



Appeal Decision

Site visit made on 17 April 2018

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th May 2018

Appeal Ref: APP/H5960/W/17/3189949

34 Elmbourne Road, London, SW17 8JR

- 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 Tom Jenkins against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2017/4646, dated 16 August 2017, was refused by notice dated 11 October 2017.
 - The development is part change of use of basement residential swimming pool (Class C3) to residential swimming pool and swimming school (Class C3/D2).
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Decision

1. The appeal is allowed and planning permission is granted for part change of use of basement residential swimming pool (Class C3) to residential swimming pool and swimming school (Class C3/D2) at 34 Elmbourne Road, London, SW17 8JR in accordance with the terms of the application ref. 2017/4646, dated 16 August 2017, including drawing numbers 1824/CMIWC/ and 16121, and subject to the following conditions:
 - i) The basement premises shall be used for mixed C3/D2 (swimming lessons only) use and for no other purpose, including any other purpose in Class D of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting the Order with or without modification.
 - ii) The basement premises shall not be open to customers other than between the hours of 15:00-18:30 Monday to Thursday; 9:00 – 12:30 and 15:00 -18:30 Fridays; 09:00 -12:30 on Saturdays, and at no other times.
 - iii) The number of students attending swimming lessons shall not exceed 2 at any one time.

Preliminary Matter

2. I note from the application details and observations at my site visit that the use of the premises has already commenced.

Main Issues

3. The main issues are:
 - i) The effect upon the residential use of the property,

- ii) Whether it is located in an appropriate location, including consideration of the effect upon the viability and vitality of the town centre,
- iii) Whether the development safeguards the living conditions of the occupiers of neighbouring residential properties, and
- iv) The effect upon the character and appearance of the Conservation Area.

Reasons

Effect upon residential use

- 4. The change of use affects only the basement of the dwellinghouse and retains the swimming pools use for the occupiers of the dwellinghouse when not in use as a swimming school. The remainder of the dwellinghouse and its garden are unaffected. Although there is a separate access to the basement from the front of the property, internal access to the remainder of the dwellinghouse is retained. Any future use as a separate self-contained facility would require further planning approval.
- 5. The Council refers to a previous appeal decision¹ for a property in Maidenhead. However this relates to an application for a certificate of lawful use and the Inspector makes clear that he did not judge the planning merits in that particular case. Whilst the change of use gives rise to a change in the character of the use of the property this does not necessarily mean that objection should be raised on this basis with regard to the planning merits.
- 6. The change of use has only a minimal effect on the use of the residential property as a whole. The swimming pool is also available for the occupants when not in use for the swimming school. Any harm to the residential use of the property is very limited and I do not consider it amounts to a significant breach of the residential protection aims of policy DMH1 of the Wandsworth Local Plan – Development Management Policies Document 2016 ('DMPD').

Location of the development

- 7. Policy DMTS12 seeks to ensure that arts, cultural and entertainment facilities are located within town centre locations. The size of the swimming school facility is fairly modest and lessons are provided six days a week for three and a half hour periods. On Fridays it would operate for two three and a half hour periods. On other days it would only be open for one period of three and a half hours. It would not operate in the evenings after 6.30pm. It is the intention that only two students would use the facility at any one time. The use is therefore modest in scale and somewhat different to the larger and more intensive type of recreational or leisure facility that would be generally found in a town centre location.
- 8. The supporting text to policy DMTS12 states that large scale facilities which will attract significant numbers of people into the area may not be appropriate in out of centre locations. I do not consider the current proposal to be a large scale facility and the number of visitors would be considerably less than, for example, a fitness centre or leisure facility that may normally be found in a town centre.

¹ APP/T0355/X/17/3169871

9. The National Planning Policy Framework applies a sequential test to main town centre uses that are not in an existing centre. The definition of main town centre uses refers to the more intensive sport and recreation uses. The proposed mixed use does not fall neatly within this definition and the particular nature of the use proposed cannot be realistically described as being 'more intensive'. In any case, the harm to the vitality and viability of the town centre is minimal given both the modest size of the facility, the limited number of users and the likely local catchment area. Given the particular nature of the use, the lack of a sequential test does not weigh significantly against the development in this case.
10. Although the use is different to a child care facility, it is modest in size and does not significantly affect the primary residential use of the property. The supporting text for policy DMC2 recognises that smaller community schemes drawing on a localised catchment are likely to be within reasonable walking distance of their catchment, especially if they are located in a residential area. I am satisfied from the information provided by the appellant, along with the representations of support, that there is a local need for the facility. From the evidence available, a considerable proportion of users of the facility are likely to come from the local area, many of whom would be able to walk to the facility.
11. Though there is little opportunity for expansion, contrary to DMC2, this would not be something that would be likely to be necessary or desirable in this case given the location and the existing residential use.
12. Therefore, whilst not located in the town centre, and therefore not complying with policy DMTS12 of the DMPD, the resulting harm arising from the conflict would be limited. There would also be a breach of the criteria of policy DMC2, but given the provision of a local facility providing for a need in the local community, I have also given limited weight to the conflict.

Residential living conditions

13. The number of movements to and from the property in connection with the swimming lessons use is fairly limited, amounting to two 'students' every half hour when in use. Whilst concerns have been raised at the total numbers of students using the facility throughout the week it does not amount to an intensive use. A restriction on the number of students and times of use can be imposed by condition.
14. It is likely that some users would walk to and from the facility rather than be reliant on the private car for transport. Although it has a low PTAL rating, local bus services and an underground station are within walking distance. This limits the possible noise nuisance from car doors and engines.
15. The site is within a fairly densely populated residential area. At my site visit I observed reasonably frequent activity in the road in terms of passing vehicles and pedestrian activity. Use of the facility would not be permitted during the evenings (after 6.30pm) or early mornings when surrounding residents might be more sensitive to any noise from additional comings and goings. Whilst some limited additional noise is likely to result from comings and goings, the evidence does not lead me to consider that it would be particularly perceptible or disturbing for neighbouring residents. Noise from inside the building is well contained and unlikely to be audible outside.

16. Consequently, taking account of the conditions restricting the use, I do not consider that the intensity of the use of the facility is such to result in any adverse impacts from noise and disturbance. It does not result in any significant impacts upon the living conditions of neighbouring residents. It satisfactorily accords with the amenity aims of policy DMS1 of the DMPD.

Conservation Area

17. The site is located within the Heaver Estate Conservation Area which is predominantly residential in character. As outlined above, the swimming school use does not significantly alter the primary residential character of the existing property when considered as a whole. It results in a greater number of comings and goings than would be the case for solely the residential use. However, given the existing activity in the road in the day time, the frequency of visits to the premises is not such that is likely to be particularly discernible. The appearance of the dwellinghouse would not change and the impact of additional activity would not significantly or detrimentally alter the prevailing residential character of the conservation area.
18. I am therefore satisfied that the use preserves and would not be harmful to the character or appearance of the conservation area. It would accord with the heritage aims of policy DMS2 of the DMPD, the Framework and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other matters

19. Given the modest size and intensity of use of the development, and the realistic option for at least some users to walk to the facility, it does not result in the likelihood of any significant impacts upon highway safety, parking or local highway conditions. It would not be open after 6.30pm in the evenings when there is likely to be particular pressure upon local parking.
20. Any restrictive covenant on the use of the premises is not a matter which weighs significantly against the development in terms of my determination of this appeal. Refuse or waste arising from the use is likely to be limited and can be dealt with in association with the domestic refuse arrangements for the property. There is no evidence before me to justify claims that harmful pollution results from the use.
21. I am not aware of any proposals for similar uses and, as each case would need to be dealt with on its merits and circumstances, I do not consider that permitting this use would lead to a harmful precedent in the area. I also note that policies seeks to avoid an over proliferation of non-residential uses.

Planning Balance

22. I have found that the location of the use leads to limited conflict with policies DMTS12 and DMC2 of the DMPD and very limited conflict with the residential protection aims of DMH1 of the DMPD. However, the use has positive benefits in providing for swimming lessons for younger children. It also accords with the aim of the Framework to deliver the recreational facilities a community needs. Furthermore, it promotes healthy living. I consider that these benefits outweigh the limited harm arising.

Conditions

23. A condition restricting the use of the premises is necessary given the particular nature of the use and the need to safeguard the residential amenity of the area. Similarly, conditions limiting hours of use and restricting the use to no more than two students at any one time are necessary to preserve residential living conditions and ensure that the use remains modest in nature and intensity and so appropriate to its location away from the town centre. I have altered the third condition from that suggested by the Council to restrict the use to two students at any one time, rather than a 30 minute period, as I consider this to be more precise and clear. I note the Council's concerns regarding enforceability, but consider on balance that they would be capable of enforcement as necessary through appropriate observations and investigation.
24. I have not imposed a cycle parking condition as there is no indication of where a secure shelter could be provided within the site. The lack of such parking is not of such significance to warrant the dismissal of the appeal. I have also not imposed the suggested condition requiring pre-booked lessons. Such a requirement is not necessary as the intensity of use of the development can be adequately controlled by conditions 2 and 3.

Conclusion

25. Material considerations indicate in this case that planning permission should be granted for the development in spite of the limited conflict with the development plan.
26. For all the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

David Cliff

INSPECTOR