

<u>No:</u>	BH2024/01184	<u>Ward:</u>	Preston Park Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	32 Varndean Gardens Brighton BN1 6WL		
<u>Proposal:</u>	Partial change of use of domestic swimming pool for private swimming lessons. (Retrospective)		
<u>Officer:</u>	Michael Tucker, tel: 292359	<u>Valid Date:</u>	14.05.2024
<u>Con Area:</u>		<u>Expiry Date:</u>	09.07.2024
<u>Listed Building Grade:</u>		<u>EOT:</u>	11.10.2024
Agent:			
Applicant:	Mr Nikolas Black 32 Varndean Gardens Brighton BN1 6WL		

1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Location and block plan	01		14 May 2024

2. The use of the pool for private swimming lessons shall not take place other than between the hours of 10:00 - 12:00 and 15:00 - 17:00 on Mondays to Thursdays. No lessons shall take place on Fridays, Saturdays, Sundays or on public holidays.

Reason: To safeguard the amenities of the locality and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

3. The number of students attending the private swimming lessons hereby permitted shall at any one time not exceed five (5) persons.

Reason: To safeguard the amenities of the locality and to comply with policies DM20 and DM40 of Brighton & Hove City Plan Part 2.

4. Within three months of the date of this permission, a management plan for the development hereby permitted shall be submitted to the Local Planning Authority for approval in writing. The management plan should set out how the private swimming lessons will be operated so as to minimise the impact upon the amenity of neighbours and shall include, but not be limited, to:

- Measures to minimise noise and disruption during comings and goings

- Providing a means by which local residents can make complaints and a process for resolving any such complaints
- How waste associated with the lessons will be responsibly disposed of
- Encouraging users of the pool to utilise sustainable modes of travel
- Reason: In the interests of protecting the amenity of neighbouring residents and to comply with Policies DM20 and DM40 of the City Plan Part Two.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.

2. SITE LOCATION

- 2.1. The application relates to a detached residential dwelling on the southern side of Varndean Gardens. There is a substantial single-storey rear outbuilding along the eastern boundary that contains a swimming pool of approximately 9m in length and 4.5m in width that is accessible via the attached side garage. There are records of a swimming pool being on the site since at least 1990, and aerial photographs show an outbuilding in place since at least 2004.

3. RELEVANT HISTORY

- 3.1. **BH2024/01657** - Certificate of lawfulness for existing use of the swimming pool for the provision of private swimming lessons in addition to its domestic use. Under consideration

4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought for a partial change of use of the swimming pool for the provision of private swimming lessons. The application is retrospective as the lessons already take place between Monday and Thursday for up to two hours in the morning and two hours in the afternoon, during term time. It is understood from the applicant that private swimming lessons first took place in 2014.

5. REPRESENTATIONS

- 5.1. **Nine (9)** letters of objection, summarised as follows:
 - Additional traffic and demand for local parking spaces
 - Harm to neighbouring amenity through noise disturbance
 - Inappropriate location for commercial use
 - Approval would set a precedent
 - Loss of property value

- Application documents are misleading/incorrect
 - Inconsiderate behaviour of pool customers
- 5.2. **Two (2)** letters of support, summarised as follows:
- The lessons so far have not resulted in a harmful impact
 - Conditions should be attached to limit the hours of use and number of students
 - The facility is well suited to children with special educational needs
- 5.3. **One (1)** letter of neutral comment, summarised as follows:
- The lessons have so far not been problematic, however concerns that if the application is approved then the lessons would intensify
- 5.4. Full details of representations received can be found online on the planning register.

6. CONSULTATIONS

- 6.1. **Sports Facilities:** No comment received
- 6.2. **Sustainable Transport:** No objection
Verbal comment - The applicant states that the operational hours are "Monday to Thursday for up to 2 hours in the morning and up to 2 hours in the evening" with a maximum of 5 clients receiving lessons at one time.
- 6.3. The proposed change of use of the swimming pool for private swimming lessons is likely to increase the number of trips to the site, however as the swimming lessons are in a private (domestic/small swimming pool) and with a maximum of 5 clients at one time, the trips to site are unlikely to generate reason for objection. Also, there appears to be space on site (the driveway) for car parking and additional parking can be managed on street.

7. MATERIAL CONSIDERATIONS

- 7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report
- 7.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016);
 - Brighton & Hove City Plan Part Two (adopted October 2022);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);

- Shoreham Harbour Joint Area Action Plan (adopted October 2019).

8. POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP9	Sustainable transport
CP17	Sports provision

Brighton & Hove City Plan Part Two

DM20	Protection of Amenity
DM33	Safe, Sustainable and Active Travel
DM36	Parking and servicing
DM40	Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents:

SPD14	Parking Standards
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9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the principle of the development, the impact upon neighbouring amenity and transport matters.

Principle of Development:

- 9.2. Vardean Gardens is residential in character, and commercial use of the pool has the potential to result in an unwelcome and inappropriate material change to this character, to the detriment of the local neighbourhood. Notwithstanding this, it is recognised that the use of the pool for private swimming lessons has been ongoing for some time so this also, to a degree, forms part of the character of the area. The current application has come about as a result of an ongoing planning enforcement investigation into the site.
- 9.3. The proposal is for swimming lessons to take place between Monday and Thursday during term time, for up to two hours in the mornings and two hours in the afternoons. Lessons are 30 minutes in length and are to have a maximum of five clients which would be restricted by condition. It is not proposed for the pool to be open for general public access in the manner of a public swimming pool.
- 9.4. It is considered that private lessons on the above basis are a relatively modest degree of commercial use that would not unduly affect the residential character of the area and accordingly no objection is raised to the application in principle, subject to amenity and transport considerations set out below.
- ### **Impact on Amenity:**
- 9.5. Policy DM20 of the City Plan Part Two states that planning permission for any development or change of use will not be granted where it would cause material

nuisance and loss of amenity to the proposed, existing and/or adjacent users, residents, occupiers or where it is liable to be detrimental to human health.

- 9.6. It is noted that public representations have raised concerns regarding the impact of the use of the pool for private swimming lessons on the amenity of neighbours.
- 9.7. The pool is 9m by 4.5m in size and is located indoors. Use of the pool for private lessons with a maximum of five clients is considered unlikely to result in a significantly greater level of noise disturbance over that resulting from a normal domestic use of the pool. It is also noted that private lessons, as is proposed, are typically a more controlled environment than general commercial hire that might be used for birthday parties for example.
- 9.8. Comings and goings associated with the private lessons are considered a more likely source of potential impact on neighbouring amenity. However, the pool is accessible from the street via the side garage and so neighbouring windows and garden areas would not be directly exposed to the movements of users reaching and leaving the pool.
- 9.9. The restricted hours and days in which lessons take place and the maximum of five students per lesson would limit the frequency of comings and goings and further reduce the likelihood of there being a significant level of disturbance arising from the use. These are subject to suitably worded conditions securing the above limits.
- 9.10. It is also considered necessary to secure a management plan for the operation, to include details such as:
- How customers will be encouraged to minimise disruption in the area, including noise and parking
 - A means for neighbours to be able to make complaints and a process for resolving these
 - How waste from the lessons such as used swim nappies etc will be responsibly disposed of
 - Any other appropriate measures to minimise the impact of the use on the neighbourhood
- 9.11. On this basis and subject to the recommended conditions it is considered that the proposal would not have a significant harmful impact upon the amenity of neighbours.
- 9.12. It is noted that the Council has separate powers under Environmental Health legislation to investigate and control statutory noise nuisances.

Sustainable Transport:

- 9.13. Policy DM33 requires that new developments are designed in a way that is safe and accessible for all users and encourages the greatest possible use of sustainable and active forms of travel.
- 9.14. The concerns raised in the public representations regarding the transport impacts of the proposal (mainly in terms of on-street car parking) is noted.

- 9.15. The Transport consultee has reviewed the proposals and raised no objection, subject to the operational restrictions outlined previously. On this basis the additional trips generated by the proposal are unlikely to be significant.
- 9.16. The site is located on a residential street which is within a Controlled Parking Zone (CPZ), with restrictions active between 9am to 10am and 2pm to 3pm on weekdays. The lessons would take place outside of these hours and so customers would be able to utilise the available on-street parking.
- 9.17. In terms of more sustainable transport modes, there appears to be space on site to provide a secure cycle storage location for use by customers. There are also bus stops within walking distance of the site, on London Road and Surrenden Road. The management plan outlined above is expected to also set out how the operators will notify customers of the available public transport options and how trips to the site by private car will be minimised.
- 9.18. Accordingly, subject to the recommended conditions it is considered that the proposal is unlikely to have/have had a significant impact in highways terms.

Conclusion:

- 9.19. Subject to the recommendation conditions, it is considered that the proposed use of the existing indoor swimming pool for private swimming lessons would not have a harmful impact on the amenity of neighbouring residents or on the local transport network. No conflict with policies DM20 and DM33 of the City Plan Part Two has been identified.

10. EQUALITIES

- 10.1. Section 149(1) of the Equality Act 2010 provides:
- 1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.