

Costs Decision

Hearing held on 3 November 2016

Site visit made on 3 November 2016

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 March 2017

**Costs application in relation to Appeal Ref: APP/T5150/W/16/3154444
Lycée International de Londres Winston Churchill, 54 Forty Lane,
Wembley, Brent HA9 9LY**

- 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 Wembley Educational Charitable Trust for a full award of costs against the Council of the London Borough of Brent.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of a part basement building fronting Forty Lane to house a five lane swimming pool and studio with a green roof and associated works to include courtyard entrance, security gates, cycle parking, demolition and reinstatement of retaining wall, landscaping and installation of PV panels on the roof of the new Annex building.
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**Costs application in relation to Appeal Ref: APP/T5150/Y/16/3154445
Lycée International de Londres Winston Churchill, 54 Forty Lane,
Wembley, Brent HA9 9LY**

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Wembley Educational Charitable Trust for a full award of costs against the Council of the London Borough of Brent.
 - The hearing was against the refusal of listed building consent for the erection of a part basement building fronting Forty Lane to house a five lane swimming pool and studio with a green roof and associated works to include courtyard entrance, security gates, cycle parking, demolition and reinstatement of retaining wall, landscaping and installation of PV panels on the roof of the new Annex building.
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Decision

1. The application for an award of costs is refused.

Procedural Matters

2. The application forms for both the planning and listed building applications described the proposal as being the erection of a covered swimming pool with associated landscaping and infrastructure works. The Council's decision notices and the appellant's appeal forms referred to a fuller description of the proposal. This revised description was agreed in the Statement of Common Ground. The main parties explained at the hearing that the description had been changed during the consideration of the applications, and I have therefore referred to the agreed fuller description above.
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The Submissions for Wembley Educational Charitable Trust

3. The application for a full award of costs is made on both procedural and substantive grounds. The Council acted unreasonably in refusing planning permission and listed building consent, thereby causing unnecessary and wasted expenditure in relation to the appeals. The Wembley Educational Charitable Trust has a duty under the Charity Commission to act in the Trust's best interests, including financial matters.
4. The Council's actions prevented development that should clearly have been permitted. The proposal was subject to positive consultation responses from Historic England, the Twentieth Century Society, and the Council's Principal Heritage Conservation Officer. The Council should have permitted the development having considered the development plan, national policy and the views of external and in-house advisors, and up-to-date advice from Historic England.
5. The Council failed to provide any evidence to substantiate the reasons for refusal, and there was a lack of precision with the evidence submitted for the appeals. Vague, inaccurate and generalised assertions of the proposal's impact have been provided, none of which have been supported by objective analysis.

The Response by the Council of the London Borough of Brent

6. The Council's Planning Committee made a decision on the basis of development plan policies and all other material considerations. The scheme was considered to have a low level of harm to the listed building and its setting, and that there would be some public benefit from the proposal. However, the Council gave a different weight to this harm than its officers. The opinions of expert advisors was considered by the Planning Committee, but they took a different view.
7. The importance of views, setting and significance has been qualified and it has been explained why the proposal was not in accordance with the development plan and national guidance. The use of the London Plan in the refusal was because of the scheme's location to the front of the listed building.

Reasons

8. The Planning Practice Guidance (the Guidance) advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
9. The Guidance advises that awards against a local planning authority may be procedural relating to the process, or substantive relating to the planning merits of the appeal. All parties are expected to behave reasonably throughout the planning process, and costs can only be awarded in relation to unnecessary or wasted expense at the appeal, although behaviour and actions at the time of the planning application can be taken into account.
10. For the reasons given in my decision I have found substantive reasons for allowing the appeals. The Council are not bound to accept the recommendations of their officers, but are expected to determine planning and listed building applications in a reasonable manner. The Committee took a different view with regard to the level of harm resulting from the proposal. The applications were refused on the basis of the evidence before the Council,

having regard to the requirements of the development plan, national policy and other material considerations, including the comments of expert advisors.

11. The submissions provided by the Council for the appeals explained and substantiated the reasons for refusal. The consideration of applications involves matters of judgement that are at times finely balanced based on complex evidence. In this case the decision of the Council's Committee was to refuse the applications, giving specific and precise reasons for doing so. The Council have not behaved unreasonably, but have given a different weight to the issues than the appellant.
12. Thus, I find the Council did not act unreasonably in reaching the decision it made on the applications. Nor do I consider the appellant has incurred unnecessary or wasted expense in the appeal process. Therefore an award of costs is not justified in this instance.

J J Evans

INSPECTOR