



Appeal Decision

Site visit made on 16 February 2021

by Martin H Seddon BSc MPhil DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2021

Appeal Ref: APP/D1590/W/20/3259580

56 Whitehouse Road, Eastwood, SS9 5SR

- 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 T Kennedy against the decision of Southend-on-Sea Borough Council.
 - The application Ref: 20/00160/FUL, dated 30 January 2020, was refused by notice dated 28 April 2020.
 - The development proposed is retrospective planning application for change of use of swimming pool from solely domestic use (Class C3) to domestic and leisure uses (Class C3 & D2).
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Decision

1. The appeal is allowed, and planning permission is granted for change of use of swimming pool from solely domestic use (Class C3) to domestic and leisure uses (Class C3 & D2) at 56 Whitehouse Road, Eastwood, SS9 5SR, in accordance with the terms of the application ref: 20/00160/FUL, dated 30 January 2020 and subject to the conditions in the schedule at the end of this document.

Main Issues

2. The use of the swimming pool for commercial purposes commenced prior to the application to the Council. The main issues are:
 - the effect of the proposal on the residential character of the building and the surrounding area, and
 - the effect on the living conditions of neighbours in respect of noise and disturbance.

Reasons

Effect on residential character

3. The appeal building is a detached bungalow with a substantial rear garden. It is sited within a row of detached dwellings of varying form and design at the south side of Whitehouse Road (A1015). Whitehouse Road is a busy highway which links Southend-on-Sea with Rayleigh.
4. The swimming pool is a single storey enclosed building. It is situated in the rear garden along with a changing room and some outbuildings. The proposal involves no physical changes to the property, although I note that the parking

area at the front of the bungalow has been marked out since the Council's decision. In view of the lack of any prominent signage or advertisements it is not apparent, when viewed from Whitehouse Road, that the swimming pool has been in use for commercial purposes.

5. Local residents have raised objections to overspill on-street parking from customers using the swimming pool, in particular at Orchard Grove and Blatches Chase. However, the Highway Authority has raised no objections to the proposal, subject to conditions.
6. The Council considers that the commercial activity and associated non-domestic comings and goings are materially at odds with, and harmful to, the character of the residential area. The appellant has put forward hours of use in the application which would restrict the non-domestic activity. A proposed parking plan has been submitted and there would be a maximum limit on the number of pupils taking swimming lessons at any one time. I consider that these matters could be the subject of planning conditions, thereby limiting the intensity of commercial use of the property, and restricting traffic movements and any associated on-street parking to a level which would not cause any significant harm to the residential character of the area.
7. Subject to the imposition of conditions, as mentioned above, the proposal would have no significant detrimental effect on the residential character of the building or the surrounding area. It would therefore not conflict with policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007) or with policies DM1 and DM3 of the Southend-on-Sea Development Management Document (DMD) (2015) regarding residential character. It would also comply with the Southend-on-Sea *Design and Townscape Guide* (2009).

Living conditions

8. The rear garden of No.56 Whitehouse Road is adjacent to the rear gardens of a number of surrounding properties. The swimming pool and changing room is relatively close to the rear of the bungalow which would mean that customer activity would be concentrated in that area, and pedestrian access to it, rather than within the wider garden setting. The Council refers to the frequency, repetition and regularity of comings and goings which introduces types and levels of activity, noise, and disturbance which it considers are incompatible with a residential setting. As mentioned above, objections to the proposal primarily concern customers parking within surrounding residential roads, rather than noise and disturbance from the use of the appeal site itself. Moreover, no records of noise complaints over time from local residents have been submitted by the Council as evidence to substantiate its view.
9. I consider that the amount of commercial use of the site may be limited by conditions to ensure that any noise and disturbance generated by visitors is at an acceptable level for neighbours. It would therefore not conflict with policies KP2 and CP4 of the Core Strategy or with policies DM1 and DM3 of the DMD concerning residential amenity. It would also comply with the *Design and Townscape Guide* and relevant objectives in the National Planning Policy Framework.

Other Matters

10. I note that the appellant's statement of case includes hours of operation in excess of those applied for in the original application form (Monday to Friday 09:15 to 14:30). The hours were clarified by the appellant during the course of assessment of the application by the Council. The hours in the appellant's statement of case exceed those clarified hours. The number of individuals using the pool at any one time was reduced in the statement of case to no more than 3 per class rather than 5. The main difference between the hours applied for initially and those in the appellant's statement of case is that there would be additional commercial use of the pool in the period 16:00 hrs to 19:00 hrs Mondays to Wednesdays, and on Fridays. This would involve activity when local residents would be more likely to be at home and potentially using their rear gardens in the warmer weather.
11. In applying the principles in the case of *Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]* I consider that the development would be so changed that to grant permission on the basis of the extended hours of operation would deprive those who should have been consulted on the changed operational hours of the opportunity of such consultation. The extended hours have not been the subject of formal public consultation or consultation with the highway authority and consequently it is inappropriate to vary the originally stated hours of operation as part of this appeal. Although the appellant has consulted neighbours, the documentation generally does not refer to hours of operation. The reduction in occupation to no more than 3 users is a less intense use, but I consider that the application should be determined on the basis of the combination of hours of use and number of users as proposed in the application and consulted upon by the Council.

Conditions

12. I have considered the conditions suggested by the Council and the appellant. The Council has stated the extended hours put forward in the appellant's statement of case, albeit with some discrepancies. However, as mentioned above I have determined this appeal on the basis of the hours of operation and number of users as applied for and consulted upon by the Council. The conditions imposed for hours of use and number of users are necessary in the interest of residential amenity. A condition is included to ensure that the parking layout is retained, again in the interest of the amenity of neighbours. I note that the Highway Authority has suggested a condition regarding a travel information pack. I have therefore included a relevant condition in the interest of sustainable forms of travel.
13. I have taken all other matters raised into account, including the social benefits and opportunities for its users that would be provided by the proposed facility. Although alternative facilities are available elsewhere in the surrounding area, the small scale of the pool can provide a specially controlled environment for its users.
14. For the reasons given above I conclude that the appeal should be allowed subject to conditions.

Martin H Seddon

INSPECTOR

Conditions

- 1) The commercial use of the swimming pool shall be limited to:

Monday to Thursdays 9:30 to 14:15

Fridays 9:30 to 14:15 and 16:00 to 18:00

Saturdays 9:30 to 12:30

And at no other times.

- 2) The commercial use of the swimming pool shall be limited to no more than 5 users at any one time.
- 3) Vehicle parking for visitors using the swimming pool during its commercial periods of operation shall be permanently provided, maintained, and made available for use within the 6 marked bays at the front of the property in strict accordance with plan No.CC/001.
- 4) Within 3 months of this decision a copy of a travel information pack including details of sustainable travel options and visitor parking arrangements shall be submitted to and approved in writing by the local planning authority. Copies of the approved information pack shall thereafter be provided to all commercial users of the swimming pool.