



Appeal Decisions

Hearing held on 10 July 2019

Site Visit made on 10 July 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal A Ref: APP/T2215/C/18/3208371

Opunake, New Barn Road, Longfield, Kent DA3 7LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Denise Calver against an enforcement notice issued by Dartford Borough Council.
- The enforcement notice was issued on 6 July 2018.
- The breach of planning control as alleged in the notice is the carrying out a development in the form of a partial change of use of the land, marked in red on the attached plan, from (Class C3) residential to mixed use, part residential, part commercial (Class D1 – non-residential institutions) for the provision of private swimming tuition without the benefit of planning permission.
- The requirements of the notice are: cease the use of the land for private commercial swimming lessons/swimming tuition.
- The period for compliance with the requirements is 14 days.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/T2215/W/18/3212305

Opunake, New Barn Road, Longfield, Kent DA3 7LG

- 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 Mrs Denise Calver against the decision of Dartford Borough Council.
- The application Ref DA/18/00335/COU, dated 14 March 2018, was refused by notice dated 15 June 2018.
- The development proposed is the change of use from residential garden to mixed use as residential garden and provision of private swimming tuition.

Summary of Decision: The appeal is allowed.

Appeal A – The Notice

1. The enforcement notice is headed operational development. However, the alleged breach of planning control is a material change of use. The main parties agreed at the Hearing that, since the notice sets out the relevant time period as ten years, the reference to operational development could be deleted

and replaced by material change of use without injustice to either party. I shall correct the notice accordingly.

2. The enforcement notice is directed at a material change of use. That being the case, the allegation should also state a material change of use, as this is the act of development as defined by statute. This can be corrected as it would not give rise to injustice to the appellant or the Council.
3. Likewise, the term 'partial' change of use is not an act of development defined in the 1990 Act. The notice attacks the land in its entirety and alleges a mixed use comprising two primary uses. The parties agreed at the Hearing that the notice can be corrected to delete the term 'partial' from the allegation without injustice to either the appellant or the Council. I shall correct the notice accordingly.
4. The parties have provided evidence regarding the relevant use class of the swimming tuition element of the alleged mixed use. The Council has indicated within the breach that it comprises a D1 use, the appellant argues that it constitutes a D2 use. However, as a mixed use, consisting of two primary uses, case law has established that it would fall outside of any use class rather than within one or both of the use classes of its components. I will therefore correct the notice to delete the reference to a D1 use and can do so without injustice to the appellant or the Council.

Appeal B – Preliminary Matters

5. The description of development given in the heading above is taken from the original application forms. The Council's decision notice gives an alternative description. It was indicated by the parties at the Hearing that the description given on the Council's decision notice is the correct one. However, the part change of use of a residential property to allow private swimming tuition within specified times is not an act of development defined in statute.
6. I consider the original description given to be more appropriate, albeit with the omission of the term 'garden' as it is clear that the mixed use applies to the appeal site as a whole. I have therefore determined Appeal B on the basis that planning permission is sought for the change of use from residential to a mixed use as residential and the provision of private swimming tuition.

Appeal A on ground (c)

7. For the appeal on ground (c) to succeed, the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice which give rise to the alleged breach of planning control did not constitute a breach of planning control.
8. In assessing whether that test is met, it necessary to first determine whether what is alleged in the enforcement notice constitutes development, as defined in section 55 of the 1990 Act. Section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land.
9. The alleged breach of planning control is a material change of use of the land from a residential use to a mixed use comprising two primary uses namely residential and private swimming tuition. The concept of a mixed use is one of

- two or more primary uses existing within the same planning unit or unit of occupation. One is not ancillary to the other, although there may be ancillary uses associated with each primary use.
10. In cases such as this where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The parties agreed at the Hearing that the planning unit in this instance comprises the house and garden as shown edged red in the plan attached to the notice.
 11. Prior to the alleged material change of use taking place, the planning unit comprised a single residential property, occupied by a single household. It is said that the swimming pool has been present at the property since the 1990s at least. Nevertheless, prior to its use for swimming tuition, it was used for purposes incidental to the enjoyment of the dwellinghouse. Likewise, the outbuilding was used for ancillary purposes, in the past having been possibly used as a gym.
 12. Following that, at the time the notice was issued, the swimming pool was being used for around 20-22.5 hours a week for private swimming lessons. Lessons are said to occur for around 10 months per year. They do not take place during school holidays and, in previous years, have ceased for the month of January. Tuition hours extend from around 1530 to 1945 on weekdays and between 0900 and 1200 on Saturdays. Outside of those times, I heard that the pool is used occasionally, if not necessarily frequently, by family members.
 13. During periods of tuition, the outbuilding at the rear of the garden is used as a waiting area for parents and siblings with seating and toys. It was said at the Hearing that it is not used outside of those times for domestic purposes. Around 90 students are accommodated each week when lessons take place. Class sizes vary from just one student up to up six. Students are said to be unrelated to the occupants of the house. The appellant receives payment for the lessons from all those who are tutored. It is her main occupation. She is also assisted from time to time by another tutor who is self-employed and not a resident of the property.
 14. Visually, there is little to indicate that a mixed use operates from the property. From the road, the house appears like any other on the street and swimming pools are, if not widespread, not unusual in domestic gardens. Nevertheless, almost the entirety of the rear garden is given over to the tuition use. Parents and students are required to use an access gate to the side of the property to reach the pool area to the rear. There is no indication that parents or students need to enter the house at any point. There is also a separate enclosed toilet for students within the rear garden.
 15. I saw from my site visit that there were various signs displayed at the property. Several contained the logo 'DC Swim School' whilst others warned visitors about noise levels. I also saw a whiteboard in the rear garden which contained the dates and times of the pool's opening and closing over the summer holidays. Signage instructs parents to wait within the outbuilding for 20 minutes of the 30 minute lessons.
 16. At the time of my site visit, classes were taking place. I was able to observe the changeover between lessons. It was clear that there was limited interaction between the appellant, who was in the pool carrying out tuition, and

parents accompanying their children. The character of the relationship between those who visit the premises and the appellant was somewhat transactional, reminiscent of a business operation.

17. In addition, whilst I recognise a considerable proportion of students walk to their lessons, there is inevitably a more frequent turnover of vehicles visiting the property during those times than would generally be the case for a property solely in use as a single dwelling. I saw from my site visit that the number of cars parked on the driveway changed frequently between lessons.
18. As a result, it seems to me that, for a considerable proportion of time, the driveway, side access, pool and outbuilding take on the character of a commercial premises providing private swimming tuition for customers. There is therefore a significant difference in the character of the activities taking place that what had gone on previously.
19. Consequently, I find, on the balance of probabilities, that a material change of use of the land from a single residential dwelling to a mixed use for residential and private swimming tuition has occurred. The appellant confirmed at the Hearing that it forms no part of their case that the use is incidental to the enjoyment of the normal residential use of the dwellinghouse and thus is not development under section 55(2)(d) of the 1990 Act. It is also accepted by the parties that such development does not benefit from planning permission, either expressly or by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015.
20. I conclude, therefore, that the matters stated in the notice which give rise to the alleged breach of planning control did, at the time the notice was issued, constitute a breach of planning control.

21. The appeal on ground (c) thus fails.

Appeal A on ground (a) and Appeal B

Main Issues

22. The main issues are:

- the effect of the development on the living conditions of neighbouring residents with particular regard to noise and disturbance;
- the effect of the parking arrangements on highway safety; and,
- the effect of the development on the character and appearance of the area.

Reasons

Living Conditions

23. The appeal site comprises the dwelling of Opunake, its front driveway and the rear garden which contains a swimming pool and outbuilding. The development subject of the appeals is the change of use from a dwelling to a mixed use of a dwelling and the use of the pool for commercial private swimming tuition.
24. The appeal property lies within a predominately residential area. The closest residential properties are Wilton Lodge to the north and Sherwood and No 1

Longfield Avenue to the south. I observed on my site visit that background noise levels were typical for suburban areas. Although ambient volumes were lower compared to what one may expect in busy urban areas, it was not wholly absent of noise. I was able to hear during the duration of my visit noise from traffic using New Barn Road and to a lesser extent Longfield Avenue. I have no reason to believe that such ambient noise was not typical of everyday conditions.

25. Undoubtedly, use of the property for swimming tuition results in a higher degree of comings and goings from customers than would be the case if the property were occupied as a single household. Clearly there will be an increased number of people frequenting the property during lesson times. The 30 minute duration of lessons means there is a recurrent movement of people and cars into and out of the property.
26. In addition, I note that noise will derive from the voices of children within the pool and from the instructors. It was put to me at the Hearing that the harmful aspects of noise from humans is not necessarily down to volume but rather the nature of the noise. To that end, I note the character of the noise that will arise is perhaps more distracting than typical background noise because the human ear responds more to human voices than other sounds.
27. Nevertheless, an enclosure is kept over the pool throughout the duration of lessons, only being lifted to allow access to and from the pool. Whilst it was indicated at the Hearing that the cover can have an echoing effect, it nonetheless comprises mesh between a curved wooden frame. It seems to me that it will dampen to some extent the effect of shouting or loud instructional talking. Indeed, that appeared to be the case on my site visit.
28. Furthermore, I saw from my site visit that there is signage in place advising parents to respect neighbours. Indeed, it was apparent that those parents attending at the time I was present did not linger and moved quickly into the outbuilding without interruption. Whilst I recognise that it is difficult to mitigate against an individual's actions, my observations indicate that the business functions well at maintaining as low noise levels as is possible. The door to the outbuilding is kept shut throughout lessons to assist with this. In addition, group lessons contain no more than six children at any one time and are only carried out two days a week. Several lessons that are undertaken are done so on a one-to-one basis with only two children in the pool at any one time. Moreover, there are not more than two instructors at any one time. This can be controlled by condition.
29. My site visit took place during the space of two lessons, including the changeover in between. I observed the lessons both from within the appeal site itself and the garden of the adjacent property Sherwood. From the neighbouring property, voices were not significantly audible from the appeal site. Although the occasionally splash of water was heard, the predominant source of noise was ambient noise from road traffic, birdsong and aircraft passing over head. Even where voices could be heard, it was not a constant or consistent noise. Rather I found it to be muffled and intermittent. Whilst I accept it could be occasionally distracting, I am not convinced, from what was put to me at the Hearing and what I heard on the site visit, that the noise will be so distracting as to result in significant harm to occupiers of neighbouring properties. Indeed, it seems to me that the noise levels were not significantly

different than one would expect from living next door to a family with young children – a frequent occurrence in this area.

30. Moreover, lessons are typically complete by 1945 at the latest on a Wednesday, with earlier finishes ranging from 1845 on a Monday, 1915 on a Tuesday, 1830 on a Thursday and 1915 on a Friday. In addition, lessons on a Saturday are carried out between 0900 and 1130 in the morning. As such, the noise would not extend late into the evening when neighbours would have expectations for higher levels of peace and quiet. Whilst I recognise that noise may be audible during early evenings when neighbours may wish to dine outside, I consider the noise levels would not be so harmful and that residents will have lower expectations for peace and quiet in a residential area at those times. Furthermore, residents would have a significant degree of respite with no lessons taking place at all on a Sunday, at any time on a Saturday afternoon or evening, or at any time during the months of August, December or January. I am satisfied that suitable conditions could ensure that is the case.
31. I conclude, therefore, that overall the development will not have an unduly harmful effect on the living conditions of neighbouring residents with particular regard to noise and disturbance. As a consequence, the development accords with Policies DP5 and DP7 of the Dartford Development Policies Plan July 2017 (the DPD) which state that development will only be permitted where it does not result in unacceptable material impacts on neighbouring uses and achieve a satisfactory quality of residential development.

Highway Safety

32. The appeal site is accessed by New Barn Road which I saw from my site visit contains a steady flow of traffic where traffic speeds are generally around 30mph. My observations are reflective of the evidence I heard at the Hearing.
33. The appeal site contains a large gravel surfaced driveway to the front with a dropped kerb to New Barn Road. It is the Council's view that a maximum of five off-street parking spaces can be accommodated within the appeal site where they are laid out in accordance with the Council's Parking Standards Supplementary Planning Document 2012. I see no reason to disagree.
34. Whilst at present eight spaces could be accommodated, this would not be in accordance with the parking standards and would not allow vehicles to exit the site in forward gear. I accept that vehicles leaving the site in reverse gear would result in the potential for collisions with oncoming vehicles on New Barn Road. It therefore seems to me that any off-street parking should accord with the parking standard. In that instance, I am satisfied that a condition requiring the parking arrangements to be laid out on the site and adhered to would suitably ensure that cars can park and exit the site safely in a forward gear. I am not convinced by the Council's view that such a condition would not be enforceable and would lead to indiscriminate parking.
35. The Council argues that the business use will generate a demand for 12 spaces with the residential element creating demand for an additional two spaces. This is far in excess of what the site can provide regardless of whether it is in line with the parking standards or not.
36. Nevertheless, I am not convinced that an apparent under provision of off-street parking would result in harm to highway safety. There are no parking

restrictions on New Barn Road although I saw that on-street parking was largely absent. Nevertheless, I saw that on-street parking takes places regularly on Longfield Avenue which is a short distance from the site. At the time of my site visit, there were several spaces available on the road where cars could park. These were a short walk around the corner from the appeal site. Whilst I accept my observations are only a snapshot of parking conditions at a particular time of day, I heard nothing at the Hearing nor saw anything in evidence which suggests they are not representative of typical parking conditions during the times when swimming lessons take place. As a result, it seems to me that, if all off-street spaces have been filled, then customers will seek to park on-street within a short distance of the site.

37. Moreover, I have no substantive evidence to suggest there is an existing problem with on-street parking in the area. As such, I am satisfied that any on street parking demand arising from the proposal will not result in a significant increase in existing on-street parking levels or congestion in the area. I am unpersuaded by the Council's claim that parking on surrounding streets from the development would invoke a perception of harm amongst residents. The regular movement of vehicles and people is common in residential areas, particularly in one such as this where commuter parking is apparent.
38. I conclude, therefore, that the development will not have a harmful effect on highway safety, in accordance with DPD Policies DP3 and DP4 which state that development will only be permitted where it makes suitable provision to minimise and manage transport impacts and that proposals should include appropriate vehicular access arrangements.

Character and Appearance

39. The appeal property lies within an area which is predominately characterised by residential properties, sited on large plots with large gardens. There is a prevalence of mature vegetation and trees. As a consequence, the area has a leafy, suburban character, in keeping with its designation as an Area of Special Residential Character as identified on the DPD proposals map. Indeed, the New Barn Area of Special Residential Character Appraisal Supplementary Planning Document 2000 describes the overriding impression of the area being that the landscape has matured very well and provides a green setting for the buildings.
40. The Council's concerns are principally that the need to provide a formalised car parking layout to the front would require the removal of a tree in the front garden, cutting back of vegetation and that requiring a hard, bound surface would appear commercial in character and have an obtrusive impact on the appearance of the area.
41. I saw from my site visit that, at present, the front boundary of the appeal site comprises a high, solid rendered brick wall. This limits the contribution of the vegetation within the site as it screens a lot of it whilst the wall itself also appears unduly stark and dominant. In addition, whilst the tree in question is visible from the road, it is not particularly large in scale nor abundant in cover. Furthermore, the actual amount of vegetation within the front of the site is limited to hedging on the southern boundary. There is no indication that this would be removed. Indeed, the majority of tree and vegetation cover on this part of New Barn Road principally derives from that in the front garden of

Sherwood adjacent which partly overhang the appeal site and the properties opposite. The contribution of the appeal site is, at most, limited.

42. As such, it seems to me that the removal of the tree would be unlikely to significantly harm the leafy character of this part of New Barn Road. Moreover, the presence of any hard bound surface and formalised car parking arrangement would be partly obscured by the front wall that would be retained even when the wall is reduced in height to 0.9m to improve visibility. In any event, hard bound front surfaces are not uncommon in the area.
43. I conclude, therefore, that the development will not have a harmful effect on the character and appearance of the area. As a consequence, it will comply with DPD Policies DP2 and DP12 which seek to ensure that development responds to, reinforces and enhances positive aspects of the locality and that development proposals affecting non-designated heritage assets, including Areas of Special Character, should conserve or enhance those aspects that have been identified as significant.

Conditions

44. A condition is suggested requiring compliance with the submitted plans. However, such a condition is not necessary as the development has already been carried out.
45. I nevertheless agree that a condition requiring the commercial element of the mixed use to be solely for private swimming tuition necessary to protect the living conditions of neighbouring residents. The Courts have held that it is not usually possible to rely on the description of development to control, restrict or limit it. I have nevertheless amended the suggested condition to remove the reference to the Use Classes Order 1987 as, for the reasons given in paragraph 4 of my decision, it is not necessary.
46. A condition requiring the private swimming tuition to be carried out, either in whole or in part, by a person living within the appeal property is necessary to ensure the commercial element does not increase to such a scale that would be harmful to occupiers of the appeal property and adjacent properties.
47. I consider a condition requiring no swimming tuition to take place during August, December and January, as well as outside of the times tuition is currently carried out, is necessary to protect the living conditions of neighbouring residents. The timings include 15 minutes either side of the start of the first lesson and the end of the last lesson of each day to allow people to change before or after lessons.
48. The LPA suggested the condition include "for one week during the Easter School Holidays and May half-term school holidays". However, dates for Easter and May holidays change on a yearly basis. Moreover, different schools can hold their holidays at different times. As a result, I am not satisfied that inclusion of such restrictions is sufficiently precise.
49. In addition, given my findings that the current turnover in people at the beginning and ending of lessons does not result in significant harmful effects to local residents, I am satisfied that the Council's suggested inclusion of requirements for lessons to be not less than 30 minutes in length and for a break of 30 minutes between lessons is not necessary.

50. A condition requiring group lessons to contain no more than six pupils and to only be carried out on a Tuesday and Wednesday is necessary to protect the living conditions of neighbouring residents. For the same reason a condition to ensure no more than two pupils are in any private lesson taking place on Mondays, Thursdays, Fridays and Saturdays is necessary. The Council suggests a restriction to allow three pupils where they are siblings. However, I am not satisfied that such a restriction is enforceable.
51. A condition requiring the pool enclosure, or a replacement, to be kept on site and closed at all times whilst private swimming tuition occurs is necessary to prevent harm to the living conditions of neighbouring residents. A single calendar day per year is permitted for the cover to be opened to allow the appellant to carry out her usual practice of allowing children one lesson per year without the cover.
52. A condition requiring the proposed parking arrangements to be carried out in accordance with the submitted plan agreed by the Local Highway Authority is necessary to ensure that five vehicles can be accommodated within the site and can exit in a forward gear. This will prevent harm to highway safety. A condition requiring the front wall to be lowered in height to ensure drivers have adequate visibility on exiting the site is necessary to prevent harm to highway safety.
53. Whilst I note the appellant's view that a condition requiring a management plan is not necessary because of the scale of the operation, I consider it is necessary to provide details of signage, operational arrangements and lighting to the Council for agreement to protect the living conditions of neighbouring residents. Finally, a condition is necessary to prevent amplified music or a PA system being used for the swimming tuition at any time to protect the living conditions of neighbouring residents.

Conclusions – Appeal A

54. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected.
55. Appeal A on grounds (f) and (g) do not fall to be considered.

Conclusions – Appeal B

56. For the reasons given above, and having considered all other matters raised, I conclude that Appeal B should be allowed.

Formal Decisions

Appeal A

57. It is directed that the enforcement notice is corrected by:
- the deletion of the words 'operational development' from the heading of the notice and their substitution with the words 'material change of use';
 - the deletion of the word 'partial' from paragraph 3 of the notice and its substitution for the words 'material'; and,

- the deletion of the words '(Class D1-non-residential institutions)' from paragraph 3 of the notice.

58. Subject to the corrections, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the land, marked in red on the attached plan, from (Class C3) residential to mixed use, part residential, part commercial for the provision of private swimming tuition at Opunake, New Barn Road, Longfield, Kent DA3 7LG as shown on the plan attached to the notice and subject to the following conditions:

- 1) The commercial element of the mixed use hereby permitted shall be for the provision of private swimming tuition only and for no other uses, including any other use whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not.
- 2) The private swimming tuition element of the mixed use hereby permitted shall not be carried out solely by a person or persons that does not reside within the appeal property.
- 3) The private swimming tuition element of the mixed use hereby permitted (including the arrival and dispersal of people in connection with the use) shall not be carried out: at any time between December and January inclusive; at any time throughout August; at any time on a Bank or Public Holiday; and, at any time outside the hours of 1530 to 1900 on Mondays, 1530 to 1930 on Tuesdays, 1530 to 2000 on Wednesdays, 1515 to 1845 on Thursdays, 1530 to 1930 on Fridays and 0845 to 1145 on Saturdays.
- 4) Not more than six pupils shall be permitted to attend group tuition within the swimming pool at any one time. Group tuition shall take place on Tuesdays and Wednesdays only and at no other time. Not more than two pupils shall be permitted to attend private tuition within the swimming pool at any one time. Private tuition shall take place on Mondays, Thursday, Fridays and Saturdays only and at no other time.
- 5) The existing swimming pool enclosure as shown on plan no. NB-18-P2, or a replacement enclosure of the same size, design and materials, shall be present on the site at all times and closed fully for the entire duration of the private swimming tuition element of the mixed use hereby approved, except for one day per calendar year.
- 6) The use hereby permitted shall cease within 28 days of the failure to meet the following requirements:
 - i. Within 2 months of the date of this permission, the approved parking layout as shown on drawing no. NB-18-PI Rev I shall be implemented in full. The approved parking and turning spaces shall have a bound-surface material and each parking bay shall be demarcated. The approved parking and turning spaces shall be maintained and kept available for such use at all times and no development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015

or not, shall be carried out on that area of land or to preclude vehicular access thereto.

In the event of a legal challenge to this decision the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) The use hereby permitted shall cease within 28 days of the failure to meet the following requirements:

- i. Within 1 month of the date of this permission, the height of the existing front boundary wall shall be reduced to no more than 900mm in height from ground level and thereafter maintained as such.

In the event of a legal challenge to this decision the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) The use hereby permitted shall cease within 28 days of the failure to meet the following requirements:

- i. Within 1 month of the date of this permission, a Management Plan for the swimming tuition use hereby approved, to include details of customer signage to be placed around the site reminding customers of the residential location, waiting area arrangements for parents/carers, ensuring the side access gate is open and closed correctly, advising visitors of the correct use of the parking and turning within the site and details of all external lighting within the appeal property, including any lighting within the swimming pool or pool enclosure and its times of use, position and brightness, shall have been submitted for the written approval of the Local Planning Authority.
- ii. If within 11 months of the date of this decision the Local Planning Authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been submitted to and accepted by the Secretary of State.
- iii. If an appeal is made in pursuance of ii) above, the appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv. The approved scheme shall have been carried out and completed within 1 month of the scheme having been approved.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 9) There shall be no PA system or amplified music in connection with the private swimming tuition element of the mixed use hereby approved at any time.

Appeal B

59. The appeal is allowed and planning permission is granted for the change of use from residential to a mixed use as residential and the provision of private swimming tuition at Opunake, New Barn Road, Longfield, Kent DA3 7LG in accordance with the terms of the application, Ref: DA/18/00335/COU, dated 14 March 2018, subject to the following conditions:

- 1) The commercial element of the mixed use hereby permitted shall be for the provision of private swimming tuition only and for no other uses, including any other use whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not.
- 2) The private swimming tuition element of the mixed use hereby permitted shall not be carried out solely by a person or persons that does not reside within the appeal property.
- 3) The private swimming tuition element of the mixed use hereby permitted (including the arrival and dispersal of people in connection with the use) shall not be carried out: at any time between December and January inclusive; at any time throughout August; at any time on a Bank or Public Holiday; and, at any time outside the hours of 1530 to 1900 on Mondays, 1530 to 1930 on Tuesdays, 1530 to 2000 on Wednesdays, 1515 to 1845 on Thursdays, 1530 to 1930 on Fridays and 0845 to 1145 on Saturdays.
- 4) Not more than six pupils shall be permitted to attend group tuition within the swimming pool at any one time. Group tuition shall take place on Tuesdays and Wednesdays only and at no other time. Not more than two pupils shall be permitted to attend private tuition within the swimming pool at any one time. Private tuition shall take place on Mondays, Thursday, Fridays and Saturdays only and at no other time.
- 5) The existing swimming pool enclosure as shown on plan no. NB-18-P2, or a replacement enclosure of the same size, design and materials, shall be present on the site at all times and closed fully for the entire duration of the private swimming tuition element of the mixed use hereby approved, except for one day per calendar year.
- 6) The use hereby permitted shall cease within 28 days of the failure to meet the following requirements:
 - ii. Within 2 months of the date of this permission, the approved parking layout as shown on drawing no. NB-18-PI Rev I shall be implemented in full. The approved parking and turning spaces shall have a bound-surface material and each parking bay shall be demarcated. The approved parking and turning spaces shall be maintained and kept available for such use at all times and no development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 or not, shall be carried out on that area of land or to preclude vehicular access thereto.

In the event of a legal challenge to this decision the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) The use hereby permitted shall cease within 28 days of the failure to meet the following requirements:
- ii. Within 1 month of the date of this permission, the height of the existing front boundary wall shall be reduced to no more than 900mm in height from ground level and thereafter maintained as such.

In the event of a legal challenge to this decision the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) The use hereby permitted shall cease within 28 days of the failure to meet the following requirements:
- v. Within 1 month of the date of this permission, a Management Plan for the swimming tuition use hereby approved, to include details of customer signage to be placed around the site reminding customers of the residential location, waiting area arrangements for parents/carers, ensuring the side access gate is open and closed correctly, advising visitors of the correct use of the parking and turning within the site and details of all external lighting within the appeal property, including any lighting within the swimming pool or pool enclosure and its times of use, position and brightness, shall have been submitted for the written approval of the Local Planning Authority.
 - vi. If within 11 months of the date of this decision the Local Planning Authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been submitted to and accepted by the Secretary of State.
 - vii. If an appeal is made in pursuance of ii) above, the appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - viii. The approved scheme shall have been carried out and completed within 1 month of the scheme having been approved.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 9) There shall be no PA system or amplified music in connection with the private swimming tuition element of the mixed use hereby approved at any time.

J Whitfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Westaway of Counsel	Landmark Chambers
Denise Calver	Appellant
James Barron	Barron Edwards
Hannah Calver	Family of the Appellant
Hollie Calver	Family of the Appellant
Karen Fotheringham	Friend of the Appellant
Julie Quinnell	Friend of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Colin Alden	Dartford Borough Council
Sonia Bunn	Dartford Borough Council
Emma Eisinger	Dartford Borough Council
Christina Walker	Dartford Borough Council

INTERESTED PERSONS:

Jeremy Kite	Local Resident
Darren Salter	Local Resident

DOCUMENTS

- 1 Written submissions of Hayley Hancock
- 2 Written submission of J Stevens
- 3 *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202
- 4 *Hertfordshire CC v Secretary of State for Communities and Local Government* [2012] EWHC 277 (Admin)
- 5 Dartford Core Strategy – Policies DP1 and DP21