



The Planning Inspectorate

Costs & Decisions Team

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Mr Richard Keczkas
Slaughter and May
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Your Ref:

Our Ref: APP/X5210/C/21/3286605¹

Date: 8 June 2022

Dear Mr Keczkas

**Local Government Act 1972 - Section 250(5) Town and Country Planning Act 1990
Appeals by JCDecaux UK Limited, IN FOCUS PUBLIC NETWORKS Ltd Site Address:
Telephone Kiosks – 80, 105 & 196-199 Tottenham Court Road, London**

APPLICATION FOR COSTS

1. I am directed by the Secretary of State for Levelling Up, Housing and Communities ("the Secretary of State") to decide your application for an award of costs, on behalf of the appellants, made on 21 December 2021 against the London Borough of Camden ("the Council"). The breach of planning control stated in the enforcement notices ("the ENS") is:-

Breach of paragraph A.2 of Part 16 Class A to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015: Telephone kiosk is no longer required for telecommunication purposes and has not been removed.

2. The Council responded to your costs application on 12 January 2022 and your final comments were made on 19 January 2022. I am sorry for the delay in deciding the application.

DECISION

3. The application is allowed and a full award of costs, on grounds of unreasonable behaviour resulting in unnecessary or wasted expense, is justified.

¹ and APP/X5210/C/21/3286700, APP/X5210/C/21/3286607, APP/X5210/C/21/3286706, APP/X5210/C/21/3286609 & APP/X5210/C/21/3286714

Basis for determining the costs application

4. 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. PPG goes on to say that costs may be awarded against a Council if it withdraws an EN without good reason. The Secretary of State has to decide whether a material change of circumstances occurred since the ENs were issued to justify the Council's decision to withdraw them when it did.
5. The ENs were issued on 30 September 2021. The appeals against the ENs were made on 10 November 2021. The appeals were made on grounds (b), (c) and (d) under section 174(2) of the Town and Country Planning Act 1990. The Council withdrew the ENs on 9 December 2021 and said that a formal withdrawal letter would be sent to the appellants; the appellants says that no such letter was received. The Inspectorate confirmed the withdrawal to the parties on 13 December 2022.
6. The Council withdrew the ENs because, following a further review of its approach to the spread of unauthorised phone kiosks in its area, it became clear that it would need to serve many more ENs on other kiosk operators as well as on the appellants. As the Inspectorate had decided to determine the subject appeals by inquiry, it would not be expedient to conduct vast numbers of inquiries into further ENs intended to be served with the attendant time and cost incurred. The Council does not consider that inquiries were required to determine the subject appeals. Furthermore, due to the delays currently in the appeal system, and given the need to issue further ENs on other operators, the Council will consider whether it would be more expedient to use other enforcement tools in order to bring a swifter end to these breaches. Very soon after the Inspectorate decided to hold an inquiry, and the Council's review regarding other breaches in its area, it withdrew the ENs.
7. The Secretary of State does not find the Council's reasons for withdrawing the ENs compelling. The Council's decision to carry out a further review of its phone kiosk policies was a material change in circumstances of its own making and was not therefore something beyond its control that happened after the ENs were issued. From what the Council says, it seems clear that the review was undertaken in response to the appeals and the Inspectorate's decision to hold an inquiry into them; it was as a direct result of the review that the ENs were withdrawn. The Secretary of State considers that this action was unwarranted as the Council should have applied its phone kiosk policies which were current at the time it issued the ENs to the appeal process; the Council could then have applied its revised policies when taking any subsequent enforcement action against other breaches. The Secretary of State therefore concludes that the Council has not provided a good reason, that amounts to a material change of circumstances relevant to the planning issues arising in the appeals, to justify its decision to withdraw the ENs when it did. Consequently, the Council has behaved unreasonably. The Secretary of State accepts that the Council withdrew the ENs shortly after they were appealed. However, having been served with the ENs it is not unreasonable for the appellants to appeal against them in order to protect their interests. By doing so, the appellants incurred unnecessary or wasted expense.
8. The Council also refers to the Inspectorate's decision to determine the appeals by way of an inquiry as a reason for withdrawing the ENs. While the Council may have been disappointed by the choice of appeal procedure, it will know that in issuing an EN there is every possibility an appeal may follow and that the appeal may be decided by way of an inquiry, if this is what the Inspectorate decides. Therefore the Secretary of State does not consider this to be a justifiable reason to withdraw the ENs.

9. The Council has commented on the appellants' grounds of appeal but this is not a matter that the Secretary of State can take into account; this decision does not imply any view on the Council's reasons for taking enforcement action or the merits of the appeals. Furthermore, the Secretary of State can only address the principle of whether costs should be awarded in full or in part, and not the amount – this is settled later between the parties.
10. The appellants have referred to events before they appealed. However, in deciding this costs application the Secretary of State has confined his consideration to the Council's actions in relation to the subject appeals.
11. As to the extent of the award, it is noted that the Council has said that it intends to take further enforcement action against the phone kiosks the subject of the appeals. However, at the time of this costs decision there is no information to suggest that further ENs have been issued or that appeals relating to such ENs have been made. It would therefore seem that none of the work undertaken in these appeals is re-usable in any further EN appeal. A full award of the appellant's appeal costs will therefore be made.

COSTS ORDER

12. Accordingly, the Secretary of State for Levelling Up, Housing and Communities, in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 174 and 322 of the Town and Country Planning Act 1990 (as amended), and all other powers enabling him in that behalf, HEREBY ORDERS that the London Borough of Camden shall pay to JCDecaux UK Limited and IN FOCUS PUBLIC NETWORKS Ltd their costs of the enforcement appeal proceedings before the Secretary of State, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned appeals more particularly described in paragraph 1 of this letter.
13. You are now invited to submit, on behalf of the appellants, details of those costs to the London Borough of Camden with a view to reaching an agreement on the amount.
14. A copy of this letter has been sent to the London Borough of Camden.

Yours sincerely

Richard Holland

Authorised by the Secretary of State
to sign in that behalf