



Appeal Decision

Site visit made on 23 January 2026

by Grahame J Kean BA (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2026

Appeal Ref: APP/N2345/X/25/3373202

3, The Triangle, Preston, PR2 8LJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Yasin Vaza against the decision of Preston City Council.
 - The application ref 06/2025/0342, dated 19 March 2025, was refused by notice dated 4 September 2025.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is use of a private swimming pool which resides within an existing dwellinghouse, to provide private swimming classes incidental/ancillary to the enjoyment and nature of the existing dwellinghouse.
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Decision

1. The appeal is dismissed.

Reasons

2. The application was refused by the Council who alleged that the use of the pool does not represent a use incidental to the main residential dwelling, but was a material change of use at the site from a dwelling house, to a mixed residential and commercial use which required planning permission.
3. The use of land in the curtilage of a dwelling for a purpose incidental to its enjoyment as such is exempted from development under s55(2)(d) of the 1990 Act. By s191(2) of the Act a use is lawful if no enforcement action may then be taken in respect of it (as it did not involve development or require permission or because the time for enforcement has expired or for any other reason); and it is not a contravention of the requirements of any enforcement notice then in force.
4. The main issue is whether the Council's refusal to grant an LDC for the change of use was well-founded. The planning merits of the development are not relevant. The onus of proof is on the appellant on the balance of probabilities. A material change in the character of a use may occur having regard, among other things, to what is happening on the land and any offsite impacts.
5. The case for the appellant is primarily focussed on the claim that no development is involved in what is claimed to be a use that is incidental or ancillary to the enjoyment of the existing dwellinghouse.
6. The appellant's case based on ten years' use is without foundation. His agent's statement has it that swimming classes have been conducted on-site since 2013 but to align with the residential character of the property. An email from the agent

dated 21 November 2024 states he has been told by the appellant that “the activity” has taken place for a period in excess of 10 years.

7. I have considered a possible scenario where commercial swimming lessons have taken place for over 10 years to an extent that would be considered, from their inception to be a material change of use from the primary residential use of the property. However, there is no evidence to that effect, rather it was the Council’s investigation in 2016 that appeared to show the use of the property then included some business activity.
8. The appeal property is a residential unit in a large plot that includes a swimming pool. The site is accessed via Garstang Road within a cul-de-sac along with two other properties. It is difficult to park on the cul-de-sac road so visitors park on Garstang Road before entering the swimming pool, whilst family and friends are able to park at the appeal site. The pool is used by the family as well as by customers, and there is no clear demarcation between the swimming facilities and the appurtenances of the domestic property, eg parking area and paths etc. I view the whole property as one planning unit.
9. The appeal site has been investigated by the Council in 2016, 2023 and 2024. The 2016 investigation considered there was some business activity but was ancillary to the use of the main dwelling, therefore the Council considered that there was no material change of use at that time.
10. The appeal premises are surrounded by a very few other residential properties in a quiet environment, accessed by a narrow cul-de-sac road, ie The Triangle. The cul-de-sac bears a sign at the entrance by Garstang Road advising: “Private Road No Parking No Entry Residents Only”. I noted that there are now double yellow lines on the side of Garstang Road all around the entrance into The Triangle, extending along the main road, so visitors have to park on the opposite side, a very busy through route.
11. A similar finding of no material change of use was made after the 2023 investigation, which as indicated in the relevant delegated report, was based on swimming lessons occurring 5 days per week, for c12 hours per week. The more recent delegated report noted an increase in hours of operation from 12 hours per week to 19 hours per week. The Council views an increase in 7 hours per week as materially different to what was the case in 2023.
12. Visitors are advised to park on Garstang Road as parking is unavailable at the site and not to enter the site with their vehicles. Indeed, it is unsurprising that the residents of the cul-de-sac, given the sign and the narrowness of the road, have taken the view that visitors’ parking is not to be tolerated. Where parking was available on the far side of Garstang Road I saw several cars parked, half-on and half-off the carriageway including a third premium vehicle with the distinctive registration mark YV corresponding to two others parked at the appeal premises.
13. It is acknowledged that the swimming pool is hired out to organisations or individuals providing swimming lessons. The commercial transactions distinguish such a use from a residential use. The increased frequency of lessons is said to affect adversely noise levels and parking conditions. The September 2024 timetable had a total of 126/7 children who visited in that month.

14. Whether using public or private transport, it would seem to me that the level of visitors accessing the site has the potential to significantly impact the residential amenity of neighbouring properties, intensifying the comings and goings on foot with consequential noise and disturbance with the impacts extending beyond the immediate environs of the appeal site.
15. No issue is taken with the findings¹ that classes now take place 6/7 days a week at an average of 19 hours per week including the presence of an off-site instructor and the appellant states he intends to continue with current operations.
16. The pool is covered, sited at the rear and side of the property, and lessons are said to be for beginners and others requiring quiet, focused instruction. However, that would not reduce external impacts of the use potentially experienced off-site.
17. As to use by the appellant and his family it is said to be regular, and on a “*near-constant basis given their unrestricted access*” which does not however mean that where timetables are scheduled for visitors’ lessons as part of a commercial transaction, those lessons would not and should not take precedence, especially where, as here, the transactions are with professional swimming organisations.
18. The swimming pool is c12m long which, although inherently limiting the numbers of children or adults using it, is conducive in design terms, including the attendant facilities, changing rooms etc, for an active and intensive commercial use.
19. Now, it is said by the Council that there are 27 hours of use a week at the premises, as per the Glovers Swim school website on which the pool is advertised. Therefore, the Council says it is misleading for the appellant to suggest, as he does that the swimming operation has only increased to 19 hours per week. The appellant says, and I have no reason to doubt him, that there is a theoretical 27 hours available which represents total availability, not booked classes. Even so, there is clearly a heavy emphasis on advertising through social media platforms, and it is undisputed that there are classes run by an outside operator.
20. Some lessons may be provided by the appellant’s daughter, yet I fail to see how that reduces the commerciality of the offer, when presumably anyone with a duty of care towards visitors taking lessons must be properly protected in terms of liability insurance, and must safeguard visitors under health and safety legislation and so forth, be they part-time staff or volunteers, relatives or otherwise.

Summary

21. The appellant states that swimming classes have taken place since late 2013 but to align with the residential character of the property. It was the 2016 investigation that concluded that there was a degree of business activity carried out at the site. There is no evidence that any material change of use of the premises began earlier than 2016, the evidence being that the material change took place later.
22. It is accepted that there has been some commercial element in what has occurred in the hiring out of the pool. Lessons have been taking place on a weekly basis for non-residents and external staff operate out of the site. The commercial facility is advertised on social media platforms. Even if the operation has increased to 19 hours per week from what was previously, I regard that level of activity in the circumstances of this appeal property and its environs, as a matter of fact and

¹ Cf appeal statement paragraphs 3.4 and 3.5

degree to have expanded well beyond what can be considered a use that is incidental to the use of the main residential dwelling at the site.

23. This level of use has external impacts in terms of the potential for significant adverse effects caused by increased comings and goings, increased traffic and noise and disturbance in a quiet residential environment, and off-site parking beyond that which might reasonably be expected to be generated by a single dwelling.
24. The commercial use in my opinion has clearly expanded to a point where it has ceased to be functionally related to the extant primary residential use, and in the circumstances has entailed a material change in the character of the use at the appeal site such that it has become a primary use on its own, within the planning unit as part of a new mixed and unauthorised use.
25. In this case no enforcement notice is in force currently, however the use is not lawful as, for the reasons stated, the use in question involves development for which planning permission is required but has not been obtained.

Other matters

26. The position taken by the Council at other premises as to whether there has been a material change of use requiring planning permission for similar activities, is referred to by the appellant. However, although some information is given, it is generalised and insufficient to make a sensible comparison with the subject property, the circumstances of which fall to be considered on their own merits.
27. I note in passing that there is some authority for the proposition that a change in the identity of the person carrying out the use, or the source or the destination of vehicles coming to and from a site will not be material (*Lewis v SSE* [1971] 23 P&CR 125), however the proposition is fact sensitive. The Lord Chief Justice stated (pages 4/5, paragraphs H/A of the transcript):

“The actual activity on land so far [as] the Secretary of State refers to it appears to be identical both before and after and it is not my understanding of the law that if the activity is exactly the same throughout the relevant period, a material change of use can occur merely because of a change in the identity of the person carrying out that activity.”

28. That was a case where both uses, ie the one before and the one after the alleged change of use, were commercial uses, which is not the position here.

Conclusion

29. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for use of a private swimming pool which resides within an existing dwellinghouse, to provide private swimming classes incidental/ancillary to the enjoyment and nature of the existing dwellinghouse is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Grahame J Kean

INSPECTOR