



Appeal Decision

Site visit made on 3 September 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2019

Appeal Ref: APP/R4408/W/19/3230629

433 Rotherham Road, Smithies, Barnsley S71 1UX

- 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 Frank Myers against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2018/1359, dated 24 October 2018, was refused by notice dated 24 January 2019.
 - The development proposed is change of use of domestic pool to private hire.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. On 19 February 2019 the Government published an updated revised National Planning Policy Framework (the Framework). The revisions do not materially alter the national policy approach in respect of the main issue raised in this appeal. Therefore, no party has been prejudiced by my having regard to this updated document.

Main Issue

3. The main issue is the effect of the development on the living conditions of neighbouring residents, with particular reference to noise and disturbance and loss of privacy.

Reasons

4. Rotherham Road is a busy thoroughfare characterised mainly by semi-detached suburban dwellings as well as some small-scale commercial premises. The houses follow a broadly consistent building line. They are typically set behind front gardens/driveways with longer gardens to the rear. The appeal site at No 433 is a semi-detached house set within a long narrow 'L' shaped plot. At the back, it incorporates an area that would initially have formed part of the rear garden to the adjacent semi at No 435. It is now grass and hardstanding and occupied by a large detached outbuilding that accommodates an indoor swimming pool with changing facilities and an adjacent parking area.
5. Having originally been built in 1991 as a pool for domestic purposes, the appeal proposal seeks to allow it to be made available for private hire. Two previous applications relating to the change of use of the pool for commercial private

use, albeit with varied opening hours to those sought by the appeal proposal, were refused in July 2017 and April 2018¹.

6. I have taken into account the noise impact assessment submitted by the appellant. This refers principally to differences in noise levels arising from the access road and car park activity and concludes that there would be no change in ambient noise levels in the vicinity. I have no reason to dispute these findings and I acknowledge both the typical ambient noise level (48 dB LAeq (1hr)) and identified noise levels (dB LAeq (1h)) at the nearest noise sensitive receptor, being 431 Rotherham Road. However, whilst the dB LAeq(1hr) would be lower, I am mindful that the Sound Exposure Level/Single Event Level (SEL) figures for individual noise events at 2m distance, including doors opening/closing and engine start-up are identified to be between 63 and 70dBA. Such sudden noise events through repetition would, in my view, be experienced by neighbouring residents, which they may find disturbing.
7. Moreover, the pool building and the driveway that provides access to the associated parking area are immediately adjoining the side boundary with No 431. Within this neighbour's garden there are a number of outbuildings and whilst I have no definitive evidence on their use as either ancillary or independent residential accommodation, the proposal would nonetheless result in the comings and goings of vehicles at regular periods throughout the day and evening in close proximity to their boundary.
8. Furthermore, the hours of use of the pool would constitute 7 one-hour sessions between 9.30am and 4.30pm with a 30-minute break between them. They would then resume with two sessions between 6.00pm and 7.00pm and between 7.30pm and 8.30pm. Even taking into account the appellant's willingness to limit the hours of use to between 10.00am and 4.00pm on Sundays and Bank Holidays, these extensive opening hours would still mean that the site would be in operation when neighbouring residents would reasonably expect to enjoy their home and garden, both in the evenings and at weekends, particularly in the summer months.
9. I am also mindful that a representation has been made about noise associated with people using the swimming pool. I have nothing before me to indicate whether or not the proposal would be audible from surrounding residential properties when in use. However, I observed window openings in both flank elevations as well as doors to the rear, looking towards the back gardens of houses on Highfield Avenue. Even if the side windows facing No 431 were to be blocked up, the intensity of the private hire use compared to a domestic pool, which would be on a reasonably continuous basis throughout the day and into the evening, and its proximity to neighbouring houses, particularly to the boundary with No 431, would have the potential to result in noise disturbance.
10. The management plan submitted by the appellant advises that the swimming pool would be run by appointment only for small groups with sessions being pre-booked to restrict it. It also indicates that no more than two cars would arrive at the same time. However, I have nothing before me to demonstrate how it would be practical to monitor the implementation of the management plan. Consequently, having regard to guidance at Paragraph 55 of the Framework, I am not persuaded that a condition to limit the proposal in this manner would be enforceable. Whilst my attention has been drawn to another

¹ Council Refs: 2017/0416 and 2017/1272

Council decision² for a swimming pool that was subject to a condition that its use be limited to small groups, I do not have full details of this case to determine the extent to which it is comparable to the appeal proposal.

11. Moreover, whilst the use of the pool might be aimed at people whose mobility is limited, as well as mothers and babies, the Planning Practice Guidance (PPG)³ also confirms that as planning permission runs with the land, it is rarely appropriate to use conditions to limit the benefits of planning permission to a particular group of people.
12. I am not, however, persuaded that the proposal would result in a loss of privacy. There is a substantial boundary between the appeal site and No 431 and a further solid boundary between Nos 435 and 437 Rotherham Road, as well as to the rear of the site. This would preclude any overlooking between the swimming pool and neighbouring properties.
13. Nevertheless, for the above reasons, I conclude that the proposal would cause substantial harm to the living conditions of neighbouring residents with regard to noise and disturbance. It would therefore conflict with Policy GD1 of the Barnsley Local Plan (January 2019), which seeks to ensure that development proposals do not adversely affect the living conditions of existing occupiers.

Other Matters

14. I appreciate that the appellant originally allowed the pool to be used by non-family members as a gesture of goodwill. I have also had regard to the representations setting out the rehabilitation benefits of the pool. This weighs in the scheme's favour. However, I have nothing before me to indicate that such facilities would not be available elsewhere, in a less sensitive location. Furthermore, the pool is small in size. Consequently, its contribution to the broader community in terms of physical therapy and health would be limited, and it would not outweigh the harm that I have identified to the living conditions of neighbouring residents.
15. The Council has not raised specific concerns about the effects of the scheme on a number of issues, including highway safety or the reasonable provision of amenity space for the occupiers of No 433. However, in order to demonstrate compliance with the development plan, these are requirements that would have to be met for any scheme to be acceptable. They are not matters that diminish the harm that I have identified in respect of the main issue above.
16. The appellant has also referred to the Council's processing of the original application. However, in my determination of this appeal, I must have regard only to the planning merits of the case before me.

Conclusion

17. For the reasons above, I conclude that the appeal should be dismissed.

Kate Mansell

INSPECTOR

² Council Ref: 2018/1372

³ PPG Reference: Paragraph: 015 Reference ID: 21a-015-20140306