



Costs Decision

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2019

Appeal A

**Costs application in relation to Appeal Ref: APP/N1160/W/19/3224097
6 Derrys Cross, Plymouth PL1 2SG**

- 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 Plymouth City Council for a full award of costs against Mr Nathan Still of Infocus Public Networks Ltd.
- The appeal was against the refusal to grant approval for the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.

Appeal B

**Costs application in relation to Appeal Ref: APP/N1160/W/19/3224098
11-13 Cornwall Street, Plymouth PL1 1NL**

- 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 Plymouth City Council for a full award of costs against Mr Nathan Still of Infocus Public Networks Ltd.
- The appeal was against the refusal to grant approval for the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.

Appeal C

**Costs application in relation to Appeal Ref: APP/N1160/W/19/3224101
30-32 Cornwall Street, City Centre, Plymouth PL1 1LP**

- 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 Plymouth City Council for a full award of costs against Mr Nathan Still of Infocus Public Networks Ltd.
- The appeal was against the refusal to grant approval for the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.

Appeal D

**Costs application in relation to Appeal Ref: APP/N1160/W/19/3224102
Mayflower, Armada Way, Plymouth PL1 1HZ**

- 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 Plymouth City Council for a full award of costs against Mr Nathan Still of Infocus Public Networks Ltd.
 - The appeal was against the refusal to grant approval for the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.
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Appeal E

Costs application in relation to Appeal Ref: APP/N1160/W/19/3224105 130-138 Armada Way, Plymouth PL1 1NR

- 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 Plymouth City Council for a full award of costs against Mr Nathan Still of Infocus Public Networks Ltd.
 - The appeal was against the refusal to grant approval for the installation of an electronic communications apparatus pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 comprising a telephone kiosk.
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Decision

1. The application for an award of costs is refused in respect of each appeal.

Reasons

2. The Planning Practice Guidance 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 appeal process. I have considered the above applications together because they raise the same issues in each case.
3. In summary, the Council consider that the appellant has acted unreasonably for two reasons. Firstly, by not engaging with the Council since the decisions were issued in respect of its 'Better Places Plymouth' scheme, as a number of the kiosks would directly conflict with the proposed street layout. If the appellant had worked with the Council, it should have been possible to identify suitable positioning for the kiosks that would not generate significant design and siting impacts.
4. Secondly, the Council raise the issue that following the case of *Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd* [2019] EWHC 176 (Admin) (the Westminster judgement) they wrote to the appellant inviting the withdrawal of the appeals because of the considered dual use of the kiosks would not fall within the scope of Class A of Part 16 of the GPDO¹. It is argued that pursuing the appeals in these circumstances has led to unnecessary and wasted expense. Given the nature of submissions from the Council I have treated the applications as seeking a full award of costs in each case.
5. The appellant has responded to explain that, in their view, they have willingly engaged with the Council during the process regarding the plans for Plymouth City Centre, including by e-mail and phone conversations. It is explained that as there is a disagreement regarding the matters of siting and appearance, it was not unreasonable to make an appeal.
6. In respect of the Westminster judgement, it is argued that the findings of fact in a case concerning a proposal in Westminster is not relevant as that proposal can be clearly distinguished from the prior approvals made in this case. The Council has not brought forward clearly relevant authorities that support its interpretation or suggest genuine uncertainty over the principle at issue.

¹ The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

7. Examining these matters, the information indicates that the appellant did engage with the Council during the processing of the submissions and was sufficiently aware of the city centre proposals. However, after receiving the decision notices, it was open for the appellant to appeal and to argue the case regarding siting and appearance. There was no requirement for the appellant to continue discussions with the Council at that stage while awaiting the outcome of the appeals and, therefore, this does not constitute unreasonable behaviour.
8. There is a disagreement between the parties as to whether the telephone kiosks are solely for the purpose of the operator's electronic communications network or propose a dual use. Looking at all the information available, I have reached the conclusion that the kiosks would not be solely for the operator's electronic communications network and therefore do not benefit from the allowances in the GDPO. However, this is a judgement to be determined on the facts of the case. The appellant's case in this respect was of sufficient merit such that this was an arguable point that could be tested at the appeal. In these circumstances, the appeals could not be avoided, and I do not consider that the appellant has acted unreasonably in this regard.
9. As a result, it follows that I cannot agree that the appellant has acted unreasonably in this case. As such, there can be no question that the applicant was put to unnecessary or wasted expense.

Conclusion

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs is not justified.

David Wyborn

INSPECTOR