
Appeal Decisions

Site visit made on 20 February 2024

by D M Young JP BSc(Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 24 April 2024

Appeal A Ref: APP/L3815/W/23/3329734

114 Second Avenue, Batchmere, Chichester, PO20 7LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Jason Moores against the decision of Chichester District Council.
 - The application Ref is E/23/01373/FUL.
 - The development proposed is 1 no. tennis court and associated fencing (retrospective)
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Appeal B Ref: APP/L3815/W/23/3326476

114 Second Avenue, Batchmere, Chichester, PO20 7LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Ms Jason Robert & Catherine Ann Moores and Lambert against the decision of Chichester District Council.
 - The application Ref is E/23/00098/FUL.
 - The development proposed is a private external swimming pool to be used in connection with 114 Second Avenue with associated fencing, air source heat pump and change of use of land.
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Decision

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for a private external swimming pool to be used in connection with 114 Second Avenue with associated fencing, air source heat pump and change of use of land at 114 Second Avenue, Batchmere, Chichester, PO20 7LF in accordance with the terms of the application, Ref E/23/00098/FUL, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following decided plans: 1596/DP100 rev 01, 1596/DP101 rev 01, 1596/DP102 rev 01 and 1596/DP103 rev 01.
 - 3) The development hereby approved shall be carried out strictly in accordance with the findings of the Preliminary Ecological Appraisal and Preliminary Roost Assessment dated the 9 December 2022 produced by Arbtech.
 - 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) the swimming pool hereby permitted

shall be used only in connection with 114 Second Avenue for the occupants' private use and for no other purpose.

Preliminary Matters

3. As set out in the banner above, there are two separate appeals. Appeal A is a retrospective application for the erection of a tennis court and associated fencing. Appeal B is a revised scheme for a swimming pool to the rear of the host property. In both cases, the applications were refused for similar reasons relating to their countryside location and consequent impact upon the character and appearance of the area. Because the appeals involve the consideration of similar issues, I have dealt with them in the same decision letter.

Main Issue

4. The main issue in both appeals is the effect of the development on the character and appearance of the area.

Reasons

5. Both appeal sites are located to the rear of No 114 on land that forms a Land Share Association (LSA) plot. These were established in the post-war period to raise domestic food production. As I understand it, the LSA plot formerly contained a number of large glass houses that were removed a number of years ago. The land at the southern end of the plot has since been used for the grazing of sheep and contains a timber stable.
6. Policy 45 of the Chichester Local Plan: Key Policies 2014-2029 (the LP), states that within the countryside, outside Settlement Boundaries, development will be granted where it requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements. The second limb to Policy 45 states that permission will be granted for sustainable development in the countryside where it can be demonstrated that criteria 1-3 are met. Of relevance to these appeals is criteria 1 which states: *'the proposal is well related to an existing farmstead or group of buildings, or located close to an established settlement'*.

Tennis Court

7. The Appellant's Statement of Case points out that the tennis court is used privately in connection with the host property, and it would be impractical to locate it within a settlement designated by LP Policies 1 and 2. Moreover, the Appellant argues that it is small scale and well related to an existing group of buildings comprising stables, the main house, an incidental storage outbuilding and the recently consented swimming pool.
8. I am not persuaded by these arguments. The LSA plot to the rear of No 114 comprises a large tract of open land. The stable block is small in scale and sited a significant distance from the main dwelling. Although the planning status of the stable block is unclear, it is in any event compatible with, and incidental to, the area's open and rural character and the lawful use of the land. The stable cannot therefore be used as justification for the infilling of the area between it and main dwelling with urbanising development.

9. As the recently consented swimming pool is sited within the residential curtilage to the rear of No 114, it is unclear how this or the storage outbuilding can be used to justify the tennis court which is some distance away from the main house (58m according to the Council). Accordingly, I find that the tennis court is not well-related to an existing group of buildings and therefore conflicts with LP Policy 45.
10. The land to the rear of No 114 is predominantly flat and open. Accordingly, it retains a strong rural character and I find little to support the Appellant's contention that it has a mixed character especially if one disregards the tennis court. The stable does of course result in a small loss of openness within this area. Nonetheless, it is used in connection with the pasture to the rear of the plot and its size and appearance does not unduly detract from the area's rural character.
11. In contrast, the tennis court is a discordant feature. Its incongruence is exacerbated by the high fencing. I accept that wider views of the tennis court are limited given the presence of a large evergreen hedge along the boundary with No 113. Nonetheless, the key issue here is one of precedent. Rather than a generalised concern, I consider there is a real risk that the approval of the tennis court within the countryside and well away from the residential curtilage could serve as a dangerous precedent for further inappropriate development. While each one might only result in a small amount of harm, collectively they would result in a significant dilution of the area's character and appearance.
12. These concerns are not outweighed by the well-being and convenience benefits proffered by the Appellant. Accordingly, I conclude that the tennis court conflicts with LP Policy 48 which among other things seeks to ensure that proposals respect and enhance the landscape character of the surrounding area.

Swimming Pool

13. Since the Council's decision to refuse planning permission, a revised application was submitted and approved by the Council in July 2023¹. Although the size and appearance of the swimming pool is essentially the same, the Council highlights that the approved scheme was sited substantially within the established residential curtilage of the host property.
14. According to the Council, the appeal scheme would be sited approximately 14 metres away from No 114, in comparison to the 7 metres within the approved scheme. Figure 2 to the Appellant's Statement of Case provides the best visual comparison of the two schemes. From this it is evident that the appeal scheme would extend the residential curtilage further southwards than the fallback position. However, in my view, the overall degree of encroachment into the LSA plot would be so small that it could reasonably be considered 'de minimus'.
15. As the Appellant highlights, the swimming pool would be sited behind the existing garden room and terrace in an enclosed location that has a direct relationship to the host dwelling, and no views from wider public vantage points. Unlike the tennis court, the swimming pool would therefore be well related to an existing group of buildings in accordance with LP Policy 45.

¹ LPA ref: E/23/01047/FUL

16. Even from private views to the south, the swimming pool would have very little visual exposure given it would be sunken largely below ground level. While an enclosure would add some vertical emphasis, it would not add much. Notwithstanding that the Applicant might have permitted development rights in this regard, I consider that the proposed timber panel fence, glass balustrade and ashp enclosure shown on drawing 1596/DP103 rev 01 would be appropriate. In light of the above, I am satisfied that the proposal would not conflict with LP Policies 45 and 48.

Conditions

17. In the case of Appeal B, I have imposed time limit and plans conditions to provide certainty. I have amended the wording of the ecological condition so that it is proportionate to the proposed development. As enhancements relating to bats, birds and hedgehogs as well as the requirements of the lighting strategy are specified in section 4 the ecological report, I consider that separate conditions are unnecessary. The proposed materials are specified on the plans and in the Application Form, a separate condition is therefore unnecessary.
18. To ensure the living conditions of neighbouring occupiers are safeguarded, I have imposed a condition to ensure the swimming pool is only used privately for the enjoyment of the occupiers of No 114. The extent of the development is clearly defined on drawing 1596/DP101 rev 01 which is secured by the plans condition. Any further change of use to the LSA plot would also require planning permission in its own right. I am not therefore persuaded that a separate condition specifying the above plan and extent of residential curtilage is necessary.

Conclusion

19. For the reasons given above the Appeal A is dismissed and Appeal B is allowed.

D. M. Young

INSPECTOR