



Appeal Decisions

Site visit made on 24 January 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 MARCH 2023

Appeal A Ref: APP/D3640/C/22/3291502

Land at Hillside House, 23 High View Road, Lightwater, Surrey GU18 5YF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alan Ingram against an enforcement notice issued by Surrey Heath Borough Council.
 - The notice, numbered 21/0248/ENF, was issued on 5 January 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the lawful swimming pool incidental to the dwellinghouse to a swimming pool for mixed commercial and household use.
 - The requirements of the notice are to:
 - 1) Cease using the residential swimming pool for the provision of commercial swimming classes outlined in red on the attached site location plan.
 - 2) Cease the use of the residential swimming pool for purposes other than for a use incidental to the enjoyment of the dwellinghouse outlined in red on the attached plan.
 - The period for compliance with the requirements is two months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
-

Appeal B Ref: APP/D3640/W/22/3291501

Land at 23 High View Road, Lightwater GU18 5YF

- 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 Mr Alan Ingram against the decision of Surrey Heath Borough Council.
 - The application Ref 21/0814/FFU, dated 21 July 2021, was refused by notice dated 6 December 2021.
 - The development proposed is: Continued use of the existing swimming pool to provide swimming lessons to the community.
-

Summary Decisions: Both Appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decisions.

Application for costs

1. An application for costs was made by Mr Alan Ingram against Surrey Heath Borough Council. This application is the subject of a separate decision.

The Notice – Appeal A

2. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
3. The allegation is of a material change of use of the lawful swimming pool incidental to the dwellinghouse to a swimming pool for mixed commercial and household use. On site I noted that the pool is in a building and that the building accommodates a changing room and pump room. The notice would be more precise if the allegation were to relate to a swimming pool and a pool house, rather than just a swimming pool.
4. I also noted that, in addition to the pool house, there was another outbuilding on the site. Again, the notice would be more precise if the location of the pool house were indicated on a plan.
5. I sought the comments of the parties on correcting the notice, as set out above. Neither party objected. The Council has also provided a revised enforcement notice plan showing the approximate location of the pool house building with a dotted green line.
6. I will, therefore, correct the notice, including the substitution of the enforcement notice plan. In doing so I can see no reason why injustice would be caused to any party.
7. On a separate matter, the allegation is of a material change of use to a mixed use, whereas the requirements of the notice do not require the mixed use to cease. The requirements of the notice should be consistent with the allegation in terms of what the recipient of the notice must do to remedy the breach. This avoids any uncertainty.
8. By correcting the notice to require the cessation of the mixed use, injustice would not be caused to any party. I can see that there is no dispute that the lawful use of the pool house building is for a purpose incidental to the enjoyment of the dwellinghouse on the site. Accordingly, the appellant can rely on the provisions of section 57(4) of the 1990 Act. This provides that, 'where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out'.

The ground (a) appeal, the deemed application for planning permission and the appeal against the refusal of planning permission

Main Issues

9. Appeal A has been made on ground (a), which includes a deemed planning application for the development that is the subject of the enforcement notice (once corrected as I intend). Whilst the description of this development differs slightly to the description of development that is the subject of Appeal B, I am satisfied that these applications seek permission for the same development.

Indeed, on his appeal form for Appeal B the appellant has used the breach alleged in the enforcement notice as the description of the development subject of Appeal B.

10. In identifying the main issues in this case, there is some ambiguity in the Council's first reason for refusal of the planning application and the first reason given for the issue of the enforcement notice. These both refer to Policies CP1 (Spatial Strategy), CP9 (Hierarchy and Role of Centres) and DM9 (Design Principles) of the Council's Core Strategy & Development Management Policies 2011- 2028 document adopted February 2012 (CSDM). They also refer to chapter 6 of the National Planning Policy Framework (the Framework).
11. Policy CP1 sets out the Council's overall strategy for the location of new development. Policy CP9 identifies the role of town and village centres in the Borough, providing a hierarchy of centres that will meet the Borough's future employment, community and retail needs.
12. These spatial policies of the CSDM have a different purpose to Policy DM9, which sets out the Council's design principles. The Council point to criterion (ii), which informs that development will be acceptable where it respects and enhances the local environment, paying particular regard to scale, materials, massing, bulk and density. The Council also refer to paragraph 84 c) of the Framework, which encourages sustainable rural tourism and leisure developments which respect the character of the countryside.
13. I note that the officer's report refers to the location of the development, suggesting that the use is not characteristic of a countryside location and that such uses are more commonly found in more urban areas where there is appropriate parking and public transport. However, there is little in the Council's evidence about how the development conflicts with the spatial strategy and the associated policies. Instead, the relevant parts of both the officer's report and the Council's appeal statement concentrate on the effect of the development on the character of the site and the surrounding area (the countryside). Indeed, the relevant section of the Council's appeal statement is entitled 'character'.
14. In view of the above, I have identified the first main issue as set out below. In doing so, I find Policies CP1 and CP9 to be of little relevance to this. The main issues are:
 - i. The effect of the development on the character of the site and the surrounding area;
 - ii. The effect of the development on the living conditions of nearby occupiers by reason of noise and disturbance;
 - iii. Whether or not the development is in an acceptable location with regard to access to more sustainable modes of transport; and
 - iv. Whether or not the development results in inconveniences for road users and is prejudicial to highway safety as a result of the parking provision on site.

Reasons

Character

15. The appeal site is occupied by a large, detached house set within a generous plot. Within the plot is a detached garage outbuilding, as well as the pool house that is the subject of both Appeal A and Appeal B. The pool house is connected to the dwelling via a small link. There is a hard surfaced parking area to the front of the dwellinghouse, which can be accessed from High View Road, via the entrance gates to the site. High View Road is a private road, described by the Council as a cul de sac. It is predominantly a single track lane where there is limited space for parking and vehicle passing.
16. The Council describe the appeal site as being in a countryside location. It is, however, on the edge of a residential suburban area. Although set within a wooded area, High View Road provides access to a number of detached properties, as well as to the woodland area to the north and west of the site.
17. The Council's concerns in this case are in respect of the activity associated with the use, including the coming and going of the vehicles of those using the pool house for swimming lessons. The appellant has described the development as a business and says that this currently operates 5 days each week between 9am and 6.30pm. Each swimming session lasts for 30 minutes and there are up to 5 swimmers per session. The appellant suggests a 'worst-case scenario' of 65 cars per day (325 per week), based on 13 sessions per day with 4 or 5 swimmers per session. The Council, on the other hand, suggest that there could be up to 130 vehicle movements.
18. There is no dispute that the swimming classes taking place in the pool house has resulted in a change to the character of the site. After all, it is agreed that the operation of the business from the property has resulted in a material change of use of the site. There have, however, been no physical changes to the property that have resulted from the material change of use.
19. Nevertheless, the appeal site is likely to have previously been a quiet domestic residence, like other properties along High View Road. Even taking into account the appellant's estimation of swimmers and associated vehicle movements, the development has clearly brought new activity to the property, which has changed the character of the site. The use results in numerous vehicle movements to and from the site every half an hour or so. Such activity would usually be associated with a commercial premises. Whilst the activity might be intermittent, it is throughout the day. Its effect, therefore, is to cause detriment to the character of the appeal site.
20. The appellant has described the character of High View Road without the activity associated with the development. In doing so, he suggests vehicle movements along the road to be regular and continuous. However, the evidence suggests that these movements are likely to only be associated with the residential properties accessed off the road. The Council say that there is no parking at the end of the road for walkers. Indeed, the appellant describes regular walkers and cyclists along the lane. The road is predominantly single track, and the lack of parking and footway gives it a more rural character. The development brings up to 5 vehicle movements to and then from the site every half hour throughout the day. To my mind such an increase in activity on the

road would be notable and, therefore, results in detriment to the character of the road, as I have described it.

21. All things considered, I conclude that the development has an unacceptable effect on the character of the site and the surrounding area. For this reason, the development conflicts with Policy DM9 of the CSDM and paragraph 84c) of the Framework.

Living Conditions

22. Whilst the appeal site is a spacious plot, the activity associated with the swimming lessons is concentrated in its northernmost corner. This activity is, therefore, close to the boundary of the site with the two adjoining properties along High View Road. I note the concerns of local residents with regard to the noise and disturbance that results from the activity at the site. This would include vehicles arriving, manoeuvring about the site and leaving, as well as car doors closing. Whilst I acknowledge that this noise and disturbance is intermittent, it is persistent and at regular half hour intervals throughout the day. The adjoining properties may well be set within spacious plots, however I find it likely that activity at the appeal site is notable from these adjoining properties, particularly from their gardens.
23. I can see that the use of the site for swimming lessons is confined to daytime hours, during weekdays, and that this could be controlled by way of a condition. Nevertheless, the activity at the site is likely to cause detriment to the neighbours' enjoyment of their properties. I acknowledge that activity on the site is screened from view and further screening could be provided. However, this would not mitigate the harm I have identified.
24. I have had regard to the appellant's pool rules, which I understand are sent to all swimmers. I am not persuaded that compliance with these rules would have the necessary effect on the source of noise and disturbance in this case. Furthermore, I am concerned that a condition requiring compliance with these rules would not be sufficiently enforceable and reasonable. As such, the condition would not comply with the tests set out in the Planning Practice Guidance: Use of Planning Conditions (PPG).
25. Having regard to the above, I conclude that the development has an unacceptable effect on the living conditions of nearby occupiers by reason of noise and disturbance. The development is, therefore, in conflict with Policy DM9 of the CSDM which requires, amongst other matters, that development respects the amenities of occupiers of neighbouring property and uses.

Location

26. The third reason for the issue of the enforcement notice and refusal of planning permission refers to the location of the appeal site and states that the development is reliant on 'private cars and located within a unsustainable location without access to public transport'. Both also refer to Policy CP11 (Movement) of the CSDM. This relates to the improvement of public transport; improvements to walking and cycling routes and facilities; and the encouragement of the use of sustainable modes of transport. It informs that 'new development that will generate a high number of trips will be directed toward previously developed land in sustainable locations or will be required to

demonstrate that it can be made sustainable to reduce the need to travel and promote travel by sustainable modes of transport’.

27. Despite the above, little of the Council’s evidence refers to the matter of the accessibility of the site. Indeed, in its appeal statement when commenting on the third reason for refusal, the Council concentrates on parking and highway safety.
28. I did not see any bus stops on High View Road and I acknowledge that there is no footway on this highway. Nevertheless, the evidence suggests that this is an often-used pedestrian and cyclist route, and the site is on the edge of a large residential area. Furthermore, I have little information about public transport links on the nearby highway network.
29. Whilst the appellant does not dispute that most swimmers arrive by private car, I have insufficient evidence to conclude that the site is not easily accessed by more sustainable transport modes. On this basis I cannot conclude that the location of the site is unacceptable and in conflict with CSDM Policy CP11.

Highway

30. Swimming sessions at the pool are every half hour throughout the day with up to 5 swimmers attending each session. I acknowledge that not all sessions will be at capacity and not all swimmers will arrive in a vehicle. Nevertheless, twice in each hour of the day vehicles will arrive at the site before the start of each half hour session and vehicles will leave the site at the end of each session.
31. As I have noted above, there is little opportunity for parking on High View Road. The appellant has provided a parking plan showing how he has instructed swimmers to park at the site, grouping the vehicles of each session together. I can see that there is space on the site to park up to 4 vehicles per session (8 in total), as well as two of the appellant’s vehicles and the vehicle of an instructor. However, this plan does not provide information about how vehicles can manoeuvre about the site in order to park. Indeed, in my judgement it would be difficult to manoeuvre into some of the spaces identified, which may deter swimmers from parking in the arrangement shown on the plan. Accordingly, a condition requiring vehicle parking in accordance with the plan would not be reasonable and would not, therefore, comply with the tests set out in the PPG.
32. In view of the above, I am not satisfied that the site can adequately accommodate the demand for parking generated by the use. The consequence of this might include the need for vehicles to manoeuvre in High View Road at the point of access to the site in order to accommodate vehicles within the site. It may also result in inappropriate parking along High View Road.
33. In addition to the above, the necessary detail (i.e. vehicle tracking) has not been provided to demonstrate that vehicles are able to enter and leave the site in a forward gear. Without this, I cannot be satisfied that it would not be necessary for those leaving the site to reverse and manoeuvre on High View Road, causing conflict with other vehicles on the road. Having noted the lack of a footway on High View Road and the evidence of regular use of the road by cyclists and pedestrians, I can only conclude that such manoeuvring is prejudicial to the safety of pedestrians and cyclist using the road. Whilst no

accidents within the vicinity of the appeal site have been drawn to my attention, this does not change my findings.

34. I have limited information with regard to the existing traffic on High View Road. Accordingly, I am unable to conclude that the road is not adequate to accommodate the increase in traffic generated by the use. Nevertheless, there is no dispute that the use generates a need for parking. Having regard to the evidence before me, I conclude that the development results in inconveniences for road users and is prejudicial to highway safety as a result of the parking provision on site.
35. In view of the above, the development is in conflict with Policy DM11 (Traffic Management and Highway Safety), which does not permit development where it adversely impacts the safe and efficient flow of traffic movement on the highway network.

Other Matters

36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the development is contrary to the development plan. It is, therefore, necessary for me to consider whether there are any material considerations of sufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan.
37. The appellant points to the use of two other domestic pools in the Borough used to provide swimming lessons, with one having recently been granted permission. He suggests that there are many similarities between the appeal site and the site that has recently been permitted. Whilst I note the comments of the appellant, the Council and interested parties on these other cases, I have limited information about the particular details on these sites, including the parking arrangements, proximity of neighbouring properties, and the character of the surrounding area. I am, therefore, unable to make an informed comparison. Notwithstanding this, that permission has been granted for a similar development at a residential property elsewhere in the Borough does not alter the weight I attribute to the harm caused by the development in this case.
38. On a separate matter, I note that the swimming lessons provided at the site are mostly for children. Accordingly, I am mindful of Article 3(1) of the United Nations Convention on the Rights of the Child, which provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
39. The appellant suggests that there is a shortage of pool time in the local area, particularly as other private pools have ceased offering pool time to local swimming clubs. The appellant also suggests that babies or younger children require pools, such as that at the appeal site, where the water and air temperature is higher than at other pools. In view of this, I am mindful that if I dismiss these appeals, the children who have swimming lessons at the appeal site are likely to be disadvantaged. I also note that the appeal site provides employment for a number of the instructors and supports the businesses that employ them.

40. Notwithstanding this, there is limited evidence to substantiate the appellant's claim of a shortage of pools in the area. Furthermore, my attention has been drawn to the pool at Bracknell and the new pool at Camberley. I am also mindful of the two domestic properties with privately rented pools referred to by the appellant.
41. It is clear that the lessons provided at the appeal site, particularly to children, are a benefit of the development. I do not underestimate how important it is that children learn to swim. However, the weight I attribute to this benefit in the planning balance is moderated to a degree, in view of the limited information I have about the access children in the area have to swimming lessons and the access swimming instructors in the area have to pools. The support of interested parties, as set out in the appellant's evidence, is noted and also adds weight in favour of the development.

Planning Balance and Conclusion

42. I have acknowledged that there are clear benefits to the development, and I have attributed appropriate weight to these. These are balanced against the harm I have identified in this case. I cannot be satisfied from the evidence before me that the imposition of conditions could overcome the harm I have identified. All things considered, I conclude that the material considerations are of insufficient weight to indicate that my determination of these appeals should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted and that the ground (a) appeal for Appeal A and Appeal B should fail.

Ground (f)

1. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. The requirements of the notice, once corrected as I intend, are to remedy the breach of planning control that has occurred.
2. The appellant's case made under the ground (f) appeal repeats much of the case made for the grant of planning permission for the development. These matters have been considered under the ground (a) appeal. They do not demonstrate that the requirements of the notice exceed what is necessary to remedy the breach in this case.
3. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach in this case and, having regard to both the nature of the breach and requirements of the notice (once corrected), no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice, once corrected, are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.

Conclusion - Appeal A

4. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Conclusion – Appeal B

5. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decision – Appeal A

6. It is directed that the enforcement notice is corrected by:

- The deletion of the words 'incidental to the dwellinghouse to a swimming pool' and their substitution with the words 'and pool house shown in the approximate location outlined in green on the attached plan entitled "Enforcement Notice Location Plan Rev A" from a use incidental to the enjoyment of the dwellinghouse to a' in part 3;
- The deletion of both requirements in part 5. and their substitution with the words '1) Cease the use of the swimming pool and pool house for a mixed commercial and household use'; and
- The substitution of the enforcement notice plan with the plan entitled "Enforcement Notice Location Plan Rev A" attached at the end of this decision.

7. Subject to the corrections, the appeal is otherwise dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision - Appeal B

8. The appeal is dismissed.

J Moss

INSPECTOR



Plan

This is the plan referred to in my decision dated: 23 MARCH 2023

by J Moss BSc (Hons) DipTP MRTPI

Land at: Land at Hillside House, 23 High View Road, Lightwater, Surrey GU18 5YF

Appeal Reference: APP/D3640/C/22/3291502

Not to scale

