

<b><u>No:</u></b>	<b>BH2022/01927</b>	<b><u>Ward:</u></b>	<b>Patcham Ward</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>3 Sunnysdale Avenue Brighton BN1 8NR</b>		
<b><u>Proposal:</u></b>	<b>Change of use from indoor swimming pool ancillary to residential dwelling to indoor swimming pool in mixed commercial and residential use (Sui Generis).</b>		
<b><u>Officer:</u></b>	Michael Tucker, tel: 292359	<b><u>Valid Date:</u></b>	24.06.2022
<b><u>Con Area:</u></b>	N/A	<b><u>Expiry Date:</u></b>	19.08.2022
<b><u>Listed Building Grade:</u></b>	N/A	<b><u>EOT:</u></b>	
<b>Agent:</b>			
<b>Applicant:</b>	Mrs Jo Harvey 3 Sunnysdale Avenue Brighton BN1 8NR		

## 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 **REFUSE** planning permission for the following reason:
- 1.2. The commercial use of the swimming pool, the frequency and intensity of which could not be controlled through planning conditions, has the potential to significantly alter the residential character of the area, in addition to significantly increasing on-site activity and comings and goings to the detriment of the amenity of nearby residents. The application furthermore has failed to demonstrate that there would not be a significant increase in trip generation and overspill car parking demand as a result of the commercial use of the pool. The application is therefore contrary to policies QD27 and TR7 of the Brighton and Hove Local Plan, policy CP9 of the Brighton and Hove City Plan Part One and policy DM20 of the emerging Brighton and Hove City Plan Part Two.

### Informatives:

- 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.
- This decision is based on the drawings received listed below:

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Proposed Drawing	2018/HAR/01	A	14 June 2022
Location Plan			14 June 2022

## 2. SITE LOCATION

- 2.1. The application relates to a single-storey residential dwelling (C3) on the western side of Sunnydale Avenue. The site includes an indoor swimming pool ancillary to the main dwelling within a single-storey outbuilding within the rear garden of the property.
- 2.2. It is noted that the outbuilding as-built is larger and of a different internal layout than was shown on the approved drawings under planning permission (BH2018/02661).

## 3. RELEVANT HISTORY

- 3.1. **BH2018/02661** - Erection of a single storey outbuilding to accommodate swimming pool Approved

## 4. APPLICATION DESCRIPTION

- 4.1. The current application seeks planning permission for a change of use of the rear indoor swimming pool from being ancillary to the residential dwelling to a mixed residential and commercial use. The application is retrospective as commercial use of the pool is already taking place.

## 5. REPRESENTATIONS

- 5.1. **Three (3)** letters of objection have been received raising the following points:
  - Additional traffic associated with the commercial use of the pool unable to be controlled through planning conditions
  - Inconsiderate parking from customers
  - There are other pools in Brighton & Hove suitable for SEN children
  - Commercial use of the pool has changed the character of the area
- 5.2. **Eleven (11)** letters of support have been received raising the following points:
  - Valuable local amenity to provide swimming lessons
  - The pool is suitable for SEN lessons whereas larger pools are not
  - The pool is safe and clean
  - Customers are advised to park considerately and be aware of neighbours

## 6. CONSULTATIONS

- 6.1. **Environment Agency:** No comment received
- 6.2. **Sustainable Transport:** Objection  
The absence of trip generation/traffic generation and parking survey and accumulation data and assessments in support of this planning application means the LHA is unable to fully assess the impact of the development proposal

from a transport and highways perspective, particularly in relation to the potential vehicle trip generation and subsequent on-street overspill parking demand, which is expected to affect the site's surrounding residential streets.

- 6.3. The LHA requests that a Transport Statement is submitted prior to determination. The Transport Statement should set out the site's existing residential trip generation, the proposed residential and commercial use multi-modal trip generation, the net increase in trips forecast, the site's hours of operation, timetable information, the expected on-street overspill parking demand expected to occur and demonstration that the site's parking demand can be accommodated in the surrounding street network without impacting on-street capacity or existing residential parking amenity.
- 6.4. The applicant is advised to consider commissioning a parking beat survey (in line with the Lambeth Methodology) to demonstrate there is enough residual capacity in the streets within proximity of the site to accommodate the forecast additional parking demand generated by the commercial use. The parking beat survey data, parking accumulation calculation and trip generation should be included in the Transport Statement requested by the LHA.
- 6.5. Notwithstanding this objection, if planning permission is granted, conditions should be attached to secure details of cycle parking for visitors, blue badge parking and a Travel Plan.
- 6.6. **Southern Water:**  
The application contains a proposal for a swimming pool for commercial/public use. 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.
- 6.7. 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.
- 6.8. **Sports Facilities:** No comment received

## 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):

The Inspector published her Final Report into the Examination of the City Plan Part Two on 19 July 2022. The Report is a material consideration. The Inspector has concluded that with her recommended changes (the schedule of changes as appended to the Report) that the Plan is sound and can be adopted. The Inspector's report concludes the examination of City Plan Part Two. City Plan Part Two policies, as amended by the Inspector's schedule of Main Modifications, can be afforded significant weight but they will not have full weight until the City Plan Part Two is formally adopted.

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:

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. The proposal is for a change of use of the existing domestic indoor swimming pool within the rear garden of the site, to allow for a mixed commercial and ancillary residential use of the pool.
- 9.3. Sunnydale Avenue is wholly residential in character, and it is considered that the introduction of commercial use of the swimming pool has the potential to result in an unwelcome and inappropriate material change to this character, to the detriment of the local neighbourhood.
- 9.4. Paragraph 55 of the NPPF states that "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions".
- 9.5. Matters such as the frequency and intensity of the commercial use could, at least in theory, be limited to an acceptable level through the use of planning conditions. For example, the hours during which commercial activity could take place and the maximum number of people on site during the periods of commercial activity could be restricted by conditions.
- 9.6. However, planning conditions must comply with each of the six tests set out in national planning guidance (NPPF para. 55 and PPG ref: 21a-003-20190723).
- 9.7. Of key importance are tests 4 (which requires planning conditions to be 'enforceable') and 6 (which requires planning conditions to be reasonable in all other respects). It is considered that, in a case such as this where a pool is proposed to be in mixed residential and commercial use, in practice it would not be possible to reliably distinguish between commercial use of the pool and ancillary residential use (upon which it would not be reasonable to place the same limits as the commercial use). Such conditions would therefore not be enforceable, and moreover a blanket limitation on the use of the pool to restrict both residential and commercial activity would not be reasonable.
- 9.8. As a result, it is considered that conditions cannot be attached to limit matters such as the hours of operation or maximum occupancy of the commercial use of the pool. Without these conditions, recommending approval would be akin to granting planning permission for unfettered commercial activity of the pool, and it is considered that this would have the potential to result in a significant harmful change in the character of the area, as well as a harmful impact upon the amenity of neighbours and the local highways network as set out in subsequent sections of this report.
- 9.9. The benefits of the proposals are acknowledged, including the provision of a suitable facility for those with Special Educational Needs (SEN) to learn to swim. The availability of the pool to wider public use would also 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. The stated intentions of the applicant with regard to the timings of lessons and number of users is also recognised, however as set out above were the application to be approved there would be no instrument by which to ensure that the commercial use of the pool does not exceed this in the future and this cannot therefore be given more than very limited weight in the planning balance.

- 9.10. It is considered that these benefits do not outweigh the harm identified above, and it is therefore considered that the proposed change of use cannot be supported in principle.

**Impact on Amenity:**

- 9.11. Policy QD27 of the Brighton & Hove Local Plan and emerging Policy DM20 (which can be given more weight than QD27) 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.
- 9.12. Use of the pool itself is considered unlikely to result in harmful levels of noise disturbance for neighbours, given that the pool is located indoors.
- 9.13. Concern is however held regarding the potential for comings and goings associated with the commercial use of the pool to result in a significant increase in activity on site, including movements from the highway to the rear garden which would likely utilise the side passage in proximity to the northern boundary. As set out previously, conditions cannot be attached to mitigate for these concerns.

**Sustainable Transport:**

- 9.14. As identified previously, the site is located on a residential street, and is not within a Controlled Parking Zone.
- 9.15. Concern is held that the commercial use of the pool has the potential to significantly increase trips to and from the site and associated traffic numbers. The inability to control the commercial use through planning conditions compounds this concern.
- 9.16. The site contains limited on-site car parking, and it is noted that public representations have raised concerns regarding the number of additional vehicles parked on the road associated with the commercial use of the pool.
- 9.17. The application does not include any reports (such as a Transport Statement and parking beat survey) to attempt to quantify the vehicle trip generation and subsequent on-street overspill parking demand that the development would cause, and whether there is capacity on-street for this. It should, in any case, be noted that such quantification would not be reliable moving forwards, given that the frequency and intensity of the commercial use (and hence its generated trips) would not be able to be controlled by planning conditions.

- 9.18. Accordingly, Officers share the view of Highways that the development has failed to demonstrate that there is currently no unacceptable impact in highways terms, and furthermore that were the application to be approved it is considered that the development has the potential to result in a significant further impact upon local parking availability due to increased vehicular trips associated with the commercial use of the pool.

**Conclusion:**

- 9.19. It is considered that the proposed change of use cannot be supported in principle, as the extent of the commercial use could not be satisfactorily controlled by condition and unrestricted commercial use of the pool would result in a detrimental change to the character of the area and a harmful impact upon neighbouring amenity. Furthermore, it has not been demonstrated that there would not be a harmful impact upon the availability of car parking in the local area.

**10. EQUALITIES**

- 10.1. The swimming pool provides a facility for swimming lessons, including for those with SEN or other needs for whom a public pool may not be suitable. It is however understood that the swimming pool is not wheelchair accessible.

**11. CLIMATE CHANGE/BIODIVERSITY**

No issues identified.

