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# Appeal Decision

Site visit made on 14 May 2024

**by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI**

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

**Decision date: 18<sup>th</sup> June 2024**

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**Appeal Ref: APP/R3705/W/23/3334783**

**89-91, Main Road, Atherstone, 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 carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr and Mrs P Hames against the decision of North Warwickshire Borough Council.
  - The application Ref is PAP/2023/0117.
  - 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.
  - 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.

## Background and Main Issues

2. Planning permission was granted for an indoor swimming pool building, subject to a restriction for incidental residential use only<sup>1</sup>. The proposal seeks to vary this condition to enable additional limited community use including for private lessons between 10:00 and 12:00 hours on Mondays, Wednesdays and Fridays. Each lesson would be limited to a maximum of 3 people based on a 45-minute lesson and a 15-minute change over period.
3. This follows the refusal and dismissal of a previous proposal for use of the private pool for community purposes during the hours of 10:00 and 14:00 and 16:30 and 18:00 hours on Mondays; 10:00 and 12:15 and 13:00 and 14:00 on Wednesdays and 10:00 and 14:00 on Fridays<sup>2</sup>.
4. The main issue of this appeal has flowed from the Council's reason for refusal. Additionally, I have included the effect of the proposed development on highway safety given the concerns raised by interested parties. Given that the appellants have had opportunity to respond to this matter during the appeal process, their interests would not be prejudiced by the inclusion of this matter.

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<sup>1</sup> Planning application PAUSAV/0602/96/FAP.

<sup>2</sup> Planning application reference PAP/2021/0687 and appeal reference APP/R3705/W/22/3307971.

5. The main issues are therefore the effect that varying the disputed condition would have on i) the living conditions of neighbouring occupiers with particular regard to disturbance and ii) highway and pedestrian safety.

## **Reasons**

### *Living Conditions*

6. Flats Lane is a rural track, tranquil in character that lies between built development and agricultural land to the east of the village of Austrey. It is proposed to utilise this track for the community use of the private swimming pool at Charity House, in addition to its residential use for 2 dwellings<sup>3</sup>.
7. No's 93 and 99 are dwellings facing Main Road, from which they will experience a degree of noise and disturbance given it is the main vehicular route through the village, where the village post office and store add to the degree of activity. The dwellings however, have rear gardens and habitable windows facing towards Flats Lane which provides the occupants with a quieter and more peaceful aspect, away from the activity of the main road.
8. The appellants suggest that the proposed community use would generate 12 two-way movements along Flats Lane 3 times per week<sup>4</sup>. Whilst this is a reduction in trips from the previous scheme, it is still necessary to assess the impact of this specific proposal. The appellants' figure appears to relate to trips made by the swimming patrons which it is suggested would be limited to 3 per lesson, or 6 per day of use. This excludes the movement of any teacher(s).
9. Moreover, the appellants fail to give any figure of likely or average daily movements for their household, or those in association with the approved dwelling that would also rely on the use of Flats Lane for vehicular access. Austrey Parish Council (APC) and an interested party indicate that staff connected to a business operated by the appellants attend Charity House a number of times each week. As this matter has not been addressed during the appeal process, it is unclear whether the use of Charity House generates more vehicular movements than would be typical of a private dwelling. Thus, it is not known whether the proposed proportion of vehicular movements associated with the community use of the swimming pool would be high or low in relation to the overall usage of Flats Lane.
10. Given the tranquil character of Flats Lane and its proximity to neighbouring windows and gardens, the disturbance arising from passing vehicles is likely to be discernible and distracting particularly in areas of the properties where the occupants can reasonably expect peacefulness. No noise assessment has been provided to evidence the contrary. I cannot be satisfied that the proposal, in combination with the existing use of the track, would not be harmful to the living conditions of neighbouring occupiers 3 days per week, all year round, even if only occurring at the specified times. The lack of an objection from the Environmental Health Officer does not affect my findings.
11. An additional condition is suggested to limit the proposed public swimming lessons to a maximum of 3 patrons at one time. This would be difficult to enforce given the use of the track by other users, such that it would not offer sufficient mitigation to overcome my concerns or those of the previous Inspector<sup>5</sup> and the APC.

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<sup>3</sup> Charity House and the dwelling permitted by appeal decision APP/R3705/W/21/3267144.

<sup>4</sup> Paragraph 5 of the appellants' statement.

<sup>5</sup> APP/R3705/W/22/3307971.

12. In the evidence of any robust evidence to the contrary, the proposed revision to the disputed condition would result in an adverse effect on the living conditions of neighbouring occupiers with particular regard to disturbance. The proposal would be contrary to Policy LP29(9) of the North Warwickshire Local Plan (NWLP) 2021 which seeks to avoid and address unacceptable impacts upon neighbouring amenities, including amongst other things noise.

#### *Highway and Pedestrian Safety*

13. Flats Lane is largely a single-track twin wheeling route that extends from Main Road around several buildings before reaching the appeal site. It carries a public right of way (PROW). There is a sharp left-hand bend just after leaving Main Road from where the lane climbs gently uphill.
14. Lessons would be limited to 2 per day of operation, for 45 minutes each, with a 15-minute interval. Notwithstanding the view of the Highway Authority, it seems to me that given the minimal change over period, there is still a likelihood that some cars would arrive and leave at the same time. Whilst I acknowledge that the number of patrons arriving and leaving the proposed swimming lessons would not be significant, I am not convinced that this arrangement would prevent 2 cars from meeting on the track.
15. There is nothing before me to evidence that existing residential and suggested business traffic would not coincide with car movements connected with the proposed lessons, nor the movements of tractors accessing the adjacent field. As discussed above, the appellants' evidence regarding the existing use of the track is not sufficiently transparent in this regard.
16. Although a snapshot in time, the vegetation to either side of the track was reasonably dense at the time of my visit such that it was not obvious that cars or pedestrians would be able to find a safe, unhindered refuge off the route, if they were to meet an oncoming vehicle.
17. If cars were to meet, it is likely to cause a vehicle to have to reverse around the sharp bend with limited visibility back onto Main Road at a point where there are a number of vehicular access points to dwellings, as well as comings and goings to the local convenience store and post office. Therefore, even if the required visibility splay could be provided, the proposal would increase the risk of collision and conflict at the junction with Main Road and prejudice the safety of pedestrians using the PROW. In the absence of any physical works to the track, or other mitigation to prevent vehicles from meeting, the risk to highway safety would remain.
18. The proposed revision to the disputed condition would cause unacceptable harm to highway and pedestrian safety. The proposal would conflict with Policy LP29(6) of the NWLP which seeks amongst other things, to ensure safe and suitable access for all users.

#### **Other Matters**

19. Austrey Baptist Church and No 99 Main Road are Grade II listed buildings of historical interest and architectural quality that lie to the west of the access track to the appeal site. The Church dating from 1808 is set back behind an open forecourt that emphasises its importance. No 99 is a timber framed cottage on a sandstone plinth immediately abutting the pavement of Main Road that has been extended to the side and rear. The Council does not object to the proposal on grounds of any harm to the setting of the listed buildings from activity and noise associated with the increased vehicular use of the track

which lies outside of their grounds. I concur with this view and consequently, the settings of the listed buildings would be preserved.

20. Reference is made to the proposal seeking to address comments of a previous Inspector and a without prejudice letter from the Council<sup>6</sup>. Be that as it may, I am not satisfied on the evidence presented that the reduction in hours of operation and vehicle movements proposed, along with a restriction on the number of patrons, would be sufficient to prevent or mitigate harm. There remains no evidence before me as to why the alternative access to Charity House cannot be used for at least some provision for vehicular access to the swimming pool, as highlighted by interested parties.
21. Support for a proposal does not equate to a lack of harm. Whilst enabling a degree of community use, it would result in unacceptable harm to highway safety and the living conditions of neighbouring occupants. The swimming pool would not be for sole use by residents of the village, such that this could be considered as a benefit of the proposal.
22. I must have regard to the Public Sector Equality Duty, contained in Section 149 of the Equality Act 2010, which requires me to consider the need to eliminate unlawful discrimination, to advance equality of opportunity and foster good relations between people who share a protected characteristic such as disability, and people who do not share it. Whilst it is suggested that swimming lessons would cater for those that fall within the protected characteristics defined within S149, it would not be exclusive provision.
23. I acknowledge that some people may benefit from learning to swim in a more private environment that would be offered by the appeal site. However, the lack of adaptations and specialist equipment would limit its value to disabled people. The Council's evidence makes it clear that there are alternative provisions elsewhere within the Borough that would be more likely to meet the needs of people with such protected characteristics, due to the services and apparatus provided.
24. Having carefully considered the potential benefits of the scheme, dismissal of the appeal is a proportionate response to the well-established planning objectives of protecting the living conditions of neighbouring occupiers and highway and pedestrian safety.

## **Conclusion**

25. The development with the condition varied as proposed would conflict with the development plan as a whole. There are no material considerations either individually or in combination that suggest a decision should be made otherwise in accordance with the development plan. The appeal is dismissed.

*M Clowes*

INSPECTOR

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<sup>6</sup> Appeal reference APP/R3705/W/3307971 and Council letter dated 17 February 2024 as submitted at the final comments stage.