



The Planning Inspectorate

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Your Ref:

Our Ref: APP/M4510/Z/16/3158995¹

Date: 9 August 2017

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 220 AND 322
TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS)
(ENGLAND) REGULATIONS 2007: APPEALS BY NEW WORLD PAYPHONES AT
VARIOUS SITES IN NEWCASTLE: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspector's appeal decisions of 6 January 2017 concerning the refusal of Newcastle City Council to grant express consent for internally illuminated digital panels in various telephone kiosks in Newcastle.

2. With apologies for the delay, this letter deals with your application, on behalf of the appellants, for an award of costs against the Council, made in your correspondence of 12 December 2016, 4 January and 21 February 2017. The Council responded in correspondence of 16 February 2017. As these representations have been copied to the parties it is not proposed to summarise them. They have been carefully considered.

Summary of decision

3. The formal decision and costs order are set out in paragraphs 16 and 17 below. The costs application succeeds to the extent that a partial award of costs is being made.

Basis for determining the costs application

4. In planning and enforcement appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.

¹ APP/M4510/Z/16/3158996, 3159002, 3159007, 3159010, 3159123, 3159124, 3159127, 3159129, 3159133 and 3159167

The Government's Planning Practice Guidance (PPG), a web-based resource, was published on 6 March 2014. The application for costs has been considered by reference to the guidance, the appeal papers, the parties' correspondence on costs and all the relevant circumstances.

Reasons for the decision

5. All the available evidence has been carefully considered. The decisive issue is whether or not the Council acted unreasonably by submitting incorrect or conflicting information, causing the appellants to incur wasted or unnecessary expense in the appeal process. The policy guidance in paragraph 047 of the PPG is particularly relevant.

6. For the avoidance of doubt, although 11 appeals were made, only 7 of them are the subject of this application for costs, which doesn't include the lead appeal APP/M4510/Z/16/3158995. The relevant appeals are as follows:

APP/M4510/Z/16/3158996
APP/M4510/Z/16/3159010
APP/M4510/Z/16/3159123
APP/M4510/Z/16/3159124
APP/M4510/Z/16/3159129
APP/M4510/Z/16/3159133
APP/M4510/Z/16/3159167

Each appeal is addressed below in turn.

APP/M4510/Z/16/3158996

7. The Council contend that while the Reasons for Refusal incorrectly refer to a Grade I listed building, the impact upon the Grade II former Co-op building is clearly assessed in the delegated Officer's report. However, from reading the report there does not appear to be any specific reference to the Co-op building. The report merely refers to the setting of listed buildings in general terms without specifying the Co-op building. Understandably, this caused you to respond on behalf of the appellants to point out this confusing situation. This resulted in the appellants incurring unnecessary extra expense as a consequence.

APP/M4510/Z/16/3159010

8. As the Council concede, the Officer's delegated report incorrectly identifies the site as being within the Central Conversation Area. However, the Council contend that as this error was rectified in the Questionnaire, it did not place the appellants at any additional cost. The Secretary of State does not accept this argument, as while the error may have eventually been rectified, it nevertheless caused you to respond on behalf of the appellants to highlight the conflicting information given in separate documents. This again resulted in the appellants incurring unnecessary extra expense as a consequence of the Council's error.

APP/M4510/Z/16/3159123

9. The Council concede that listed building details were submitted for the wrong building rather than that for the Grade I listed Grainger Market and grade 11 buildings on Nelson Street. However, they contend that this was rectified once it was pointed out

by the appellants so it did not place them at any additional cost. Again, the view is taken that the appellants incurred extra expense through you having to point out the error.

APP/M4510/Z/16/3159124

10. While it would have been helpful had the Council made clear which specific listed buildings they claimed to be affected, it is not clear to the Secretary of State that this caused you to carry out any extra work. The grounds of appeal may well have contained different text by focussing on specific listed buildings, but would not necessarily have incurred any less work to that involved in preparing the grounds of appeal submitted. In fact, it could well have involved more work. Therefore, the Secretary of State cannot be satisfied, on the evidence available, that the Council's failure to stipulate specific listed buildings caused the appellants to incur wasted or unnecessary expense in the appeal process.

APP/M4510/Z/16/3159129

11. The Council concede that the decision notice incorrectly refers to the impact on a Grade I listed building and the Central Conservation Area. While this was rectified in the Questionnaire, the secretary of State is satisfied that it caused the appellants to incur extra expense through you having to point out the conflicting information.

APP/M4510/Z/16/3159133

12. In this case, the site is located adjacent to a Grade I listed building and within the Central Conservation Area. However, the Questionnaire incorrectly states that it is not. Again, this caused the appellants to incur extra expense through you having to point out the conflicting information.

APP/M4510/Z/16/3159167

13. The Council argue that the Officer's report never stated that the site was within the Conservation Area, but merely impacted upon its character. They also contend the report correctly identifies the site to be only 20 meters from the eastern boundary of the Central Conservation Area. However, from reading the report, there is no evidence to demonstrate that this specific identification was made. Nevertheless, although the Council are correct to point out that they and the appeal Inspector considered the impact of the proposal on the nearby Conservation Area, it was understandable that the appellants were under the impression that the Council considered the site to be within the Conservation Area, given the Reasons for Refusal made the same statement as the other decision notices within the Conservation Area; namely, that it would detract from the character and appearance of the Central Conservation Area. The report does not identify the Conservation area as merely being nearby the appeal site as asserted by the Council. Therefore, the Secretary of State is satisfied that the appellants incurred extra expense through you having to respond as a result of the Council's misleading information.

Conclusions

14. The overall conclusion reached is that the Secretary of State is satisfied, on the evidence available, that the Council have acted unreasonably, which has caused the appellants to incur wasted or unnecessary expense in the appeals process, with the exception of appeal APP/M4510/Z/16/3159124. An award of costs will therefore be

made, limited to those costs incurred in relation to you having to respond on behalf of the appellants in pointing out errors and conflicting information as identified above.

15. For the avoidance of doubt, the Secretary of State's power to award costs is interpreted as enabling him to award to a party the costs necessarily and reasonably incurred in relation to the appeal proceedings before him. He does not determine the amount payable; that will be for the parties to resolve by agreement on the evidence of expense actually incurred or failing that, in the context of an application to the Senior Courts Costs Office for detailed assessment.

FORMAL DECISION

16. For these reasons, the Secretary of State has decided that a partial award of costs against the Council on the grounds of "unreasonable" behaviour resulting in wasted or unnecessary expense is justified in the particular circumstances.

COSTS ORDER

17. Accordingly, the Secretary of State for Communities and Local Government, in exercise of his powers under section 250(5) of the Local Government Act 1972, Town and Country Planning Act 1990 – Sections 220 and 322, Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and all other powers enabling him in that behalf, **HEREBY ORDERS** that Newcastle City Council shall pay to New World Payphones Ltd their costs of the appeal proceedings before the Secretary of State, limited to those costs incurred in relation to appeals APP/M4510/Z/16/3158896, 3159010, 3159123, 3159129, 3159133 and 3159167 in having to point out errors and conflicting/misleading information as highlighted above; such costs to be assessed in the Senior Courts Costs Office if not agreed.

18. You are now invited to submit to Mr Jon Rippon, Team Manager at Newcastle City Council, details of those costs with a view to reaching an agreement on the amount. A copy of this letter has been sent to him.

Yours faithfully

K McEntee

KEN McENTEE

Authorised by the Secretary of State
to sign in that behalf