



Costs Decision

Site visit made on 29 March 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Costs application in relation to Appeal Ref: APP/X5990/W/21/3287395 London Coffee Bank, 81 Abbey Road, London NW8

- 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 Tia Ryan Ltd for a full award of costs against the Council of the City of Westminster.
 - The appeal was against the refusal of planning permission for raised outdoor seating area with bollard lighting and screened planter boxes to the front and side.
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Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary and wasted expense in the appeal process. Costs cannot be claimed for the period during the determination of the planning application although behaviour and actions at the time of the planning application can be taken into account in my consideration of whether or not costs should be awarded.
3. The applicant's claim is that the Council made inaccurate assertions about the appeal site. They suggest that the Council incorrectly determined that the appeal site formed part of the highway and that this prevented development which should have been permitted.
4. It is clear from the submitted evidence that both main parties fundamentally disagree over the status of the appeal site with regards to whether or not it forms part of the highway. The applicant indicates that it is within their ownership and suggests that the forecourt has always been used to place paraphernalia associated with the appeal site. The Council contend that, whilst the appeal site may be in the ownership of the applicant, it has nevertheless gained highway status.
5. However, as can be seen from my appeal decision, regardless of the status of this area of land, the development policies relating to highway safety, notably pedestrian movement, would nevertheless remain relevant when assessing the development given the footway which remains adjacent to the site. The Council's assessment of pedestrian safety was supported with substantive reasons based on the assessment of the proposal in relation to its surroundings, having regard to relevant development plan policies. Therefore, although I have

reached a different conclusion to the Council on the issue of pedestrian safety, I consider that the Council did not act unreasonably in this regard.

6. Furthermore, the planning application was also refused on the basis of the effect of the development on the significance of the St John's Wood Conservation Area. Therefore, irrespective of the Council's interpretation of the appeal site's status, there were also fundamental disagreements between the parties in relation to this matter thus the appeal process was unavoidable in this regard.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. A claim for costs is not therefore justified and accordingly it is refused.

H Ellison
INSPECTOR