



Appeal Decision

Site visit made on 31 January 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2023

Appeal Ref: APP/R3705/W/22/3307971
89-91 Main Road, Austrey CV9 3EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Hames against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2021/0687, dated 16 December 2021, was refused by notice dated 8 September 2022.
 - The application sought planning permission for alterations and extensions to house including redesign of swimming pool and conservatory as previously approved without complying with a condition attached to planning permission Ref PAUSAV/0602/96/FAP, dated 14 August 1996.
 - The condition in dispute is No 4 which states that: The swimming pool hereby shall not be used for any purpose other than for purposes incidental to the enjoyment of the dwellinghouse known as Charity House, 89 Main Road, Austrey as such.
 - The reason given for the condition is: In order to prevent any unauthorised use of the property.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Hames against North Warwickshire Borough Council. This application is the subject of a separate Decision.

Background and Preliminary Matters

3. Planning permission was granted in 1996 for various works to the appeal property (hereafter referred to as Charity House). These include the construction of an outbuilding containing a swimming pool, which has been completed. In effect, the appeal proposal seeks to amend the disputed condition to allow community use of the pool as well as the use incidental to the enjoyment of Charity House.
4. The additional use would be for private swimming lessons by appointment only. The application form sets out times when the pool would be used for swimming lessons but the appellant has since proposed the following time periods:
 - between the hours of 10.00am and 2.00pm as well as between 4.30pm and 6.00pm on Mondays;

- between 10.00am and 12.15pm as well as between 1.00pm and 2.00pm on Wednesdays; and
 - between 10.00am and 2.00pm on Fridays.
5. The Council has considered the application on the basis of the lessons only taking place during the above time periods. I have assessed the appeal on the same basis. Private swimming lessons have already taken place at Charity House, although I understand that these have ceased since the appeal was lodged.

Main Issues

6. Given the Council's refusal reasons, a main issue is whether the disputed condition is necessary to ensure satisfactory living conditions for occupiers of neighbouring properties, particularly when having regard to the noise and other effects of traffic. In light of interested parties' comments, an additional main issue is whether the disputed condition is necessary in the interests of highway and pedestrian safety. The appellant has had the opportunity to respond to interested parties' comments through the appeal process and so no injustice is caused by having regard to this factor in my assessment.

Reasons

Living conditions

7. Charity House is a dwelling with a large rear garden. The outbuilding containing the swimming pool is next to the rear of the house. A gated entrance to the front of the house provides vehicular access directly from Main Road. Also, a separate track runs from the garden along the rear of Austrey Baptist Church and 93 and 99 Main Road (Nos 93 and 99) before turning onto Flats Lane, which joins up with Main Road. A public footpath runs along part of this track. The submissions state that visitors to the swimming lessons would access and egress the property via Flats Lane.
8. Nos 93 and 99 are both residences that face onto Main Road. No 93 is set back from the highway, whereas No 99's front elevation adjoins the roadside pavement. No 99's side elevation is next to Flats Lane, close to its junction with Main Road. A ground floor window and garage doors in the side elevation face onto the track. Both No 93 and No 99 have back gardens that are away from Main Road and that adjoin the access drive.
9. Flats Lane provides access for vehicles to adjoining fields as well as to No 99's garages and the appeal property. Also, it would provide vehicular access to a proposed dwelling in an outbuilding at Charity House, which was granted planning permission following an appeal¹. No information on current traffic movements along the track has been provided. However, its informal nature and the limited number of properties it serves suggests the track is used infrequently. Even if it is provided, the permitted dwelling in the outbuilding would generate only a modest number of daily vehicular trips. Consequently, the tranquil character of the Flats Lane track is likely to remain.
10. The introduction of private swimming lessons is bound to lead to an increase in visitors to Charity House in the form of swimmers and class instructors. The

¹ Appeal reference number APP/R3705/W/21/3267144

site is in the village and so it is within a reasonable walking distance for some Austrey residents. However, there is no guarantee that those attending lessons would walk to the pool even if they are local. As such, it is reasonable to expect the proposal would lead to an increase in vehicular usage of the Flats Lane access.

11. The amount of visitors and so the level of associated traffic would to a degree be dependent upon the number of separate classes and the number of attendees for each class. The appellants have suggested that private lessons in the aforementioned time periods would generate 154 two-way traffic movements per week. However, this is based on the pool not being used so intensely during certain time periods and with some classes lasting longer than others and so with a less frequent turnover of swimmers. There is no certainty that the length and format of classes will remain as stated and so the number of visitors to the pool may be higher.
12. In any event, it is highly probable that the stated trip generation figures would represent a significant increase in the vehicular use of the Flats Lane access. No noise impact assessment has been provided to me by the Council or the appellants. However, given the proximity of the track, it seems likely that additional vehicular activity would generate noise that is heard by occupants of Nos 93 and 99. This is likely to be noticed from the room served by the side window to No 99, even though traffic noise on Main Road already affects the property to a degree. Also, despite boundary fencing, I envisage the noise of extra cars travelling close to the rear boundaries would cause disturbance to those using the back gardens to Nos 93 and 99. This would be particularly noticeable and disruptive given the current tranquillity of the locality. In light of the probable level of additional traffic and associated noise, I consider the harm caused would be significant and unacceptable, even though it would only occur at the specified times.
13. In allowing the aforementioned appeal for a new dwelling at Charity House, the Inspector made no comment on noise from associated traffic and whether this would cause a nuisance to nearby residents. However, the vehicular trip patterns associated with a new residence would be markedly different in terms of number and timings of car movements compared to the current proposal. Therefore, this previous decision does not set a precedent to be followed in the consideration of this appeal.
14. The appellants state that the Council's environmental health officer has raised no objection to the proposal. However, I have been provided with no record that shows an environmental health officer has been consulted or that they have advised the proposal would be acceptable in terms of noise impacts. The lack of any comments from an environmental health officer either in support or against the scheme fails to address my concerns.
15. I have given consideration as to whether any detriment caused by noise effects could be addressed through the imposition of planning conditions. However, apart from the proposed amendment to the disputed condition, the appellants have made no suggestions on how traffic noise could be attenuated. As such, I am uncertain how noise effects associated with the proposal could be addressed.
16. The refusal reason also refers to the inconvenience caused by additional traffic, although the Council has provided little explanation for this objection. No 99's

occupier has objected on the grounds that vehicles leaving their garages would move onto Flats Lane close to a tight corner where forward visibility is limited. As such, extra traffic associated with the swimming classes may lead to an increased need for care when moving a vehicle into and out of the garages. However, irrespective of the proposal, an element of care and attention is needed by drivers using the garages. Therefore, I find no unacceptable additional effect would be caused in terms of convenience.

17. Nevertheless, for the above reasons, I conclude the appeal proposal would lead to extra traffic noise that would detrimentally affect the living environment at nearby dwellings. Therefore, the disputed condition is needed to ensure satisfactory living conditions for occupiers of Nos 93 and 99. A development that allows private swimming lessons would not accord with part 9 of policy LP29 of the North Warwickshire Local Plan 2021 (the LP) as it would not avoid unacceptable harm to neighbouring amenities by reason of noise.

Highway and pedestrian safety

18. At its entrance on Main Road, Flats Lane is wide enough to allow 2 vehicles to pass. However, evidence before me supported by my observations indicate that cars are parked at times outside the side elevation of No 99. Such parking restricts space at the start of the track so as to prevent 2 cars from passing. Also, the track narrows as it approaches the bend and as it rises up towards Charity House. There are no obvious passing places between the bend in the track and the entrance into Charity House's garden.
19. I have already found in considering the first main issue that the swimming lessons would markedly increase the vehicular use of Flats Lane and the access track. While it is stated lessons would be by appointment only, there would still be a reasonable likelihood of people arriving and leaving the appeal property at the same time, particularly if there are classes after each other. As such, the proposal would increase the risk of 2 vehicles meeting while on the track. Such incidences may lead to a delay in drivers entering into Flats Lane, thereby hindering the free flow of traffic on Main Road. Also, they may result in drivers needing to reverse back onto Main Road to allow space for vehicles to exit the lane. There can be no certainty that drivers on the track would reverse to allow cars to enter Flats Lane. Moreover, it is likely that vehicles meeting on the track would require drivers to reverse, possibly around a corner or for a significant distance. Any of the above situations would either increase the risk of collision on Main Road or prejudice the safety of pedestrians using the public footpath that follows the track.
20. I note and attach significant weight to the fact that neither the Council nor Warwickshire County Council (WCC) as highway authority has raised highway safety concerns. Nonetheless, WCC acknowledges the development would result in an intensification of the use of a sub-standard access. WCC suggest a condition to secure proposed improvements to the access and the appellants indicate the lane could be re-surfaced in a hardbound material. However, I am uncertain whether any improvements would enable the track to be widened to allow vehicles to pass. Without such assurance, I find that the lack of objection from the Council and WCC fails to fully address my concerns.
21. The previous appeal Inspector found that traffic associated with the proposed dwelling would not lead to unacceptable harm to highway safety. However, the Inspector was considering a development that would generate a different

pattern and level of car movements than the current proposal. Compared to a single new dwelling, the private swimming lessons use is more likely to lead to vehicles meeting on the track. Also, there is a realistic prospect that the approved dwelling would be provided in which case, associated traffic may coincide with car movements connected with the proposed lessons. In light of this cumulative effect, it would not be inconsistent with the previous appeal decision to find harm would be caused by the current proposal to highway and pedestrian safety.

22. Concerns have been raised over the visibility when leaving Flats Lane onto Main Road, with reference to a recent accident near to the junction. However, the full details of this incident are not before me and so it is unclear whether limited visibility was a contributory factor. The appellants' plan shows the required 2.3m x 34m visibility splay to the north of the access can be provided. Criticisms have been raised over the accuracy of the splay measurements. However, from my observations I am satisfied that drivers leaving Flats Lane would have adequate sight of road users in both directions so as to not cause an unacceptable highway safety issue. Also, I am satisfied that any restriction to visibility at the junction would not put pedestrians at undue risk of harm as the pavement ends in front of No 99 on the Flats Lane side of Main Road. However, acceptability in these regards would not overcome my concerns over the increase in traffic using a single vehicular width track along which there is a public right of way.
23. For the above reasons, I conclude the proposed revision to the disputed condition would cause unacceptable harm to highway and pedestrian safety. Consequently, the condition as it stands is necessary in order to ensure the development accords with part 6 of LP policy LP29. This looks for safe and suitable access to developments.

Other Matters and Planning Balance

24. Austrey Baptist Church is a grade II listed building dating from 1808. Its significance derives from its age as well as its architectural quality. The Council officer's report on the planning application leading to this appeal highlights that vehicles travelling along the track and parking at Charity House would change the ambience of the church. Even so, traffic noise is most likely to affect the rear of the church and it would not detract from the appreciation of the more attractive front and side elevations. As such, the development's effect on the setting of the church would not harm the aspects that contribute to its significance.
25. Also, I am advised that No 99 is a grade II listed building. I have already found that traffic noise associated with the appeal development would affect the living conditions of occupiers of this property. However, it would seem that No 99's heritage significance lies solely with its age and architectural interest. This would be unaffected by vehicular noise associated with the swimming classes. As such, the development would not harm the heritage significance of No 99.
26. Reference is also made to listed buildings at 87 Main Road and the Homestead. These are set away from the pool and the access and so the proposed swimming classes and associated traffic noise would not affect their settings nor their heritage significance. Lack of harm to the nearby designated heritage assets is a neutral factor in my assessment.

27. Interested parties have written in support of the proposal, including those that attended lessons before they ceased. The community use of the pool would bring people together and would promote exercise and healthy lifestyles. It would be a new community facility in the village and would provide an opportunity for local residents, including children, to attend local swimming lessons and to attain an important life skill. I am advised that there is no alternative pool within Austrey. The swimming classes would also provide employment opportunities. All of these benefits are supported by the provisions of the National Planning Policy Framework as well as parts 3, 4, 5 and 7 of LP policy LP29. Such factors weigh in favour of the scheme.
28. Even so, the proposal would cause harm as identified in respect of the main issues. As such, it would be contrary to the provisions of the development plan when read as a whole. Overall, the weight to be given to the advantages of the private swimming classes do not justify a decision to grant planning permission contrary to the development plan.
29. The submissions indicate that some of the proposed swimming classes would cater for people with disabilities. The Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 sets out the need to advance equality of opportunity for people who share a protected characteristic and those who do not. A decision to dismiss the appeal may deprive people with disabilities the chance to attend swimming lessons and so it would fail to advance equality of opportunity.
30. However, the identified harm to the living conditions of nearby residents and to highway and pedestrian safety outweighs the benefits in terms of advancing equality of opportunity. Also, it does not follow from this decision that another proposal that allows a level of pool usage by disabled people would be unacceptable. Moreover, interested parties have highlighted that, as well as Flats Lane, Charity House benefits from an alternative vehicular access. No explanation has been provided by the appellants as to why this alternative would be unsuitable for use in connection with swimming lessons at the pool. As such, I am unconvinced from the evidence that the revision to the condition as proposed is the only way to secure private swimming lessons. In such circumstances, it would be proportionate to dismiss the appeal even when having regard to the PSED.

Conclusion

31. The proposed amendment to the disputed condition would lead to harm as identified above. The benefits of the proposal would fail to override this harm. Therefore, the appeal does not succeed.

Jonathan Edwards

INSPECTOR