



Appeal Decisions

Site visit made on 16 July 2019

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2019

Appeal A Ref: APP/R5510/C/18/3209713

27 The Avenue, Ickenham, Uxbridge UB10 8NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs C Burgess against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 20 July 2018.
- The breach of planning control as alleged in the notice is the material change of use of an outbuilding to facilitate the provision of private swimming lessons (Use Class D2).
- The requirement of the notice is cease the use of the outbuilding for the provision of private swimming lessons.
- The period for compliance with the requirement is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the notice is quashed, and planning permission is granted on the deemed application.

Appeal B Ref: APP/R5510/X/18/3208970

27 The Avenue, Ickenham, Uxbridge UB10 8NR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs C Burgess against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 991/APP/2018/2476, dated 12 July 2018, was refused by notice dated 19 July 2018.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which the LDC is sought is use of the existing domestic swimming pool to provide private swimming lessons.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

Application for Costs

1. An application for costs was made by Mrs C Burgess against the Council of the London Borough of Hillingdon. This application is the subject of a separate Decision.

The Appeals Site and Background

2. The appeals site is in an established residential area. It also lies within the Ickenham Village Conservation Area. The building in question, which accommodates a swimming pool and associated changing facilities, is a fairly recent construction. It is located at the rear of the appeals property's back garden, just inside the south-eastern boundary of the site which borders onto the rear garden of No.50 Ivy House Road and parts of those of Nos 48 and 52.
3. In March 2017 the Council issued an LDC under the provisions of section 192 of the 1990 Act (ref 991/APP/2017/73). This certified that the proposed erection of an outbuilding for use as a gym/home office/swimming pool would be lawful as it would constitute permitted development by virtue of the provisions of Schedule 2, Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
4. As well as visiting the appeals site, in response to a request from the occupiers of No.52 Ivy House Road, I also made an accompanied site visit to view the site from that property.

The LDC Application

5. The description of the use for which the LDC that forms the subject of Appeal B was sought, as set out in the case particulars above, is taken from the LDC application form. It differs from that which appears on the notice of refusal. According to the appellant, the latter was substituted by the Council without seeking the applicant's consent. For the avoidance of doubt, I shall determine Appeal B on the basis of the use as indicated on the LDC application form.
6. The appellant's case includes references to the manner in which the LDC application was handled by the Council. While this matter is also raised in the costs application, it is something that lies outside my remit insofar as the determination of the LDC appeal is concerned and I shall refrain from commenting on it in this context.

The Allegation

7. The statement in support of the LDC application, which notes that the swimming pool is used primarily by the household family and friends, has not been called into question by the Council. Mindful that the building in question is located in a domestic garden, I consider the allegation is somewhat deficient as it does not acknowledge this. It seems to me that the allegation ought more appropriately to refer to a mixed use, including residential as well as the use in contention. I have the power to correct the notice, and as doing so on the lines indicated would essentially amount to relabelling the allegation, as opposed to extending the scope of the notice, I am satisfied that this step would not cause injustice to the parties.

Post Site Visit Correspondence

8. Shortly after my site visit, the National Planning Policy Guidance (PPG) on noise was updated. As noise is one of the reasons given by the Council for issuing the enforcement notice, the parties were invited to comment on the updated guidance. This invitation also extended to giving them the opportunity to

comment on the possible consequences should the current arrangements¹ for those attending swimming lessons at the appeals property cease. Both parties duly responded, and I have taken account of their respective representations in coming to my decision

Appeal A – Appeal on Ground (c) and Appeal B

9. As the matters involved under this heading in this instance involve the same considerations, I deal with them jointly.
10. In essence, the nub of the appellant's case is that the use in question is of such insignificance that it does not amount to a material change of use. In particular, it is submitted that the use is minimal; it has not fundamentally diminished the primary use of the site as a residential dwelling.
11. According to the appellant, who lives at No.27, and provides the instruction, the swimming pool is used to provide swimming lessons to individuals or small groups, the maximum number being 4. It is further stated that, depending upon her availability, lessons, which are pre-booked, either online or by telephone, can take place between 09.00 to 13.30 hours and 16.30 to 18.30 hours, 4 days per week, and between 09.00 and 13.00 hours on Saturdays. Unless they are registered as disabled, clients are required to come along The Avenue [a private road] by foot. When lessons are not taking place, usage of the pool reverts back to family use.
12. As the building in question stands in No.27's garden, I agree with the appellant that the relevant planning unit in this instance is the house and its associated garden, or as the appellant puts it, 'the whole of the domestic curtilage' of No.27. Besides the location of the building, the main link between the use in question and the residential use of the appeals property appears to come down to the fact that the appellant lives at No.27. Other than that, it seems to me that the disputed use is functionally distinct and independent from the residential use of the property; indeed, according to the statement in support of the LDC application, no access to the house itself is required. In the light of this, I do not consider the disputed use can reasonably be regarded as incidental or ancillary to No.27. On this basis, I do not consider it falls within the scope of section 55(2)(d) of the 1990 Act.
13. I am mindful that steps have been taken to discourage clients from coming to and from the site by car, and it is stated that the numbers involved are usually below the maximum figure. In addition, I have read that the swimming lessons only run for 39 weeks of the year, presumably to coincide with school term times. It may be that in percentage terms, the proportion of time when the use takes place is not especially great. However, as the appellant acknowledges, the carrying out of lessons here does add another dimension to the property.
14. The appellant's submissions indicate that the use is not active for about a quarter of the year. However, when the use is in operation, it appears to attract a steady stream of visitors to the site throughout the day. Furthermore, the purpose of these visits appears to be wholly unrelated to the site's residential use. Even if the number of attendees who currently come to the appeal property by car is minimal, as the appellant suggests, and the associated comings and goings are largely by foot, this trait is not something I

¹ These are described in paragraph 11.

would normally associate with a typical house, including one as large as the 6 bedroom appeal property.

15. I accept that the circumstances of this case are somewhat different from a domestic pool sub-let to a third party operator in that in this instance the instructor is also the householder. Be that as it may, my view is that, as a matter of fact and degree, the nature and character of the use in question is significantly different from that of No.27 as a dwellinghouse to the extent that it amounts to a material change of use.
16. For the reasons given above, and in the apparent absence of any relevant planning permission, I find that there has been a breach of planning control. Accordingly, therefore, the appeal on ground (c) fails. I likewise conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the existing domestic swimming pool to provide private swimming lessons was well-founded and that Appeal B should fail also. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal A – Appeal on Ground (a) and the Deemed Application

Main Issue

17. I consider the main issue is whether the living conditions of the occupiers of the neighbouring dwellings would be adversely affected.
18. Planning policies for the area are contained in the Council's Local Plan (HLP) and the Saved Unitary Development Plan (SUDP). The National Planning Policy Framework (The Framework) is also a material consideration, as are the Planning Policy Guidance regarding noise (PPG) and the Noise Policy Statement for England (NPSE), both of which point to the effect of noise on health and the quality of life.
19. HLP Policy EM8 and SUDP Policy OE1 address noise. The latter indicates that planning permission will not normally be granted for uses which are, or are likely to become, detrimental to the character or amenities of surrounding properties or the area generally, because of, amongst other things, noise. In addition, the supporting text in the 'Built Environment' section of HLP identifies noise problems from neighbours as one of the key factors associated with poor mental well-being.
20. In essence, the Council's concern, which is echoed in many of the representations made by local residents, is that the development in question causes noise and disturbance to the occupiers of the houses in the area, especially those bordering onto the site in The Avenue and Ivy House Road. The objectors' comments refer especially to disturbance caused by the comings and goings associated with the use, both within the appeals site, and as attendees pass along The Avenue as they go to and from the site. There is nothing to indicate that noise emitted from within the appeal building itself gives rise to serious problems.
21. The reasons for issuing the notice refer to 'noise nuisance', but just what this means in this instance has not been elaborated upon by the Council. While reference is made to the use of the access to the appeals building increasing the likelihood of noise disturbance, the Council's submissions shed little light on the precise nature and extent of the 'nuisance' alleged. Referring to the PPG,

the Council say that 'the significant observed adverse effect level boundary'² has been crossed. While it is self-evident that the use in question has attracted objections, just how this conclusion was arrived at, and whether it is based upon any other evidence, is far from clear.

22. Despite the forthright nature of the Council's stance, there is nothing that suggests that it is underpinned by any objective noise assessment. Reference is made to 'internal comments', but as the Council's case is silent as to what these are, I am unable to attribute any weight to them. The only evidence regarding recorded noise levels at the appeals site before me is contained in the assessment carried out on behalf of the appellant. This concludes that noise levels are consistently and considerably below the level at which an observable adverse effect would be expected to occur.
23. The appellant's assessment has been reviewed by consultants acting on behalf of the Council, but their brief does not appear to have extended beyond this as their comments are not informed by any fresh noise survey. Both the review and some of the objectors are critical of elements of the appellant's assessment, but the actual measurements recorded have not been called into question. I am therefore inclined to attach a good deal of weight to this unchallenged evidence.
24. The noise assessment's finding that the area has a low level of prevailing noise pollution supports the view expressed by many of the objectors that the appeals site lies within a quiet residential area. In such a setting the type of noise referred to by objectors, in particular, children's voices, which in my experience can often be quite shrill - one objector refers to an instance of a bout of screaming³ - could lead to perception of that the area's acoustic character had changed somewhat. Be that as it may, when the appellant's noise readings are assessed in the light of the table in the PPG, my view is that at worse the use in question falls into the 'no observed adverse effect' category. Furthermore, while the Council's consultant's review suggests that the acoustic character of the area may have changed so that the 'lowest observed adverse effect level' had been exceeded⁴, this falls well short of supporting the Council's assertion referred to in paragraph 21 above.
25. As far as The Avenue is concerned, it would appear that activity here is not confined solely to people visiting the appeals site. For instance, one local resident, an opponent of the use in question, indicates that the road is a "*much used pedestrian walkway to the local park and local school*". And, another, who has expressed support for the use, notes that The Avenue is "*a busy road for pedestrians at most times of the day for local people using the park and the route to the schools at both ends*". Although neither of these parties' representations contain any indication of the actual numbers involved, it is reasonable to assume that their observations are based upon their respective first-hand experience, in which case I am inclined to attach a good deal of weight to these comments. They strongly suggest to me that activity associated with pedestrian movement along the road would take place irrespective of the use in question.

² Table at Paragraph 005 Reference ID: 30-005-20190722

³ The appellant disputes that this was associated with the use in question.

⁴ Review carried out by Andersen Acoustics section 6.1 'Conclusions' - final bullet point.

26. Having regard to the sessional nature of the swimming lessons, movement associated with the use is likely to occur largely around the starting and finishing times, but the numbers involved at such times are not likely to be great. It is unlikely that visitors to the site would proceed along The Avenue in total silence, but as the residents' comments indicate that the attendees would be part of a general pattern of movement here, I am not satisfied that any perceived disturbance associated with the comings and goings would be so great as to make the residents' homes appreciably less pleasant places in which to live.
27. At a more local level, within the appeals site, access to the building in question is gained by a pathway on the north side of No.27, alongside its boundary with the neighbouring house, No.25. Having noted that there are no windows on the side wall of the main body of No.25, and there is a boundary wall about 1.6m high between the 2 houses, these factors are likely to mitigate any impact that the comings and goings may have upon the occupiers of No.25 and their ability to enjoy their home.
28. The appeals building is closer to the houses in Ivy House Road – about 25m in the case of 52 Ivy House Road - than it is to No.27. There is nothing to suggest that noise associated with the use causes problems inside the neighbours' homes here. But, despite the instances of noise associated with the arrival and departure of users of the pool, seemingly audible from the neighbours' garden, there is nothing that demonstrates that such noise is excessively loud or that it has materially diminished the neighbours' ability to enjoy their homes or their gardens.
29. I accept that the use in question has resulted in the establishment of a business use of sorts within an established residential area. However, as I see it, this in itself is not sufficient to make it unacceptable. The circumstances of this case are such that I am not satisfied that the use in question would have an unacceptably adverse effect upon the living conditions of the occupiers of the neighbouring dwellings. I therefore see no conflict with HLP Policy EM8 or SUDP Policy OE1.

The Ickenham Village Conservation Area

30. As noted in paragraph 2, the appeal site lies within a conservation area. I am mindful that section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of such an area. This statutory approach is reflected in HLP Policy HE1 which indicates that Hillingdon's distinct and varied environment and the wider historic landscape, including designated heritage assets such as conservation areas, will be conserved and enhanced.
31. The reasons for issuing the notice state that the use in question fails to either preserve or enhance the character of the Ickenham Village Conservation Area. However, while reference is made to The Framework as well as HLP Policy HE1, just why this is considered to be the case is not elaborated upon. Nor is any light shed on this matter in the Council's submissions; they are silent on this point.
32. As I perceived it, a key distinguishing feature of The Avenue is that is characterised in the main by large detached houses set in mature gardens with

much greenery in evidence – the latter trait continues through to Swakeley's Park at the bottom of the road.

33. To my mind, neither the use in question, which takes place in an existing building, albeit a fairly recent one, nor the comings and goings associated with it, are likely to impinge upon the special qualities of the area. I regard the effect of the use in this respect as being essentially neutral, in which case the character and appearance of the area would be preserved. I therefore see no conflict with either HLP Policy HE1 or The Framework.

Other Matters

34. The views set out above reflect the current manner in which the use in question, and perhaps more significantly, the comings and goings associated with it, operate. At present, the appellant appears to go to some lengths to ensure that vehicular traffic associated with the use is kept to a minimum. However, the possibility that things could change at some point in the future cannot be discounted and so is something I have to have regard to.
35. The appellant has suggested possible conditions as a means of addressing this scenario. However, as the appeals property has an in-out driveway, together with space to park in front of the house, it seems to me that there would be sufficient scope for parking associated with the use within the bounds of the site should the need for this ever come to pass. And while additional vehicle movements to and from the site, together with associated matters such as the closing of car doors, could have implications for noise, I am not satisfied that the scale of any such activity would be so great that it would seriously impinge upon the living conditions of the neighbours.
36. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

Conditions

37. As regards the conditions suggested by the Council, in the light of my conclusions on the main issue, I see no need for a condition appertaining to the submission and implementation of a noise emission control scheme. And, as the building in question stands in a mature domestic garden, I see no justification whatsoever for a condition requiring the submission and implementation of a landscape scheme.
38. I agree that the hours of use ought to be restricted, but I see nothing untoward in the start times indicated by the appellant, as opposed to those put forward by the Council. And, despite the submissions made by one of the objectors, I see nothing untoward in including Saturdays, something that I note the Council are also amenable to.
39. In the light of the manner in which the appellant is said to exercise control over the scope of the use, a personal condition has been suggested on her behalf. But, as the use rather than the appellant lies at the heart of the matter, I do not consider this would be reasonable or appropriate. That said, it seems to me that the linkage between the occupier of No.27 and the use, as opposed to a named individual, is something that would be likely to provide a basis for ensuring that the scope of the activity remained compatible with its surrounds. To this end, I consider a condition reflecting this, which would also be likely to

preclude the possibility of the use being carried out by a third party, is both reasonable and necessary in the circumstances. I shall attach one accordingly.

Overall

40. For the reasons given above, I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation as referred to in paragraph 7 above. The appeal on ground (g) does not therefore need to be considered.

Formal Decisions

Appeal A Ref: APP/R5510/C/18/3209713

41. I direct that the enforcement notice be corrected in section 3 by the deletion of all the words after "material change of use" and their substitution by "comprising residential and the use of an outbuilding (as shown hatched in blue on the attached plan) for the provision of private swimming lessons (Use Class D2). ("The breach")."
42. Subject to the above correction, I allow the appeal and quash the enforcement notice. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely a mixed use comprising residential and the use of an outbuilding for the provision of private swimming lessons at 27 The Avenue, Ickenham, Uxbridge UB10 8NR subject to the following conditions:
- 1) Swimming lessons shall only take place between the following hours:
08.00 – 19.00 Mondays - Fridays
08.00 – 16.00 Saturdays
and at no time on Sundays or Bank Holidays.
 - 2) The swimming lessons shall be conducted solely by the occupier of No.27 The Avenue.

Appeal B Ref: APP/R5510/X/18/3208970

43. I dismiss the appeal.

D H Brier

Inspector