

<u>No:</u>	BH2021/03532	<u>Ward:</u>	Westbourne Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	1 Courtyard Lane Hove BN3 4BP		
<u>Proposal:</u>	Partial change of use of domestic swimming pool for private swimming sessions, swimming lessons, and scuba classes. (Retrospective) (Varied hours of use)		
<u>Officer:</u>	Michael Tucker, tel: 292359	<u>Valid Date:</u>	01.10.2021
<u>Con Area:</u>	None	<u>Expiry Date:</u>	26.11.2021
<u>Listed Building Grade:</u>	<u>EOT:</u>		
<u>Agent:</u>	Whaleback Planning And Design Whaleback Planning And Design The Old Bank 257 New Church Road Hove BN3 4EE		
<u>Applicant:</u>	Philippa Stephen-Martin Care Of Whaleback Planning And Design The Old Bank 257 New Church Road Hove BN3 4EE		

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 Plan	SITE LOCATION PLAN		1 October 2021
Other	Email - Schedule of Hours		18 January 2022

2. The commercial use of the swimming pool hereby approved shall operate in strict accordance with the limitations set out below:

- Monday, Tuesday and Wednesday - between 15:30 and 18:30, maximum five 30-minute swimming lessons which comprise one teacher and either one or two students
- Thursday and Friday - between 15:30 and 18:30, maximum three private swimming sessions, each session no more than 7 adults, or maximum group size of 6 if a mixed ground of adults and children.
- Saturday - between 10:00 and 13:30, maximum six 30-minute swimming lessons which comprise one teacher and either one or two students.
- Sunday (once per month) - between 09:30 and 14:30, monthly underwater scuba class which comprise 1-2 teachers and a maximum of 9 students.

Reason: As this is fundamental to the acceptability of the proposal and in order to protect neighbouring properties from noise disturbance and to comply with Policy SS1 of the Brighton and Hove City Plan Part One and Policy DM20 of the Brighton and Hove City Plan Part Two.

3. Within three (3) months of the date of this permission, a full Management Plan for the premises shall be submitted to the Local Planning Authority for approval in writing. The Management Plan will set out how the commercial use of the swimming pool shall operate and how noise and disturbance arising from this use shall be minimised. The premises shall thereafter operate in strict accordance with the approved Management Plan.

Reason: In order to protect neighbouring properties from noise disturbance and to comply with Policy DM20 of the Brighton and Hove City Plan Part Two.

4. Within three (3) months of the date of this permission, a Travel Plan for the premises shall be submitted to the Local Planning Authority for approval in writing. The Travel Plan shall thereafter be fully implemented in accordance with the approved details.

Reason: To ensure the promotion of safe, active and sustainable forms of travel and comply with policies TR4 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One.

5. Within three (3) months of the date of this permission, details of secure cycle parking facilities for visitors to the development hereby permitted shall be submitted to the Local Planning Authority for approval in writing. The approved facilities be retained for use at all times.

Reason: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with policy TR14 of the Brighton & Hove Local Plan and SPD14: Parking Standards.

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 two-storey dwelling on the eastern side of Courtyard Lane. The garden area of the site includes a swimming pool of approximately 10m length and 5m width. The swimming pool was formerly within the plot of no. 53 New Church Road.
- 2.2. The building is not listed and is not located within a Conservation Area.

3. RELEVANT HISTORY

- 3.1. **BH2012/02617** - Extension of first floor balcony. Refused

- 3.2. **BH2006/01019** (53 New Church Road) - New dwelling house to replace existing pool house. Amendments to previously approved application BH2005/01008FP. Approved

4. APPLICATION DESCRIPTION

- 4.1. Planning permission is sought for a partial change of use of the swimming pool for private swimming sessions, swimming sessions and scuba classes. The application is part-retrospective as non-domestic use of the swimming pool has already commenced.
- 4.2. The application has been amended since the initial submission to reduce the proposed hours of non-domestic use.

5. REPRESENTATIONS

- 5.1. The application was first publicised with an expiry date for representations of 16th November.
- 5.2. **Fifteen (15)** letters of objection were received:
- Noise disturbance from users of the pool as well as comings and goings, above that would be expected from a private family pool
 - Commercial use out of character for residential area
 - Pool has been operating without planning permission
 - The pool takes up a large portion of the rear garden space and is in close proximity to several blocks of flats
 - The applicant should closely supervise the sessions
 - Security concerns with large numbers of people moving to and from the site
 - No toilets for customers to use
 - Those in favour are not local residents
 - Loss of property value
 - Additional traffic
 - Overdevelopment
 - The site has been listed on AirBnB in the past
 - Commercial use has been ongoing for longer than stated in the application submission
- 5.3. **Sixty-four (64)** letters of support were received:
- Beneficial community asset
 - Useful for those uncomfortable in larger pools
 - Pool is safe, clean and well run
 - Scuba sessions result in little noise
 - Shortage of pools within Brighton & Hove
- 5.4. **Four (4)** letters were received making no objection.

Following negotiations to reduce the hours of proposed commercial use, the application was subsequently re-advertised, with an expiry date of 7th March. At the time of writing;

5.5. A further **twelve (12)** letters of objection have been received:

- Additional traffic
- Loss of property value
- Noise disturbance
- Inconsiderate of neighbours
- No disabled access or toilets
- Proposal not suitable for residential area
- Swimming parties late into night with loud music

5.6. A further **nine (9)** letters of support have been received:

- Useful for those uncomfortable in larger pools
- Pool is safe, clean and well run
- Noise will not be excessive

6. CONSULTATIONS

6.1. **Southern Water:**

If the pool produces filter backwash water this would need to be discharged to the public foul sewer. The rate and times of discharge of this water to the sewer and of the contents of the pool if these need to be drained to the sewer, would have to be agreed with Southern Water.

6.2. Should the Local Planning Authority be minded to grant planning permission for this development we request that the following condition is attached to the consent: The applicant should ensure that the Trade Effluent discharge licence has been obtained, before the connection to the public sewerage network can be approved.

6.3. **Sports Facilities:** No comment received

6.4. **Environment Agency:** No comment received

6.5. **Environmental Health:** No comment received

6.6. **Sustainable Transport:** Verbal comments

Access to the site is down a private lane and this raises no planning concerns.

6.7. Diving training could require the transportation of relatively heavy equipment - consideration should be given to providing quiet trolleys and old blankets to muffle sound from the transportation of this equipment.

6.8. Cycle parking for visitors should be secured by condition.

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 Local Plan 2005 (retained policies March 2016);
 - 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);
- 7.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

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 and Hove Local Plan (retained policies March 2016):

TR7	Safe Development
TR14	Cycle access and parking
SU10	Noise Nuisance
QD27	Protection of amenity

Brighton & Hove City Plan Part Two (Proposed Submission October 2020):

Policies in the Proposed Submission City Plan Part 2 do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23 April 2020, when the Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications. The weight given to the relevant CPP2 policies considered in determining this application is set out in the Considerations and Assessment section below where applicable.

DM20	Protection of Amenity
DM33	Safe, Sustainable and Active Travel
DM35	Travel Plans and Transport Assessments
DM36	Parking and Servicing
DM40	Protection of the Environment and Health - Pollution and Nuisance

Supplementary Planning Documents:

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. The proposal is for a partial change of use of the existing domestic swimming pool within the rear garden of the site, to allow for the introduction of an element of commercial use of the pool. This commercial use would comprise privately booked swimming sessions, swimming lessons and scuba diving instruction.
- 9.3. Use of the pool in a part-commercial capacity has been ongoing for some time. The application states that scuba lessons have been taking place on a Sunday once per month for several years, and it is understood that the pool has been offered to visiting members of the public since April 2021.
- 9.4. As originally submitted (and as it is understood to have already been occurring), the commercial use for swimming sessions, lessons and scuba instruction would have totalled 33.5 hours over six days per week (excluding Thursdays), often extending into the early evening and with up to eleven people on site at a time.
- 9.5. This was considered by Officers to be unacceptable in terms of both the duration and intensity of the proposed commercial elements, and the resulting impact on residential amenity. Accordingly, a reduced proposed schedule has been negotiated, namely:
- Monday, Tuesday and Wednesday - between 15.30 and 18.30, maximum five 30-minute swimming lessons which comprise one teacher and either one or two students;
 - Thursday and Friday - between 15.30 and 18.30, maximum three private swimming sessions, each session no more than 7 adults, or maximum group size of 6 if a mixed ground of adults and children;
 - Saturday - between 10.00 and 13.30, maximum six 30-minute swimming lessons which comprise one teacher and either one or two students; and
 - Sunday (once per month) - between 09.30 and 14.30, monthly underwater scuba class which comprise 1-2 teachers and a maximum of 9 students.
- 9.6. This equates to a total of 18.5 hours per week, plus the monthly scuba class. It should be noted that the lessons and sessions total only 16.5 hours, with the remaining 2 hours to allow for the cleaning of the pool between each class.
- 9.7. No objection is raised in principle to the introduction of an element of non-domestic use of the swimming pool, which would not in principle contravene adopted planning policies, and would go some way towards furthering the aims of policy CP17 of the City Plan Part One (to increase participation in sports and physical activity) by extending the swimming facilities open to members of the public that are available in the city.

- 9.8. Notwithstanding this, an assessment of the impact upon neighbouring amenity and sustainable transport matters will also be necessary, as below.

Impact on Amenity:

- 9.9. Policy QD27 of the Brighton & Hove Local Plan 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.
- 9.10. The site is located within a predominantly residential area, surrounded on all sides by residential uses. The existing outdoor swimming pool is established on site, having been in situ for a number of decades. Outdoor swimming pools, by their nature, result in some level of noise and disturbance for neighbours. This is the case even for outdoor pools solely in domestic use, with splashing and raised voices to be expected.
- 9.11. This being the case, it is considered that the proposed schedule of commercial use, as amended and subject to the recommended conditions, would not result in an unacceptable harmful impact upon neighbouring amenity compared to the existing solely domestic use of the pool.
- 9.12. The proposed amended schedule limits commercial activity on site to the late afternoon on weekdays and late morning on Saturdays, plus the monthly scuba class on a Sunday morning. Swimming classes on Monday/Tuesday/Wednesday/Saturday would be limited to maximum of 3 persons using the pool at once, with the private sessions on Thursday and Friday limited to 7 persons.
- 9.13. A draft Management Plan has also been provided, detailing measures such as active site supervision and adherence to ground rules such as no running/diving. A condition is recommended to secure the submission to and approval by the LPA of a full Management Plan, which would also address the movement of heavier equipment for the monthly scuba classes. It is considered that this would help ensure the impact on neighbouring residents is minimised.
- 9.14. It is considered that the proposed classes are unlikely to result in a significant increase in noise disturbance or general activity on site, due to the limited number of attendees (up to 2 pupils with 1 teacher) and the timing of the classes during the late afternoon. The private sessions on Thursday and Friday have the potential for a greater impact due to the greater number of allowed attendees (up to 7) and the differing nature of a private swimming session as opposed to an instructed class, however it is considered that this harm would not be so significant as to warrant refusal, in view of the limited time window for these sessions and the supervisory measures that can be secured by condition as part of the Management Plan.
- 9.15. It is considered that the monthly scuba class is unlikely to result in a significant impact in terms of noise or disturbance, due to the nature of scuba activities and

the infrequent occurrence of this session. The handling of heavier/noisier equipment will need to be addressed within the full Management Plan.

- 9.16. In terms of comings and goings it is recognised that, as the sole access to the swimming pool runs past 53 New Church Road and Coastal Place and is shared by 53A & 53B New Church Road, there is the potential for disturbance to be generated in this regard. It is expected that the full Management Plan will address this aspect of the proposals, as will a Travel Plan as set out below.

Sustainable Transport:

- 9.17. The site is accessed from New Church Road via Courtyard Lane, which is a private road.
- 9.18. No on-site car parking is therefore available for visitors to the pool and no objection is raised to this. The site is located close to local bus stops allowing for sustainable modes of transport.
- 9.19. The site is accessible by cycle, however no dedicated cycle parking is proposed. The applicant has stated that it is possible for visitors to leave their cycles within the garden area in a relatively secure environment. It is however considered that covered, secure cycle parking should nevertheless be provided on site and this can be secured by condition.
- 9.20. The proposal has the potential to significantly alter the number and nature of trips to and from the site, and it is therefore considered appropriate to secure a Travel Plan by condition to encourage sustainable transport to and from the site and manage use of the private lane.

Other Considerations:

- 9.21. Representations from members of the public have raised concerns regarding potential non-compliance with the proposed hours of use and supervisory measures from the Management Plan, as well as disturbance arising from late night parties on the site.
- 9.22. Non-compliance with planning conditions would be a matter for the Planning Enforcement team. There is an open Planning Enforcement investigation into the site (which has brought about this application) and were the measures to be secured (such as the hours of use, number of attendees, site supervision) not to be complied with then enforcement action could be taken as appropriate.
- 9.23. This permission for partial commercial use of the pool would be limited to the hours and intensity described. Commercial activity outside of these limits would be unauthorised. This permission would also not prejudice other powers available to the Council to address noise disturbance, such as under relevant Environmental Health legislation.

Conclusion:

- 9.24. No objection is raised in principle to the introduction of an element of commercial use to the swimming pool on site. Whilst some impact would likely result for neighbours, it is considered that the reductions made to the proposed hours and

intensity of the commercial use, in tandem with the supervisory measures that can be secured via a Management Plan, have enabled this to be mitigated to an acceptable level. Sustainable transport matters can be addressed via a Travel Plan.

10. EQUALITIES

None identified

11. CLIMATE CHANGE/BIODIVERSITY

- 11.1. The proposal would make for continued use of an existing site and pool which has been in place for some decades. Sustainable modes of transport can be encouraged via a Travel Plan.

