

PINS REF APP/L1765/C/20/3248513

WCC REF 18/00159/COU

THE BUNGALOW BOTLEY ROAD BISHOPS WALTHAM SOUTHAMPTON

APPELLANT'S FINAL COMMENTS ON LPA'S STATEMENT.

LPA INTRODUCTION

The LPA have misunderstood the uses taking place at the site. In their introduction, they say the pool is being used for "lessons". In my view this relates to educational and not commercial leisure and recreational as alleged in the breach. Children are learning which is education (please refer to my client's returned PCN dated 19/12/2019). I specifically draw attention to the answer to question 6(a) – "Baby and preschool lessons/ preschool junior lessons". Please also refer to the PCN response by Mr and Mrs Skilton , question 4 , it simply reads "hiring pool". Response to question 13 reads "preschool lessons – parents sit on the side". This confirms the pool is being used for educational purposes, not commercial leisure and recreational.

As regards my client's response to question 11 parking. He misunderstood the question when he answered 12. He did not realise the question only related to the area within the red line. He gave the answer as the number available to the business, taking account of land opposite in the farmyard, which was used. Parking is very limited in the curtilage of the dwelling.

SITE DESCRIPTION

AGREED

PLANNING HISTORY

AGREED

NULLITY

My client remains confused The LPA allege “commercial leisure and recreational” which one do they mean?. We say neither. The use is educational . Are the LPA saying there is more than one breach taking place, as two uses are identified?

If the breach in the notice correctly identified the use alleging the use of the pool for educational swimming lessons, then my client would have made a ground (a) appeal as the correct breach had been cited. It was pointless appealing for uses that he does not understand or want to implement. To amend the notice would deny my Client the opportunity to now appeal under ground (a)

The Harrogate case relates to the planning unit . The planning unit is not in dispute in this case Burdle principles are accepted as defining a planning unit. The Richmond case is not applicable in this case.

The mere hiring out of the pool is not development. When the pool is physically used, then that use is development and may lead to a breach

In the penultimate paragraph of page 2 of the LPA’s statement it is not denied the educational use is commercial. What I do say is education is fundamentally different from leisure and recreational use. Quoting from the statement “could easily be defined”. I do not consider this precise enough , taking account of the consequences of breaching an enforcement notice. It may well be “typically termed when referring to swimming pools” In this case the pool is controlled and only used for educational purposes.

Page 3, 2nd paragraph . Misses the point. It has been said earlier if the Inspector is mindful to amend the breach, what opportunity would my client have to appeal on ground (a) for what he wants to use the pool for ? He does not want planning permission for the uses specified in the notice, whatever they may be. At the time of making

the appeal, legislation only allows to appeal any development alleged in the breach. The alleged breaches were not taking place, at the time the notice was served. It was simply children's swimming lessons.

Ground (b)

The Appellant is unable to relate leisure and recreational uses, whatever they may be to children's swimming lessons (educational). In any event if the Inspector is able to categorise children's swimming lessons as either leisure or recreational, one of the allegations cannot have happened, as this is two uses. To delete one allegation would cause injustice.

Ground (f)

Without certainty of what is alleged the Appellant is unable to access the implications of the period set by the LPA. An amendment would cause injustice.

Conclusion

Clearly, from what has been written above my Client does not accept the LPA's views. Interestingly in the LPA's statement, no less than 5 times the LPA reminds The Inspector, he or she can amend the notice. This does not portray that the LPA is confident that the notice is sound. The LPA have had several weeks to withdraw the notice, having read the appellants statement, rather than being reliant on convincing the Inspector to make amendments

The Inspector is respectfully requested to concur with The Appellant that the Notice is a nullity.

Richard Stone

On behalf of

Mr Ricky Fernandez.

