



Costs Decision

Site visit made on 17 June 2014

by **Doug Cramond** BSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 July 2014

Costs application in relation to Appeal Ref: APP/Q1445/A/14/2214347 Airwave Solutions Site Number SUS107, Court Farm Barn, Devils Dyke Road, Hove

- 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 Airwave Solutions Ltd for an award of costs against Brighton & Hove City Council.
 - The appeal was made against the refusal of an application, Ref BH2013/02358, dated 9 July 2013, which sought the variation of a condition attached to a planning permission Ref BH2008/03539, dated 6 February 2009.
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Decision

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

Reasons

2. Planning Practice Guidance (guidance) advises that, irrespective of the outcome of the appeal, costs may only 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 Appellant considers that there has been unreasonable behaviour by the Council in its determination of the proposal to remove the relevant controlling condition. This requires taking away the telecommunication apparatus, which is to a large degree screened by existing barns, by the end of September 2015. The Appellant's proposal to have pre-application discussions was not followed up. The case is made that the Council has failed to recognise the changes in planning policy since the previous determination of the case for non-time restricted retention of the telecommunications installation. The Framework has emerged, the land is no longer Article 1(5) land (AONB), Saved Local Plan (LP) Policies are out of date and the City Local Plan Part 1 is at an advanced stage of adoption.
4. Furthermore the Appellant underlines that the second mast to be found locally and which is presently redundant is required to be removed from its site by the end of September 2015 which would negate concern over cumulative visual impact. The Council failed to have proper regard to the 'no objection' stance of the adjoining National Park Authority. Although in the Appellant's eyes it would have been very much contrary to usual government policy which dissuades against a series of temporary permissions that option was still open to the Council and it has subsequently, belatedly, indicated it might have found such a course of action acceptable.

5. The case is made that the Council should have had regard to evidence from the 2008 that the barns had a long term future, should have appreciated the more recent security investment at the site and should have re-assessed the barns' condition. If the Council was not satisfied with the 2008 evidence the Appellant suggests it could and should easily have sought up-to-date information.
6. The general principle embodied within the guidance is that the parties involved should normally meet their own expenses. I have carefully considered the matter of a full or, indeed, partial, award of costs.
7. The offer of pre-application discussions was regrettably not acknowledged or taken up by the Council and it is quite wrong to say the suggestion was not made. However in practice and at the promoters choice when in the face of the 'September 2015 deadline' there was arguably no urgency, the application followed very quickly, about three weeks later, and no second written attempt seems to have been made to progress discussions prior to this.
8. To my mind the refusal reason is clear and sets out unequivocally the concerns of the Council. The reason cross-refers to the applicable saved policies and notwithstanding the revocation of the AONB these policies continue to have applicability in countryside and the National Park context. The LP provides for this. The application papers themselves refer to the saved policies of the LP and at that time made no suggestion that they are out of date. The City Local Plan Part 1 carries only limited weight due to the stage reached but in any event includes countryside protective objectives. The Council clearly had awareness of the Framework and I would not expect every Committee report to set out every avenue of that document. There is some concern expressed over cumulative impact from a second mast which does still presently exist but most weight, as is clear from the refusal reason, relates not to cumulative impact but to the screening role of the barns on this proposal.
9. There was some lethargy in the Council in merely looking back at historic undertakings by the barns' owner and using the shorthand that 'nothing had changed' but at the same time I would have expected the applicant to have provided, without prompting, up-to-date information on the key matter of barn retention. Such information as has now helpfully been provided with the appeal papers. The Officers' report sets out consultees' responses and they would seem to form part of the consideration. If in the light of the refusal to remove the controlling condition, and against the background of national guidance, a further temporary period had at the time been deemed appropriate by the promoters then approaches could have been made in that regard to the Council. The choice was made to appeal the case rather than explore this.
10. The Council's appeal papers expand upon the refusal reason, logically consider the planning history of the site, refer or cross-refer to pertinent policy issues and relevant guidance and explain why the proposal would, in the Council's eyes, fail to accord with the objective of ensuring that development would not impact upon the character and appearance of the area. It is widely appreciated that there is desirability in ensuring such objectives are met.
11. In conclusion, the Council's commentary throughout is lucid, sufficiently full and a reflection of the judgement of those who determined this proposal. On the evidence it had available, and against the proper planning policy template, it has provided a respectable standpoint within the reason set out on the

decision notice and as the background and justification in reaching that decision; the Council's stance was certainly not in any way irrational.

12. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the planning guidance, has not been demonstrated.

D Cramond

INSPECTOR