

Appeal Decision

Site visit made on 17 July 2019

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2019

Appeal Ref: APP/K3605/W/19/3226616

Juniper House, 8a Beauchamp Road, East Molesey KT8 0PA

- 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 John Crafts against the decision of Elmbridge Borough Council.
 - The application, Ref. 2018/3865, dated 31 December 2018, was refused by notice dated 21 March 2018.
 - The development proposed is a change of use of the site to a mixed use of C3 (Residential) / D2 (Leisure) to cover the use of the pool for swimming lessons for 3 number sessions per week (retrospective application).
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) the effect on the character of the area, and (ii) the effect on the living conditions for the occupiers of 8b Beauchamp Road by reason of noise and disturbance.

Reasons

3. I saw on my visit that in the vicinity of the appeal site Beauchamp Road is a tree lined road comprised of substantial detached houses with good sized rear gardens. As such, it is a road with a pleasingly suburban and residential character and appearance.
 4. The swimming pool building ('the pool house') is sited at the bottom of No. 8a's rear garden 40 metres or thereabouts to the rear of the house. It was constructed pursuant to planning permission 2002/1397 which included a condition to the effect that its use is restricted to one of incidental to the main dwelling. This can reasonably be interpreted as meaning the occupiers of No. 8a and their family members and friends. The use of the pool house for swimming lessons for young children not associated with the residents of the house, although only for three sessions (two 3-hour and one 4-hour) per week, is in breach of that condition.
 5. On the first main issue, the Council says that the reason for the condition was to safeguard the residential character of the area, and as nothing has since changed as regards that character a retrospective permission in this case would result in material harm to both it and the street scene.
-

6. In respect of the second issue, the objection is that the comings and goings of a substantial number of non-residents to use of the pool house, even though limited to three specific periods per week, causes noise and disturbance to the occupiers of No. 8b, the adjoining dwelling closest to the access route from Beauchamp Road to the pool house.
7. Both main issues appear to relate particularly to the movement of the children and accompanying adults between Beauchamp Road and the pool house at the end of the garden. This is firstly because any noise from the pool house is not the main focus of the Council's objection and secondly because the highway authority does not consider that the additional car parking and vehicular movements cause problems of highway safety and traffic flows in Beauchamp Road.
8. Be that as it may, as regards the movements themselves even though the swimming lessons total only 10 hours a week the cumulative footfall during that period aggregates to a total far exceeding the eight to ten movements typically associated with the comings and goings from a single dwelling. Depending on individual circumstances the latter could be more or less, but even if more it would not be comparable with those from the significant combined total of children, parents and instructors.
9. In this regard I note the supporting statement accompanying the application sets out the schedule for the lessons, this being six half hourly lessons on each of the Mondays and Fridays and eight on the Saturday mornings. This schedule was for the Autumn term of 2018 and in each case there were sets of siblings which had the effect of reducing the comings and goings.
10. However, sibling numbers is clearly a variable that cannot be imposed or enforced through conditions and in my view the more important point is that with six lessons on both Mondays and Fridays and eight on Saturdays there will be a regular sequence of arrivals and departures throughout each session period. Given that arrivals for the middle set of half hour lessons will be earlier than the departures from the preceding lesson to allow for changing to and from swimwear, it is reasonable to assume that comings and goings are at frequent and regular intervals during the majority of each session.
11. I am aware that some near neighbours have commented that the activity is unobtrusive and sometimes it may well be, but I am nonetheless satisfied that the intensity of the use in terms of arrivals and departures does have a materially adverse effect on the residential character of the area for a significant period on three days of each week. (The Council also uses the term 'street scene', but whilst I understand that this is intended to reflect the greater level of activity it is arguably a misnomer for the arrivals and departures connected with the pool house).
12. Turning to the second issue, the effect on the neighbours at No. 8b, the fact that the pool house is at the end of the garden means that the children and parents have to walk along the footpath for the full length of the flank wall of that dwelling and also the full length of the rear garden's boundary. Whilst there are site usage protocols and signage in place associated with the lessons, in my view these are unlikely to be completely effective and are beyond the reach of enforceable conditions.

13. There is a kitchen window in the side wall of No. 8b and both this and the rear garden are susceptible to the inevitable noise of young children and parents walking and talking on their trips to and from the pool house. During periods of warmer weather when the kitchen window is open or the neighbours are in their garden the potential for disturbance is all the greater. In the winter afternoon sessions there will be lighting in the pool house and quite possibly the route to and from it for the later lessons. I acknowledge that there is always the potential for noise and disturbance to neighbours from single family occupation of a dwelling and any ancillary leisure facility, but the regular and more intense activity associated with the use of the pool house by third parties is in my view quite a different matter that merits considerable weight in this appeal.
14. On both the issues of the effect on the residential character of the area and the effect on the living conditions for the occupiers of 8b, I consider on balance that the use of the pool for swimming lessons is harmful to the extent that justifies the Council's refusal of permission. The appellant and the Council disagree as to the relevance of the policies in the Notice of Refusal. However, whilst I agree that some of the provisions may not be directly relevant, I am satisfied that there would be clear conflict with Policy DM3b of the Elmbridge Local Plan 2015 on the first issue and with paragraph 127f) of the National Planning Policy Framework 2019 on the second issue. These conflicts are sufficient to justify refusal of the application on the basis of current planning policy. Furthermore, in the event that I had reached the opposite conclusion it would be difficult to justify an argument to resist to additional lesson periods that would further compromise the residential character of the area and neighbours' living conditions.
15. In reaching my conclusions I have taken account of the benefit of the pool to the community through its provision of swimming lessons in a quality of environment that is not always available at other establishments. However, there is no clear evidence that there are no suitable alternative premises available. I have also had regard to the suggested conditions limiting the use of the pool, but these are insufficient to negate the actual and potential adverse effects. This is particularly as any permission would be permanent and run with the dwelling rather than the current owners of No. 8a, whose implementation of the protocols to limit any adverse effects of the pool's use may not be embraced by future occupiers of the dwelling.
16. I have considered all other matters raised, including by interested parties in favour of the appeal scheme, but for the reasons explained the appeal is dismissed.

Martin Andrews

INSPECTOR