



Appeal Decision

Site visit made on 7 January 2020

by S Thomas BSc (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2020

Appeal Ref: APP/X0415/W/19/3238477

Mardan Ville, Mill Lane, Chalfont St Giles HP8 4NR

- 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 Laura, Lars & Kirsten Sevenus against the decision of Chiltern District Council.
 - The application Ref PL/19/0899/FA, dated 14 March 2019, was refused by notice dated 23 July 2019.
 - The development proposed is described as change of use from a single dwelling to a mixed use comprising a single residential dwelling and use of the pool for commercial swimming lessons (sui generis).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I observed that the use described above has already been carried out and I have dealt with the appeal on that basis. I have amended the description of development above from that stated on the application form removing the word 'retrospective' as that is not an act of development.

Main Issue

3. The main issue is the effect of the development on the living conditions of neighbouring occupiers with particular regard to noise, including the effect on the Established Residential Area of Special Character (ERASC).

Reasons

4. Mardan Ville is located in a tranquil leafy area within the Chiltern Area of Outstanding Natural Beauty. It is a very large property set in substantial grounds and the extensive tree cover contributes to the verdancy of this peaceful area. The dwelling is set back some distance from the road and is accessed via a gravelled parking area, with the swimming pool contained in an annexe to the dwelling.
5. The area is an ERASC as defined by the Council in the Chiltern District Local Plan 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011 (Local Plan). From my observations on site, the special character of this area is defined by the built form but also the

quiet verdant setting and I consider the tranquillity of this residential area contributes to its special character.

6. The indoor swimming pool is set back into the appeal site. I observed that noise from the pool was connected with the plant associated with its operation. Whilst audible from the adjacent lane, this was not at a level that would result in harm to adjacent occupiers. In any event, this noise would be associated with the pool whether or not it was in commercial use. Lessons were underway during my visit, and I did not observe any harmful noise emanating from the pool that would result in harm to the living conditions of neighbours. I am therefore satisfied that this would be acceptable subject to the imposition of appropriate conditions as requested by the Council's Environmental Health Officer.
7. The key consideration, therefore, is the effect of the proposed traffic movements and outdoor noise associated with traffic arriving and leaving the site, and associated noise emanating from users walking to and from their cars to access the facility. During my early afternoon visit, traffic along the lane was of low volume. Lessons were in operation during my approximately 2 hr visit and during that time I observed approximately 8 car arrivals and departures which based on 30-minute sessions would equate on average to approximately 2 cars per session. I did not observe anyone walking to use the facility.
8. I witnessed that cars using the facility approached the site slowly, which conflicted with the higher speeds of cars using the lane past the site. I observed from Mill Lane and Stratton Chase Drive that audible noise from the facility, included cars using the gravelled drive, the opening and shutting of doors, users talking, and users walking over the gravelled area to the swimming pool. At this level of usage, I did not find the level of noise to harm the living conditions of existing occupiers. However, this needs to be considered against the frequency of these movements throughout the day for 6 days a week, at different times and class sizes operating at a higher level.
9. The starting point in the assessment of vehicle trips to my mind should begin with normal vehicular movements associated with a dwelling of this size. I note the third-party Transport Statement¹ which indicates normal trips for a dwelling of this size would be in the region of 5-6 vehicular movements a day. There is some variation in the likely level of users given the conflicting information in the appellants' evidence. The evidence supporting the planning application indicated that the current level of usage was approximately 30 children per day which would equate to a maximum of 28 car-based arrival and departures per day. Based on these figures, this would lead to a maximum of approximately 56 vehicular movements a day.
10. This evidence stated that the maximum number of children that could be accommodated per day is 114 which would equate to 11 car arrivals and departures per hour or 22 vehicular movements per hour. However, the appellants' considered this level of use would be unrealistic and identified there was scope to increase current usage figures but would set a maximum number of children of up to 60 per day. This suggested maximum was subsequently reduced during the course of the application to a maximum of 45 children per day.

¹ Bellamy Roberts Transport Appeal Statement (December 2019)

11. The appellants' statement of case subsequently identifies that the site could offer 34 sessions a day based on a maximum of 4 children per session. The appellants' state that this level of use is unlikely and on average the site averages 19 sessions per weekday and 21 on a Saturday, however not all sessions are full. Notwithstanding this, the appellant indicates that a maximum of 8 cars could arrive and depart per each 30-minute session. This to my mind would result in significant levels of vehicular movements over the course of the day. Further, additional vehicular movements are associated with swim teachers and reception staff.
12. The appellants' have not provided detailed evidence to confirm existing number of trips by private vehicle or that of users accessing the facility by foot. In the absence of this, I have considered the survey undertaken in the BRTA evidence which indicates that on the surveyed weekdays there was an average of approximately 81 vehicle movements entering and leaving the appeal site. Further, on the surveyed Saturday there were approximately 73 vehicle movements entering and leaving the site.
13. The above figures show a substantial increase in vehicular movements above what would be expected from a normal residential dwelling. Clearly, should the site operate at full capacity of 34 sessions this would lead to a level of traffic flows that I consider would be unacceptable from this residential property and would in itself lead to a level of traffic that is uncharacteristic of that associated with a quiet residential area. The submitted site plan and parking provision would allow the facility to operate at full capacity. The frequency of audible noise from cars crossing the gravel, audible noise of users and parents walking to the facility and cars entering and leaving the facility would not protect the amenity of existing residents.
14. I have considered the noise assessment² which identifies that audible noise is primarily associated with vehicle movements on the gravel driveway including noise from patrons exiting their vehicles, doors slamming and patrons walking inside. Based on a maximum class size of 5, the modelling demonstrates a low influence on the ambient noise environment and the assessment concludes the scheme would result in a No Observed Effect Level (NOEL).
15. Whilst the Council have not commented on the Noise Assessment, I consider the times of the day that will present greatest potential nuisance to local residents would be Saturday morning and the late evening sessions when in these quieter times of day sensitivity to noise may be more accentuated. The attended measurements do not cover those periods. In addition to this, it is not clear at what capacity the facility was operating during the baseline and attended measurements in terms of the numbers of children attending classes during those periods. Further, the attended measurements have not been taken at the entrance to the site, where noise is likely to be most prominent particularly given the property opposite.
16. Whilst noting the noise assessment concludes a low impact, from my assessment of the evidence I am unable to conclude that the impacts would not be heightened at early evening and Saturday morning when residents are likely to be more perceptible to noise emanating from the site. Further, the frequency of journeys associated with the maximum class size compared to that associated with a normal residential dwelling would be excessive. The

² Anderson Acoustics Planning Noise Assessment Laura Sevenus Swimming Tuition (October 2019)

conclusion of NOEL states the acoustic character of the area can be slightly affected but not such there is a perceived change in the quality of life. The tranquillity of the area is a feature of its character and that experienced by existing residents. I therefore conclude that the potential frequency of movements from the site would result in noise levels that would harm neighbours living conditions and cause harm to the tranquil character of the area.

17. I have considered the mitigation measures proposed by the appellants'. In respect of a personal permission, restricting use only to the appellants' would not alter the existing situation and would not alleviate any adverse impacts currently experienced by local residents. The largest audible noise is associated with the gravel driveway and the replacement of this with a quieter surface would reduce noise and could mitigate nuisance to local residents. Similarly, I have considered the potential for acoustic fencing between the trees and hedge opposite the car park which could reduce audible noise from the car park areas and along the route to the pool. However, given the presence of the trees and hedges, whilst this may reduce noise, based on the evidence, I am unable to conclude this would be feasible and would not cause damage to existing trees.
18. The appellants' have suggested a compromise of reducing opening hours from 09:00 – 18:00 during weekdays but I am not persuaded the existing 08:30 opening time on a Saturday would not cause inconvenience to residents. Whilst I recognise the appellants' intention to keep background noise from users accessing and departing the facility to a minimum; there is no way this can be enforced.
19. The limitation on children attending and the number of sessions will be a key determinant on the effects of noise experienced by neighbours through the control of vehicle movements and associated noise from users. Whilst I have considered the imposition of a condition to restrict opening hours, I do not consider that a condition to limit class sizes or indeed numbers of children is enforceable, as I am not convinced there is a way of the local authority monitoring or enforcing this condition. Thus, I do not consider such a condition would meet the requirements of Paragraph 55 of the National Planning Policy Framework (the Framework).
20. I have considered the proposal for a temporary permission on this facility. In terms of the benefit of this, it would allow the facility to continue to operate albeit under a time restricted basis. The effects would not be permanent and therefore the level of harm would be reduced. However, I must acknowledge that this facility has been operating for some time and the evidence indicates some neighbouring residents have already experienced negative effects.
21. Given the varying usage figures within the evidence, and my view that conditions to limit class sizes would not be enforceable, the facility could operate at a level during the temporary permission that would cause harm to the living conditions of neighbouring residents. Therefore, based on the current layout plan showing 14 visitor spaces which would allow the proposal to cater for two full classes for each 30 minute session, I do not consider it would be appropriate to allow the facility potential unrestricted use for the period of a temporary permission. Whilst a temporary permission would allow the Council to monitor the facility, this would not outweigh the impact of continued unrestricted usage on local residents.

22. Although I acknowledge that not all classes could be full, conversely, given the popularity of the facility the site could operate up to the maximum level. I also recognise that siblings may share classes and children may miss sessions which would reduce movements. However, with the maximum of 4 per class this could allow 4 separate households to use it. Whilst accepting the movements would not be continuous, the potential frequency of movements would cause harm to the character of this tranquil area. The increased level of noise associated with the gravel path, audible noise from car doors and people talking would be uncharacteristic of a residential area and unrestricted usage will cause harm to the living conditions of neighbouring occupiers, failing to protect the special character of this residential area.
23. For the reasons outlined above, I conclude the development results in harm to the living conditions of adjacent neighbouring occupiers with particular regard to noise, leading to an adverse impact on the special character of this residential area. Accordingly, the development is in conflict with Policies GC3 and E5 of the Chiltern District Local Plan 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 and November 2011. Amongst other matters these policies seek that business use should not adversely affect the amenities of adjacent residents or the character of the residential area generally including disturbance from traffic movements and should protect the amenities enjoyed by the occupants of existing and adjoining properties.

Community Benefits

24. I have considered the level of support for this facility, which indicates the facility is valued by users, given the swimming environment it provides. I also note Paragraphs 91 and 92 of the Framework which seeks to enable healthy lifestyles through provision of sports facilities and to guard against the unnecessary loss of facilities. However, in this case the development is currently unauthorised.
25. Furthermore, I acknowledge that a number of users have particular support needs which this facility is important in helping them learn to swim. I have weighed these specialist needs in my consideration of this appeal. In this regard, I have duly considered the Equality Act 2010 and I recognise that the facility caters for people with specialist needs. However, this facility is catering for a wider demographic of users, not as a dedicated facility for users with more specialist needs which may attract a different consideration. In any event, it has not been sufficiently demonstrated that existing facilities could not offer a similar service in a location more suitable for a commercial swimming facility, or to provide specific lessons for those with more specialist needs.
26. I also recognise the passion that the owners have for the business and that it employs a number of staff which has consequential economic and social benefits. The evidence indicates this facility started off with the owner assisting a small number of children. The popularity of the facility has resulted in numbers increasing and attracting users from a wider area. Given its location and the lack of public transport options near to the site, this has resulted in the key issues experienced and has resulted in a facility that has increased in numbers with users predominately travelling to and arriving by

the private car. Thus, the general reliance on the private car to access the facility does not support the sustainable transport objectives in the Framework.

27. I acknowledge the business offers a facility that is valued by those who use it, but I am not persuaded that alternative facilities that accommodate such uses are not available and accordingly I attach moderate weight to the resultant community benefits of the proposal. However, given the location of the site in this quiet residential area, the ability for this facility to continue unrestricted would to my mind not be conducive to protecting the living conditions of existing residents. The harm to neighbouring living conditions with particular regard to noise should the facility operate to capacity, attracts significant weight in the determination of this appeal.
28. Therefore, in summary, whilst the community benefits weigh in favour of the scheme, given the potential capacity of the existing operation, and the uncertainty of the feasibility of potential mitigation measures, the harm that would be caused to the living conditions of existing residents and to the character of the ERASC through noise and frequency of vehicle movements would outweigh the community benefits.

Conclusion

29. For the above reasons, the appeal is dismissed.

S Thomas

INSPECTOR