



Appeal Decision

Site visit made on 5 January 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Appeal Ref: APP/J1535/X/20/3259217

Garra, 292 Nine Ashes Road, High Ongar, Ongar CM4 0LA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Liz Frostick against the decision of Epping Forest District Council.
 - The application Ref EPF/1149/20 CLD, dated 1 June 2020, was refused by notice dated 11 August 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of a pre-existing swimming pool and associated facilities for the purpose of private swimming lessons.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The appellant currently operates a restricted programme of swimming lessons and would accept an LDC issued on this basis, rather than the programme in operation when she made her application¹. However, as confirmed below, my decision is concerned with the use that existed on the application date and it is not possible to impose conditions in the grant of an LDC.
3. While it is contended that the provision of swimming lessons is an activity promoted by development plan policies and the National Planning Policy Framework, it is not possible to consider planning merits, including any environmental, health and social benefits, when determining if a use is lawful.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the appellant can show, on the balance of probability, that no enforcement action could be taken in respect of the use of the swimming pool and associated facilities for the purpose of private swimming lessons on the application date.

¹ Monday 1000-1430 (9 lessons); Tuesday 1000-1400 and 1545-1845 (14 lessons); Wednesday 1600-1830 (5 lessons); Thursday 1030-1845 (15 lessons); Friday 1530-1930 (8 lessons); and Saturday 0800-1000 (4 lessons). All sessions maximum 30 minutes and a maximum of 3 students per session

Reasons

5. In an LDC appeal the burden of proof is on the appellant to produce evidence. However, if there is no other evidence to contradict or otherwise make her version of events less than probable, there is no good reason to refuse the appeal.
6. The appellant's case rests on the contention that the use of the pool for swimming lessons has not brought about a material change of use. In order to determine this, it is necessary to consider whether, as a matter of fact and degree, the scale and nature of the swimming lessons, and activity associated with them, are incidental to the reasonable enjoyment of the normal residential use of the dwelling and its curtilage. If not, the overall character of the dwelling will have altered such that a material change of use requiring planning permission will have occurred.
7. The Planning Practice Guidance advises that the relevant issues to be considered include whether there have been notable increases in traffic, disturbance to neighbours, abnormal noise or smells or the need for any major structural changes or major renovations. The appellant refers to guidance on the Planning Portal, and although this is not published by the Government, I shall also have regard to the criteria set out, particularly whether any activities unusual in a residential area are involved.
8. Some other dwellings in the village have swimming pools but no evidence that any of those pools have been used by people other than the resident household and their guests has been provided. As such, the way in which this pool is used differs from the norm.
9. The appellant's management of swimming lessons includes instructions to parents in order to avoid noise disturbance to neighbouring occupiers. The pool is at the end of a long garden, therefore well separated from neighbouring dwellings, and no evidence of complaints from neighbours has been presented. No evidence that the pool has undergone any major structural changes or renovations in order to facilitate swimming lessons has been produced. Accordingly, these factors do not indicate any change in the character of the use of the property.
10. The evidence indicates that attendees arrive for swimming lessons by car. Estimates of the number of vehicle movements vary, with the appellant indicating it is only 2 per hour, although this depends on the numbers attending a session and whether they travel separately. At the time of the application, swimming lessons comprised 55 30-minute sessions, totalling a little under 28 hours spread over 6 days each week, all of which could be attended by 1, 2 or 3 children. At the lowest level of activity, this would suggest up to 55 cars arriving and leaving in a week. At the other extreme, if all sessions are attended by 3 children arriving separately, vehicle movements rise to 165 per week.
11. While the appellant has gone to great efforts to manage how and when vehicles arrive and depart and how they are parked, the key consideration in terms of vehicular activity is whether it is of a level consistent with residential use or so different that it changes the character of the use. The site's capacity for car parking is determined by its pre-existing layout and I saw examples of other dwellings with large frontage areas available for car parking nearby, some with

as many as 4 cars on them. However, it is the number of vehicle movements, and not the number of vehicles normally kept at the property, that is at issue. Having regard to the nature of the property and the surrounding area, between 55 and 165 additional vehicle movements a week results in a level of traffic generation significantly higher than residential use of a single dwelling. As such, it indicates a material change in the character of the use of the property.

12. Accordingly, the level of activity associated with swimming lessons is not incidental to the reasonable enjoyment of the normal residential use of the dwelling and its curtilage. The overall character of the dwelling has altered and a material change of use requiring planning permission has occurred. It has therefore not been demonstrated that enforcement action could not have been taken in respect of the use of the swimming pool and associated facilities for the purpose of private swimming lessons on the application date.

Conclusion

13. For all the above reasons, I conclude that the Council's refusal to issue an LDC was well founded. The appeal fails accordingly.

Mark Harbottle

INSPECTOR