Penderfyniadau Cynllunio ac Amgylchedd Cymru
Planning & Environment Decisions Wales

Costs Decision

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by N Jones BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 22.01.2026

Costs applications in relation to:

Appeal A reference: CAS-04304-K3B8V5

Appeal B reference: CAS-04300-C0M5F7

Site address: Pavement Outside 41 Regent Street, Wrexham, LL11 1SG

- The applications are made under the Town and Country Planning Act 1990, sections 78, 322C and Schedule 6.
- The applications were made by Mr Ben Porte (New World Payphones) for a full award of costs against Wrexham County Borough Council.
- The appeals were against the grant, subject to conditions, of planning permission and advertisement consent for a digital advertising display integrated with digital communications kiosk.
- A site visit was made by the Inspector on 9 December 2025.

Decision

1. The applications for an award of costs are allowed in the terms set out below.

Reasons

2. The Section 12 Annex 'Award of Costs' of the Development Management Manual ('the Annex') advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably, thereby causing the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applications are made on the grounds that the Council imposed condition No 1 in relation to Appeal B citing Section 91(3) of the Town and Country Planning Act 1990 (the Act) as the reason. The failure to apply the correct statutory framework caused confusion and necessitated the appeal. The Council granted only a temporary planning permission for the kiosk structure and that it did so in reliance on an incorrect section of the Town and Country Planning Act 1990 (the Act). The Council also restricted display of the advertisement to a temporary period thereby removing the right to continue to display the advertisement after the expiry of express consent with the benefit of deemed consent under Regulation 6 and Class 14 of Part 1 of Schedule 3 to the Town and Country Planning (Control of Advertisements) Regulations 1992 (the Regulations), contrary to the advice within Technical Advice Note 7: Outdoor Advertisement Control (November 1996).

4. The Council prevented or delayed development that should clearly be permitted. Moreover, national policy and established guidance require that temporary permissions must be supported by clear, site-specific planning reasons. The Council has provided no evidence of anticipated changes in planning circumstances, policy, or site constraints that would justify the imposition of the disputed conditions. There is no suggestion that the kiosk would be unacceptable in design, scale, or siting beyond 2030, nor is there any evidence of harm that would arise after that date. The conditions do not satisfy the statutory tests for conditions, and the imposition of a fixed end date is therefore arbitrary and unsupported by planning rationale. The conditions place an unnecessary and disproportionate restriction on a valuable permanent public infrastructure proposal. The condition does not satisfy the statutory tests for conditions in Circular 016/2014: The Use of Planning Conditions for Development Management (the Circular) and its imposition constitutes unreasonable behaviour as set out in the Annex.

5. The Council's response did not include a response to the applicant's claim in relation to condition No 1 of Appeal B.

6. Although the Regulations allow a commencement date to be set out in a condition, the Council provided no reasons for imposing condition No 1 of Appeal B which differed from the dates set out in the application and on which it relied in justifying the imposition of condition No 3 of Appeal A. In both cases, its reasons relied on incorrect statutory provisions. Nevertheless, there is no evidence that this error caused the applicant to misunderstand the requirements of the conditions. In relation to the advertisement, an appeal would not have been avoided as the applicant also disputed the need for condition No 8 of that consent.

7. I consider that the 5-year duration specified on the application form was clearly in relation to the Appeal B advertisement proposal. Whilst the applicant's Planning & Design Statement (PDS) instructed that the dual application as made, for both the appeal kiosk and a separate advertisement consent, must be considered as an integrated whole, there was nothing in the description of the intended development or in the PDS to suggest that a temporary planning permission was being sought for the appeal kiosk or that the applicant would not seek to continue to display the advert under deemed consent after the expiry of the express consent. Even so, it was open to the Council to grant a temporary permission and to remove deemed consent for the advertisement. However, whilst the effect of the conditions was not to prevent or delay development, the Council's reasons for imposing the conditions must be clear and evidenced.

8. Notwithstanding that planning conditions should be relevant to planning and should not normally duplicate other controls, the conditions as worded go further than is necessary to address the Highway Authority's concerns as they require the removal of the kiosk and advertisement at the end of the temporary consents whether they are damaged, or considered obsolete, or not. The Council produced no substantive evidence in support of the appeal that the kiosk, or associated advertisement, would be likely to become obsolete within 5 years, or that it would be necessary to remove the kiosk structure even if the continuing display of the advertisement became unacceptable over that time. It also failed to provide cogent evidence of likely changes in policy or local circumstances which would justify the temporary permission or removal of deemed consent. The ability to apply for a renewal of any consent before the expiry of any temporary permission does not itself make the conditions acceptable whilst the availability of routes for the applicant to seek to vary or remove the conditions does not obviate the need for the conditions to meet the Circular tests.

9. In imposing conditions that do not comply with the tests set out in the Circular, the Council acted unreasonably. This unreasonable behaviour resulted in the applicant incurring

unnecessary expense in pursuing the appeals. A full award of costs is therefore justified. The applications for an award of costs are allowed in the terms set out below.

Conclusion

10. In exercise of the powers under section 322C 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 Wrexham County Borough Council shall pay to Mr Ben Porte (New World Payphones) the costs of the appeal proceedings described in the heading of this decision.

11. The applicant is now invited to submit Wrexham County Borough 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. In the event that the parties cannot agree on the amount, an application for a detailed assessment by the Senior Courts Costs Office should be considered

N Jones

INSPECTOR