



Costs Decision

Site visit made on 6 October 2020

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2020

Costs application in relation to Appeal Ref: APP/X0360/C/20/3247007 Edgefield, Western Avenue, Woodley, Reading RG5 3BH

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Pankaj Popat for a partial award of costs against Wokingham Borough Council.
 - The appeal was against an enforcement notice alleging without planning permission, the material change of use of land and buildings from dwelling house and associated residential land and buildings, including an enclosed swimming pool, to a mixed use of dwelling house and associated residential land and buildings, including an enclosed swimming pool for a use for the provision of swimming classes.
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Decision

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

Reasons

1. The Planning Practice Guidance (the PPG) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
2. The basis of the appellant's claim for costs is that the Council acted unreasonably in so far that the notice did not refer to any ancillary use to the main dwelling and that the breach did not allege any change to the 'dwellings and associated residential land and buildings'. The appellant claims that the breach lies with the swimming pool alone and that the notice should have attacked the use of that building alone rather than the whole site. By covering the whole site, the Council has acted in an inconsistent and irrational manner, having previously accepted the planning application which related solely to the swimming pool building and its access for a change of use to a mixed use.
3. It appears to me that the appellant claims that by incorporating the whole site and not simply the swimming pool building within the notice, this has caused the appellant further expense in appealing the notice rather than appealing just the planning application refusal.
4. As acknowledged by the appellant, the pool building is used at times completely independently of the dwellinghouse and at other times, by the occupants in a way that is incidental to the enjoyment of the dwellinghouse. The appellant considers the omission of reference in the notice to the incidental use, which formed part of the description of the proposed development on the planning

application, is inconsistent behaviour and that the costs claim is therefore not unfounded.

5. As reasoned within my decision letter, there is no physical or functional separation of the buildings within the appeal site. The pool building provides for use by both the occupiers of the house, which are secondary activities incidental to the primary use of the appeal site, and by others for commercial swimming classes. The site forms a single planning unit and the Council was correct in identifying the whole of the site as being in mixed use. The fact that there is no reference to any ancillary use to the dwellinghouse is neither here nor there as the incidental use of the enclosed swimming pool is not unlawful. As such, it is considered that the notice correctly identified the appeal site as a single planning unit in a mixed use.
6. Overall, I find that the Council has not behaved in an inconsistent and irrational manner. Furthermore, two months passed between issuing the planning application decision notice and the issuing of the enforcement notice which would have allowed the appellant time to submit an appeal against the planning refusal and not incur an additional fee.
7. I am not satisfied that it has been clearly demonstrated that there was unreasonable behaviour on the part of the Council that led the appellant to incur unnecessary or wasted expense. I conclude accordingly that an award of costs, either partial or in full, is not justified and the costs application should not succeed.

S Hanson

INSPECTOR