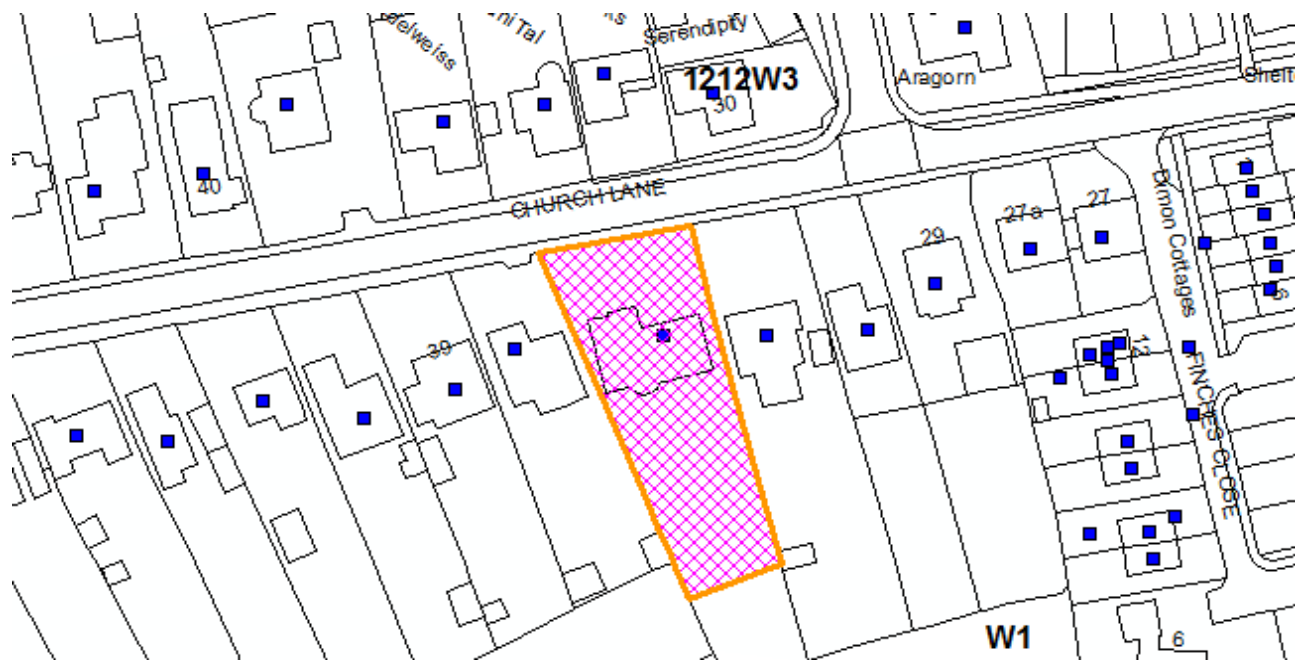


WINCHESTER CITY COUNCIL
PLANNING COMMITTEE

Case No: 22/02679/FUL
Proposal Description: Change of use of property from a domestic residential use to a mixed use for residential purposes and provision of swimming lessons to children
Address: 35 Church Lane, Colden Common SO21 1TW
Parish: Colden Common
Applicants Name: Mr and Mrs Brooks
Case Officer: Liz Young
Date Valid: 28 November 2022
Recommendation: Refuse
Pre Application Advice: Yes

Link to Planning Documents

22/02679/FUL <https://planningapps.winchester.gov.uk/online-applications/search.do?action=simple>



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Reasons for Recommendation

The development is recommended for refusal because it would result in the introduction of a use within a residential area which gives rise to a significant and harmful increase in noise levels and activity. This in turn has an unacceptably harmful impact upon the amenities of neighbouring properties contrary to LPP2 Policies DM17 and DM20 of the Winchester District Local Plan Part 2 – Development Management and Site Allocations and paragraph 185 of the National Planning Policy Framework (2023).

General Comments

The application is reported to Committee due to the number of supporting representations received contrary to the Officer's recommendation.

Amendments to Plans Negotiated

None

Site Description

The application site comprises a detached dwelling and its residential curtilage and is located within the settlement boundary of Colden Common. The site is of a rectangular configuration and extends to approximately 1300m². The house itself is a single storey building, originating from around the 1960s. A swimming pool (with removable glazed enclosure) lies to the rear of the house immediately adjacent to the patio area and appears to have been in place since at least 2007.

The site is adjoined by residential development to the east and west (detached dwellings within plots of a comparable size). Mature trees enclose the rear boundary of the site and open fields lie beyond this. The wider area is predominantly residential.

Proposal

Consent is sought for the continued use of the site for children's swimming lessons. Information which accompanies the application states that lessons take place from 9:30 am to 11:30 am and from 3:30 pm to 7 pm on Mondays to Wednesdays. Only afternoon sessions (3:30 pm to 7 pm) take place on Thursdays and only morning sessions on Fridays (9:30 am to 11:30 am). According to the submitted information, one instructor is present on site at any one time. Parents remain with their children during the lessons. The submitted transport assessment indicates that each lesson runs for a period of 30 minutes and that there would be a maximum of four pupils at one time.

Pool plant / equipment and also changing facilities are both within the main house. Access to the pool is to the side of the dwelling from the front parking area.

Relevant Planning History

Front porch extension; rear ground floor extension replacing existing conservatory; rear first floor dormer extension to include balcony (amended proposal) (22/00609/HOU)
Permitted 22.06.2022

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Consultations

Service Lead – Public Protection (Environmental Protection) – Objection raised:

- Unacceptable adverse impacts upon the amenities of neighbouring residents having regard to the times requested, the noise levels generated from the use and proximity to neighbouring properties
- Existing pool enclosure does not sufficiently mitigate noise impacts
- The submitted noise assessment underestimates the impact on neighbouring properties. The impact from the proposal for the times requested would result in a significant adverse impact

Service Lead – Engineering (Drainage) – No objections raised

Hampshire County Council (Highway Authority) – No objections raised

Representations:

Objection from Colden Common Parish Council

'The removal of the front garden of this property for parking provision is not an appropriate ratio of hard and soft landscaping, is not in keeping with the character of this residential area nor does it respond positively to local context and therefore does not comply with policy DM16.

The parking area proposed does not offer access to or movement within the site in a safe and effective manner. Turning facilities are poor, and commercial use of this front garden for vehicles affects the amenity of the adjacent residents in terms of traffic and noise and therefore does not comply with policy DM18.

Use of this residential property and pool on a commercial basis has an unacceptable adverse effect on neighbouring properties. The applicant states that the pool is heavily used already by the family and friends. Any commercial use will provide no respite from the noise.

The proximity of the pool and the enclosure from neighbouring properties means that any commercial use is unacceptable and does not comply with policy DM17.

It should be noted that this is a retrospective application as this site has been operating on a commercial basis for 18 months. Neighbours have endured a significant amount of distress during this period awaiting an application to be submitted and determined. The level and frequency of noise from both the swimmers and carers and the traffic is not compatible with a residential area.

In addition to lessons the business is advertising private hire, private parties and mermaid parties. If the officer is minded to approve this application, the Parish Council requests
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that this application is determined by the Winchester City Council Planning Committee.'

13 Objecting Representations received from different addresses citing the following material planning reasons:

- Proposal will set an unwanted precedent for similar forms of development
- No identified need for swimming lessons in Colden Common
- Adverse noise impacts to the detriment of living conditions of neighbouring residents
- Noise levels are significantly worse in summer when the pool enclosure is removed
- Harmful impacts on highway safety resulting from increased demand for on road parking and increased use of access
- Inappropriate form of development in a residential area
- The hours and nature of the use presented in the application differs from the uses currently being advertised / undertaken
- Parking provision does not account for vehicles which remain at the property

23 Supporting Representations received from different addresses citing the following material planning reasons:

- The use is a benefit to the local community
- Swimming lessons elsewhere are in high demand
- Classes are limited to four and are generally quiet
- Adequate parking on the site

One neutral comment received:

- It is necessary to establish the impact of parking in the local area as it is not safe to park on the road

Relevant Government Planning Policy and Guidance

National Planning Policy Framework (2023) (NPPF):

Chapters 2, 9, 15

National Planning Practice Guidance

Noise (2019)

Winchester Local Plan Part 1 – Joint Core Strategy (2013) (LPP1):

Policy DS1 – Development Strategy and Principles
Policy MTRA 2 - Market Towns and Larger Villages
Policy CP6 - Local Services and Facilities
Policy CP8 – Economic Growth and Diversification

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Winchester District Local Plan Part 2 – Development Management and Site Allocations
(2017) (LPP2):

Policy DM1 – Location of New Development
Policy DM16 – Site Design Criteria
Policy DM17 – Site Development Principles.
Policy DM18 – Access and Parking
Policy DM20 – Development and Noise

Supplementary Planning Documents

National Design Guide 2019
High Quality Places 2015
Colden Common Village Design Statement 2022
WCC Technical Guidance for Noise (2022)

Principle of development

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and paragraph 47 of the National Planning Policy Framework (NPPF, 2023) requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Policy DS1 of the LPP1 is consistent with the NPPF which states in paragraph 11 that decisions should apply a presumption in favour of sustainable development and that for decision taking this means approving development proposals that accord with an up to date development plan without delay.

The application site lies within the settlement boundary of Colden Common and LPP1 policy DS1 seeks to focus development proposals (including those relating to local services) within such areas on account of their greater level of accessibility. Similarly, LPP1 Policy MTRA2 encourages economic and commercial growth to maintain and improve the shopping, service, tourism and employment roles of settlements including Colden Common. LPP1 Policy CP6 supports proposals for the development of new, extended or improved facilities and services where these comply with the development strategies set out in Policies LPP1 WT1, SH1 and MTRA1.

Policy CP8 seeks to encourage economic prosperity and to promote self employment and that demand may exist for swimming lessons within the local area. Whilst it is acknowledged that comments within the various representations received raise concerns over the fact that there is not an identified need for swimming lessons in the local area, there is no policy requirement to demonstrate a need for new community facilities or local services. The presumption is that such uses should be directed towards built up areas and in this case that requirement would be met.

Having regard to the above, it is acknowledged that there is policy support for the provision of local services within settlement boundaries. However, the application site is within a residential part of the settlement. It will often be the case that introducing commercial uses or services within predominantly residential areas will give rise to a greater potential for noise impacts and harm to local amenity in comparison with established commercial centres. With this in mind consideration would need to be given as to whether the proposal would be an acceptable use having regard to its location so as to ensure compliance with other relevant policies within the Development Plan.

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Assessment under 2017 EIA Regulations.

The development does not fall under Schedule I or Schedule II of the 2017 Environmental Impact Assessment Regulations, therefore an Environmental Impact Assessment is not required.

Impact on character and appearance of area

The application site lies within relatively built up, residential surroundings characterised by detached houses set back from the highway with off road parking to the front. Whilst concerns have been raised in relation to the impact upon the character of the area, the application site is broadly reflective of these characteristics and no operational development has been undertaken to facilitate the change of use. The swimming pool itself was established prior to the change of use and has previously been used in association with the main house. Both the pool and enclosure meet the relevant criteria contained Class E of Part 1 of Schedule 2 of the General Permitted Development Order and the residential use of the pool would therefore be classed as permitted development.

The only notable change resulting from operational development to the character and appearance of the site relates to the additional parking which takes place to the front of the site alongside associated increases in vehicular activity. Whilst such activity could potentially be regarded as harmful in a more rural context, it is considered that the visual impact of an increased number of cars parked at the front of the site is not demonstrably harmful. It is accepted that Church Lane already experiences a relatively high level of vehicular activity with a significant amount of on and off road parking so there is no harm to this wider character in this context to the extent that refusal would be justified on these grounds. As such there would be no conflict with the requirements of LPP2 Policy DM16. However the change to a mixed commercial use will be disruptive to the immediately adjoining properties from the increased comings and goings and so this is considered further below.

Historic Environment

The development does not affect a statutory listed building or structure including setting, Conservation Areas, Archaeology or Non-designated Heritage Assets including setting.

Neighbouring amenity

The WCC Technical Advice Note for Noise sets out that depending upon location, design and size of the premises it is likely that the most significant noise impact will commonly be associated with sport/recreational uses (amongst others). In this case, the nature of the proposed use is such that it gives rise to the potential for increased noise levels resulting from the voices of children, staff and parents alongside additional vehicle movements. The use has the potential for up to 8 children to be on site at one time during session overlaps. This is a particularly significant issue given the proximity to neighbouring residential properties and low levels of background noise.

NPPF paragraph 174 seeks to ensure planning decisions prevent new and existing development from contributing to or being put at unacceptable risk from noise pollution (amongst various other things). Paragraph 185 states that new development should be

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appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions. LPP2 policies DM17 and DM20 reflect these requirements and state that proposals should not cause unacceptable levels of pollution to neighbours by means of noise and would not have an unacceptable impact on human health or quality of life. LPP2 Policy DM20 also requires noise generating proposals to provide an assessment to demonstrate how it prevents, or minimises to an acceptable level, all adverse noise impacts.

In this case the applicant has submitted a noise report, which has been reviewed by the Environmental Protection Officer (EPO). Concern is raised that the assessment within the report uses acoustic parameters that effectively average out the peaks in noise impact from the use (in the main, voices from children, and instructors, and noise from the swimming through the water itself). This approach therefore underestimates the impact on neighbouring properties, as the impact from such non-continuous uses is from the peaks of the noise rather than the 'average' noise level. The report therefore does not enable harmful impacts from increased noise levels to be ruled out.

Due to the proximity between the pool and neighbouring properties the noises associated with the use (which would typically involve children and adults with loud voices along with teachers giving instruction) would be very clearly heard from neighbouring properties. As ways of attracting attention, they are often louder than background noise levels and unpredictable in their occurrence. This has been established from recent noise monitoring undertaken by WCC Environmental Protection from within a neighbouring property.

The nature of the pool enclosure is also such that it will not serve to adequately mitigate noise impacts even if it were to remain closed.

As the proposed use and therefore any noise disturbance including the additional comings and goings of car trips, be that continuous or intermittent, would be permanent, it would represent a significant noise intrusion within a quiet residential area. Overall, having regard to the frequency and duration of use, the relatively low background noise and the proximity to neighbouring residents (and also the limited scope to control noise associated with the use) is such that it is concluded that the proposal would give rise to an unacceptably harmful noise impact on the local residential amenity contrary to LPP2 policies DM17 and DM20 and paragraph 174 of the NPPF.

Sustainable Transport

With regards to overall levels of vehicular activity, the submitted Transport Assessment states that for each 30 minute swim session there would be a maximum of 5 two way movements (five arrivals and five departures), although it is stated that in reality this would be lower as many would typically arrive on foot. It states that 10% of clients would also typically car share. On the busiest day (Monday) the document states that the use would generate up to 42 vehicle movements overall.

With regards to parking there are 9 off road spaces at the front of the site which is considered sufficient to accommodate the typical parking demand of (2 X 2 pupils and one instructor car).

Hampshire County Council Highways have been consulted and raise no objections to the development. They acknowledge that the off road parking is potentially not sufficient for all
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users at the busiest times and that some visitors may park on the road either through choice or necessity. However, they state that provided there is a commitment to encourage on-site parking, an objection on highway grounds would not be sustainable as there would be no detriment to highway safety. Highways also note in their further comments of 18 October the following points:

- The use is existing and there is no evidence of accidents being caused.
- The road is easily wide enough for two-way traffic and as such the overtaking of temporarily parked vehicles.
- There are no yellow line parking restrictions on Church Lane. Therefore, anyone could theoretically park roadside without interference from others.
- The visibility from the site access is very good.
- The busy periods are short-term occurrences outside of peak network hours.

Highways also confirmed that they undertook a site visit at the time of a lesson changeover to observe traffic movements to and from the site and have confirmed that this does not change their views on the proposal.

Whilst it is acknowledged that Parish and also third party concerns have been raised in relation to parking and access provision, alongside highway safety impacts it is concluded that a refusal on the grounds of highway safety would not be sustainable in this instance.

Overall, it is therefore concluded that the scale of the use and the nature of parking and access provision are such that the development allows for access to, and movement within, the site in a safe and effective manner as required by LPP2 Policy DM18.

Ecology and Biodiversity

The proposal has no impact as it is not Development within, bordering or in close proximity to a European Protected Site (i.e., River Itchen SAC, The Solent SAC, SPAs, Ramsar Sites) or is not overnight accommodation affecting Nitrates.

There are no notable ecological interests present within or immediately adjacent to the site and the development will therefore not give rise to any adverse impacts upon biodiversity.

Sustainable Drainage

The application site does not lie within a flood zone or within a critical drainage area. The change of use does not involve any form of operational development and will not impact upon surface or foul water disposal from the site. No objections have been raised by the Drainage Engineer and it is therefore considered that the development does not give rise to any adverse impacts upon the water environment.

Equality

Due regard should be given to the Equality Act 2010: Public Sector Equality Duty. Public bodies need to consciously think about the three aims of the Equality Duty as part of the process of decision-making. The weight given to the Equality Duty, compared to the other factors, will depend on how much that function affects discrimination, equality of opportunity and good relations and the extent of any disadvantage that needs to be

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addressed. The Local Planning Authority has given due regard to this duty and the considerations do not outweigh any matters in the exercise of our duty.

Planning Balance and Conclusion

Policy CP8 seeks to encourage economic prosperity and to promote self employment with such considerations weighing in favour of the proposed development along with CP6. However, this consideration does not outweigh the harmful impact which has resulted from the introduction of an uncharacteristic commercial use within a road of residential properties, to the detriment of the living conditions of the occupants of neighbouring residential properties.

Overall it is concluded that the use is incompatible with neighbouring uses and therefore is not considered to be a suitable location for the development having regard to relevant policies relating to noise disturbance. The proposal is therefore recommended for refusal due to the overriding impact of the noise disturbance.

Recommendation

Refuse for the following reason:

1. The change of use results in a significant increase in noise levels in a residential area where background noise levels are very low and within close proximity to neighbouring residents. Having regard to this and the limited scope to manage any noise impacts associated with the use, it is considered that the proposal would have an unacceptably adverse impact upon the living conditions of neighbouring residents contrary to LPP2 policies DM17 and DM20 and paragraph 174 of the NPPF.

Informatives:

1. In accordance with paragraph 39 of the NPPF (2023), Winchester City Council (WCC) take a positive and proactive approach to development proposals, working with applicants and agents to achieve the best solution. To this end WCC:

- offer a pre-application advice service and,
- update applicants/agents of any issues that may arise in the processing of their application, where possible suggesting alternative solutions.

In this instance further information was requested from the agent.

2. The Local Planning Authority has taken account of the following development plan policies and proposals:-

Winchester Local Plan Part 1 – Joint Core Strategy (2013) (LPP1):

DS1 – Development Strategy and Principles
Policy MTRA 2 - Market Towns and Larger Villages
Policy CP6 - Local Services and Facilities

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Winchester District Local Plan Part 2 – Development Management and Site Allocations
(2017) (LPP2):

Policy DM1 – Location of New Development
Policy DM16 – Site Design Criteria
Policy DM17 – Site Development Principles.
Policy DM18 – Access and Parking
Policy DM20 – Development and Noise

3. This permission is refused for the following reasons:

The development is not in accordance with the Policies and Proposals of the Development Plan set out above, and other material considerations have sufficient weight to justify a refusal of the application. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning permission should therefore be refused.