



Costs Decision

Site visit made on 13 March 2024

by D Cleary MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2024

Costs application in relation to Appeal Ref: APP/U4610/H/23/3323042

Land on the south east of Foleshill Road, Foleshill, Coventry CV1 4HX

- 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 Wildstone Estates Limited for a full award of costs against Coventry City Council.
 - The appeal was against conditions imposed when granting express consent for the removal of existing advertisement display boards and erection of two internally illuminated digital advertisement boards.
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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 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. The applicant's claim for an award of costs is based upon the Council applying an inconsistent approach to decision-making on the site in attaching the condition where an earlier consent had no such condition; attaching the condition arbitrarily with no robust justification as to why the Council deemed it to be necessary; and, to provide no response to emails from the applicants agent concerning the imposition of the condition subsequent to issuing its decision to grant advertisement consent.
4. In response, the Council have confirmed that the imposition of the condition was due to an administrative error and, as such, sought not to challenge the appeal. The Council indicate that the emails received were sent to a generic email address and were subsequently filed against a closed case, which would not have been monitored. The Council suggest that the applicant could have contacted the case officer direct by email or phone.
5. Advertisement consent was granted on 12 April 2023 with a condition requiring their removal after a period of five years. Following receipt of the decision, an email was sent to the Council on 13 April 2023, querying the imposition of the condition and seeking an immediate remedy. A further chasing email was sent on 28 April 2023. No response was received to either email. Therefore, the applicant lodged an appeal against the imposition of the condition. The appeal was lodged on 26 May 2023, about a month later than the applicants last

contact with the Council. Any appeal would have to have been lodged within 8 weeks of the date of decision.

6. As I have indicated in the main decision, the condition was not justified by any evidence and its imposition was wholly unreasonable and unnecessary. Further, the approach taken by the Council was inconsistent with an earlier consent for advertisements at the site.
7. I acknowledge that from time to time, administrative errors on decision notices can, and do, occur. This in isolation may not be tantamount to unreasonable behaviour. However, in this instance, the applicant immediately sought clarification from the Council and to seek a remedy of the issue. Unfortunately, no response was forthcoming to any communication and, in the absence of any contact, an appeal was lodged before the time limit to appeal could expire. The appeal was not lodged immediately, and I consider that there would have been sufficient time for the Council to respond to the applicants queries and for a resolution to be agreed.
8. I note the Councils suggestion that the applicant could have contacted the case officer direct. However, I have no evidence that the applicant had the relevant contact details of the individual case officer. Nonetheless, the evidence indicates that the applicant made direct contact with the Council to seek a resolution, marking the initial email for the attention of the case officer. The onus was then on the Council to duly reply. Had the emails been acted upon through a more helpful approach, then it is possible that an agreement could have been reached between the parties, and the appeal avoided.
9. The Council suggest that the appeal could have been withdrawn following approval of the subsequent advertisement consent¹. This application was made after the appeal was lodged, and, at that time the expense in preparing and submitting the appeal had already been incurred by the applicant.
10. For these reasons, together, I find that the Council have acted unreasonably, which has resulted in unnecessary and wasted expense being incurred by the applicant in pursuing an appeal which could have been avoided. However, I agree with the Council that an award of costs should not extend to the submission of the further planning application, as this does not specifically relate to the appeal process.

Conclusion

11. I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the Guidance, has been demonstrated. Accordingly, I conclude that a full award of costs is justified.

Costs Order

12. 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 Coventry City Council shall pay to Wildstone Estates Limited the costs of the appeal proceedings described in the heading of this decision, and such costs shall be assessed in the Senior Courts Costs Office if not agreed.

¹ Reference PL/2023/0001078/ADV

13. Wildstone Estates Limited is now invited to submit to the 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.

D Cleary

INSPECTOR