



Costs Decisions

Site visit made on 25 April 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 16 May 2025

Costs application in relation to Appeal Ref: APP/D1590/C/24/3347242 Day Nursery, 43 Imperial Avenue, Westcliff-on-Sea, Essex SS0 8NQ

- 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 Mrs Frances Hickling (Imperial Day Nursery) for a full award of costs against Southend-on-Sea City Council.
- The appeal was against an enforcement notice alleging erection of fences, sheds, stores and laying out of a hardstanding within the front garden.

Costs application in relation to Appeal Ref: APP/D1590/W/24/3336412 Day Nursery, 43 Imperial Avenue, Westcliff-on-Sea, Essex SS0 8NQ

- The application 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 application is made by Mrs Frances Hickling for a full award of costs against Southend-on-Sea City Council.
- The appeal was against the refusal of planning permission for hard and soft landscaping, boundary fencing, pergola, 2 no storage sheds, bin store for 2 no commercial wheelie bins, covered buggy store, 1 no parking space and 1 no cycle stand on site frontage.

Decisions

1. The applications for costs are allowed in the terms set out below.

Reasons

2. 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. One of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities and to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.

5. The Council refused the planning application and issued the subsequent enforcement notice on the basis of a single main issue. Its case, which continued to be pursued in defending the ensuing appeals, was that the appeal developments significantly harmed the character and appearance of the site, the streetscene and the area more widely. Whether or not the developments were in keeping with the setting of the surrounding area was a key part of the consideration of this issue.
6. I have found in my Appeal Decisions that I disagree with the Council on this matter of planning judgment. That would not by itself be a basis for a finding of unreasonable behaviour. Local planning authorities are entitled to, and indeed required by statute, to come to their own views on planning merits (views which, in turn, can inform decisions on the expediency of issuing enforcement notices).
7. However, the local presence of the very extensive and high close-boarded fencing serving the Essex County Bowling Club, with very long sections directly abutting the highway - quite close to the appeal property and on the same side of Imperial Avenue – does not appear to have been considered at all by the Council in coming to its view. There is certainly nothing in the officer reports (on each appeal scheme) which refers to it. Indeed, they say that *“The streetscene in this part of Imperial Avenue has a strong open character with low front boundary treatments...”* To make that statement without mentioning, considering or assessing the very obvious and substantial nearby counterexample was both amiss and unreasonable. Further, neither can I see anything in the Council’s appeal submissions which attempts to include this materially relevant part of the local streetscene as part of its consideration of the central character and appearance issue in dispute (despite it being raised and expounded by the appellant as part of her case).
8. It seems to me that, had the single main issue in dispute been more properly assessed, there would have been no need for the appeals to have been made in the first place and that the appellant has been put to unnecessary expense. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that full awards of costs are justified in respect of both appeals.

Costs Orders

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Southend-on-Sea Borough City shall pay to Mrs Frances Hickling, the costs of the appeal proceedings described in the headings of these decisions; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to Southend-on-Sea City Council, to whom a copy of these decisions has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Walker

INSPECTOR