



Costs Decision

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

Costs application in relation to Appeal Ref: APP/R5510/C/18/3209713 and APP/R5510/X/18/3208970

27 The Avenue, Ickenham, Uxbridge UB10 8NR

- The application is made under the Town and Country Planning Act 1990, sections 174, 195 and 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs C Burgess for a partial award of costs against the Council of the London Borough of Hillingdon.
 - The appeals were against an enforcement notice alleging the change of use of an outbuilding to facilitate the provision of private swimming lessons and a refusal to grant a certificate of lawful use or development (LDC) for the use of the existing domestic swimming pool to provide private swimming lessons.
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Decision

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

Preliminary Matter

2. The appellant's submissions in support of the appeals and the costs application are critical of the manner in which the LDC application was handled by the Council. It is accepted, however, that an argument why the use was not deemed to be lawful has been advanced by the Council, and in the appellant's final comments on the costs application, it is stated that the application is based upon the Council's handling of the enforcement notice and appeal. In the light of this I shall deal with the application as one for a partial award of costs, directed solely at matters appertaining to the section 174 appeal.

Reasons

3. The Planning Practice Guidance (PPG) advises that parties in planning appeals and other planning proceedings normally meet their own expenses. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
4. In essence, the application is based on the premise that the Council failed to justify why planning permission should not be granted for the use in question. In particular, it is claimed that the Council: failed to defend its position regarding the Ickenham Village Conservation Area; had claimed demonstrable harm without having carried out any monitoring; had failed to consider options that might have allowed the use to proceed; and had failed to consider the wider public benefits accruing from the use in question.

5. As regards the Ickenham Village Conservation Area, I acknowledge that the reasons for issuing the notice cite the Council's Local Plan Policy HE1 and only refer to the character of the area. 'Character' is also referred to in paragraph 3.21 of the Council's statement. However, as the first sentence of that paragraph refers to factors germane to assessing whether a change of use has occurred, the reference to character here appears to be in this context, not that of the conservation area.
6. The Council do state that The Avenue is residential in character, but the character of the conservation area is not commented upon. Furthermore, as I note in my appeals decision, just why the use in question is considered to fail to either preserve or enhance the character of the Ickenham Village Conservation Area is not elaborated upon, an omission that I find rather odd. All this leads me to conclude that the Council's case in this respect is seriously lacking in substance to the extent that this amounts to unreasonable behaviour.
7. However, mindful of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 referred to in my appeals decision, there is a reasonable expectation that anyone challenging a local authority's decision in this respect would address these matters, especially where, as is the case in this instance, the appellant is professionally represented. In these circumstances I am not satisfied that the Council's behaviour has caused the appellant to incur unnecessary expenditure.
8. Turning to the question of alleged harm, the reasons for issuing the notice refer to noise nuisance and disturbance. Although this reflects concerns expressed by various local residents, in my appeals decision I have already expressed concern about the apparent absence of a clear basis for the Council's conclusion that 'the significant observed adverse effect level boundary' had been crossed. Given the forthright nature of the Council's assertion, I find the apparent absence of an objective assessment of noise associated with the use to support the stance taken somewhat surprising.
9. That said, despite the criticism levelled at some of the individual objectors by the appellant, I have no reason to believe that the concerns they express, some of which refer to specific instances of noise, are anything other than a genuine reflection of the perceived effects of the use in question. Seen in this light, the Council's assessment of whether it was expedient to take enforcement action essentially came down to the application of judgement and the apportionment of weight. This is not something I equate with unreasonableness.
10. As to the claimed failure to consider other options, such as controlling the use by conditions, it seems to me that this is also something which comes down to the application of judgement on the part of the Council. I acknowledge that the beneficial effects of the use advanced by the appellant and by others are not addressed in the Council's appeal statement. However, it seems to me that this apparent omission is likely to have come about because this matter was not deemed to carry much weight. Despite the importance attached to this part of her case by the appellant, the approach taken by the Council was something they were reasonably entitled to follow.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.
12. I have taken into account all the other matters raised, including the extracts from the other costs decisions highlighted by the appellant, together with the comments appertaining to them. Mindful that each case falls to be considered on its own merits, neither these cases nor the other matters raised are sufficient to outweigh the considerations that have led me to my conclusions.

D H Brier

Inspector