Costs Decision

Site visit made on 28 January 2026

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03rd March 2026

Costs application in relation to Appeal Ref: APP/Q4245/X/24/3357477
16 Broadway, Sale M33 6NR

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Mark Howells for a full award of costs against Trafford Metropolitan Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) to replace existing wrought iron fences and gates with 2 metre wooden fences and gate.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.

3. The applicant considers that the Council have acted unreasonably by failing to substantiate each reason for refusal, failing to provide an objective analysis, and have acted contrary, or not followed, well-established case law and/or previous appeal decisions.

4. The applicant claims that the Council have made inaccurate measurements which underrepresent the distance of the property boundary to the carriageway and that they have failed to explain why the difference in heights between the fence and the stone piers is relevant to adjacency. The Council have responded in terms of the measurements by indicating that this arises from the differing opinion as to where the highway used by vehicular traffic starts. From the evidence presented to me, there is nothing clear to suggest that the Council have provided manifestly inaccurate or untrue measurements. The Council's statement of case also adequately identifies and considers the effects of the stone piers as intervening features and describes why this is not relevant to the matter of adjacency, including referencing other appeal decisions. I do not consider that the Council have acted unreasonably in terms of substantiating their reasons for refusal.

5. The Council have explained that they do not consider it unusual for minimum distances to be referred to when describing distances from the fencing to the nearest part of a highway, making reference to an appeal decision where an Inspector refers to "at its nearest point". There are clear differences between the Councils and applicants analysis of distance from the fencing to the highway, however, this is largely down to what each party considers to be the "highway used by vehicular traffic". The Council's statement of case provides arguments in terms

of the relationship of the proposed fencing with their perception of where the highway begins. I am satisfied that the Council have not acted unreasonably in terms of providing an objective analysis.

6. The applicant claims that the Council have acted contrary, or not followed, well-established case law and previous appeal decisions including misinterpreting the meaning of “highway used by vehicular traffic”, misinterpreting the use of the word “enclosure” and failing to identify and consider the effects of intervening features. As can be seen from my appeal decision, I disagree with the Councils position and have found that the fencing is not adjacent to a highway used by vehicular traffic. Nevertheless, the Council, in their statement of case, have provided robust justification for refusing the LDC application including referencing case law and previous appeal decisions. There is an array of related case law and appeal decisions in relation to the matter of adjacency to a highway, however, ultimately, each case has to be determined on its own basis with the relevant test of the evidence being on the balance of probability. I do not consider that the Council have acted unreasonably on these matters to an extent that has led to unnecessary or wasted expense.

7. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Chris Baxter

INSPECTOR