



Appeal Decision

Site Visit made on 12 October 2021

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 10 November 2021

Appeal Ref: APP/E2001/W/21/3273863

River View, High Street, Hook, Goole DN14 5PL

- 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 G Harte against the decision of East Riding of Yorkshire Council.
 - The application Ref 20/03957/PLF, dated 23 November 2020, was refused by notice dated 11 February 2021.
 - The development proposed is the change of use of swimming pool to commercial use.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The description of development in the heading above has been taken from the planning application form. Although it is stated in part E of the appeal application form that the description of development has not changed, the following wording from the Council's decision notice has been entered – 'change of use of domestic swimming pool to domestic and commercial use (retrospective)'. As the appellant has confirmed this revised description in her final comments, other than for the inclusion of the word retrospective, which is not development as specified in the Act¹, I have determined the appeal on the basis of it.
3. On 20 July 2021 a revised National Planning Policy Framework ('the Framework') was issued replacing the version of the Framework published in 2019. The parties were invited to comment and the comments received have been taken into account in the determination of the appeal.

Main Issues

4. The proposed development has been carried out. The main issues in this appeal therefore are:
 - the effect of the development on the living conditions of neighbours in terms of noise and light disturbance; and
 - the effect of the development on highway safety.

Reasons

Living conditions

Noise

¹ Section 55 of the Town and Country Planning Act 1990

5. River View is a large, detached house spaciouly set on a large plot by the western bank of the River Ouse. Set well back behind the houses that line the eastern side of High Street, which itself ends a short distance to the north, the dwelling and its neighbours are located in a quiet, peaceful residential location.
6. The swimming pool is located within the rear elevation of River View and faces the raised bank of the river. The pool is in commercial use for swimming lessons and private hire. It is also used domestically. At 10m in length by 5m in width it has a maximum capacity of 10 people and 4 spectators. The pool's external brick walls and the non-openable nature of its windows means that noise would be relatively well contained within the building.
7. Parking for the pool is located close to the side boundary fence with houses on Hudscroft Drive and continues past the rear elevation of River View towards the top of the raised river bank. Whilst Hudscroft Drive is more densely developed than River View and its other neighbours, the houses along it next to the appeal site are located at the end of the drive and so experience no passing traffic and relatively few vehicle movements. As a result, the houses that neighbour the parking area, 7 and 22 Hudscroft Drive also have a quiet, residential character.
8. Read together, the application form and supporting statement seeks planning permission to operate the pool seven days a week with opening times of 8am to 7pm Monday to Friday, and 8am to 6pm on Saturdays and Sundays.
9. During the normal working week, Monday to Friday, when the pool opens at 8am it is reasonable to assume that most neighbouring residents will be up and in the process of leaving home to go about their daily business. As a result, from opening through to the time that households typically return home in the late afternoon, the noise generated by cars arriving and departing, car doors opening and closing, and people walking to and from the pool would not be unduly intrusive. However, after this point it is reasonable to expect to be able to relax at home and enjoy this quieter time of the day without noise and disturbance.
10. Given that the pool is used during term time for swimming lessons from 4pm through to 7pm Monday to Friday, it is reasonable to expect that pool activity during the working week would be most intense during these hours. The associated noise of patrons arriving and leaving by car described above would result in noise and disturbance that would be significantly in excess of what could be considered to be reasonable in a quiet residential area. Such noise would have a notable adverse effect on living conditions at a time of day when it is reasonable to expect to be able to relax and be undisturbed, particularly during the warmer months of the year when residents may well wish to sit outside and enjoy their gardens.
11. Weekends are especially valuable in terms of the opportunity for people to enjoy their homes and rest and relax. Operating from 8am on both days through to 6pm would therefore be particularly intrusive and harmful to living conditions. Given that the parking continues past the rear elevation of River View towards the top of the raised river bank, the noise and disturbance associated with the comings and goings of customers at evenings and weekends would also affect the amenity value of the rear garden at High View, but to a lesser extent.
12. The Council has suggested restricting operating hours by preventing the pool from opening on Sundays and bank holidays. However, this measure, together

with the measure of restricting pool users to no more than 45 a day, would be insufficient to overcome the adverse effects on residential amenity that I have described because the pool would be able to open until 7pm Mondays to Fridays and until 6pm on Saturdays. The appellant's suggestion, that instead of controlling opening hours pool use is restricted to 5 sessions a day, would not ensure that the living conditions of neighbours are safeguarded in the evenings and at weekends.

13. Reference is made in the officer report to an application for a 2.4m tall side boundary fence to replace the existing 1.8m tall fence. Domestic fences though are of lightweight construction and ineffective as noise barriers. As a result, I am not persuaded that it would materially reduce the noise and disturbance experienced by adjacent neighbours on Hudscroft Drive.
14. A public right of way along the raised river bank means that there is activity and overlooking of the rear of houses that back onto the river. However, public rights of way are common in rural areas and unlike the development proposal do not result in motor vehicle activity in close proximity to houses. As a result, the existence of the right of way does not negate the adverse effects that I have described.

Vehicle headlights

15. The private access off High Street serving River View also serves the neighbouring detached house High View. Orientated at an angle to the drive two parallel rows of trees and the hedge below screen views of the access drive from within the dwelling at High View. During the colder months of the year, when the trees are not in leaf and daylight hours are shorter, vehicle headlights partly screened by the hedge would briefly shine towards the front elevation of High View just before cars turn into River View. However, given the acuteness of the angle concerned and that the front elevation of High View at ground floor level only contains an open plan entrance area, and that the rooms above are bedrooms, the additional vehicular movements generated by the commercial use of the pool would not result in demonstrable harm.
16. In relation to Hudscroft Drive, the disturbance caused by shining vehicle headlights could be controlled by a suitably tall fence.

Conclusion on living conditions

17. My positive finding in relation to car headlights does not negate the cogent planning objections described in relation to noise and disturbance that would be generated by use of the pool. For the reasons given above, I therefore conclude that the development causes unacceptable harm to the living conditions of neighbours. The development is therefore contrary to policy ENV1 (B.4) of the East Riding Local Plan Strategy Document ('Local Plan') and paragraph 185 of the National Planning Policy Framework ('the Framework') which seeks to limit and prevent such harm through good design.

Highway safety

18. River View and High View share use of a private access from High Street. Approaching the junction with High Street the access drive is sufficiently wide that if a vehicle turns onto the access it can wait clear of the public highway and allow an exiting vehicle to pass. The private access is also sufficiently wide along its length for pedestrians and cyclists to safely pass vehicles. Therefore, whilst use of the swimming pool significantly increases the use of the access,

its fundamentally safe design means that the safety of those using the driveway is not impaired.

19. The development therefore complies with policies ENV1 (B.9) and EC4 (A) of the Local Plan and paragraph 111 of the Framework. The policies referred to seek to prevent harm to highway safety and the cited paragraph advises that permission should only be refused on highway safety grounds if there would be an unacceptable effect.

Other Matters

20. Decision makers are required by the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 to advance equality of opportunity and to eliminate unlawful discrimination in relation to, amongst others, people with disabilities and the elderly.
21. I have had due regard to the PSED in considering the information provided by some pool users regarding their disability needs and age related preference for a small, quiet swimming pool which the proposed development addresses. However, given the presence of pools of different sizes in the wider area to which I have been referred, I attach modest weight to the equality implications of the proposal in favour of the appeal.
22. Reference has been made in relation to other developments in the area in support of the appeal, such as the use of a first floor of a garage as a hair and beauty salon. It is an established principle that each application is assessed on its merits. On the basis of the information provided, I am not persuaded that they are directly comparable to the appeal proposal. As a result, they are not considerations of material weight in favour of the proposal.

Conclusion

23. The appeal site is located within the development limit of Hook where new local facilities and economic development is supported by policy S4 of the Local Plan. It would also reduce the need to travel for pool users who live in the village as supported by this policy. In addition, I have found that the proposal would not harm highway safety and so would comply with policies ENV1 (B.9) and EC4 (A) of the Local Plan.
24. Noise and disturbance though caused by the proposal would unacceptably harm to the living conditions of neighbouring residents, contrary to policy ENV1 (B.4) of the Local Plan and the Framework which both seek to prevent such harm through good design. As a result, I find that the proposed development would be contrary to policy ENV1 and the development plan considered as a whole.
25. The other considerations put forward in favour of the proposal, namely the social benefits of providing a small, local pool which is suited for teaching and use by others, including those with disabilities and the elderly, together with the social and economic benefits of the mostly part time employment for 5 people created by the use, are insufficient to outweigh the harm that would be caused and non-compliance with the development plan. Material considerations therefore do not indicate that the proposal should be determined other than in accordance with the development plan. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe Inspector