The Planning Inspectorate

Appeal Decision

Site visit made on 12 December 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29th December 2016

Appeal Ref: APP/D3125/W/16/3157356
15 Cassington Road, Eynsham, Oxfordshire OX29 4LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Jonathan Ede against the decision of West Oxfordshire District Council.
- The application Ref 16/01622/FUL, dated 29 April 2016, was refused by notice dated 22 July 2016.
- The development proposed is new tennis court on land at rear of 15 Cassington Road.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposal on the living conditions of neighbouring occupiers with regard to noise and disturbance.

Reasons

3. The proposed tennis court would have a Macadam surface and be enclosed by a combination of retaining walls and timber and chain link fencing. It would occupy a location at the end of what was No. 15 Cassington Road, the plot of which is currently under development to create three new houses. In addition, permission has been granted for the erection of two new dwellings next door, to the rear of No. 17. No. 3 Little Lane lies immediately to the west. These properties are (or will be, in the case of those yet to be built) in close proximity to the appeal site and therefore, the tennis court would be closely surrounded on three sides by residential development.

4. There is a Public Right of Way running approximately east-west just beyond the boundary of the appeal site and those of the neighbouring properties. Beyond this to the north is a school, the grounds of which contain what is described in the application documents as a Multi-Use Games Area (MUGA).

5. The appellant has drawn my attention to the fact that he occupies No. 3 Little Lane and the dwelling currently being built immediately to the south will eventually be lived in by his son. However, there is no guarantee that ownerships will not change over time and future occupiers may not regard the use of the tennis court in the same way as the appellant and his family.

6. I do not have any substantive evidence before me to suggest that the MUGA's use pattern would include times of the day outside school hours. In contrast,

whilst the proposal does not include any lighting, the tennis court could be used at any time during daylight hours including at weekends. During periods of the year with longer daylight hours, use could extend well into the evening and would be likely to coincide with neighbours wanting to sit out in their gardens. Whilst the two dwellings that are to be built at No. 17 would sit between the appeal site and their rear gardens, this does not mean that noise associated with games of tennis would not carry such that it would be disturbing to the peaceful enjoyment of neighbours' outdoor amenity areas. No technical evidence has been submitted to lead me to conclude otherwise. Furthermore, there is no clear evidence to show that noise would not penetrate indoors.

7. In addition, there is nothing to clearly demonstrate that noise from the nearby road or the MUGA would drown out that from the proposed tennis court. Nevertheless, the rhythmical striking back and forth of tennis balls, coupled with the bounce on the Macadam surface and general discussion across the net between participants, could result in different noise effects than these other nearby features. In any case, I have already concluded that the MUGA's use pattern would not be the same as a private tennis court. Notwithstanding this, the presence or otherwise of other noise sources does not justify a further erosion of neighbours' living conditions.

8. It is argued that the tennis court would be built quickly were it to receive planning permission and thus before the two properties that are yet to be built at No. 17. It is therefore argued that prospective purchasers of these dwellings would be aware of the existence of the facility and could choose whether to pursue the purchase or not.

9. However, there are no appropriate mechanisms to ensure the timing would be as the appellant suggests. Moreover, I do not consider that it would be reasonable to impose a condition requiring the development to be carried out anything other than in accordance with the standard 3 year time limit. Furthermore, there is a difference between noting the presence of a tennis court and having a full appreciation of the noise that it would be likely to generate.

10. It has been put to me that tennis courts are a common feature in such residential areas. Whilst this may be the case in some residential areas, it does not necessarily give credence to the construction of a court in such close proximity to residential properties. In any case, I must deal with the particular circumstances before me rather than apply such a generic consideration.

11. The appellant states that he will construct a grass tennis court should permission be refused for the current proposal. However, to create a level court, excavation would be required which would constitute an engineering operation requiring planning permission. I am not therefore persuaded that there would be a significant likelihood of the stated fallback position being implemented. Accordingly, I give this argument little weight.

12. I accept that by the nature of the proposal, it could have associated health benefits for its users. However, this does not outweigh the clear identified harm to the living conditions of neighbouring residents with regard to noise and disturbance.

13. Taking all of the above into account, the proposal runs counter to saved Policy BE2 of the West Oxfordshire Local Plan (2006) (LP) that, amongst other things, requires development proposals to create or retain a satisfactory environment for people living in the area. I have had regard to the provisions of LP Policy H2, which relates to proposals for additional and replacement dwellings, extensions and alterations to existing dwellings. However, I can find nothing in the Policy's wording that suggests it applies to ancillary uses of land within residential gardens. Accordingly, I am not persuaded that saved Policy H2 is of relevance to the proposal before me.

14. The Council has listed a number of polices from the emerging West Oxfordshire Local Plan 2031. However, given that the Plan is still at consultation stage, I do not afford them anything more than limited weight.

Other matter

15. The appeal site lies immediately to the east of the Eynsham Conservation Area (CA) and therefore has the potential to affect the setting of this designated heritage asset. However, given the character of the surroundings including the extensive school site and that the tennis court would be cut in to the land, I do not consider that its proposed surfacing or enclosing fencing would result in adverse effects on the significance of the CA.

Conclusion

16. For the above reasons and having had regard to all other matters raised, the appeal is dismissed.

Hayden Baugh-Jones

Inspector