

APPLICATION FOR COSTS AT APPEAL

**Town and Country Planning Act
1990**

**Town and Country Planning
(Control of Advertisements)
(England) Regulations 2007**

Appeal(s) against Manchester City Council
Refs. 139737/FO/2024 & 139738/AOH/2024

July 2024

INTRODUCTION

1. New World Payphones hereby apply for an award of costs against Manchester City Council (“the Council”).
2. The application(s) for costs relate to the refusal of applications for planning permission and express advertising consent made to the Council.
3. The appeal proposal is for a new digital communications kiosk and ancillary advertisement display to replace an existing telephone box on King Street West, in Manchester’s city centre. This statement should be read in conjunction with the accompanying Appeal Statement.

THE COSTS REGIME

4. The Planning Practice Guidance (“the PPG”) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary expense in the appeal process.
5. The mechanism is designed to ensure that parties behave in a reasonable way, encourage decision makers to exercise judgment in a sound manner and, ultimately, discourage unnecessary appeals. In this regard, it is considered that the local planning authority has failed on all counts.

REASONS FOR AN AWARD OF COSTS

6. The Appeals PPG advises 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, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples¹ include, but are not limited to, the following:
 - i. vague, generalised or inaccurate assertions about a proposal’s impact, which are unsupported by any objective analysis.
 - ii. persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
 - iii. Not determining similar cases in a consistent manner.

¹ Paragraph: 049 Reference ID: 16-049-20140306

- iv. Failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances.
 - v. refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal.
7. Based on its reasons, the Council has not provided any substantive details of any decluttering strategy or regeneration proposals to warrant giving these matters significant weight in any refusal. References to strategies which may or may not be ongoing, regeneration programs well removed from the appeal site, or the impact of any adjoining development are considered unsubstantiated and contrived respectively. Anything submitted now would be *after the fact*.
8. A Planning Inspector has effectively ruled on the design, siting and appearance merits of the kiosk previously². The Council has dismissed these considerations altogether and considered the new unit harmful to the townscape by virtue of its design and siting.
9. There is nothing in the Council's decision, therefore, which credibly demonstrates why it is departing from the previous Inspector's decision, nor why a similar proposal at the site, for a BT Street Hub was permitted. The premise of the approval was the removal of outdated telephone boxes and installation of new modern equipment to bolster the connectivity of the city centre. This is exactly what is proposed in the appeal proposal, but the Council have not been consistent in their approach towards NWP compared to other operators.
10. Finally, the appellant entered into pre-application discussions with the Council and provided a significant degree of information upfront regarding the proposed communications kiosks, including their siting, design and appearance, even noting the site's favourable planning history. In its response, the Council raised no concerns, and certainly nothing pertaining to the potential conflict with any regeneration program or highways strategy. Had these matters been raised, the time and expense on any application – *and now an appeal* – may not have been incurred.
11. Based on the evidence presented in this application (*and ancillary appeal*), New World Payphones consider that Manchester City Council has acted unreasonably, and the appellant has incurred unnecessary costs in appealing this decision. It is

² Appeal decision ref. APP/B4215/W/18/3195987 (enclosed with Planning and Advertisement appeals)

NWP's view, therefore, that the Council has refused consent as a matter of general policy rather than for any substantive or objective reasons.

12. The main expense in this appeal is time, and whilst submitting an appeal may be free of charge, it has necessitated a greater degree of work and effort compared with the original application³.

SUMMARY AND CONCLUSION

13. New World Payphones hereby apply for an award of costs against Manchester City Council. The claim is made on the basis that the Council have behaved unreasonably with respect to the substance of the matter under appeal, and the reasons underpinning the decision are unreasonable, unnecessary, and unjustified.
14. Hence, it is concluded that the Council has acted unreasonably, resulting in unnecessary or wasted expense, and a full award of costs is justified.

³ This does not consider the time and expense taken by the Planning Inspectorate.