
Costs Decision

Site visit made on 10 February 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Costs application in relation to Appeal Ref: APP/N4720/Z/19/3238879 7 City Walk, Holbeck, Leeds LS11 9AT

- 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 Mr Mark Wilkinson (Infinity Outdoor Ltd) for a full award of costs against Leeds City Council.
 - The appeal was against the refusal of express consent for freestanding digital screen mounted on a steel structural support.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It also states that examples of unreasonable behaviour by local planning authorities include not determining similar cases in a consistent manner and introducing fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would not otherwise have arisen. Unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).

Substantive unreasonable behaviour

3. The applicant considers that the Council has not determined similar cases in a consistent manner citing other development proposals located close to the appeal site and at other locations within the city with similar issues being considered where planning permission was granted. The applicant also considers that the Council behaved unreasonably in not acknowledging or considering a legal opinion regarding consistency in making planning decisions which they submitted as part of the original application.
4. My reading of the submitted legal opinion¹ is that it covers consistency in making planning decisions in a broad sense whilst aiming to show that the proposal was sufficiently similar to other comparable proposals that were granted consent meaning that the proposal should also have been granted permission.

¹ See appendix 2 of appellant's appeal statement.

5. However, the legal opinion refers to the North Wiltshire judgement² and whilst it states that '*previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process, noting that consistency is self-evidently important to both developers and development control authorities and is also important for the purpose of securing public confidence in the operation of the development control system*' it also goes on to correctly state that '*As the Court also explained in that case, there is no rule that like cases must be decided alike.*' As a result, I consider that the applicant has accepted the principle that previous proposals (or others) of a similar type are not always materially the same and that the consideration of these is a matter for the decision-maker with each case being judged on its own merits.
6. The officer's report makes it clear that there are differences between the current proposal (subject of the most recent planning appeal) and the previous proposals on the appeal site, even though they are similar. Therefore, I consider that the Council has acted reasonably in determining these different (but similar) proposals, on their own merits, and in a manner consistent with current planning practice and in accordance with the general principles for consistency in decision-making highlighted by the applicant's submitted legal opinion. I am therefore also satisfied that they took into account the previous appeal decisions related to the appeal site and adequately explained how they reached their decision.
7. Furthermore, although the officer's report did not specifically refer to the similar proposals at other locations in the city that were granted permission, given they were not indistinguishable from the appeal scheme, I consider that the Council also acted reasonably in determining it on its own merits, giving clear reasons why they made their decision.
8. The applicant also considers that the Council behaved unreasonably by asking the Highways Authority to re-examine the proposal in more detail after the first set of their comments provided raised no objection to the scheme. They also suggest that the Council behaved unreasonably by failing to acknowledge the first set of comments in the officer's report, while instead only referring to the second, more detailed set of comments that did raise highway safety concerns.
9. However, in their response to the applicant's grounds for costs, the Council have highlighted that they made contact with the applicant to explain that the proposal was unacceptable on visual amenity grounds and that given the nature of the proposal, they considered that a more detailed assessment by the Highway Authority was necessary.
10. Accordingly, it would be reasonable to think that at this stage of the process the applicant would have known that a differing opinion may have been forthcoming from the Highways Authority, and, that as the proposal was unacceptable on visual amenity grounds, it would likely be refused in any event. It follows therefore that the applicant would also have been reasonably certain that the only likely way to obtain permission for the proposal would be to lodge an appeal. It would therefore also be reasonable to think that that the second set of comments from the Highway Authority would not have been the only determinative factor in the applicant doing so.
11. Moreover, whilst the Highway Authority did provide two sets of comments with differing opinions, it is not uncommon for consultees to change their minds after further considering a development proposal in more detail, and they are within their rights to do so.

² North Wiltshire District Council v Secretary of State for the Environment [1992] 65 P. & C.R. 34

12. Additionally, when this occurs it is usually the latest set of comments that are referred to in the officer's report not those that have been superseded. It is also not unreasonable for an experienced officer to ask a consultee to re-examine a development proposal in more detail if they think that this would be necessary in order to gain a full understanding of it and to comprehensively assess its potential impact.
13. In the overall planning judgement, it appears to me that having regard to the evidence before me the Council did determine these similar cases in a consistent manner. The refusal of planning permission in this case therefore does not constitute substantive unreasonable behaviour contrary to the basic advice in the National Planning Policy Framework and the Guidance.
14. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore that the appeal could have been avoided. I have found that the Council had reasonable concerns about the impact of the proposed development which justified its decision. Consequently, I conclude that substantive unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated and that a full award of costs is not justified.

Procedural unreasonable behaviour

15. At a late stage in the appeal process the Council submitted a substantial piece of evidence from the Highway Authority, to which the appellant prepared and submitted a formal response. This evidence was accepted as it provided additional pertinent information relating to the potential impact of the proposal on highway safety. However, given both the late stage of the appeal process and the substantial nature of the evidence submitted, I consider that this did give rise to extra expense on the applicant's part given that they prepared a formal written response to this statement at short notice.
16. I therefore conclude that procedural unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

17. 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 Leeds City Council shall pay to Mr Mark Wilkinson (Infinity Outdoor Ltd), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the preparation of their formal written response to the late evidence submitted by the Council as outlined above; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to Leeds City 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.

C Coyne

INSPECTOR