



Costs Decision

Site visit made on 7 November 2022

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th November 2022

Costs application in relation to Appeal Ref: APP/T5150/H/22/3297215 Advertising rights opposite Panther Drive, Drury Way, Brent, London NW10 0HZ

- 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 Mr Ben Porte (Clear Channel UK) for a full award of costs against Council of the London Borough of Brent.
 - The appeal was against the grant of advertisement consent for replacement of existing 48-sheet poster advertisement with illuminated 48-sheet digital poster display.
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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 appeal process.
3. 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. An example of such behaviour is when a condition has been imposed that is not necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions. Conditions should only be utilised when each of these 6 tests are satisfied.
4. Regarding the use of conditions and advertisement consent, the PPG states that if a local planning authority decides to impose conditions that are additional to the standard conditions, these must be supported by specific and relevant planning reasons. It also states that conditions should never be imposed because the local planning authority wishes, as a matter of general policy, to prevent the operation of Class 14 in Schedule 3 of the Regulations (advertisements displayed after expiry of express consent) in their area.
5. In my appeal decision I found no specific or relevant planning reasons to withhold the right to display the advertisement under deemed consent. Therefore, the disputed part of condition 1 is neither reasonable nor necessary in the interests of amenity or public safety. The Council acted unreasonably in imposing condition 1 with the wording subject to the dispute included.

6. The appeal solely relates to the imposition of condition 1. Had the disputed wording been omitted there would have been no reason for an appeal and the entire process would have been avoided. I note the correspondence between the Council and appellant following the grant of advertisement consent which included a suggestion from the Council that an application could have been submitted in order to apply to remove the condition. However, unlike an application for planning permission where Section 73 of the Town and Country Planning Act 1990 (as amended) applies, a local planning authority has no power to accept an application to grant advertisement consent for an advertisement without complying with a condition imposed on a previous consent. Therefore, that application route was not available to the appellant, making the requirement for the appeal process to be pursued inevitable.
7. 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 full award of costs is justified.

Costs Order

8. 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 Council of the London Borough of Brent shall pay to Mr Ben Porte (Clear Channel UK) the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to the Council of the London Borough of Brent to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

H Jones

INSPECTOR