



Costs Decision

Site visit made on 1 March 2023

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs Application in relation to Appeal Ref: APP/T5150/W/22/3306379 104-106 Windermere Avenue, Wembley HA9 8RB

- The appeal 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 appeal is made by The Nest for a partial award of costs against the London Borough of Brent.
 - The appeal was against the refusal of an application for a glass enclosure to forecourt seating area.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) 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 costs to incur unnecessary expense in the appeal process. Patently this is a two stage test.
3. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
4. The crux of the applicant's claim is that the Council have determined an area of land in their ownership is part of the public highway. The area of land is the forecourt of the restaurant and the site of the proposed development. They also contend that, following notification from the highways authority the land in question was public highway, the Council did not seek clarification from the applicant. They suggest that not doing so has caused them additional, and in light of the confirmative information, unnecessary expense. They refer to details of discussions between themselves and the highways authority, from 2018 onwards, that show the latter's acknowledgement that the land in question was not part of the public highway.
5. I have alluded to this debate in my decision on the appeal and whilst I would also refrain, as part of my decision on the matter of costs, from confirming the exact extent of the public highway in relation to the appeal site, I do understand the applicant's frustrations on the Council's apparent misunderstanding if the land in question is not public highway. The applicant has provided a reasonable amount of evidence, including a land registry plan,

showing the site of the proposed development as being in their ownership. However, and whilst the Council do state in their reasons for refusal that the land is public highway, the mainstay of their concerns is how the development may, and a similar development currently does, impinge the safe movement of pedestrian users across the frontage of the restaurant.

6. Even if the Council are incorrect in their understanding of the extent of the highway, such concerns may remain given the open nature of the frontages across the units in the wider parade. Indeed, and due to the location of the proposed development, it's reasonable to conclude that a front extension, or enclosure as it is described, would require express planning permission and thus all matters pertaining to its effect would be reasonably taken into account, land ownership aside.
7. The Council engaging with the applicant during the time they had the planning application on deposit may have yielded common ground and thus been more helpful but, with the above in mind, I cannot be completely sure it would have removed the reason for refusal concerning the free flow of pedestrians. A matter I have, in any case, resolved in my decision on the appeal. The information provided by the applicant thereon being relevant and therefore useful to that finding.
8. The Council have also provided as part of their costs rebuttal a copy of information provided to them by the highways authority showing the extent of the public highway in relation to the appeal site. It shows the appeal site being within the public highway. There remains therefore, extent of the applicant's evidence to the contrary aside, some ambiguity as to where the extent is, even as I write this decision.
9. It seems sufficiently clear that in some respects the Council have been unhelpful but, for the above reasons, that has not translated into being unreasonable for the purposes of a successful claim for costs. It is also clear that, with all of the reasons for refusal in mind, the appeal would not have been avoided should the Council have conceded that the land in question is not public highway.

Conclusion

10. Taking all of the above into account, unreasonable behaviour leading to unnecessary or wasted expense has not been demonstrated and thus the claim for an award of costs is not justified.

John Morrison

INSPECTOR