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# Appeal Decisions

Site visit made on 25 October 2022

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9<sup>th</sup> December 2022**

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## **Appeal A ref: APP/B2355/C/22/3298305**

### **Land at Far Brex Farm, Brex, Bacup, Lancashire OL13 8NN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Martin Makin against an enforcement notice issued by Rossendale Borough Council.
  - The notice was issued on 1 April 2022.
  - The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use of the land from a private residential swimming pool to a commercial swimming pool use facilitated by the use of the swimming pool by Above Surface Swim School Limited.
  - The requirement of the notice is to cease the commercial use of the swimming pool.
  - The period for compliance with the requirements is within one month from the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## **Appeal B Ref: APP/B2355/W/22/3298302**

### **Brex, Far Brex Farm, Coal Pit Lane, Whitewell Bottom, Rossendale OL13 8NN**

- 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 Sarah Makin against the decision of Rossendale Borough Council.
  - The application Ref 2021/0533, dated 9 September 2021, was refused by notice dated 1 April 2022.
  - The development proposed is retrospective change of use application from private swimming pool to commercial swim school.
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## **Summary of the Decisions**

1. Appeals A and B are allowed, and planning permission is granted subject to the conditions set out under the Formal Decision.

## **Preliminary Matter**

2. During the course of the appeals, I sought the main parties' comments on: whether a temporary planning permission would be suitable, and if so, for what period of time; and secondly on a suggested planning condition limiting how the commercial swim school could potentially operate. I have regard to the responses received from the parties in reaching my decision.

## **The appeal on ground (a)/the deemed application for planning permission (Appeal A) and Appeal B**

3. The main issue in respect of Appeals A and B is whether the development is in a suitable location, having regard to policies in the development plan and the

National Planning Policy Framework (the Framework) with particular consideration of accessibility by sustainable modes of transport, the effect of traffic generated by development on highway safety on Coal Pit Lane and the safety of users of the public right of way network, and the need for the development.

#### *The operation*

4. The appeal site relates to a residential property found at the end of Coal Pit Lane in an isolated elevated position in a moorland landscape. The property has a swimming pool to the side of the main body of the dwelling which was originally built for private use by the occupants of the dwelling. The pool is accessible from an area of hardstanding that provides off-street parking and manoeuvring space.
5. A swim school operates from the site, providing swimming lessons to 4 to 5 children at a time in 30-minute sessions. There is a 15 minute changeover period between lessons.
6. Evidence from interested parties indicates that the pool has been used at various times of the day, at weekends and has been available for private hire. However, the operation proposed in Appeals A and B is to open between 09:00 and 11:00 four days a week for pre-school aged children and between 16:00 and 19:00 three days a week for school aged children. The lessons would be term time only with none at weekends. I have considered the appeals on this basis.

#### *The location*

7. Policy SD2 of the Rossendale Local Plan 2019 to 2036 (Local Plan) explains that an exception to all new development taking place within the Urban Boundaries, is where development specifically needs to be located within a countryside location and the development enhances the rural character of the area.
8. The appeal site lies outside the Urban Boundary for the Borough where the Council will focus growth and investment. Development in such areas needs to take into account the suitability of the site, its sustainability and the needs of the local area, whilst protecting the landscape, existing built form and the character of rural areas. The dispute insofar as this policy is concerned is around the suitability of the site in terms of accessibility, transport, highway safety, its sustainability, and the need for swim schools.

#### *Accessibility, transport and highway safety*

9. Coal Pit Lane is long and mostly a narrow unadopted road. A good portion of it also serves as a bridleway. The stretch closest to the appeal site is also a public footpath (FP 165). Hence, the lane is not exclusively used by vehicles. The lane rises up the moorland landscape from Shaw Clough Road, the closest adopted highway. Except for a limited number of passing places, the lane is wide enough for a single vehicle. It is unlit, of a mixed surface, without footways, and with varying degrees of visibility due to its alignment, the topography of the land and/or boundary features such as walls, hedgerows or banking. The road serves a small number of isolated residential properties.
10. The nearest bus stop is a considerable walk away and although there is a network of public rights of way in the area, journeys to and from the appeal site would be, especially given the use by children, by private vehicle. Whilst sustainable transport options do vary between urban and rural areas, I do not consider the site to be accessible by sustainable modes of transport due to the nature and length of the lane. The proposal does not reduce the need to travel

or maximise the use of sustainable modes of transport.

11. Each lesson could generate four to five vehicle trips using the lane. There is just about enough room for the vehicles to park on the site and turn around so that they are in forward gear in both directions along the lane. However, the changeover period is too short for swimmers to gather any kit, to dress, leave the premises and for the parent or guardian to drive the length of the lane before vehicles bringing to the next lesson start the same procedure in reverse.
12. Vehicles parked at the site relating to a lesson at that time taking place plus those for the following lesson cannot be accommodated at the same time and vehicles arriving or leaving meet each other along the lane due to the length and the nature of the road. Vehicle speeds may well be low, but the swim school use operating in the manner proposed would cause conflicts, require vehicles to reverse back along the lane to a passing place, and generally cause disruption to residents that rely on the access to reach their properties. Added to this, there is limited opportunity for users of the bridleway and footpath to safely step off the lane to avoid vehicles. Furthermore, forward visibility is constrained at certain points which creates potential for conflicts to arise. Headlights on vehicles would help others generally see when there is an oncoming vehicle, but they would not alleviate the visibility or lack of safe refuge issues during the hours of darkness or inclement weather.
13. The lane is not suitable or safe for the number of vehicle movements that the swim school's operation would generate, and within constrained time periods. There may be no recorded accidents in the last three years, but the pandemic will have affected the use of the pool significantly during this time so little weight can be given to this. In any event, the lack of accident records does not necessarily mean that incidents have not occurred. Using the pool in the manner proposed would result in unacceptable highway safety impacts.

#### *Need*

14. It is a vital life skill for all to be able to swim, especially in rural areas where there are many former mill lodges and ponds. The ability to learn is typically greatest amongst children and undertaking regular exercise in a suitable learning environment promotes a healthy lifestyle and fun. However, these are general points and not specific to the swim school subject of the appeals. This does not lessen their importance, but consideration still needs to be given to whether the development specifically needs to be located at the appeal site.
15. It is said that the swim school has been able to fill an important gap by teaching children to swim when there is no prospect of it being provided by anyone else.
16. Both municipal swimming pools in the Borough at Marl Pits/Rawtenstall and Whitworth offer swimming lessons. A commercially run swimming pool in Turn Village, also within the Borough recently ceased trading. The appellants say that there are no existing swimming pools that would allow the swim school to operate, but this is not supported by substantive evidence to explain whether this is due to the lack of pool space or available slots for the swim school business. There is also no analysis of any other potential sites in the Urban Boundary that could be made suitable for the swim school.
17. In the wider area there are swimming pools in Ramsbottom, Bury, Rochdale, Burnley, Accrington, Bolton and Hyndburn. Most of these are located some distance away from children living in the Borough, but Ramsbottom is just

outside the Borough boundary so cannot be discounted on location alone. There is also no explanation setting out whether any of these pools could potentially be used for the swim school business.

18. However, there are long waiting lists for both pools in the Borough; this has been the case for many years. There is also a 6 month to a year's wait for lessons at Burnley Leisure Centre and the waiting list is currently closed for lessons at Blackburn/Darwen Leisure Centre due to the high volume of applicants. Interested parties have enquired and found availability at Bury Swim School and have suggested that there is availability at others in the wider area. However, as Bury Swim School is around 8 miles away and many of the other locations in the wider area are further away still, they are not reasonable alternatives due to the distances involved and the evident demand for swimming lessons, which is only likely to be replicated in other nearby areas. Access to swimming lessons, whether they be in larger or smaller group settings or on a 1:2:1 basis does seem to be problematic or involve a considerable wait.
19. Children have different learning needs and progress at different rates. For both reasons, some children are not best suited to a large group setting and prefer in smaller groups or 1:2:1 tuition as they provide more individual teaching time. Lessons at public swimming pools tend to be in larger groups whereas the swim school offers a small group setting. Testimonies from parents of children attending the swim school outline the health and learning benefits that their children have experienced. The swim school has and is no doubt helping children learn to swim and build their confidence in the water.
20. However, the clear benefits of the swim school and the availability at other swim schools do need to be balanced against whether there is another location from which the swim school could operate. There is no compelling evidence to sustain a view that the development specifically needs to be located in this countryside location. However, there currently appears to be a constraint on children in the Borough being able to learn to swim locally. Therefore, there is a need for the swim school and the use does not harm the character of the rural landscape.

#### *Conclusion on main issue*

21. There is a need for children to be able to learn to swim, but circumstances around this could well change, and the appellants have not made a robust case around the lack of other facilities from which they could operate the swim school from. This means that I cannot agree that the proposal specifically needs to be located within a countryside location outside of the Urban Boundary. On this basis the proposal does not accord with Local Plan Strategic Policies SS and SD2.
22. There are also accessibility, transport and highway safety related issues arising from the site's location based on the operation applied for. In this regard, the proposal conflicts with Local Plan Strategic Policies SS, SD1, TR1 and TR2 and Framework paragraph 111 in relation to accessibility by sustainable modes of transport and the site's location. Jointly, these seek, among other things, to have regard to other users of the route and vehicular traffic, to address known road safety issues, and to only prevent or refuse development on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
23. However, Framework paragraph 55 advises that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of conditions.

24. A planning condition to limit the use to the hours of 16:00 and 19:00 on Tuesdays, Wednesdays and Thursdays, and to term times within the Council's administrative boundary is suggested. Given my finding on accessibility and highway safety, this condition would control the total number and time of vehicle movements to specific days and provide certainty on when the swim school can operate given that some school holidays vary.
25. Saying that, the issues around highway safety and nearby residents' amenity would remain if the existing changeover period continued. The appellants suggested nil changeover period would mean that vehicles linked with the use would not meet on the lane, but it is unclear where up to 10 vehicles that these two lessons could generate would park and turn around on site. Essentially, the issue would be shifted elsewhere and potentially affect users of the public rights of way near to the appeal site.
26. A 30 minute changeover period would be appropriate between lessons to allow swimmers to change before or after their lesson and for vehicles to travel to/from the swim school along the lane without causing highway safety issues, whilst keeping the number of vehicles parked at the site at any one time low.
27. The Council is correct that they, nor the appellants, can control how and when drivers use the lane, but the changeover period would relate to the pool not the road, and persons attending the swim school are only likely to be doing so for lessons given the type, nature and the development along the lane. Also, if people arrive early, it would be straightforward to detect a contravention as it would likely lead to the highway safety issues identified. As such, I consider the condition to be precise, necessary, relevant to the development, to planning, reasonable and enforceable.
28. However, even with such a planning condition, permanent planning permission would not be appropriate. This is because of the long-term impact of operating the swim school in this isolated and unsustainable location which is at odds with the strategy to locate development in the development plan despite the need, given the lack of compelling evidence on locating the swim school elsewhere.
29. I recognise that the swim school has already been in use and there have been harmful impacts of this which conflict with the development plan. However, the level and nature of the use now proposed, and which could be secured through a planning condition, would not have the same highway safety effects. A time limited permission would allow for an assessment of whether that is correct in practice. Also, circumstances in relation to the need for the swim school and whether it specifically needs to be located within a countryside location outside of the Urban Boundary could well change by the end of a limited time period, especially in the context of waiting lists, swimming pool provision and the current economic climate. These factors lead me to consider that a time limited planning permission for 2 years would be appropriate for both appeals. Although this is less than the 3 years suggested by the appellants, a balance needs to be struck given the site's location and the harm that this would still cause during any temporary period.

*Conclusion on Appeal B and conclusion on ground (a) (Appeal A)*

30. I have found that the scheme subject of Appeals A and B is harmful for various reasons and does not accord with the development plan. Hence, I conclude that a permanent planning permission would not be appropriate, and the material considerations do not indicate that I take a different decision.

31. However, there are material considerations which I have outlined above that lead me to conclude that a temporary planning permission should be granted on ground (a) in Appeal A, and in Appeal B, and that I should take a decision other than in accordance with the development plan. I shall grant planning permission for the use as described in the notice. The merits of ground (g) in Appeal A do not therefore need to be considered.

### **Formal Decisions**

32. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the land from a private residential swimming pool to a commercial swimming pool use at Land at Far Brex Farm, Brex, Bacup, Lancashire OL13 8NN as shown on the plan attached to the notice and subject to the conditions in the attached schedule.
33. For the reasons given above, I conclude that Appeal B should be allowed subject to the conditions in the attached schedule.

*Andrew McGlone*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

1. The use hereby permitted shall be for a limited period being the period of 2 years from the date of this decision.
2. The use of the swimming pool for commercial purposes shall be limited to the following times: 16:00 to 19:00 inclusive on Tuesdays, Wednesdays and Thursdays and during term times of those schools within the Rossendale Borough Council boundary area. The use hereby permitted shall operate with a changeover period between each lesson of no less than 30 minutes.

END OF SCHEDULE