

Costs Decision

Site visit made on 16 and 17 June 2024

by Grahame Kean BA(Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Costs applications in relation to:

Appeal A Ref: APP/B4215/G/22/3309427

ECP Car Park, Miller Street, Manchester

Appeal B Ref: APP/B4215/G/22/3310603

ECP Car Park, Land Bounded by Rochdale Road, Addington Street and Cable Street, Manchester

- The applications are made under the Town and Country Planning Act 1990, sections 220 and 322, Schedule 6, and the Local Government Act 1972, section 250(5) and the Town and Country (Control of Advertisements) (England) Regulations 2007.
 - The applications are made by City Outdoor Media Limited for full awards of costs against Manchester City Council (the Council).
 - The appeals were against discontinuance notices concerning the display of advertisements at the above sites.
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Decision

1. The applications for an award of costs against the Council are refused.

Submissions of the Applicant

2. In respect of both appeals, the Council advanced points with no legal basis or which were not supported by substantive evidence and made only generalised assertions.

Appeal A

3. The display currently on site was temporarily approved in a non-full motion format on appeal on 4 March 2013 to allow the Council to consider its acceptability at the expiry of two years. The Council did not contest the appeal and agreed to the two-year period.
 4. On 17 January 2014 an appeal decision permitted the use of moving images, recognising ongoing regeneration in the area and the proximity of heritage assets. The express period of consent expired on 26 February 2015.
 5. On 27 October 2021 the Council wrote to say it intended to serve a discontinuance notice and the appellant formally replied on 29 November 2021. No response to this was received until the discontinuance notice was served on 14 September 2022. The Council failed to produce any delegated report or document relating to the decision to issue the notice.
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6. The Council's approach was chaotic, unfocused and the notice failed to disclose clear reasons for its issue that related to the statutory test of "substantial injury to amenity". Its claims were generalised without any level of particularity, its statement of case (SoC) was late and it dwelt on regeneration matters set out in a non-development plan document irrelevant to the test of "substantial injury to amenity". The SoC unhelpfully related to both appeals comprised assertions rather than adequate and intelligible reasons.
7. The Council's final comments emphasised the proximity of conservation areas and listed buildings, but this was an exercise of "pure prejudice" since it was not part of its case that harm was in fact caused to heritage assets.

Appeal B

8. On 12 September 2016 the Council granted consent for the display currently on site. Officers had concluded that the display proposed was acceptable by reference to national planning policy and the development plan and that the display was acceptable in terms of highway safety. It passed into deemed consent on 13 September 2021.
9. As with Appeal A the Council had written to say it intended to serve a discontinuance notice which the respondent responded to, but no reply was made by the Council before the discontinuance notice itself was served on 14 September 2022, with no sign of any document relating to the decision to issue the notice.
10. The Council confused high level regeneration objectives with statutory tests applicable to the appeals. Its highway case was unsubstantiated, the personal injury statistics were ignored and the Council contemplated a potential future highway safety concern rather than a present one but did not substantiate that or explain what changed since 2016 to raise a safety issue.
11. In its final comments the Council's claim that the consent of 12 September 2016 was granted in error was not credible. That it chose not to judicially review its error was inexplicable if it believed the display posed a public safety issue for some 5 years. The Council should have informed the appellant that once the permission expired it would take discontinuance proceedings but its handling of this case was "utterly incompetent".
12. At the time of the 2012 appeal decision relied on by the Council, the junction layout was relatively new but there had been no untoward accident history or objection from Transport for Greater Manchester. The Council failed to acknowledge that the 2012 display was a different form of display to the current display and the Council itself approved the backlit display for the original advert that had the same siting and dimensions as the current display.

Submissions of the Council

Appeals A and B

13. Referring to its statement of case and final comments, the evidence substantiated its case, supplemented by its contributions made at the hearing into the appeals. It had legitimate concerns as to impact on amenity and public safety and clearly its position had a legal basis. Put simply, the appellant disagreed with the Council's assessment of impact.

14. The concern as to the drafting of the notices for both appeals was unfounded since their content was clear and met statutory requirements. In correspondence with the applicant the Council was equally clear in expressing its concerns.
15. The claim that the statement of case was filed late is disingenuous as it was filed one day after the deadline and the Council provided the Planning Inspectorate and the applicant with the reason for the delay. There was no objection to one more day being given to file it and no prejudice was caused.
16. Therefore, there was no unreasonable behaviour in issuing the notice or in conducting the appeal.

Reasons

17. Paragraph 30 of the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
18. For appeals against refusal of planning permission, the PPG's examples of unreasonable behaviour by Councils include failure to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, unsupported by objective analysis. By analogy, that advice may be applied to appeals in the context of the Town and Country Planning (Control of Advertisement) (England) Regulations 2007.
19. Whilst it is true that the notices themselves did not give very detailed reasons for their issue, the drafting could not have given rise to any fundamental misunderstanding as to their purpose and effect. Also, the Council's statement of case lacked some detail that could helpfully have been provided at the time and this was supplemented in their "final comments". However, the applicants were well aware of the case they had to meet because they had prepared a detailed and lengthy statement of their own including their own final comments in advance of the hearing. In my view the appeals would not have been avoided had the Council provided more of their evidence at an earlier date prior to or contemporaneous with the issue of the notices. I disagree with the appellant that the Council's case on both appeals was mere assertion, as can be seen from the content of its statement. The format of a single statement for both appeals was not an optimum approach, but it was not unreasonable.
20. The appellant took care to differentiate several aspects of appeal decisions and cases submitted by the Council, but it would be wrong in my view to characterise the Council's actions as advancing points with no legal basis at all. The detail on future plans for the areas was perhaps not all necessary but provided some context, whilst both parties recognised that focus had to remain on the situation as it appears on the ground as far as concerns the effect that the use of the sites for advertisements had on amenity.
21. The applications tend to belie the fact that the appellant simply disagreed with the Council's assessment of impact. Although they chose not to comment in detail on the absence of personal injury accidents on the Angel Street approach to the junction since 2016, as I found in the decision such absence was not in

and of itself a determinative factor and in any event, I found in favour of the applicant on the issue of danger to the public. Overall, the applications attack a perceived failure on the Council's part to substantiate its concerns when rather there was simply a basic disagreement as to the merits of those concerns.

22. In summary, whilst the council's conduct in relation to the appeals in some respects could not be said to be highly proficient, it did not amount to unreasonable behaviour resulting in unnecessary or wasted expenditure by the appellant. Therefore, the applications do not succeed.

Grahame Kean

INSPECTOR