



Appeal Decisions

Site visit made on 7 April 2025

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 May 2025

Appeal A: APP/L1765/C/24/3338194

Appeal B: APP/L1765/C/24/3338195

Land at 35 Church Lane, Colden Common, Winchester, Hampshire SO21 1TW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Andrew Brooks (Appeal A) and Mrs Richelle Brooks (Appeal B) against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 2 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from use as a single dwellinghouse to a mixed use as a single dwellinghouse and use (of the swimming pool) for leisure and recreational purposes that are not incidental to the lawful use as a single dwellinghouse.
 - The requirements of the notice are: Cease the use of the swimming pool for all purposes that are not incidental to the lawful use of the Land as a single dwellinghouse.
 - The period for compliance with the requirements is two months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/L1765/W/24/3337941

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Andrew Brooks against an enforcement notice issued by Winchester City Council.
 - The application Ref 22/02679/FUL, dated 28 November 2022, was refused by notice dated 15 November 2023.
 - The development proposed is: Change of use of property from a domestic residential use to a mixed use for residential purposes and provision of swimming lessons to children.
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Summary of Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice is upheld.

Appeal C

2. The appeal is dismissed.

Preliminary Matter

3. There has been a revised National Planning Policy Framework (the Framework) published by Government since the enforcement notice was issued and

planning permission refused. It however does not raise new issues that are determinative for the purposes of my assessment and therefore injustice to the parties does not arise.

Appeals A, B and C – The ground (a) appeal and refusal of planning permission

Main Issue

4. The main issue is the effect of the use on neighbouring living conditions, having particular regard to noise and disturbance.

Reasons

5. The site relates to a detached dwelling set within a predominantly residential area with neighbouring properties bordering in very close proximity. The development relates to the use of an existing rear swimming pool for children's swimming lessons between 9.30-11.30 and 15.30-17.30 on weekdays for 33 calendar weeks per year, excluding public holidays. This would see four children in the pool at any one time. The swimming pool is then covered by an existing retractable glazed structure.
6. In an effort to address concerns, the appellants have submitted a noise impact assessment. It is concluded that the use results in a low/negligible or slight noise impact.
7. The assessment also states that noise from the use will likely be audible at times. I however do not accept that it will only be audible at times because it is clear that the provision of lessons to children will result in instructions and noise associated with the presence of people as well as the swimming activity itself. The existing enclosure, being a glazed structure, is then unlikely to offer any practicable acoustic mitigation and there is also little evidence that it is to remain closed during warmer periods.
8. The evidence provided by the Council of social media posts indicate the majority of the lessons would be 30 minutes in duration. That being so, each week would see 160 children in the swimming pool. Even if lessons were 1hr or not fully subscribed, it might see around half this number. This is nevertheless still considerable at a residential property with neighbours in very close proximity.
9. Whilst it has been indicated there are no noise standards for assessing noise from people, the nature of the use is very likely to see noise emanating from the site that is significantly greater than would be expected from a residential property. This is particularly the case as I do not accept the area is busy as it is predominantly a residential one of relatively low density.
10. This culminates to cast significant doubt in my mind as to the acceptability of the use. Whilst I appreciate there should not be a reasonable expectation of silence, particularly during weekday daytime hours, it is then not reasonable for neighbouring occupiers to expect the numbers of children proposed in a private swimming pool in such close proximity. The noise and disturbance associated with the use is consequently very likely to have an unacceptable adverse impact on living conditions. Whilst the neighbouring property closest to the pool, No.33, does not have primary windows facing the pool, there are

nevertheless habitable rooms and the rear garden of this property in very close proximity.

11. There is then the further activity associated with the use given the considerable increase in vehicles entering, manoeuvring and exiting the site, which add further to my concerns about the unacceptable impact. This would particularly be the case during the overlap period between lessons starting and finishing and given the pool and changing room are accessed via a pedestrian gate in very close proximity to No.33.
12. It has been suggested that the quantum of the use could be reduced from that proposed and controlled by planning conditions. There is however little evidence of what the suggested reduction might be or to persuade me that it would otherwise address the unacceptable impact of the use.
13. The existence of other dwellings close to other leisure facilities elsewhere is then not particularly persuasive as the full details are not before me, but which in any event do not relate to the provision of swimming lessons in a glazed structure.
14. I conclude the use is unacceptably harmful to neighbouring living conditions, having particular regard to noise and disturbance, in contravention of Policies DM17 and DM20 of the Winchester District Local Plan Part 2, April 2017. These policies, amongst other things, require development to not cause unacceptable levels of pollution to neighbours by means of noise or unacceptable impact on quality of life. This is a planning harm to which I attach considerable weight.

Other Considerations

15. The provision of a local service for children and those with specialist needs within a settlement boundary is laudable and may well comply with the thrust of local policy and the Framework in this regard. However, this clearly has to be at a suitable site and there is also little evidence as to the numbers who regularly attend with specialist needs. I therefore afford the provision only moderate weight.
16. The appellants contend there is a fallback position in terms of the private use of the swimming pool and that it could be used to provide some lessons at a level that would be considered incidental to the private residential use of the property. Whilst a level of use has then been asserted, there is no certificate of lawfulness to demonstrate on the balance of probabilities what this would actually be at this property. It would therefore also be wrong to only consider the additional impact of the proposed use beyond an ill-defined fallback. I therefore afford such considerations only very limited weight.
17. Whilst there might be areas of common ground between the main parties, the absence of other planning harms only attracts neutral weight.

Conclusion

18. There are no material considerations, either alone or in combination, that indicate the appeals should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeals should be dismissed.

Appeals A and B – The ground (g) appeal

19. The appellants contend that the time given to comply with the requirements of the enforcement notice are too short.
20. Six months is requested, but there is little evidence of the contractual obligations between the appellants and users of the swimming pool.
21. The swimming pool might then be used by those with special needs, as well as others familiar with these surroundings, and who would no doubt wish to find an alternative. Whilst I have sympathy for those in this situation, a period of 2 months then strikes the appropriate balance so as not to unduly perpetuate the breach of planning control. Whilst the Council did not issue a stop notice, this does not evidence why the compliance period is now too short.
22. The appeal on ground (g) therefore fails.

Appeals A, B and C - Overall Conclusion

23. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission.

Formal Decisions

Appeals A and B

24. The appeal is dismissed and the enforcement notice is upheld.

Appeal C

25. The appeal is dismissed.

Paul T Hocking

INSPECTOR