

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. 139703/FO/2024 and 139704/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 a new digital communications kiosk featuring an integral advertisement display. The proposal would see the removal of the existing red telephone kiosk outside the Ritz Theatre on Whitworth Street West and the installation of the new replacement digital communications kiosk and ancillary advertisement outside no.15 Whitworth Street West.

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. The Council has not submitted any substantive detail of their objections to warrant withholding consent. References to strategies which may or may not be ongoing, or undocumented and vague regeneration programs/objectives, 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 a similar proposal on land nearby previously². The Council has dismissed these considerations citing the aim of regenerating the local area and considered the new unit harmful to the townscape by virtue of its design and siting.
9. The Inspector notes in paragraphs 10 and 11 of their decision that although “*there are existing items of street furniture, the erection of the proposed kiosk would not give rise to an unacceptably cluttered appearance*”. Rather, it would “*complement the contemporarily designed neighbouring building. By reason of its design, its siting within the street furniture zone, the context of the neighbouring building and the busy nature of the junction, the appeal scheme would not be an unduly prominent or visually discordant structure within the footway along the north side of the road nor the wider appearance of the streetscene*”.
10. Moreover, it clarifies in the subsequent paragraphs that “*the separation distance between the appeal scheme and the viaduct, the busy character of the junction and other street furniture combine to ensure that the setting of the Listed Building would be preserved rather than harmed*”.
11. There is nothing in the Council’s decision, therefore, which credibly demonstrates why it is departing from the previous Inspector’s decision – particularly given that there has been no change in local circumstances.
12. Furthermore, the Council approved similar proposals a short distance away on Whitworth Street West for two BT Street Hubs (refer to the ancillary appeal statement), featuring a telephone and double-sided advertisement displays. The

² Appeal decision ref. APP/B4215/W/18/3192639 (enclosed with Planning and Advertisement appeals)

premise of these approvals 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.

13. Finally, the Council entered into pre-application discussions with the Council (set out in the accompanying appeal). NWP provided a significant degree of information upfront regarding the proposed communications kiosks, including their siting, design and appearance. In its response, the Council raised no concerns, and certainly nothing pertaining to the potential conflict with any regeneration program or highways strategy. In fact, it considered the relocation of the existing telephone box as a positive, noting the improvements to the public realm and setting of the listed Ritz Theatre. Had these matters been raised, the time and expense on any application – *and now an appeal* – may not have been incurred.
14. 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 NWP's view, therefore, that the Council has refused consent as a matter of general policy rather than for any substantive or objective reasons.
15. 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

16. 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.
17. 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.