

Appeal Decision

Site visit made on 10 September 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2024

Appeal Ref: APP/F3545/W/23/3335762

51A Chels, Bury Road, Newmarket, Suffolk CB8 7BY

- 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 Daniel Nicholls against the decision of West Suffolk Council.
 - The application Ref is DC/23/0719/FUL.
 - The development proposed is change of use of the existing swimming pool to be used by swim school.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the existing swimming pool to be used by swim school at 51A Chels, Newmarket, Suffolk CB8 7BY in accordance with the terms of the application, Ref DC/23/0719/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for cost was made by Mr Daniel Nicholls against West Suffolk Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended.
4. In addition, on 30 July 2024 the Government published a consultation on proposed reforms to the Framework and a written ministerial statement. While these proposed changes can only be given limited weight at this stage, those parts most relevant to the appeal are not proposed to be amended. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no party's interests would be prejudiced by my taking this approach.
5. The appellant has submitted a Noise Assessment¹ as part of this appeal in response to the Council's reason for refusal. Whilst I cannot be certain that

¹ Sharps Acoustics Assessment of noise from operation of commercial swimming pool dated 14 December 2023

this document has been subject to wider publicity it is a technical document which does not alter the location or nature of the scheme which was subject to wider publicity. In any event, the Council have had opportunity to comment on this assessment. As such I am satisfied that interested parties have not been unduly prejudiced by my acceptance of this technical document.

6. I note from the application details that the use of the premises has already commenced. During my site visit the vehicular parking arrangements I observed do not fully accord with the plans submitted as part of the appeal. Notwithstanding this, I have considered the appeal based on the development applied for and the plans submitted with it.

Main Issue

7. The main issue is the effect of the development on the living conditions of existing occupiers with particular regard to noise and disturbance, including those associated with vehicular movements.

Reasons

8. The appeal site comprises a detached dwelling, set back from Bury Road. The appeal property lies within an area which is predominately characterised by residential properties, sited on large plots with large gardens. Vegetation is present giving it a verdant appearance.
9. Policy NKT5 of the Newmarket Neighbourhood Plan (NP) provides support for new and growing businesses. Whilst specific reference is made regarding working from home under criterion c ii), I am satisfied that such requirements can reasonably be applicable to businesses generally.
10. At my site visit I was able to hear noise from traffic using Bury Road. This is consistent with the findings of the Noise Assessment that found road traffic noise from surrounding roads, to be the dominant source of noise. I observed some vehicular parking along the private road, and I have no reason to believe that such ambient noise and parking was not typical of everyday conditions.
11. The evidence before me indicates that the lessons are for a duration of 30 minutes with the hours varying each weekday between 3.15pm to 8pm and morning lessons between 9.30am and 11.00am on Wednesdays only. There are no lessons on weekends. In addition, the appellant submits that there are a maximum of three people having lessons at any one time.
12. The use of the property for swimming tuition would result in a higher degree of comings and goings from customers than would be the case if the property were occupied as a single household. Whilst concerns have been raised as to the total number of people using the facility throughout the week it does not amount to an intensive use.
13. Representations from interested parties indicate there is some noise disturbance that is audible through open windows at the appeal site and arising from comings and goings. The appellant indicates that the building now benefits from triple glazing. I have no reason to doubt this. A condition requiring doors and windows to be closed during lessons would ensure that noise from inside the building would be well contained and unlikely to be

audible outside. Whilst some additional noise is likely to result from comings and goings, the evidence before me does not lead me to consider that it would be particularly perceptible or disturbing for neighbouring residents. The Council's Environmental Health Officer raises no objections and I see no reason to reach a different view.

14. Representations indicate that parking associated with the swim school occurs on the private road. Whilst photographs have been provided, I have no substantive evidence that the parking is associated with the swim school. The submitted plans indicate that 10no parking spaces would be accommodated within the parameters of the appeal site. Given the modest number of students having lessons at any one time, even taking account of change over between sessions, the parking provision within the site would be sufficient. Accordingly, the increase in vehicular movements would not have a materially harmful impact upon living conditions by reason of noise and disturbance.
15. Conditions could be imposed relating to the hours of use and the number of students in the pool at any one time. Accordingly, having regard to the scale of the proposed use, the separation distances between properties and the availability of parking within the appeal site the intensity of the use would not be materially harmful, in terms of noise and disturbance, to warrant a refusal.
16. For the reasons stated, taking account of the conditions restricting the use, I conclude that the proposal would not result in any significant adverse impacts on the living conditions of existing occupiers with particular regard to noise and disturbance, including those associated with vehicular movements. Consequently, the proposal accords with Policy DM2 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policy Document 2015 (JDMPD) which, amongst other things, seeks to protect the residential amenity of adjacent areas by reason of noise and other pollution, including the volume or type of vehicular activity generated.
17. Nor do I find conflict with Policy NKT5 of the Newmarket Neighbourhood Plan which supports starter businesses where proposals respect the nature of the part of the neighbourhood area in which they are located and would not result in unacceptable levels of deliveries, visits by others and any other type of activities which would detract from the amenity of the immediate locality.
18. In reaching this conclusion I have had regard to the Framework at paragraph 185 which seeks to ensure a good standard of amenity for existing users.
19. Reference to paragraph 130 of the Framework² is cited in the reason for refusal. However, as this relates to good design, I do not consider it to be determinative to the appeal proposal before me.

Other Matters

20. The appeal site lies within the settlement boundary of Newmarket where the principle of the use is not disputed between the appellant and the Council. I have no reason to reach a different view in this regard.

² 2021 Version of the National Planning Policy Framework

21. The appeal site lies within the boundaries of the Newmarket Conservation Area (CA). I have not been provided with a Conservation Area appraisal. However, in my view, the special character of the CA derives its significance from horse breeding, training and racing activities and associated Royal patronage, within the medieval market town and its medieval layout. At my visit I observed a significant feature of the CA to be the quality and range of its buildings. Which, in the vicinity of the appeal site, includes substantial detached houses set behind garden walls that provides visual enclosure along the back pavement edge. There is a statutory requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas under the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).
22. The appeal site is located on a private road and set behind a tall wall. Views of the existing property are limited. No external changes are proposed to the building and additional vehicular parking can be satisfactorily accommodated within the confines of the appeal site, screened from wider view. For these reasons I am satisfied that the appeal proposal would preserve the character and appearance of the CA, and accordingly would not harm the heritage significance of the CA and would therefore accord with Policy DM17 of the JDMPD in this regard. This is a view shared by the Council.
23. The use has positive benefits in providing for swimming lessons, in particular for children and adults with learning disabilities. It also accords with the aim of the Framework to promote healthy living and deliver the recreational facilities a community needs. These modest benefits weigh in favour of the proposal.
24. Concerns regarding compliance with health and safety standards, Building Regulations, licences and deeds fall outside the remit of the planning process.
25. It is understood that an existing horse walk runs adjacent to Bury Road and crosses the private road which is used by visitors to access the appeal site. As outlined above, I am satisfied that sufficient parking would be accommodated within the appeal site. Accordingly, there would be unlikely to be significant impacts upon highway safety, parking or local highway conditions. Thus, when combined with the restrictions on the hours of use, the proposal would not result in an adverse impact on the horse walk and would accord with Policies DM46 and DM48 of the JDMPD in this regard.
26. Local residents have expressed a wide range of concerns including, but not limited to the following: the availability of other pools locally, website and advertisement of the pool, congestion and deterioration of local roads. However, I note that these matters were considered by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters. I have considered this appeal proposal on its own merits and concluded that it would not cause harm for the reasons set out above.
27. In respect of concerns regarding the proposal setting a precedent for similar proposals my decision has been made based on the evidence before me and

the individual merits of the case, set out in the reasoning above. This does not have any bearing on future applications that may be heard by the Council.

Conditions

28. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability.
29. As the development has commenced it is not necessary to impose the standard time limit for commencement. I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
30. Conditions limiting hours of use and the number of students are necessary to preserve residential living conditions and ensure that the use remains modest in nature and intensity.
31. A condition for parking and manoeuvring areas is necessary for compliance with the development plan parking standards in the interests of highway safety.
32. A condition regarding the closure of windows and doors is reasonable and necessary to avoid environmental harm.

Conclusion

33. For the reasons given above, I conclude that the proposal would accord with the development plan and the Framework, and therefore the appeal is allowed.

R Gee

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in strict accordance with the following drawings: 489A-LA-02 REV A Proposed block plan.
2. The number of students attending swimming lessons shall not exceed 3 at any one time.
3. The opening hours of the premises for the purpose of swimming lessons and any other commercial pool use shall be restricted to only between the following hours and there shall be no customers on the site outside of these hours:
Monday - 3:45pm to 7:15pm
Tuesday - 3:15pm to 7:15pm
Wednesday - 9:30am to 11:00am and 3:45pm to 8:00pm
Thursday - 4:15pm to 8:00pm
Friday - 3:15pm to 7:15pm

The premises shall not be open for the purpose of swimming lessons, or any other commercial pool use at any time on Saturday or Sunday.

4. Within 30 days of the date of this permission, the area(s) within the site shown on Drawing No. 489A-LA-02 A for the purposes of loading, unloading, manoeuvring and parking of vehicles shall be provided and thereafter the area(s) shall be retained, maintained and used for no other purposes.
5. All external doors and external windows to the swimming pool room shall be kept closed at all times during commercial pool use, except as may be required for egress and ingress.

*****End of Schedule*****