



Appeal Decision

Site visit made on 30 September 2019

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2019

Appeal Ref: APP/R1038/W/19/3233597

The Croft, Mansfield Road, Mile Hill, Hasland, Chesterfield, Derbyshire S41 0JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mrs Lynn Booth on behalf of Swim 121 against the decision of North East Derbyshire District Council.
- The application Ref 18/01045/FL, dated 22 October 2018, was refused by notice dated 31 January 2019.
- The application sought planning permission for construction of log cabin to house above ground rehabilitation exercise tank with disability access and changing facilities for both the pool and the tank without complying with conditions attached to planning permission Ref 16/00768/FL, dated 23 November 2016.
- The conditions in dispute are Nos 2 and 3 which state that:
"2. The business shall employ no more than six employees working at The Croft, Mile Hill, Hasland in addition to any employees who reside at the appeal site."
"3. Swimming tuition shall take place only between the hours of 9:30am to 6:30pm Monday to Friday and 9:00am to 2:30pm on Saturdays and Sundays."
- The reason given for each of the conditions is:
"To safeguard the privacy and amenity of neighbours in accordance with policies GS6 and E9 of the North East Derbyshire Local Plan."

Decision

1. The appeal is allowed and planning permission is granted for construction of log cabin to house above ground rehabilitation exercise tank with disability access and changing facilities for both the pool and the tank in accordance with the application Ref 18/01045/FL, dated 22 October 2018, without compliance with conditions 2 and 3 attached to planning permission Ref 16/00768/FL, dated 23 November 2016, subject to the conditions set out in the attached Schedule.

Background and Main Issue

2. The application subject of this appeal sought removal of condition 2 and variation of condition 3 of planning reference 16/00768/FL to allow swimming lessons to only take place between 0930 - 1930 hours on Mondays to Fridays and 0830 to 1630 hours on Saturdays and Sundays. At the time of my visit, the log cabin building subject of the permission had yet to be constructed.
3. The evidence before me includes an indication of the planning history, including the initial planning permission for change of use of an existing domestic

swimming pool to part commercial use for 1-to-1 tuition in 2004¹, a subsequent planning permission in 2009² to extend the hours of opening and remove a restriction on number of employees, and a further permission in 2015³ for the construction of a new pool enclosure, rehabilitation tank and access improvements which included conditions with similar wording as those which are the subject of this appeal. The full details of the previous planning permissions are not before me, although based upon observations during my visit, the 2015 permission does not appear to have been implemented.

4. The extant conditions of the previous planning permissions relating to the site are not subject of this appeal and fall outside of my jurisdiction. The status of those conditions in terms of the established use of the site and any associated restrictions upon the appellant's business, together with any implications of this decision in those respects, are a matter for the appellant and the Council. I, necessarily, determine this appeal in terms of the application as listed in the appeal decision header as relating to the development for which planning permission was granted under ref: 16/00768/FL. In that regard, the parties have been afforded an opportunity to comment on the relationship between the established use and disputed conditions 2 and 3, and related condition 4, given that the conditions of previous planning permissions would remain in place.
5. In light of the above, the main issue is whether the disputed conditions 2 and 3 and the related condition 4 are necessary and reasonable with regard to the effect of the development on the living conditions of occupiers of neighbouring properties, with particular regard to matters of privacy, noise and disturbance.

Reasons

6. The appeal site consists of a large two storey detached property and associated buildings that are located in a linear row of residential properties which adjoin the north eastern side of Mansfield Road (B6039), a 40mph speed limit road beyond the main village envelope of Hasland. The site also lies close to a dual carriageway (A617) that runs beyond a woodland belt behind the rear curtilage boundaries of the properties.
7. The main property within the site is known as The Croft, and there is also a single storey residential annex known as Summerfield Cottage located toward the western boundary of the site. The existing swimming pool is located at the rear of the main property and has an enclosure with associated changing facilities and plant, with the reception area currently located in the ground floor of the eastern section of the main property. A further temporary building was also positioned toward the eastern boundary of the site at the time of my visit, but I am unaware of its current planning status and it does not form part of the planning permission subject of the appeal before me.
8. The properties nearby are predominantly in residential use. However, a number of commercial premises are present in the wider area including a MOT testing centre for cars, minibuses and light commercial vehicles further along Mansfield Road and a scrap yard located on the opposite side of the road beyond a field and landscaping. I observed during my visit in the mid-morning of a weekday that the presence of commercial uses nearby and the proximity of the B6039 and the A617 to the front and rear of the site respectively, result in background

¹ Council ref: NED/04/01055/FL

² Council ref: 09/00028/FL

³ Council ref: 15/00413/FL – Planning Permission Granted – 17 December 2015

levels of noise that are higher than is ordinarily typical of a semi-rural setting in the countryside. In particular, I was able to hear during the entire duration of my visit, noise from passing traffic using the B6039 and A617, with the latter being particularly noticeable towards the rear of the site and when near to the reception area and the existing pool and associated facilities.

9. The development under planning permission ref: 16/00768/FL is for construction of a log cabin to house above ground rehabilitation exercise tank with disability access and changing facilities for both the pool and the tank. I consider it reasonable that the principle of the development reflects an implicit acknowledgement that it would intensify the established use of the site for 1-to-1 swimming tuition, particularly through the addition of a ground rehabilitation exercise tank. This would include a higher degree of comings and goings of customers and staff than would be the case if the property were occupied as a single household. In that regard, the number and duration of lessons within the opening hours of the business means that there is already a recurrent movement of people and cars into and out of the property and the parking area at the front of the site.
10. With regard to the above, it is reasonable that in granting planning permission for the development that the Council has sought to mitigate any perceived impact upon the living conditions of occupiers of neighbouring properties in terms of intensification of activity when compared with the established use. However, to my mind, the extent of comings and goings at the site would be limited by the scale of development proposed and the other facilities associated with the established lawful use, together with the restrictions upon the business use that are otherwise imposed by conditions of previous planning permissions and remain in place. Furthermore, it is evident that condition 8 of the 2016 permission is intended to mitigate the rating level of sound arising from the development, corrected for acoustic features, to no more than 2 dB above the residual sound level at a position representative of the residential boundary. Based upon the evidence before me, I have no reason to consider that compliance with such a condition would not be achievable.
11. The closest property to the swimming pool and the siting of the building for which planning permission has been granted is Herne House, an existing dwelling. The nearest building within the curtilage of that property is a two storey outbuilding that is located around 9m from the shared boundary with some windows facing the site. The presence of the outbuilding largely screens the main dwelling, with an intervening driveway between an outdoor seating area and a ménage that adjoin the appeal site. Based upon the evidence before me, the outbuilding has been used for domestic storage associated with the main house and would be capable of being occupied as ancillary living accommodation. The shared boundary treatment consists of tall close boarded fencing with some intermittent trees along its length, together with a denser grouping of trees and shrubs separating the respective accesses and driveways towards the front. The properties to the west are more distant from the pool and the siting of the development subject of this appeal.
12. When having regard to the above, I am satisfied that the development proposed would be adequately screened by boundary treatments to avoid a loss of privacy for occupiers of neighbouring properties. Furthermore, a limitation in the increase in the rating level of sound arising from the development as per condition 8 of the 2016 permission would be sufficient to

prevent harm to the living conditions of occupiers of neighbouring properties in terms of noise and disturbance given that habitable windows and rooms of neighbouring properties would be more distant from the shared boundary.

13. It follows from the above and the presence of condition 8 of the 2016 permission, that I consider that disputed condition 2 which seeks to impose restrictions on the number of employees working at The Croft, Mile Hill, Hasland in addition to any employees who reside at the appeal site, is not necessary to ensure that the development would not harm the living conditions of the occupiers of neighbouring properties. I also have concerns that such a condition does not meet the requirements of a condition as set out in paragraph 55 of the Framework as it would impose a restriction that extends beyond the development permitted to the wider operation of an existing business with an established use and facilities that are already operating from the site. In any case, as I am satisfied that condition 8 of the 2016 permission would prevent harm to the living conditions of occupiers of neighbouring properties, disputed condition 2 is not necessary and should be removed.
14. Turning to the disputed condition 3, the appellant has sought to vary the condition to allow swimming tuition to take place for extended periods of time on weekdays as otherwise permitted by previous planning permissions relating to the established lawful use within the site, together with extended hours on Saturdays and Sundays between 0830 - 0900 and 1430 - 1630. However, I am mindful that the facilities within the building subject of this appeal would include a significant proportion of floorspace that would be used as ancillary to the function and use of the existing swimming pool and the associated tuition business which fall outside of my jurisdiction. Consequently, as condition 4 of planning permission ref: NED/04/01055/FL (as amended by ref: 09/00028/FL) relates to the use of the existing swimming pool and cannot be varied as part of the appeal before me, I consider it reasonable that any hours restriction upon the building subject of this appeal should remain consistent with it.
15. The authorised hours for the existing tuition business in that case are 0930 to 1930 hours on Mondays to Fridays and 0830 to 1300 hours on Saturdays only and therefore, the disputed condition 3 should be modified accordingly as part of this appeal to reflect those hours and re-worded to be more precise in terms of the restrictions imposed specifically on the development.
16. The modified condition would reflect hours of use for the building permitted that are less than those imposed in disputed condition 3 of the 2016 permission on Saturday afternoons and during Sundays, in circumstances where the original permission would continue to exist (along with the conditions attached to it). Nonetheless, as per my previous reasoning, such restrictions and limitations relating to the site extend beyond the development itself to the wider operation of the business and the established lawful use. Consequently, as part of the outcome of this appeal, the modification to disputed condition 3 is necessary to ensure that it is clear that the grant of a new planning permission Ref 16/00768/FL relates to only the building for which permission was sought and does not imply that it would otherwise alter or remove the restrictions of condition 4 of planning permission ref: NED/04/01055/FL (as amended by ref: 09/00028/FL) relating to the established use of the site.
17. It follows from the above, that a variation of the disputed condition 3 as part of this appeal so as to provide an extension of hours when swimming tuition could

take place as part of the established use would not be reasonable as such a condition would be incompatible with extant conditions of existing permissions relating to the wider business. In that respect, to my mind, it is reasonable that the controls upon the hours when swimming tuition is to take place within the site and any variation thereto, should be derived from extant conditions of planning permissions for the established use and/or the construction of the pool itself and therefore, cannot reasonably be varied or extended by the development subject of the appeal before me.

18. In reaching the above view, I note the appellants aspiration for the wider business to continue to operate during the hours proposed and the associated economic and social benefits in that respect, including letters of support from customers and staff. Furthermore, I note that evidence provided by the appellant seeks to justify that no harm to the living conditions of occupiers of neighbouring properties would occur in terms of noise and disturbance during the intended periods of extended opening hours. However, any such proposed extension to hours of use of the existing swimming pool and tuition business as intended by the appellant (including in association with ancillary facilities within the development subject of this appeal should planning permission Ref 16/00768/FL be subsequently implemented) falls outside of my jurisdiction. Consequently, it would need a separate planning application relative to condition 4 of planning permission ref: NED/04/01055/FL (as amended by ref: 09/00028/FL) which would necessarily be assessed on its own merits.
19. It is also the case that condition 4 of the 2016 permission could be implied to impose restrictions upon swimming lessons that could take place within existing facilities and use of the existing swimming pool rather than the development permitted. The parties have been afforded an opportunity to comment upon this matter, as condition 4 did not form part of the disputed conditions in the application subject of this appeal. However, it falls within my jurisdiction to consider the other conditions to be imposed as part of the removal of disputed condition 2 and modification of disputed condition 3 which requires the grant of a new planning permission. It follows that as a consequential change, condition 4 should be modified to ensure that the wording is more precise and that it relates to the use of the ground rehabilitation exercise tank and only swimming tuition taking place within the building subject of the appeal. I am satisfied that no parties would be prejudiced should I modify the wording of condition 4 in that respect and to ensure that it relates to only the development permitted.
20. I conclude that disputed condition 2 is not reasonable or necessary to protect the living conditions of occupiers of neighbouring properties. In the absence of that condition and following the modification of disputed condition 3 and condition 4 for the reasons previously stated, the development would comply with Saved Policies GS6 and E9 of the North East Derbyshire Local Plan, adopted November 2005, in so far as they seek that new development is for the operation of a use appropriate to such a location and causes minimal problems of noise, disturbance and pollution or other environmental impact. The policies are consistent with the National Planning Policy Framework which seeks to ensure that development is appropriate for its location taking account of, amongst other things, the likely effects (including cumulative effects) on living conditions. I also find no conflict with Emerging Policies SS1 and SS9 of the North East Derbyshire Local Plan 2014-2034 - Publication Draft.

Other Matters

21. The dwelling and business share an existing access from a well-lit section of Mansfield Road which would be a safe and acceptable highway solution for the limited increase in traffic and parking demand that would arise from the development and associated intensification of the business. The parking area would be of a suitable size to accommodate the demand associated with the existing use of the site and the development with a turning area to allow a safe entry and exit by vehicles in forward gear and therefore, would not increase on-street parking. The access is of an adequate width to allow vehicles to pass each other without potential conflict, with clear signage that to my mind would prevent confusion with the access to Herne House close by. In addition, despite the access being close to the brow of a hill, there is no evidence of any previous accidents having occurred as a result of its use during the daytime or in periods of darkness. I, therefore, find that the addition of the limited traffic movements associated with the development and the associated intensification of the business would not have a detrimental impact upon highway safety.

Conditions

22. Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. In allowing this appeal and granting planning permission I have considered the conditions previously imposed relating to planning permission Ref: 16/00768/FL and necessarily ensure that the time limit of the planning permission remains three years from the date of the Council decision. As I have no information regarding the status of the other conditions imposed on the original planning permission, I shall impose all those that remain relevant having regard to the advice contained within paragraph 55 of the Framework and the guidance contained in the PPG. If some have in fact been discharged, that is a matter which can be addressed by the parties.
23. I have previously concluded that disputed condition 2 is not reasonable and necessary in terms of the effect of the development on the living conditions of occupiers of neighbouring properties, and that disputed condition 3 and condition 4 should be modified for the reasons previously stated. I, therefore, intend to grant a new planning permission that does not include disputed condition 2 and re-numbers the remaining conditions accordingly, including the new conditions 2 and 3 which respectively modify disputed condition 3 and condition 4 of planning permission Ref: 16/00768/FL as previously imposed.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed and planning permission granted for construction of log cabin to house above ground rehabilitation exercise tank with disability access and changing facilities for both the pool and the tank, without compliance with disputed conditions Nos. 2 and 3 previously imposed on planning permission Ref 16/00768/FL, subject to the conditions set out in the attached Schedule.

Gareth Wildgoose

INSPECTOR

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from 23 November 2016.
- 2) The use of the ground rehabilitation exercise tank and the building hereby permitted for purposes associated with swimming tuition shall take place only between 0930 to 1930 hours on Mondays to Fridays and 0830 to 1300 hours on Saturdays. Other than this, the log cabin building shall only be used for the private use of the occupants of The Croft and those of their immediate family and for no other commercial purposes.
- 3) From the first use of the building hereby approved, any swimming lessons taking place within the ground rehabilitation exercise tank shall be run on a one-to-one basis only.
- 4) Space for the parking of 11 cars with turning shall be provided prior to the bringing in to use of the log cabin for use by staff and customers of the swimming pool and rehabilitation tank. This is in addition to the existing parking provision for residents of the dwellings currently served by the same vehicular access onto Mansfield Road.
- 5) If during construction works associated with the development hereby approved, any areas suspected of being contaminated are discovered, all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority. The assessment shall take the form of a Phase I contaminated land assessment (desk-study) and shall detail the site investigation strategy required to deal with the contamination identified. Any investigation required shall be undertaken in accordance with the scheme submitted and shall comply with current Government Guidance. The local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination.

Upon completion of the remediation works carried out in accordance with the site investigation strategy; a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation shall be included.

- 6) Prior to development commencing, a gas risk assessment must be carried out for any buildings proposed for this development. This should be carried out in line with current guidance. The assessment shall include:
 - a) A survey of the extent, scale and nature of the current gas regime of the site;
 - b) An assessment of the potential risks to human health, property (existing or proposed), adjoining land and its receptors;
 - c) An appraisal of remedial options as appropriate and a proposal for the preferred remedial option.

Any gas protection measures must be carried out by a suitably qualified person and an independent verification report must be approved in writing by the local planning authority.

- 7) The development hereby approved shall not be brought into use unless and until an assessment of sound emanating from the building has been undertaken and a scheme specifying the provisions to be made for the control of sound has been submitted to and approved in writing by the local planning authority. The assessment shall demonstrate that the rating level of the sound, corrected for acoustic features, measured at or calculated to a position representing any residential boundary which may suffer a loss of aural amenity from sound associated with the development, does not exceed the residual sound level by more than 2 decibels. The scheme as approved shall be implemented in full and notified to the local planning authority. The scheme as installed shall be retained thereafter. References in this condition to rating level and residual sound level have the same meaning as those defined in BS4142:2014 Methods for rating and assessing industrial and commercial sound.
- 8) The development hereby approved shall be carried out in accordance with the details submitted and specifically the location plan (untitled), site plan, floor plan, elevations A and B and elevations C and D (all undated) unless otherwise subsequently agreed through a formal submission under the non-material amendment procedures and unless otherwise required by any condition contained in this decision notice.
- 9) Before development starts (excluding any demolition or site clearance), a scheme shall be submitted to and be approved in writing by the local planning authority with details of the site compound that will be used. The scheme shall include details of all construction workers accommodation, storage of plant and materials, parking and manoeuvring areas for site operatives and visitors vehicles, loading and unloading and manoeuvring for goods vehicles. Thereafter, before any other operations are started on site the agreed scheme shall be implemented in accordance with the approved details and be retained as such during the duration of the works.