not essential since its reason for refusal had already been substantiated prior to the appeal. In relation to (2), I therefore find that the Council adequately substantiated its reason for refusal.

6. In relation to (3), I do not have full details of these schemes including the plans and details that were before the decision maker. As such, I cannot be certain that the area of the base station was clearly specified and that the circumstances were exactly the same.
7. In relation to (4), I am not aware of a specific obligation for the Council to discuss an application with the applicant post decision. Even if it had, this may not have led to a different outcome.
8. Overall, even though I have allowed the appeal and I disagree with the Council's decision, its reasons were sufficiently substantiated. This decision required an element of judgement on the interpretation of the disputed part of the GPDO to be made. Ultimately, the need to appeal the decision would unlikely to have been avoided due to this difference in interpretation and therefore unnecessary or wasted expense has not been incurred by the applicant.

Conclusion

9. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated by the applicant. Consequently, the application for an award of costs is refused.

H Marriott

INSPECTOR