



Appeal Decision

Hearing held and site visit made on 3 December 2024

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

Appeal Ref: APP/R4408/C/24/3342727

Units 9E and 9F Mapplewell Business Park, Barnsley, S75 6BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
- The appeal is made by Sprint Swim Academy Limited against an enforcement issued by the Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 18 March 2024.
- The breach of planning control alleged in the notice is, without planning permission, the material change of use of the land to a swimming pool providing lessons and associated courses.
- The requirements of the enforcement notice are:
 - (i) Cease the unauthorised change of use of the land described in paragraph 3 of this notice.
 - (ii) Remove from the Land the swimming pool structure and all equipment and materials associated with the use as cited in paragraph 3.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on grounds set out in section 174(2)(a), (b), (e), (f) and (g) of the Act. As such, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is corrected and quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal initially lodged on ground (b) related to the plan attached to the enforcement notice on the basis that it was too widely drawn and, resulting from that plan, on ground (e) that not everyone included within the red line had been served with a copy of the enforcement notice.
2. At the Hearing the parties agreed the correct planning unit comprised the combined former industrial units 9E and 9F. Further discussion revolved around whether the planning unit includes the service and parking yard shared with other adjacent industrial units. Having regard to the long established case law in *Burdle*¹ I consider in this case that the material change of use is contained solely within the building itself (i.e. units 9E/9F). This is because the new use is physically and functionally separate from other existing uses in other units, and physically and functionally separate

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

from the use of the parking/service yard which is a shared ancillary facility by all of the units. As such, the service yard use is not contained within or forms part of the primary use of any one individual unit.

3. It was agreed at the Hearing that in making such a finding I could correct the notice plan accordingly without injustice to either party. I will therefore do so by removing the plan and substituting it with the plan at Annex A to this Decision using powers available to me under s176(1) of the Act. On that basis it was also confirmed by the appellant that grounds (b) and (e) could be withdrawn. I have therefore determined the appeal on that basis.
4. In an enforcement notice the requirements for compliance should specify in precise words what needs to be done. This makes it clear if, for example, lesser steps than full compliance are required. It should also accurately reflect the same terms as the alleged breach at Section 3 of the notice. As such, I will correct the terms of the requirements accordingly to refer to the swimming pool use under s176(1). These are minor drafting alterations and will not result in any injustice to any party.

Appeal on ground (a)/deemed application for planning permission

5. The appeal site occupies combined units 9E and 9F within a small range of industrial units fronting two sides of a large service/parking yard. The yard and units are located within the larger Mapplewell Business Park.

Main Issues

6. The main issue is the effect of the development on highway safety and efficiency and whether there would be adequate parking provision.

Reasons

7. The NPPF² echoes the requirement in law that applications for planning permission are to be determined in accordance with the Council's Development Plan unless material considerations indicate otherwise.
8. Policies GD1 and T4 of the Barnsley Local Plan (2019) (LP) relate to amenity and to ensuring that new development provides all transport users within and surrounding a development with safe, secure and convenient access and movement.
9. The notice refers to amenity with regard to customers comings and goings in the context of Policy GD1. However, at the Hearing the Council agreed that there was no real conflict with the criteria of Policy GD1, and that their concern in respect of visits to and from the site more directly related to whether there was adequate and safe parking within the adjoining service yard.
10. The appellant company provides swimming related tuition and other related activities on a membership/appointment only basis during the hours of 09:00 to 20:00hrs during the week, and at reduced times at the weekends. Given the pool size and the ratio of staff to customers a maximum of 10 bookings can be accommodated at any one time.

² National Planning Policy Framework, MHCLG, (2023)

11. Within the service yard there are 20 existing parking spaces available to serve all of the industrial units. Of the original 7 separate units available for occupation there are now only 4 separate occupiers³ resulting from the combination of some of the units, including the appeal site.
12. The appellant's submitted transport assessment⁴ (TA) included surveys of trip generation and of parking demand in the service yard. It found that with regard to parking demand there was a peak parking accumulation of between 15-19 vehicles for a single 15-minute period at 5.45pm, with an average occupancy throughout the full day of between 8-11 vehicles. As such, the TA concluded that the existing 20 spaces available are sufficient to meet the overall parking demand of all of the units.
13. The TA also recorded that there was no adverse impact on the connected highway network including at junctions and at peak times, and there have been no personal injury collisions recorded on Mapplewell Drive or at the junction between Mapplewell Drive and Blacker Lane which provides access to the site from the wider highway network.
14. In my view the TA is soundly based and robust. Its evidential and other technical data and conclusions were not challenged by the Council, and no contrary evidence has been submitted. Accordingly I attach significant weight to it in reaching my Decision.
15. In conclusion; I find overall that there would be no increased risk to highway safety or efficiency and that the existing parking provision within the service yard is sufficient to serve all of the existing units. As such, there would be no conflict with LP Policies GD1 or T4.
16. For all these reasons I conclude that the ground (a)/deemed application for planning permission should succeed. Planning permission will be granted under s177(1)(a) of the Act subject to planning conditions. In these circumstances there is no need for me to consider the appeals made on grounds (f) and (g).

Conditions

17. An hours of use condition (1) is required to control and define operating hours. A condition (2) is required to control the numbers of users at any one time to ensure the overall level of parking provision available in the service yard is not exceeded.

FORMAL DECISION

18. It is directed that the enforcement notice is corrected by:
 - deleting all of Section 5(i) and substituting instead "Cease the use of the land as a swimming pool providing lessons and associated courses"; and
 - after the word "use" in Section 5(ii) deleting the rest of the sentence and substitute instead "as a swimming pool"; and
 - removing the plan attached to the notice and replacing it with the one attached at Annex A to this Decision.

³ Sprint Swim Academy, Renewables Warehouse, BB Packaging, Charltons Curtains & Blinds

⁴ Bryan G Hall: Transport Assessment, June 2004

19. Subject to the corrections the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the material change of use to a swimming pool providing lessons and associated courses at Units 9E and 9F Mapplewell Business Park, Barnsley S75 6BP, as shown on the corrected plan attached to the notice, and subject to the following conditions:

- 1) The use hereby permitted shall not be open to customers other than between the hours of 09:00 to 20:00 on Mondays to Saturdays, including bank holidays.
- 2) Use of the swimming pool shall operate solely on a pre-booked appointment basis only, limited to a maximum of 10 at any one time.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alec Cropper (LLB)	Director, Walton & Co.
Stuart Wilkins MCIHT I Eng	Director, Bryan G Hall
Lynsey Rose	Director, Swim Sprint Academy Ltd
James Medlam	Director, Swim Sprint Academy Ltd
Steve Rose	Sprint Swim Academy Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Paul Doherty	Group Leader, Planning, Building Control and Enforcement
Chris Byrne	Planning Enforcement Officer

Annex A

