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## Costs Decision

Site visit made on 2 October 2018

**by T A Wheeler BSc (Hons) T&RP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 November 2018**

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### **Costs application in relation to Appeal Ref: APP/X4725/Z/18/3205903 Land at Ings Road, Wakefield WF1 5QJ**

- The application is made under section 322 of the Town and Country Planning Act 1990, Regulation 17 of the Town and Country Planning (Control of Advertisements) Regulations 2007, and section 250(5) of the Local Government Act 1972.
  - The application is made by Wildstone Estates Limited for a full award of costs against City of Wakefield Metropolitan District Council.
  - The appeal was against: single sided, free standing, 48 sheet advertisement screen and associated logo box.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. 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 appeals process.
3. In the case of this appeal, the applicant says that Wakefield Council failed to engage in meaningful discussions during the determination process, other than some brief comments concerning the highways officer's concerns. The applicant asserts that the objection on highway safety grounds was in-principle and subjective only, and was not backed up by a reasoned justification. As a result, they had no alternative but to resort to the appeals process and have incurred unnecessary costs and delay.
4. The PPG is clear that costs cannot be claimed for expenses incurred as part of the determination of a planning application. However, actions at the time of the planning application can be taken into account if the applicant has proceeded to make an appeal.
5. The local planning authority may be at risk of an award of costs where it fails to produce evidence to substantiate reasons for refusal. In this case the Council has produced nothing more than the planning officer report recommending that advertisement consent should be refused on highway safety grounds and conflict with development plan policy. This recommendation was based on the weight given to the consultation response of the highways officer dated 13 April 2018. The Council acknowledges as much in its response to the application for costs dated 26 October 2018.

6. The highway officer's response referred to sub paragraphs (b), (d) and (e) in the PPG on the main types of advertisement which may cause danger to road users<sup>1</sup>. The response also stated:

*Given the site's close proximity to the adjacent signalised junction and the low bridge there are concerns that the proposed digital advertisement board would affect public safety on the roads.*

The response concluded by stating:

*Therefore to reiterate this Service's concerns, given the site's close proximity to the adjacent signalised junction and the low bridge and for the reasons stated above, it is considered that the proposed digital advertisement board would be detrimental to highways efficiency and Safety contrary to Policy D14 of the Local Development Framework.*

7. In effect, the highway officer's response was based on a restatement of the PPG paragraphs on public safety considerations and the opinion that since the proposal would be near to both a signalised junction and low bridge it would not be acceptable. The applicant describes the highways officer's stance as 'in-principle and subjective...rather than a sound evidence based assessment'. However, the highways officer was entitled to express a professional opinion that the proposal was detrimental to highway safety without recourse to specific matters of fact, for example accident records.
8. From the evidence before me it is clear that the applicant made efforts to engage the council in discussions regarding the highway safety concerns prior to the determination of the application. The applicant also sent the planning officer comments on the highway's officer's response which were not referred to in the delegated report which recommended refusal of the application. The Council acknowledges in its response that officers are required to take due account of the case put forward by the applicant but there is no evidence that they did so in a meaningful way in the planning officer's report.
9. The delegated report advised that significant highway safety concerns could relate to either undue distraction or impeding the safe and efficient flow of traffic. It acknowledged that there would be no issue in terms impeding the flow of traffic, and would rationalise the number of signs on the site. However, with regard to highway safety it relied on a restatement of the PPG guidance and the highway officer's advice that highway safety concerns existed. The planning officer added only 'the concerns principally would be the risk of the advertisement causing an undue distraction to drivers as they approach a signalised junction and low bridge'.
10. Based on the Council's reason refusal of consent, the applicant commissioned a Traffic Safety Report (the Vectos Report). This report provided an assessment of all four approaches to the appeal site, and the low bridge, with regard to highway safety. It also reviewed the accident data for the previous five years in the vicinity of the site. Had the Council engaged in discussions with the applicant over its concerns on highway safety, the scope of this report could have been refined.
11. In response to the appeal, the Council has produced no evidence to rebut any of the findings of the highway safety report. Nor has it provided any conditions,

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<sup>1</sup> Planning Practice Guidance Paragraph 068 Reference ID: 18b-068.20140306

in addition to the five standard conditions, which it would wish to be imposed in the event that an express consent is granted.

12. The applicant seeks a full award of costs. The Council argues that as the local planning authority it was entitled to base its decision on the specialist advice of the highways officer and the planning judgement of its officers. It acknowledges that the perceived lack of engagement with the applicant was regrettable, but the decision was based on the information before officers. I find that whilst the decision to refuse consent was based mainly on an in-principle objection to the proposal, it went beyond vague or generalised assertions unsupported by any objective analysis, and therefore, of itself, does not amount to unreasonable behaviour. Therefore a full award of costs is not justified in this instance. However, for the reasons given above I find that the Council acted unreasonably in not engaging in meaningful discussions with the applicant prior to determination and as a result the applicant was put to unnecessary expense in preparing the case for appeal.

### **Conclusion**

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

### **Costs Order**

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the City of Wakefield Metropolitan District Council shall pay to Wildstone Estates Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of the Highway Safety Report VN81064 June 2018 by Vectos Transport Planning Specialists; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the City of Wakefield Metropolitan District Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Tim Wheeler*

INSPECTOR