



Appeal Decision

Site visit made on 18 April 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2023

Appeal Ref: APP/F2415/W/22/3309050

1 Sandringham Way, Market Harborough LE16 8EP

- 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 Mrs Melissa Aldridge against the decision of Harborough District Council.
 - The application Ref 22/01144/VAC, dated 1 June 2022, was refused by notice dated 7 September 2022.
 - The application sought planning permission for change of use of C3 outbuilding to F1/mixed use to provide 1 to 1 swimming lessons (retrospective) as previously approved without complying with a condition attached to planning permission Ref 20/01832/FUL, dated 20 January 2021.
 - The condition in dispute is No 1 which states that: The F1/mixed use to provide 1 to 1 swimming lessons hereby permitted shall be for a limited period only, and shall cease to continue after 20th July 2022. The F1/mixed use to provide 1 to 1 swimming lessons hereby permitted shall be discontinued after this date (unless a subsequent application to continue the use has been approved).
 - The reason given for the condition is: To enable a sufficient period of monitoring to ensure the amenity of residents and highways safety is safeguarded in accordance with Policy GD8 and IN2 of the Harborough Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of C3 outbuilding to F1/mixed use to provide 1 to 1 swimming lessons (retrospective) at 1 Sandringham Way, Market Harborough LE16 8EP in accordance with application Ref 22/01144/VAC, dated 1 June 2022, without compliance with condition number 1 previously imposed on planning permission Ref 20/01832/FUL, dated 20 January 2021, subject to the following conditions:-
 1. The outbuilding shall only be used for 1 to 1 swimming lessons and residential purposes which are ancillary to the residential use of 1 Sandringham Way, Market Harborough and for no other use.
 2. 1 to 1 swimming lessons shall take place only between the hours of 0730 and 1930 on Mondays to Fridays and between 0800 and 1930 on Weekends and Bank Holidays.
 3. The use hereby permitted shall only be carried out while the noise mitigation measures to the pump box, the hydraulic pipes and pipes between the pool outbuilding and the adjacent fence, as referred to in

section 4.0 of the submitted Tetra Tech Noise Technical Note dated 13 October 2022, are in place.

Background and Preliminary Matters

2. The appeal property is a house in a residential area. An outbuilding in the rear garden contains a pool, referred to in the submissions as either a swimming or hydrotherapy pool. In January 2021, the Council granted planning permission for the change of use of the pool building to F1/mixed use so as to allow the provision of 1 to 1 swimming lessons. The change of use has occurred and swimming lessons have taken place at the appeal property.
3. The disputed condition requires the F1/mixed use to cease by 20 July 2022. This appeal effectively seeks the removal of condition 1 so the 1 to 1 swimming lessons can continue indefinitely.
4. As part of the appeal, a Noise Technical Note (NTN) has been provided that was not before the Council at the time it made its decision on the planning application. However, the Council and interested parties have had an opportunity to comment on the NTN through the appeal process. Accordingly, no injustice would be caused by taking the NTN into account.
5. The appellant suggests that carrying out swimming lessons may not constitute a material change in the use of the property. However, it is not my role in dealing with this appeal seeking planning permission to decide on this matter. Moreover, interested parties have raised concerns that the outbuilding has not been constructed in accordance with the terms of the planning permission granted for its erection. Also, it is claimed that plant associated with the maintenance and use of the pool is unauthorised. This appeal relates solely to the change of use of the building and so the issue as to the lawfulness of the construction of the outbuilding and provision of plant has no bearing on my assessment. To be clear, this decision does not determine whether the construction of the outbuilding or the installation of plant is lawful or unlawful.

Main Issues

6. Given the Council's refusal reasons, the main issue is whether the disputed condition is necessary to ensure satisfactory living conditions for occupiers of neighbouring properties having regard to noise and disturbance.

Reasons

7. The flank elevation of the pool outbuilding is close to the back garden of 3 Sandringham Way (No 3) with a fence on the common boundary. The pool building is seen from the rear of No 3. Also, there are oblique views of the appeal property from the front windows of 4 Balmoral Close (No 4), which lies to the rear of the site. A garage to the front of No 4 has residential accommodation above.
8. The Council and appellant agree that the pool could be lawfully used for purposes incidental to the residential use of the appeal property, even if this appeal is dismissed. I find no reason to disagree with this view. As such, it is likely that the pool would continue to be used and associated plant and equipment operated regardless of my decision on this appeal. This fallback position is a consideration in my deliberations. However, it is fair to expect that swimming lessons would lead to additional use of the pool compared to the

fallback position. Therefore, it is necessary to consider whether any extra pool usage would lead to unacceptable noise and disturbance.

9. The NTN identifies traffic as a dominant noise source at the appeal property. On my visit, I heard traffic noise from the nearby Kettering Road when in the appeal property's back garden. The sound of traffic could also be heard at No 3 and No 4, even though these are further away from Kettering Road. Traffic noise was not constant but nevertheless it was frequent. As such, while the area is residential, it is affected by the sound of traffic.
10. The NTN focuses on the noise generated by plant associated with the pool, including extractor fans and pump. It notes that noise mitigation measures have already been installed including acoustic insulation to the brick surround to the external pump and to hydraulic pipes. It identifies background noise levels at various locations at the appeal property as well as noise when extractor fans and a water flow generation machine is operating. Also, it sets out calculations that establishes noise levels at the closest sensitive receptors when the various pieces of equipment are operating. The NTN concludes that, when considering the different operating sources, noise levels at the closest receptors are predicted to be at least 6dB below existing daytime background levels. As such, and in light of advice in the Planning Practice Guidance (PPG), it is claimed that the noise from plant falls below lowest observed adverse effect levels.
11. Notwithstanding the findings of the NTN, noise generated from the plant associated with the pool has been the cause of complaint from neighbouring residents. For this reason, the Council's environmental health officer has suggested a planning condition that requires the submission of a noise survey. However, this request was made before the submission of the NTN and the Council has not sought to dispute the survey's conclusions.
12. Interested parties have raised various concerns over the validity of the NTN. This is understandable given the complaints to the Council over noise and the close relationship of the pool building and plant to neighbouring properties. I also note the outbuilding lies on a level above No 4. The representations indicate that noise from plant can be heard from No 3, No 4 and potentially from other properties. I would envisage plant noise is audible during breaks in the sound of traffic, particularly from the rear of No 3 and from No 4's front rooms and above the garage when windows and rooflights are open.
13. However, the submissions indicate noise insulation measures have been put in place at the appeal property following the original complaints to the Council. It is fair to expect that these have reduced noise effects. Also, in the absence of any noise survey information that demonstrates to the contrary, I attach significant weight to the NTN's findings. As such, I am satisfied that there is no unacceptable effect from plant noise on living conditions of nearby residents, especially given the dominant background traffic noise.
14. Mention is made of noise from a treadmill within the pool building as well as from pool filtering equipment. This is not covered by the NTN. However, it is likely these would not be the cause of noise levels in excess of the surveyed plant items. In any event, the appellant accepts a limitation on the hours of the swimming lessons to between 0730 and 1930 on Mondays to Fridays and between 0800 and 1930 at weekends and bank holidays. During these hours,

- road traffic noise would be dominant and so the use of equipment is unlikely to cause disturbance.
15. The NTN does not cover potential noise from visitors attending swimming lessons, who would need to walk across the back garden to and from the pool building. In doing so, they may well be heard from the neighbouring properties. However, gardens are commonly used for noisy activities such as play and recreation. The noise from visitors would not be unusual nor unduly disruptive.
 16. Concerns are raised that the appeal property has been used for group swimming lessons that have resulted in significant disturbance. However, the proposal before me is for 1 to 1 lessons and it would be reasonable to attach a planning condition to that effect. As such, even if people leave and arrive simultaneously, it is likely that only a limited number of visitors attending lessons would be on the site at any one time. Therefore, I see no reason why visitors to the lessons should cause unacceptable noise disturbance, particularly given the suggested time restrictions.
 17. Additional concerns are raised in respect of noise from vehicles arriving and leaving with associated door slamming, movement of people and activity on the street. However, such activities are usual in residential areas and so they would not unacceptably disrupt occupiers of nearby dwellings.
 18. The pool building and swimming lessons have caused distress and worry to nearby residents. I am sympathetic to these concerns. However, the determinative factor with this appeal is whether the change of use complies with development plan policies. For the reasons given above, I find the development would generate a level of activity and noise which can be mitigated to an appropriate standard so as to avoid an adverse impact. Therefore, I conclude the disputed condition is not necessary to ensure satisfactory living conditions for occupiers of neighbouring properties having regard to noise and disturbance. In these respects, the development would accord with policy GD8 of the Harborough Local Plan 2019. Similarly, I find no conflict with the provisions of the Council's Development Management Supplementary Planning Document 2021 and the National Planning Policy Framework in these regards.
 19. Article 8(1) of The Human Rights Act 1998 provides that everyone has the right to respect for their private and family life and their home. In this case, I have found that the disputed condition is unnecessary to ensure such rights are safeguarded for the occupiers of nearby residences. Accordingly, I am satisfied that allowing the appeal would not interfere with these rights.

Other Matters

20. Other concerns have been raised. Objections are made to the appearance of the outbuilding and its effect on neighbouring residences, including impact on drainage systems. However, the appeal relates solely to the use of the building and so such concerns do not influence my assessment.
21. I am referred to appeal decision reference number APP/T0355/X/17/3169871. This relates to an application for a certificate of lawfulness and so the Inspector does not consider the acceptability of noise effects on nearby residents. Therefore, it is of little relevance in the assessment of this appeal.

22. I note criticisms on the Council's handling of the planning application leading to this appeal. However, these have no bearing on the merits of the development and so they fail to influence my considerations. Allowing the appeal has no effect on any covenants that the appeal property may be subject to.
23. Visitors attending swimming lessons may travel by car and so the development leads to extra on-street parking. However, Sandringham Way and other nearby roads are not subject to parking restrictions and there is significant scope for safe on-street parking close to the appeal property. I find no reason why parking is bound to obstruct vehicular or pedestrian movements or to unacceptably restrict visibility on the road. Therefore, I conclude that parking and vehicular movements associated with the swimming lessons would not prejudice highway safety.
24. Even following the change in use, the residential element of the appeal property is readily evident and dominant given the modest scale of the pool and its position to the rear. No harm is caused to the residential character of the site or area.
25. The boundary features to the back garden help ensure that users of the outbuilding are unable to easily overlook adjoining properties. I am advised of previous anti-social behaviour from visitors to the swimming lessons. This is unfortunate but there is no reason why the development would inevitably lead to undesirable activities. The outbuilding contains a changing area and shower and so there is no need for visitors to arrive or leave in a state of undress. Also, there is little evidence before me to substantiate concerns in respect of unacceptable odours emanating from the pool.
26. It is suggested that there is no need for the change of use as other pools in the area offer swimming lessons. However, the representations in support of the scheme indicate that there is a significant demand for the facility. In any event, there is no planning policy requirement for a need to be demonstrated.
27. There is little evidence to support the contention that allowing the appeal would lead to other similar proposals or the establishment of commercial uses in residential areas. Any applications for such development would need to be considered on their own merits and they are not bound to be permitted simply on the basis of this appeal being allowed.
28. None of the objections raised provide sufficient reason to refuse planning permission. Therefore, they do not affect my overall conclusion.

Conditions

29. The PPG states that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should repeat relevant conditions from the original planning permission unless they have already been discharged. I have re-imposed condition 2 from the original planning permission as condition number 1. This limits the use of the outbuilding and is required to prevent unacceptable harm to the living conditions of neighbouring residents. For the same reason, I impose a condition that limits the hours of operation for the 1 to 1 swimming lessons.
30. The NTN addresses the request for a planning condition that requires the submission and approval of a noise survey. However, the NTN's findings are based on the acoustic insulation measures already installed to the pump

housing, the hydraulic pipes and the pipes between the pool building and adjacent property fence. As such it is reasonable and necessary to impose a condition that requires such measures to be retained while the proposed use is being carried out.

Conclusion

31. For the above reasons, I conclude that the appeal should succeed.

Jonathan Edwards

INSPECTOR