

General Development Applications

(5/f) Application No: PAP/2023/0117

89 - 91, Main Road, Austrey, Atherstone, CV9 3EG

Variation of condition no: 4 of planning permission PAUSAV/0602/96/FAP (PAP/1996/3856) dated 14/08/1996 relating to use of swimming pool limited to clients covered under The Public Sector Equality Duty (PSED) and specifically with reference to section 149 of the Equality Act 2010., for

Mr & Mrs Hames

1. Introduction

1.1 This application is reported to the Board for determination at the discretion of the Head of Development Control given its past interest in the site and the outcome of a recent planning appeal.

2. The Site

2.1 This is a large detached residential property on the north side of Main Road set between another residential property to the west and the Austrey Baptist Church to the east. There is residential property and the village shop on the opposite side of the road. The property has a large rear curtilage with a number of outbuildings. It has also been extended.

2.2 The proposal relates to the use a swimming pool which occupies one the outbuildings referred to above.

2.3 There is a vehicular access to the house here off Main Road, but the proposed access to the building used for the pool is via a private single carriageway track running south at the rear of other frontage properties, towards Flats Lane. This Lane is a private access track leading to the fields beyond to the east. It joins Main Road immediately to the south of number 99 Main Road. Its' frontage is at the rear of the pavement and its' side range directly faces Flats Lane itself. There are garage doors in this elevation as well as a window, understood to be the front widow to the kitchen/dining room, together with a door. Another residential property - number 93 – backs onto the private track.

2.4 This track also hosts a public footpath – the T142 - which runs from Main Road to the gate at the end of the track, before continuing in the adjacent field.

2.5 A location plan is attached at Appendix A which illustrates these features.

3. Background

3.1 The outbuilding the subject of this application was granted permission in 1997 and the Notice is attached at Appendix B. Condition 4 limits the use of the pool for, “purposes incidental to the enjoyment of the dwelling house known as Charity House, 89 Main Road Austrey”. This permission was taken up resulting in the construction of the building, housing the swimming pool.

3.2 In September 2021, an appeal was allowed for the conversion of another outbuilding at the rear of 89/91 Main Road to a single dwelling. The appeal letter is at Appendix C and the plan is at Appendix D. Access to this was approved using the private access track and Flats Lane onto Main Road as described above. One of the conditions attached to that decision relates to the access – Condition 1.

3.3 In September 2022, planning permission was refused for a variation of Condition 4 of the 1997 consent as set out above, so as to allow “community use” of the pool as well as for private purposes. This additional “community use” was proposed for the following time periods:

- between 1000 and 1400 hours as well as between 1630 and 1800 on Mondays,
- between 1000 and 1215 hours as well as between 1300 and 1400 on Wednesdays and
- between 1000 and 1400 on Fridays.

3.4 The Refusal Notice is at Appendix E

3.5 An appeal was lodged, but this was dismissed by letter dated 3/2/23. This is at Appendix F

3.6 Austrey Baptist Church is a Grade 2 Listed Building – its description is at Appendix G.

3.7 Number 99 Main Road is also a Grade 2 Listed Building – its description is at Appendix H.

4. The Proposals

4.1 The present application seeks to vary Condition 4 of the 1997 planning permission.

4.2 In this case, the applicant is proposing the following wording:

“The swimming pool hereby approved shall only be used for purposes incidental to the enjoyment of the dwelling known as Charity House, 89 Main Road, Austrey together with its limited community use for private lessons during the days and hours set out in the following Schedule and in accordance with the provisions contained in Section 149 of the Equality Act 2010.

The Schedule:

Use between 1000 and 1200 hours on Mondays, Wednesdays and Fridays, with each lesson limited to a maximum of three people based on a 45-minute lesson and a 15-minute change over period.

Reason: In the interests of highway safety and to reduce adverse impacts on the residential amenity of neighbouring residential occupiers”.

4.3 For the benefit of the Board – a copy of Section 149 of the 2010 Act is attached at Appendix I.

4.4 The 2023 appeal case considered the hours as set out in paragraph 3.3 above. In terms of vehicle usage during those hours, the Board and the appeal Inspector dealt with the case on the basis of 154 two-way vehicle movements a week concentrated into three days, leading to an average of some 50 two-way movements on those days. The applicant considers that the current proposal would give rise to 36 two-way movements a week – concentrated into the same three days, giving an average two-way movement figure of 12 per day.

4.5 The applicant's case for the revised application is set out in full as Appendix J.

5. Consultations

Warwickshire County Council as Highway Authority – No objection (see Appendix K)

Warwickshire County Council (Public Rights of Way) – No objection

AD (Leisure and Community Development) - Information is provided (see Appendix L)

Environmental Health Officer – No objection

6. Representations

Austrey Parish Council – It has lodged an objection based on the following matters:

- There will still be a large number of vehicles using the track and access
- Visibility is poor and the track is only single carriageway
- There is no explanation of why the existing house access cannot be used
- How would emergency vehicles access the pool
- Other locations offer similar facilities with dedicated facilities

The full letter is at Appendix M

There have been 12 letters of objection received. These refer to the following matters:

- Increased traffic movements using an inadequate track access and junction onto Main Road,
- Poor visibility at that junction – accidents have occurred – and limited width
- The track is used by walkers
- How would any permission be enforced?
- There are other facilities in nearby towns which have the appropriate specialist equipment
- There are concerns as to whether the pool meets the appropriate safety and building specifications for “public” use
- Road safety concerns
- The loss of residential amenity for neighbouring occupiers because of the increased use of the track
- There is no benefit to the village

One letter of support has been submitted

Following clarification of the proposal as set out in Appendix I, re-consultation has taken place with the Parish Council and the occupiers of the properties particularly identified by the Inspector. Objections have been received from the residents, referring again to the matters raised above.

7. Development Plan

North Warwickshire Local Plan 2021 – LP1 (Sustainable Development); LP2 (Settlement Hierarchy), LP15 (Historic Environment), LP21 (Services and Facilities) and LP29 (Development Considerations)

Austrey Neighbourhood Plan 2017 – AP3 (Views) and AP8 (Five Minute Walkable Neighbourhood)

8. Other Material Planning Considerations

The National Planning Policy Framework - (the “NPPF”)

National Planning Practice Guidance

The Public Sector Equality Duty

The Appeal Decision – APP/R3705/W/22/3307971

9. Observations

a) Introduction

9.1 This application should be treated afresh by the Board. However, the very recent appeal decision is considered to be a material planning consideration of substantial weight in the assessment of the final planning balance. This is because it deals with a very similar proposal where the issues – both benefits and harms – are the same in nature and when there has been no change in the physical arrangements at the site, nor in the planning policies which are the most important in the determination of the case.

9.2 The applicant has responded to that decision through the submission of this fresh application. He considers that the changes now included, would be of sufficient standing to outweigh the reasons for the dismissal of that appeal. These changes are:

- A reduced number of “customers”, but including those with protected characteristics
- A reduction in the overall hours for such use from 13 to 6 per week
- >These hours being limited to 1000 to 1200 hours, rather than extending to 1400 and late afternoons on one day
- A reduction in traffic generation from 154 two-way movements a week to 36.

9.3 The Inspector considered that there were two main issues in dealing with the recent appeal case – the impact on the living conditions of occupiers of neighbouring properties particularly with regard to the noise together with other effects of traffic and secondly, the impact of that traffic on highway and pedestrian safety at the access of Flats Lane onto Main Road. This report will review these two issues in light of the revised proposal. It will then look at other material considerations including having regard to the Public Sector Equality Duty, before drawing matters together in the final planning balance.

b) Living Conditions

9.4 The appeal Inspector concluded that that proposal would lead to extra traffic noise that would detrimentally affect the living environment at nearby dwellings. He concluded that a development that allows private swimming lessons would not accord with part 9 of Local Plan policy LP29, as it would not avoid unacceptable harm to neighbouring amenities by reason of noise.

9.5 The Inspector's conclusion was based on traffic movements amounting to 154 two-way movements a week concentrated into three days – an average of say 50 two-way movements a day on those days. The current proposal is for 36 two-way movements a week, again concentrated into three days – an average of say 12 two-way movements a day. To this would need to be added the use of the track by the teachers/trainers. It is understood that a single "teacher" would stay for each two hour session. Hence this figure should be increased to 14 two-way movements a day on each of the three days.

9.6 The permission referred to in para 3.2 above is still extant and thus could be taken up. Given the approved access arrangements, there could be in the order of 7/8 two-way movements a day arising from that consent using the track and the access onto Main Road. The movements from para 9.5 would need to be added to this – say up to 22 two-way movements on three days of the week, but with a concentration into the period from 1000 to 1200.

9.7 The Inspector's reasoning that led to his conclusion in para 9.4 above, was based on:

- the significant increase in vehicular use of the track and Flats Lane
- the associated noise that would be heard by the neighbours and cause disturbance because of the proximity of track to the houses and rear gardens
- this would be noticeable and disruptive because of the tranquillity of the locality.
- even though this noise would occur at specified times, it would still be significant and unacceptable.

9.8 There have been representations made by the occupiers of the most affected properties and they have repeated their previous objections notwithstanding the proposed reduction in use.

9.9 The matter before the Board is thus whether the reduced usage is sufficient to overcome the unacceptable impact.

c) Highway and Pedestrian Safety

9.10 The Inspector found that the proposed variation of the condition he dealt with would cause unacceptable harm to highway and pedestrian safety thus not being in accord with point 6 of Local Plan policy LP29.

9.11 The reasoning behind this conclusion was based on:

- The physical arrangements of the width of the track and additional car parking at Number 99 in Flats Lane.
- the marked increase in vehicular use would either increase the risk of collision on Main Road or prejudice pedestrian safety of the public using the public footpath along the track
- improvements to the track would be unlikely to remedy this situation.
- the traffic connected to the use of the converted building may coincide with movements connected to the proposed lessons
- visibility at the junction with Flats Lane is acceptable.

9.12 His overriding concern was, “the increase in traffic using a single vehicular width track along which there is a right of way”.

9.13 There have been representations made by the local community and these repeat previous objections, notwithstanding the proposed reduction in use. The County Council as Highway Authority did not object to the previous case. It neither objects to the current application.

9.14 The significant reduction in likely traffic movements as a consequence of the current revised proposal would not warrant review of the Inspector’s conclusion on the appropriateness of the access onto Flats Lane, particularly as there has been no physical change to that junction since the date of the appeal. However, his overriding concern remains, even with the reduced usage – the increase in traffic using the single width access track which continues to host the footpath.

9.15 The matter before the Board is thus whether the reduced usage is sufficient to overcome that concern.

d) Heritage Matters

9.16 Austrey Baptist Church and number 99 are both grade 2 Listed Buildings. The Council is under a statutory duty to have regard to the desirability of preserving the setting of listed buildings as well as of any features of special architectural or historic interest which they possess.

9.17 In the case of the Baptist Church, its significance derives from its age as well as its architectural quality and community value. There is no direct impact on the fabric of the building, but vehicles travelling along the track and parking at Charity House could change the ambience of the Church’s setting. The Inspector concluded that whilst traffic would affect the rear of the Church, that would be at the rear and sides rather than the front, thus not harming its significance.

9.18 Number 99's significance lies in its age and architectural interest. The Inspector concluded that this would be unaffected by vehicular noise associated with the swimming classes and as such there would be no harm to the significance of this asset.

9.19 With the proposed reduction in traffic movements the Inspector's conclusions are given additional weight. No heritage harm would thus be caused.

e) The Benefits of the Proposal

9.20 The overriding benefit of the proposal is the community use of the pool such that it promotes exercise and healthy lifestyles as well as for general well-being. In particular there is explicit recognition in the current proposal that some of the classes would provide opportunity for people who share protected characteristics as set out in Section 149 of the Equality Act. This was also the case in the previous proposal and the Board reports at that time referred to the letters of support from visitors, indicating their appreciation of the facility. The Council is subject to the Public Sector Equality Duty and thus a decision now to refuse planning permission for this revised proposal, may deprive people with relevant protected characteristics to attend swimming lessons and thus such a decision would fail to advance equality of opportunity.

It is, however, important to note the extent of the Public Sector Equality Duty (PSED) in the context of this application. Specifically, the PSED states that a public authority must, in the exercise of its functions, having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics to which the PSED applies are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Members are asked to note that the applicant has only provided material relating to use of the pool by those with a disability, as did the Inspector in determining the appeal. Accordingly, there is no material before the Board in relation to use by those other groups or the facilities provided elsewhere to those groups. Accordingly, any reference to groups within the scope of the PSED in section 149 should be considered as references to those with the relevant protected characteristic of disability.

Similarly, should members decide to grant the application, any conditions attached should consider the relevant characteristic of disability.

9.21 The Borough Council does make provision to meet Section 149 as set out in Appendix L. The pool is in Atherstone – some ten kilometres from the application site – and there are centres at Polesworth and Coleshill - some 7 and 20 kilometres respectively from the site. There are other facilities in North West Leicestershire Borough Council's area at Whitwick and Coalville as well as at Ashby, together with facilities in Nuneaton and Tamworth.

f) Planning Conditions

9.22 The Board will be aware that it has to consider the use of planning conditions to be attached to the grant of a planning application in order to establish whether these could

mitigate or limit any recognised adverse impacts, thus enabling an application to be supported.

9.23 In this case, conditions could “define” the community use and refer to the schedule attached to the application description – see paragraph 4.2 above. They too can require details of a car parking layout and details to show accessibility for disabled persons and their vehicles to and from the building. Additionally, an agreed method of monitoring the use can be required.

g) Other Matters

9.24 Some representations have picked up on the possibility of the applicant using the property’s main access directly off Main Road, particularly with the now reduced level of proposed use. Indeed, the Inspector did refer to this in his letter – see paragraph 30 of Appendix D. However, Members will be aware that the Board should deal only with the application it has before it. It should assess the balance between its potential harms and benefits using the proposed access arrangements. There should be no weight given in the consideration of this case, to the suggestion that an alternative means of access might be available.

9.25 There have also been queries raised about the safety and building requirements for use of the pool by the public. Members will be aware that these will be governed by other legislation and thus are not planning matters. If permission is granted, then the appropriate authorities can be notified. However, planning conditions could be imposed to require car parking details as suggested in paragraph 9.23 above.

g) Conclusions

9.26 It is acknowledged that this revised application involves a significant reduction in the scale of the proposed community use here. The matter is whether that is sufficient to outweigh the harm that the Inspector found arising from noise affecting residential amenity and pedestrian safety along the single carriageway track.

9.27 The physical characteristics of the track, its setting, the presence of the abutting rear neighbouring gardens and the parked vehicles in Flats Lane have not altered. There will thus still be an adverse impact. A previous Inspector found that the traffic generation arising from the conversion of the outbuilding would be acceptable in planning terms. The current proposed increase over that is material - from 7/8 two-way movements each day, to an additional 14 on three days of the week concentrated into two morning hours. That increase would be noticeable, change the character of the tranquil setting of this track and give rise to off-site adverse amenity impacts. In the terms of point 9 of Local Plan policy LP29, it does not therefore “avoid unacceptable impact” on the residential amenity of neighbouring occupiers. There too would still be some conflict with its pedestrian use, but that conflict would be far less frequent and thus of less weight. In the terms of point 6 of Local Plan policy LP29, it is considered that on balance there would be “safe and suitable access for all users”.

9.28 This overall conclusion on the two main planning issues has to be balanced against the benefits of the proposal. The lessons are supported by points 3 (an accessible local service), 4 (the promotion of healthy lifestyles), 5 (pedestrian access to a service) and 7 (expanding recreation facilities) of Local Plan policy 29 as

supplemented by the NPPF. Additionally, they would support opportunities for those who have relevant protected characteristics.

9.29 In short, the final assessment of this revised application is more finely balanced than the previous case.

9.30 In looking at this balance, it is of weight that facilities and opportunities do exist elsewhere for the lessons being proposed here. Local residents would have to travel, but from the evidence supplied with the last application it is clear that customers who have used this pool in Austrey in the past are not exclusively residents from the village.

A refusal here would thus not deprive people with the chance to attend alternative venues.

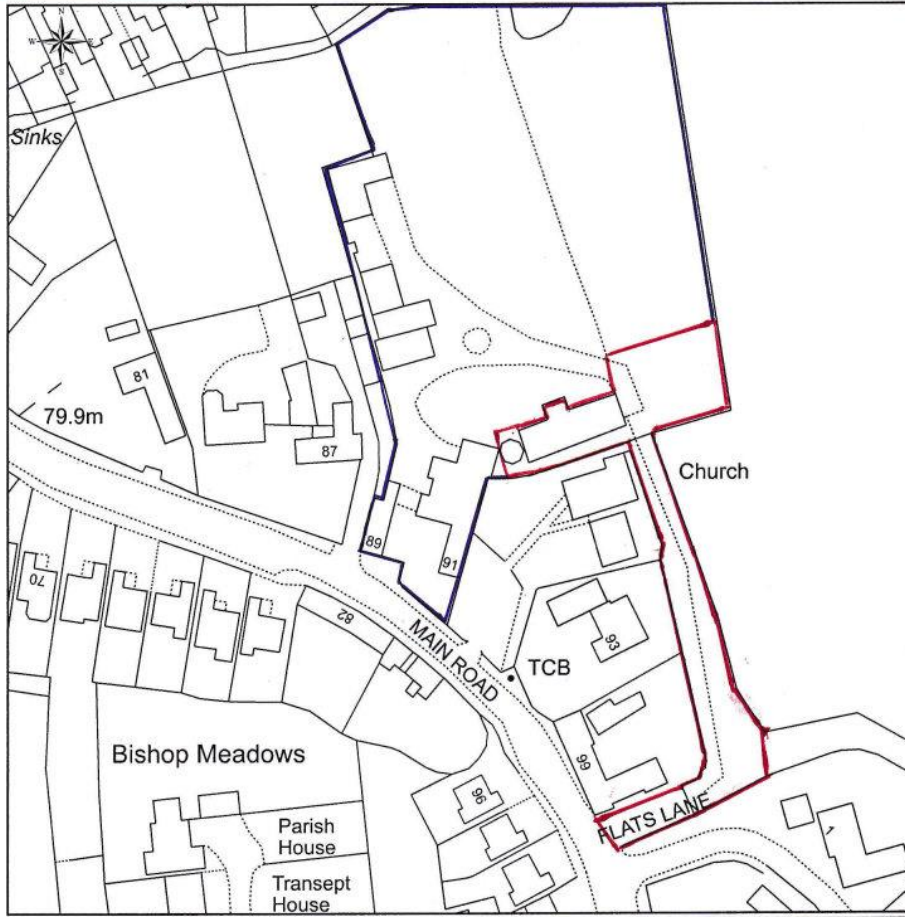
9.31 It is also necessary to look to see if planning conditions could be used to mitigate the identified harm. In other words, in the terms of point 9 of Local Plan Policy LP29, they would “address” unacceptable impacts. These would define the hours of use; the number of lessons conducted, their length and the maximum level of vehicular usage associated with the use. They could also be used to agree a definition for the booking system and the means of monitoring the bookings. As indicated in paragraph 9.23 above these have been used elsewhere in similar cases. Here however, “harm” is considered to arise from the proposed schedule of use and thus conditions would not be appropriate.

Recommendation

That planning permission be REFUSED for the following reason:

“The proposal is not considered to accord with Policy LP29 (9) of the North Warwickshire Local Plan 2021, in view of the material increase in vehicular movements caused by the greater number of vehicles passing directly by neighbouring residential property thus causing adverse impacts on the residential amenity of their occupiers by virtue of increased levels of disturbance and inconvenience”.

Site Location Plan

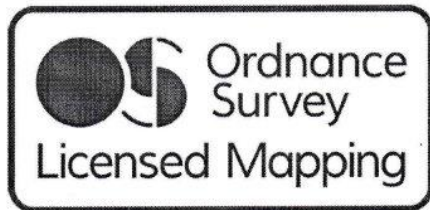


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0m 20m 40m 60m 80m 100m

Scale: 1:1250, paper size: A4

89-91 Main Road, Austrey, CV9 3EG.



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plans

Prepared by: Simon Cheshire, 23-08-2022



**North Warwickshire
Borough Council**

Planning Division
The Council House
South Street
Atherstone
Warwickshire
CV9 1BD

APPENDIX B
DECISION R

PLANNING DECISION
Amended Plans Without
Additional Conditions

Haden Ritchie Partnership
The Manor House
Lichfield Street
Tamworth, Staffs
B79 7QF

Case Officer: Mrs E Levy

Direct Line: 01827 719294

The Town and Country Planning Act 1990

Application Number: 0602/96

Development: Alterations and extensions
to house including redesign
of swimming pool and
conservatory

At: Charity House
89 Main Road
Austrey

For: D A Kirtland

Acting under the powers delegated to me by the Borough Council, I have considered the application for an amendment to the above planning permission, and hereby approve the plans numbered:-
3892-200

deposited with the District Planning Authority on 26th September 1997 subject to the conditions contained in the Notice of Decision dated 14th August 1996.

This letter does not convey an approval under the Building Regulations, for which a separate application must be made.

Signature:

Authorised Officer

Date: 30th September 1997

PC93L

Borough Planning Officer
David Atkin BA FRTP





**North Warwickshire
Borough Council**

Planning Division
The Council House
South Street
Atherstone
Warwickshire
CV9 1BD

DECISION

R

**PLANNING PERMISSION
WITH CONDITIONS**

Page 1

TO: HADEN RITCHIE PARTNERSHIP
OF: THE MANOR HOUSE
LICHFIELD STREET
TAMWORTH
B79 7QF

The Town and Country Planning Acts

The Town and Country Planning General Development Orders

Application Number: PAUSAV/0602/96/FAP

Development: ALTERATIONS & EXTENSIONS TO
HOUSE INCLUDING REDESIGN OF
SWIMMING POOL & CONSERVATORY
PREVIOUSLY APPROVED

For: D A KIRTLAND

At: CHARITY HOUSE
89 MAIN ROAD
AUSTREY
XXX

Deposited with the Council on 13th June 1996
The Borough Council, having considered the application for permission
to carry out the above development, **HEREBY GIVE YOU NOTICE** that
PERMISSION is GRANTED, subject to the following conditions:-

- (1) The development to which this permission relates must be begun not later than the expiration of five years from the date of this permission.
Reason:
To comply with S.91 of the Town & Country Planning Act 1990.
- (2) The development hereby approved shall not be carried out otherwise than in accordance with the plans numbered 3892.13, 3892.14 and 3892.15 received by the District Planning Authority on 13th June 1996, and the plan numbered 3892.16 received by the District Planning Authority on 12th August 1996.
Reason:
To ensure that the development is carried out strictly in accordance with the approved plans.

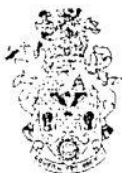
DATE: 14th August 1996

AUTHORISED OFFICER OF THE COUNCIL *DS. Atkin*

Please take note of all continuation pages with further conditions or reasons, where appropriate. Also notes on appeal procedures are attached.

Borough Planning Officer
David Atkin BA FRTP





**North Warwickshire
Borough Council**

Planning Division
The Council House
South Street
Atherstone
Warwickshire
CV9 1BD

DECISION

**PLANNING PERMISSION
WITH CONDITIONS**

Page 2

Application Number:
PAUSAV/0602/96/FAP

CONDITIONS CONTINUED:

- (3) No development shall be commenced before details of the facing bricks and roofing tiles to be used have been submitted to and approved, in writing, by the District Planning Authority.

Reason:

To ensure that the facing materials harmonise in colour and texture with those in the locality.

- (4) The swimming pool hereby shall not be used for any purpose other than for purposes incidental to the enjoyment of the dwellinghouse known as Charity House, 89 Main Road, Austrey as such.

Reason:

In order to prevent any unauthorised use of the property.

NOTES:

- (1) The submitted plans indicate that the proposed works come very close to, or abut neighbouring property. This planning permission does not authorise the carrying out of any works on their land, or access on their land, without the consent of the owners of that land. You would be advised to contact them prior to the commencement of work.

DATE: 14th August 1996

AUTHORISED OFFICER OF THE COUNCIL *DS Atkin*

Borough Planning Officer
David Atkin BA FRTP



Appeal Decision

Site visit made on 22 April 2021

by Elaine Benson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal Ref: APP/R3705/W/21/3267144

89-91 Main Road, Austrey CV9 3EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
- The appeal is made by Mr Darren Burchell against North Warwickshire Borough Council.
- The application Ref PAP/2020/0303, is dated 18 June 2020.
- The development proposed is conversion of outbuilding to dwelling.

Decision

1. The appeal is allowed and planning permission is granted for conversion of outbuilding to dwelling at 91 Main Road, Austrey CV9 3EG in accordance with the terms of the application, Ref PAP/2020/0303, dated 18 June 2020, subject to the conditions on the attached Schedule.

Preliminary Matters

2. The Council confirms that had it had the opportunity to determine the planning application, it would have been refused on highway safety grounds.
3. Since the submission of the appeal, the revised National Planning Policy Framework (the Framework) has been published. Since there is no change to national policy and guidance in relation to the matters at issue in this appeal, the comments of the main parties on the Framework have not been sought.

Main Issue

4. The Council raises no objections to the principle or most details of the proposed development. Having regard to all of the evidence, including the status of the relevant development plan policies as confirmed by the Council, there are no reasons to disagree. The main issue in this appeal therefore is the effect of the proposed development on highway safety.

Reasons

5. It is proposed to convert a building comprising a garage and workshop to a dwelling. It is one of a number of outbuildings at the rear of No 89-90 Main Rd, a substantial dwelling in extensive grounds.
6. The appeal building would be served by an existing access which is used by the appellant to reach the rear of their property. The access leads from the appeal site onto Flats Lane before joining Main Rd. Flats Lane also provides access to the garage belonging to the neighbouring property (No 99) which opens onto it. The lane is also used by agricultural vehicles accessing the fields to the rear. A public footpath runs alongside the lane.

<https://www.gov.uk/planning-inspectorate>

7. At issue in this appeal is whether there would be a safe and suitable access to the site at the junction of Flats Lane and Main Rd. The Highway Authority considers it to be substandard due to the limited visibility at the junction of these 2 roads. The required standard of 2.4m x 43m can be achieved to the south. However, to the north visibility is restricted by planting and the building line. It is noted that this standard can be reduced in situations where there are low traffic speeds.
8. Main Rd is the principal route through the village, with streetlights and housing on both sides. The speed limit is 30mph and there are no parking restrictions. There are multiple lay-bys for parking along the length of the road, including directly opposite the site access, and most properties have off street parking. Notwithstanding the pandemic's effect on the number of traffic movements, the submitted road speed data establishes traffic speeds along Main Rd as below the 30mph limit. Moreover, as confirmed by local residents, traffic flow and speed in the locality of the access is slowed by the on-road parking by customers of the post office/shop on the opposite side of Main Rd and by the frequent turning of vehicles in the road. I also observed these conditions and it appears to me that these factors lead to an overall reduction in traffic speeds in the area.
9. Furthermore, in terms of the potential intensification of the use of the access, it is necessary to consider its existing use, including by agricultural vehicles. I am not convinced by the evidence that the number of vehicle movements associated with the occupation of a 2 bedroomed dwelling would have a material effect on the access onto Main Rd such as to harm highway safety. Pedestrians crossing the road at this junction would be aware of the potential for vehicle movements at this point, particularly as the access is already there. In my experience this situation would be little different to many accesses in village and rural locations. Furthermore, the access track would be widened to a uniform 3m along its length which would give additional space for users of the public right of way.
10. In accordance with the aims of the Framework and on the basis of the site-specific considerations, I conclude that the appeal proposal would not lead to an unacceptable impact on highway safety and there would be no severe residual cumulative impacts on the road network. Accordingly, the proposal would comply with the requirements of Core Strategy Policy NW10 (6) which requires proper access to development sites; Policy LP31 of the Submitted Local Plan which continues this approach, and the Proposed Modification MM74 to Policy LP31.

Other Matters

11. I have had special regard to the desirability of preserving the settings and any features of special architectural or historic interest which the nearby listed buildings Austrey Baptist Church and 87 Main Rd possess. I concur with the Council that due to the distance between the appeal site and the listed buildings and the presence of intervening buildings there would be no harm to, or loss of, the significance of these designated heritage assets or their settings.
12. There would be minimal alterations to the appearance of the appeal building and new windows would be screened by boundary fencing. There would be no overlooking of adjoining properties or any other harm to the living conditions of neighbouring occupiers.

13. In respect of concerns about potential flood risk in the area resulting from the proposal, the proposal is for a conversion and not new-build development and any surface water would be disposed of by soakaway. Notwithstanding the concerns of the Austrey Parish Council about incidents of flooding and flood damage nearby, there is no convincing evidence that there would be an increased flood risk here. In this regard I share the Council's view.

Conditions

14. A condition is necessary which sets out the approved drawing for the avoidance of doubt and in the interest of proper planning. In the interests of visual amenity and highway and pedestrian safety, details and specifications for the approved improvements to the access are required to be submitted to and approved in writing by the local planning authority for approval and thereafter retained.
15. The Council suggested a condition restricting the construction of outbuildings under Class E of the General Permitted Development Order. The Framework and the Planning Practice Guidance indicate that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this specific case the resulting dwellinghouse would have a large garden area, the site is close to the village boundary and it is bounded by a public footpath and nearby fields. There is therefore the potential for buildings otherwise permitted under Class E to harm visual amenities. In this regard I have also considered the Austrey Neighbourhood Plan Policies AP2 and AP3 which among other things seek to retain access to surrounding fields and to protect important views. Accordingly, for these reasons the suggested condition has been imposed.
16. The installation of an electric vehicle charging point is required by condition in the interests of sustainability. A further condition was suggested requiring the submission of a Construction Management Plan. However, as the proposal is for the conversion of a small-scale existing building which is likely to require fewer construction material deliveries and personnel than a new build development, and because the access to the site already exists, I consider that such a condition would be unreasonable and unduly onerous.

Conclusion

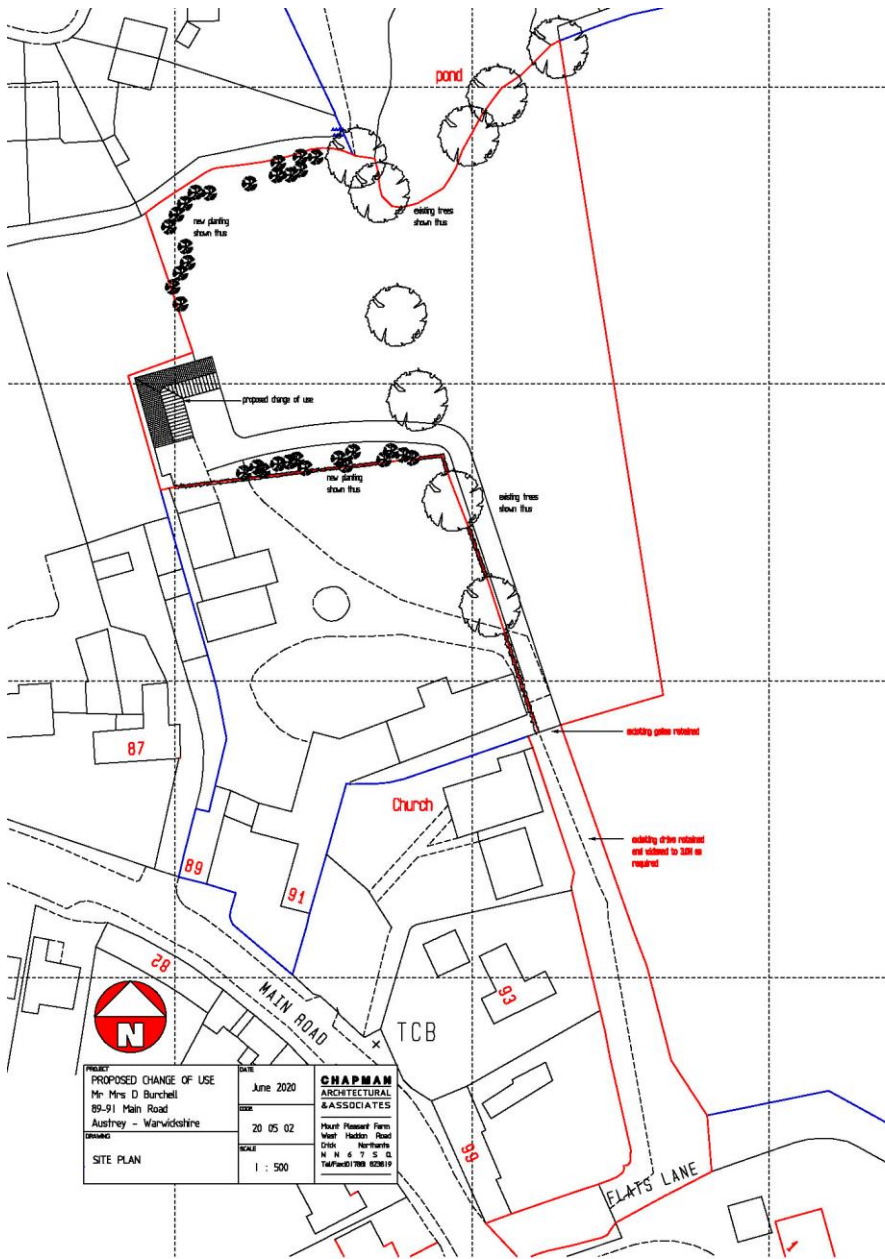
17. I have had regard to all other matters raised, including objections to the proposal from the Parish Council and neighbouring occupiers, but none affect my conclusions. For the reasons set out above the appeal should be allowed subject to the imposed conditions.

Elaine Benson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 20 05 02 and 20 05 04.
- 3) Development shall not take place until full details and specifications for the approved improvements to the access have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the works have been carried out in accordance with the approved details. The access shall thereafter be retained as approved.
- 4) Notwithstanding the provisions of Class E of Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no buildings or structures incidental to the enjoyment of a dwellinghouse shall be constructed.
- 5) Prior to the first occupation of the approved development, an electric vehicle charging point shall be installed and maintained in full working order at all times.





North Warwickshire Borough Council

Simon Cheshire
Simon Cheshire Planning Ltd
34 Stanley Road
Market Bosworth
Nuneaton
CV13 0NB

APPENDIX E

Jeff Brown BA Dip TP MRTPI
Head of Development Control Service
The Council House
South Street
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Warwickshire
CV9 1DE

Telephone: (01827) 715341
Fax: (01827) 719225
E Mail: PlanningControl@NorthWarks.gov.uk
Website: www.northwarks.gov.uk

Date: 08 September 2022

The Town & Country Planning Acts
The Town and Country Planning (Listed Buildings and
Conservation Areas) Act 1990
The Town & Country Planning (General Development)
Orders
The Town and Country Planning (Control of
Advertisements) Regulations 1992 (as amended)

DECISION NOTICE

Application to Vary Conditions/Non-compliance with
Conditions

Application Ref: PAP/2021/0687

Site Address

89-91 Main Road, Austrey, Atherstone, Warwickshire, CV9 3EG

Grid Ref:

Easting 429626.41
Northing 306492.25

Description of Development

Variation of condition no: 4 of planning permission PAUSAV/0602/96/FAP (PAP/1996/3856) dated
14/08/1996 relating to use of swimming pool for limited community use for private lessons

Applicant

Mr & Mrs Hames

Your planning application was valid on 21 December 2021. It has now been considered by the Council. I
can inform you that:

Planning permission is **REFUSED** for the following reason(s):

1. The proposal is not considered to accord with Policy LP29 (9) of the North Warwickshire Local Plan
2021, in view of the material increase in vehicular movements caused by the greater amount of
vehicles passing directly by neighbouring property, thus causing adverse impacts on the residential
amenity of occupiers by virtue of increased levels of disturbance, noise and inconvenience.

INFORMATIVES

1. Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a
positive and proactive manner through providing the opportunity to overcome objections. However
despite such efforts, the planning objections and issues have not been satisfactorily addressed/the
suggested amendments have not been supplied. As such it is considered that the Council has
implemented the requirement set out in paragraph 38 of the National Planning Policy Framework.

Authorised Officer: _____

Date: 8 September 2022

APPEALS TO THE SECRETARY OF STATE

(1) If you are aggrieved by the decision of the Local Planning Authority, you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.

(2) As this is a decision to refuse planning permission for a householder application, if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.

(3) Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>.

If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

(4) The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

(5) The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

(6) The Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by him.

(7) If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK](#).

NOTES

1. This decision is for the purposes of the Town and Country Planning Act only. It is not a decision under Building Regulations or any other statutory provision. Separate applications may be required.
2. A report has been prepared that details more fully the matters that have been taken into account when reaching this decision. You can view a copy on the Council's web site via the Planning Application Search pages <http://www.northwarks.gov.uk/planning>. It will be described as 'Decision Notice and Application File'. Alternatively, you can view it by calling into the Council's Reception during normal opening hours (up to date details of the Council's opening hours can be found on our web site <http://www.northwarks.gov.uk/contact>).
3. Plans and information accompanying this decision notice can be viewed online at our website <http://www.northwarks.gov.uk/planning>.

Authorised Officer: _____

Date: 8 September 2022



Appeal Decision

Site visit made on 31 January 2023

by **Jonathan Edwards BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03 February 2023

Appeal Ref: APP/R3705/W/22/3307971

89-91 Main Road, Austrey CV9 3EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Hames against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2021/0687, dated 16 December 2021, was refused by notice dated 8 September 2022.
 - The application sought planning permission for alterations and extensions to house including redesign of swimming pool and conservatory as previously approved without complying with a condition attached to planning permission Ref PAUSAV/0602/96/FAP, dated 14 August 1996.
 - The condition in dispute is No 4 which states that: The swimming pool hereby shall not be used for any purpose other than for purposes incidental to the enjoyment of the dwellinghouse known as Charity House, 89 Main Road, Austrey as such.
 - The reason given for the condition is: In order to prevent any unauthorised use of the property.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Hames against North Warwickshire Borough Council. This application is the subject of a separate Decision.

Background and Preliminary Matters

3. Planning permission was granted in 1996 for various works to the appeal property (hereafter referred to as Charity House). These include the construction of an outbuilding containing a swimming pool, which has been completed. In effect, the appeal proposal seeks to amend the disputed condition to allow community use of the pool as well as the use incidental to the enjoyment of Charity House.
4. The additional use would be for private swimming lessons by appointment only. The application form sets out times when the pool would be used for swimming lessons but the appellant has since proposed the following time periods:
 - between the hours of 10.00am and 2.00pm as well as between 4.30pm and 6.00pm on Mondays;

<https://www.gov.uk/planning-inspectorate>

- between 10.00am and 12.15pm as well as between 1.00pm and 2.00pm on Wednesdays; and
 - between 10.00am and 2.00pm on Fridays.
5. The Council has considered the application on the basis of the lessons only taking place during the above time periods. I have assessed the appeal on the same basis. Private swimming lessons have already taken place at Charity House, although I understand that these have ceased since the appeal was lodged.

Main Issues

6. Given the Council's refusal reasons, a main issue is whether the disputed condition is necessary to ensure satisfactory living conditions for occupiers of neighbouring properties, particularly when having regard to the noise and other effects of traffic. In light of interested parties' comments, an additional main issue is whether the disputed condition is necessary in the interests of highway and pedestrian safety. The appellant has had the opportunity to respond to interested parties' comments through the appeal process and so no injustice is caused by having regard to this factor in my assessment.

Reasons

Living conditions

7. Charity House is a dwelling with a large rear garden. The outbuilding containing the swimming pool is next to the rear of the house. A gated entrance to the front of the house provides vehicular access directly from Main Road. Also, a separate track runs from the garden along the rear of Austrey Baptist Church and 93 and 99 Main Road (Nos 93 and 99) before turning onto Flats Lane, which joins up with Main Road. A public footpath runs along part of this track. The submissions state that visitors to the swimming lessons would access and egress the property via Flats Lane.
8. Nos 93 and 99 are both residences that face onto Main Road. No 93 is set back from the highway, whereas No 99's front elevation adjoins the roadside pavement. No 99's side elevation is next to Flats Lane, close to its junction with Main Road. A ground floor window and garage doors in the side elevation face onto the track. Both No 93 and No 99 have back gardens that are away from Main Road and that adjoin the access drive.
9. Flats Lane provides access for vehicles to adjoining fields as well as to No 99's garages and the appeal property. Also, it would provide vehicular access to a proposed dwelling in an outbuilding at Charity House, which was granted planning permission following an appeal¹. No information on current traffic movements along the track has been provided. However, its informal nature and the limited number of properties it serves suggests the track is used infrequently. Even if it is provided, the permitted dwelling in the outbuilding would generate only a modest number of daily vehicular trips. Consequently, the tranquil character of the Flats Lane track is likely to remain.
10. The introduction of private swimming lessons is bound to lead to an increase in visitors to Charity House in the form of swimmers and class instructors. The

¹ Appeal reference number APP/R3705/W/21/3267144

site is in the village and so it is within a reasonable walking distance for some Austrey residents. However, there is no guarantee that those attending lessons would walk to the pool even if they are local. As such, it is reasonable to expect the proposal would lead to an increase in vehicular usage of the Flats Lane access.

11. The amount of visitors and so the level of associated traffic would to a degree be dependent upon the number of separate classes and the number of attendees for each class. The appellants have suggested that private lessons in the aforementioned time periods would generate 154 two-way traffic movements per week. However, this is based on the pool not being used so intensely during certain time periods and with some classes lasting longer than others and so with a less frequent turnover of swimmers. There is no certainty that the length and format of classes will remain as stated and so the number of visitors to the pool may be higher.
12. In any event, it is highly probable that the stated trip generation figures would represent a significant increase in the vehicular use of the Flats Lane access. No noise impact assessment has been provided to me by the Council or the appellants. However, given the proximity of the track, it seems likely that additional vehicular activity would generate noise that is heard by occupants of Nos 93 and 99. This is likely to be noticed from the room served by the side window to No 99, even though traffic noise on Main Road already affects the property to a degree. Also, despite boundary fencing, I envisage the noise of extra cars travelling close to the rear boundaries would cause disturbance to those using the back gardens to Nos 93 and 99. This would be particularly noticeable and disruptive given the current tranquillity of the locality. In light of the probable level of additional traffic and associated noise, I consider the harm caused would be significant and unacceptable, even though it would only occur at the specified times.
13. In allowing the aforementioned appeal for a new dwelling at Charity House, the Inspector made no comment on noise from associated traffic and whether this would cause a nuisance to nearby residents. However, the vehicular trip patterns associated with a new residence would be markedly different in terms of number and timings of car movements compared to the current proposal. Therefore, this previous decision does not set a precedent to be followed in the consideration of this appeal.
14. The appellants state that the Council's environmental health officer has raised no objection to the proposal. However, I have been provided with no record that shows an environmental health officer has been consulted or that they have advised the proposal would be acceptable in terms of noise impacts. The lack of any comments from an environmental health officer either in support or against the scheme fails to address my concerns.
15. I have given consideration as to whether any detriment caused by noise effects could be addressed through the imposition of planning conditions. However, apart from the proposed amendment to the disputed condition, the appellants have made no suggestions on how traffic noise could be attenuated. As such, I am uncertain how noise effects associated with the proposal could be addressed.
16. The refusal reason also refers to the inconvenience caused by additional traffic, although the Council has provided little explanation for this objection. No 99's

occupier has objected on the grounds that vehicles leaving their garages would move onto Flats Lane close to a tight corner where forward visibility is limited. As such, extra traffic associated with the swimming classes may lead to an increased need for care when moving a vehicle into and out of the garages. However, irrespective of the proposal, an element of care and attention is needed by drivers using the garages. Therefore, I find no unacceptable additional effect would be caused in terms of convenience.

17. Nevertheless, for the above reasons, I conclude the appeal proposal would lead to extra traffic noise that would detrimentally affect the living environment at nearby dwellings. Therefore, the disputed condition is needed to ensure satisfactory living conditions for occupiers of Nos 93 and 99. A development that allows private swimming lessons would not accord with part 9 of policy LP29 of the North Warwickshire Local Plan 2021 (the LP) as it would not avoid unacceptable harm to neighbouring amenities by reason of noise.

Highway and pedestrian safety

18. At its entrance on Main Road, Flats Lane is wide enough to allow 2 vehicles to pass. However, evidence before me supported by my observations indicate that cars are parked at times outside the side elevation of No 99. Such parking restricts space at the start of the track so as to prevent 2 cars from passing. Also, the track narrows as it approaches the bend and as it rises up towards Charity House. There are no obvious passing places between the bend in the track and the entrance into Charity House's garden.
19. I have already found in considering the first main issue that the swimming lessons would markedly increase the vehicular use of Flats Lane and the access track. While it is stated lessons would be by appointment only, there would still be a reasonable likelihood of people arriving and leaving the appeal property at the same time, particularly if there are classes after each other. As such, the proposal would increase the risk of 2 vehicles meeting while on the track. Such incidences may lead to a delay in drivers entering into Flats Lane, thereby hindering the free flow of traffic on Main Road. Also, they may result in drivers needing to reverse back onto Main Road to allow space for vehicles to exit the lane. There can be no certainty that drivers on the track would reverse to allow cars to enter Flats Lane. Moreover, it is likely that vehicles meeting on the track would require drivers to reverse, possibly around a corner or for a significant distance. Any of the above situations would either increase the risk of collision on Main Road or prejudice the safety of pedestrians using the public footpath that follows the track.
20. I note and attach significant weight to the fact that neither the Council nor Warwickshire County Council (WCC) as highway authority has raised highway safety concerns. Nonetheless, WCC acknowledges the development would result in an intensification of the use of a sub-standard access. WCC suggest a condition to secure proposed improvements to the access and the appellants indicate the lane could be re-surfaced in a hardbound material. However, I am uncertain whether any improvements would enable the track to be widened to allow vehicles to pass. Without such assurance, I find that the lack of objection from the Council and WCC fails to fully address my concerns.
21. The previous appeal Inspector found that traffic associated with the proposed dwelling would not lead to unacceptable harm to highway safety. However, the Inspector was considering a development that would generate a different

pattern and level of car movements than the current proposal. Compared to a single new dwelling, the private swimming lessons use is more likely to lead to vehicles meeting on the track. Also, there is a realistic prospect that the approved dwelling would be provided in which case, associated traffic may coincide with car movements connected with the proposed lessons. In light of this cumulative effect, it would not be inconsistent with the previous appeal decision to find harm would be caused by the current proposal to highway and pedestrian safety.

22. Concerns have been raised over the visibility when leaving Flats Lane onto Main Road, with reference to a recent accident near to the junction. However, the full details of this incident are not before me and so it is unclear whether limited visibility was a contributory factor. The appellants' plan shows the required 2.3m x 34m visibility splay to the north of the access can be provided. Criticisms have been raised over the accuracy of the splay measurements. However, from my observations I am satisfied that drivers leaving Flats Lane would have adequate sight of road users in both directions so as to not cause an unacceptable highway safety issue. Also, I am satisfied that any restriction to visibility at the junction would not put pedestrians at undue risk of harm as the pavement ends in front of No 99 on the Flats Lane side of Main Road. However, acceptability in these regards would not overcome my concerns over the increase in traffic using a single vehicular width track along which there is a public right of way.
23. For the above reasons, I conclude the proposed revision to the disputed condition would cause unacceptable harm to highway and pedestrian safety. Consequently, the condition as it stands is necessary in order to ensure the development accords with part 6 of LP policy LP29. This looks for safe and suitable access to developments.

Other Matters and Planning Balance

24. Austrey Baptist Church is a grade II listed building dating from 1808. Its significance derives from its age as well as its architectural quality. The Council officer's report on the planning application leading to this appeal highlights that vehicles travelling along the track and parking at Charity House would change the ambience of the church. Even so, traffic noise is most likely to affect the rear of the church and it would not detract from the appreciation of the more attractive front and side elevations. As such, the development's effect on the setting of the church would not harm the aspects that contribute to its significance.
25. Also, I am advised that No 99 is a grade II listed building. I have already found that traffic noise associated with the appeal development would affect the living conditions of occupiers of this property. However, it would seem that No 99's heritage significance lies solely with its age and architectural interest. This would be unaffected by vehicular noise associated with the swimming classes. As such, the development would not harm the heritage significance of No 99.
26. Reference is also made to listed buildings at 87 Main Road and the Homestead. These are set away from the pool and the access and so the proposed swimming classes and associated traffic noise would not affect their settings nor their heritage significance. Lack of harm to the nearby designated heritage assets is a neutral factor in my assessment.

27. Interested parties have written in support of the proposal, including those that attended lessons before they ceased. The community use of the pool would bring people together and would promote exercise and healthy lifestyles. It would be a new community facility in the village and would provide an opportunity for local residents, including children, to attend local swimming lessons and to attain an important life skill. I am advised that there is no alternative pool within Austrey. The swimming classes would also provide employment opportunities. All of these benefits are supported by the provisions of the National Planning Policy Framework as well as parts 3, 4, 5 and 7 of LP policy LP29. Such factors weigh in favour of the scheme.
28. Even so, the proposal would cause harm as identified in respect of the main issues. As such, it would be contrary to the provisions of the development plan when read as a whole. Overall, the weight to be given to the advantages of the private swimming classes do not justify a decision to grant planning permission contrary to the development plan.
29. The submissions indicate that some of the proposed swimming classes would cater for people with disabilities. The Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 sets out the need to advance equality of opportunity for people who share a protected characteristic and those who do not. A decision to dismiss the appeal may deprive people with disabilities the chance to attend swimming lessons and so it would fail to advance equality of opportunity.
30. However, the identified harm to the living conditions of nearby residents and to highway and pedestrian safety outweighs the benefits in terms of advancing equality of opportunity. Also, it does not follow from this decision that another proposal that allows a level of pool usage by disabled people would be unacceptable. Moreover, interested parties have highlighted that, as well as Flats Lane, Charity House benefits from an alternative vehicular access. No explanation has been provided by the appellants as to why this alternative would be unsuitable for use in connection with swimming lessons at the pool. As such, I am unconvinced from the evidence that the revision to the condition as proposed is the only way to secure private swimming lessons. In such circumstances, it would be proportionate to dismiss the appeal even when having regard to the PSED.

Conclusion

31. The proposed amendment to the disputed condition would lead to harm as identified above. The benefits of the proposal would fail to override this harm. Therefore, the appeal does not succeed.

Jonathan Edwards

INSPECTOR

SKZONE 2/105 CV
11/9/91.

Tely Lee Kiosk

MAIN ROAD

APPENDIX G

SKZONE 2/6 07/11/85	AUSTREY	MAIN ROAD (North-east side) Wall surrounding garden at the Elms
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GV II

Garden wall. Probably late C18. Coursed squared sandstone and upper part of red brick with coping. Approximately 2 metres high. Gateway with overthrow on the axis of the front door of The Elms (q.v.). Included for group value.

SKZONE 2/7 22/03/82	AUSTREY	MAIN ROAD (North-east side) No.87 (The Limes)
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GV II

House. C18, with slight C19/C20 alterations. Brick with C19/C20 pebbledash, rendered string course and brick dentil cornice. Late C20 plain-tile roof; C19 brick ridge and right end stacks. L-plan with wing on left to rear. 3 storeys; 3-window range. Part-glazed 6-panelled door between second and third bays has rendered alternating rusticated surround with blind keyed round arch. Casements of 3 lights and 2 lights to third bay have glazing bars and rendered segmental arches with keyblocks. Lower second floor has cross-glazed casements without arches. Interior: room to left has open fireplace with plastered bressumer. Room in wing has moulded ceiling beam and open fireplace with rough cambered bressumer.

SKZONE 2/8	AUSTREY	MAIN ROAD (North-east side) Austrey Baptist Church
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GV II

Baptist chapel. 1808. Flemish bond brick with brick dentil cornice. Slate roof. 2 storeys; 3 bays. Symmetrical front has C20 double-leaf doors, with brick segmental arch, set within a blank round arch. Small round-arched windows with glazing bars. All openings have keystones and imposts. Plain shallow-pitched gable has clock. Attached slate monument slab on right, signed C. Cooper and dated 1825 etc. has incised decoration and inscriptions to the Burton family. 4-bay return sides; fourth bay is slightly set back. Left side has many blocked windows and an external stack. Right side has plank door with segmental arch to fourth bay, and blocked window above. 2-bay rear has altered or blocked openings. Interior has gallery with panelled front on slender iron columns above entrance. Opposite end is panelled, with gallery above. Mid/late C19 fittings. (VCH: Warwickshire: Vol IV, p9)

SKZONE
2/9

AUSTREY

MAIN ROAD
(North-east side)
Farthings

II

House. C17. Timber-framed with braces and rendered infill on regular coursed sandstone plinth. Old plain-tile roof; rendered ridge stack. 3-unit plan. 2 storeys; 3-window range. First bay has late C20 door and adjoining window. Second bay has fire window. Late C20 two-light casements throughout. Rendered lean-to addition across left return side.

SKZONE
2/10

AUSTREY

MAIN ROAD
(South-west side)
The Homestead

6V

II

Cottage. C17 with mid/late C20 alterations. Timber-framed with C20 colourwashed pebbledash. Late C20 plain-tile roof. Brick ridge and right end stacks. Attached former outbuilding to left, now part of the house, is partly timber-framed with brick infill and partly of brick. Corrugated asbestos roof. Originally 2-unit plan. One storey and attic; 2-window range. C20 studded door on left has flanking lead-latticed small windows. 2 old 3-light windows with glazing bars have painted rendered lintels with keyblocks. Mid/late C20 dormers have 3-light casements. Small one-storey range on right has C20 casement in return side. Left range is of one storey. Stable and 2 plank doors. Late C20 three-light casement on right. Left return side has timber-framed gable. Rear is irregular. Interior has exposed framing. Open fireplace has rough bressumer. Stop-chamfered joists. Room to left has flagged floor. Queen strut roof.

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Equality Act 2010

UK Public General Acts 2010 c. 15 Part 11 Chapter 1 Section 149

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Changes over time for: Section 149

05/04/2011

Changes to legislation: There are currently no known outstanding effects for the Equality Act 2010, Section 149.

149 Public sector equality duty

- (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.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice, and
 - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are—
 - age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.

- (8) A reference to conduct that is prohibited by or under this Act includes a reference to—
- (a) a breach of an equality clause or rule;
 - (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

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APPENDIX J

PAP/2023/0117

Planning Statement

Variation of condition 4 related to application 0602/96/FAP approved 14th August 1996 associated with Charity House, 89-91 Main Road, Austrey CV9 3EG (Resubmission PAP/2021/0687).

May 2023

© **Simon Cheshire Planning Ltd**
Email: plot64@talktalk.net

Introduction

This statement is submitted in support of the variation of condition 4 related to application 0602/96/FAP approved 14th August 1996 associated with Charity House, 89-91 Main Road, Austrey CV9 3EG.

This Statement has been prepared in accordance with the requirements of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) and the provisions of the Town and Country Planning (General Development Procedure) (Amendment) Order 2010 and Town and Country Planning (Development Management Procedure) (Amendment) Order 2015.

In accordance with the National Planning Policy Guidance (NPPG), the level of detail presented in this statement is proportionate to the scale and complexity of the application. References were made to the relevant planning policies. These are predominantly the adopted and saved Local Plan policies as they take primacy in the determination of such an application where they are NPPF & NPPG compliant.

Relevant Planning Policy

National:

NPPF & NPPG

Local:

LP1-Sustainable Development.

LP2- Settlement Hierarchy.

LP31 -Development Considerations.

LP32 – Built Form.

LP36 – Parking.

Other material planning considerations

The NPPF identifies three dimensions to sustainable development giving rise for the planning system to perform the roles below:

“an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and

an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”

Furthermore, LP policy should follow the approach of the presumption in favour of sustainable development where such development should be approved without delay. On this basis the Government is committed to ensuring the planning system supports all

sustainable development and that the system should not act as an impediment to proposals and uses that represent an overall community benefit to local residents.

Local List Requirements

Due to the scale and nature of the proposal, the level of detail submitted with the application is considered proportionate. Schedule 4 of the DMPO details the statutory consultations required *before the grant of permission*. If during the determination period the statutory consultees request additional information and this is not provided by the applicant, the LPA could refuse the application for this reason. On this basis this section forms a notice under Article 12(1) (DMPO Amended July 2015) as the applicant considers the submitted information meets the requirements set out in article 34(6)(c) and any other information contained in the adopted Local List should be waived allowing the immediate validation of the application.

Relevant Planning History

APPEAL REF: APP/R3705/W/22/3307971	Dismissed 03.02.23
0602/96/FAP: Alt & Ext including redesign of swimming pool	Permitted 14.08.96

Principle of development

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 instructs that planning applications must be determined in accordance with the provisions of adopted LP policy unless material considerations indicate otherwise.

Paragraph 29 of the appeal dismissed on the 3rd February 2023 noted:

“The submissions indicate that some of the proposed swimming classes would cater for people with disabilities. The Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 sets out the need to advance equality of opportunity for people who share a protected characteristic and those who do not. A decision to dismiss the appeal may deprive people with disabilities the chance to attend swimming lessons and so it would fail to advance equality of opportunity.”

The 149 Public sector equality duty requires:

- (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.*

The relevant protected characteristics are—

- age;*
- disability;*

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation.

Variation of Condition 4.

Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

In light of the comments of the Inspector above, lessons will now be limited to small groups of three people including those that fall within the protected characteristics identified in Section 149.

Classes will take place over 3 days (Mon, Wed, Fri) 10am – noon based on 45 minute lessons with 15 minute change over period.

Mon 10am – 10-45am small group lesson (max 3 people) parking on property (using Flats Lane)

11am – 11-45am as above.

Repeated Wednesday and Friday 10am to midday where lessons are strictly by appointment only for private users and the facilities will not be advertised or available for use by any members of the general public. On this basis there is no requirement for any additional internal alterations needed to accommodate specialist equipment as the specific needs of the clients will be discussed at the time of booking

Access & Parking

The existing lawful access from Flats Lane will be utilised and parking can be accommodated within the grounds of Charity House to meet the necessary requirements during the limited hours of use. The applicant is agreeable to improve the access arrangements and provide a formal parking layout via the imposition of the condition imposed by the Inspector in relation to appeal Ref APP/R3705/W/21/3267144 dated 20th September 2021:

“Development shall not take place until full details and specifications for the approved improvements to the access have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the works have been carried out in accordance with the approved details. The access shall thereafter be retained as approved.”

In relation to transport issues paragraph 111 of the Framework states:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

The use of the access on Main Road was discounted following a formal objection from the Local Highway Authority (LHA) during a previous site visit following concerns over the width of the access where the width was physically measured during the site visit with the LHA.

Based on the above and the limited hours of use by appointment only, the percentage impacts of traffic movements are considered minimal meaning the use will have effectively 'nil detriment' and will not therefore adversely affect the current road network capacity or amenity of adjacent neighbours.

Conclusion & Justification

The Framework directs that all such applications should be considered in the context of the presumption in favour of sustainable development. The comments of the Inspector in relation to the recent appeal and section 149 of the Equality Act 2010, demonstrates the revised and reduced hours of use will not lead to an unacceptable impact on highway safety or the amenity of adjacent neighbours and this is further demonstrated by the letter contained in Appendix 1 below received from the LPA dated 17th February 2023.

Taking all matters into account, the revised and reduced class timetable will result in:

A limitation of the private client base including those within the protected characteristics identified in Section 149.

A material reduction in overall hours with these being now being late morning to early afternoon.

A significant material reduction in traffic generation of 36 two-way movements per week - i.e. 12 on each of the three nominated days.

Appendix 1



North Warwickshire
Borough Council

Jeff Brown BA Dip TP MRTPI
Head of Development Control Service

The Council House
South Street
Atherstone
Warwickshire
CV9 1DE

Mr S Cheshire
34 Stanley Road
Market Bosworth
Nuneaton
CV13 0NB

Switchboard : (01827) 715341
Fax : (01827) 719225
E Mail :
Website : www.northwarks.gov.uk
This matter is being dealt with by

Direct Dial : (01827)
Your ref :
Our ref : PAP/2021/0687

Date : 17th February 2023

Dear Simon

Appeal Decision dated 3 Feb 2023
89/91 Main Road, Austrey

WITHOUT PREJUDICE

I refer to the recent appeal decision dated 3 February in respect of the use of the swimming pool at this address. You will be aware that the Council has a resolution to issue an Enforcement Notice should there be a breach of planning control in respect of the planning condition attached to the 1996 planning permission restricting the use of the swimming pool at this address. Indeed, you will have already been in receipt of a Planning Contravention Notice in that regard prior to the appeal decision date. The resolution to issue an Enforcement Notice has not been withdrawn.

You will be aware that there is a significant degree of interest in this case from the local community and the Council continues to receive comments about vehicles using Flats Lane.

I note that the Inspector in his decision letter at para 30 says that "it does not follow from this decision that another proposal that allows a level of pool usage by disabled people would be unacceptable". He refers to the alternative vehicular access to Charity House. From my experience, comments such as these from a Planning Inspector are unusual.

As a consequence, would you be able to confirm if your client would consider an alternative proposal based on the Inspector's comments on a without prejudice basis?

Yours faithfully

Jeff Brown
Head of Development Control

Chief Executive: **Steve Maxey** BA (Hons) Dip LG Solicitor

To see our privacy notice go to:
www.northwarks.gov.uk/privacy

Your ref: PAP/2023/0117
My ref: 230117



Communities

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Mr J Brown BA Dip TP MRTPI
Head of Development Control Service
The Council House
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FAO: Christina Fortune

23rd May 2023

**PROPOSAL: Variation of condition no: 4 of planning permission
PAUSAV/0602/96/FAP (PAP/1996/3856).**

LOCATION: 89 - 91, Main Road, Austrey, Atherstone.

Warwickshire County Council, hereby known as the 'Highway Authority', has undertaken a full assessment, of the planning application, at the request of North Warwickshire Borough Council in its capacity as the Local Planning Authority.

The Highway Authority did not object to the previous application that was dismissed at appeal. The inspector raised one concern regarding highway safety as part of that appeal which was in relation to the restricted access width due to parked vehicles.

With the reduction in sessions once again proposed the number of movements as a result of the development would be around 36 per week, spread across 3 days from 10am to 12pm. Movements to the site would therefore be outside of peak hours.

A previous appeal was allowed on the site for a 2-bed dwelling which could generate around 28 movements per week. The inspector did not consider 28 movements to be significant and therefore the proposed 36 movements are also not considered significant.

It is also noted that a 15-minute change over period is proposed. It is therefore considered unlikely, with the reduced number of movements, that people would be arriving to and leaving the site at the same time so as to conflict within the access.

Improvements are proposed to the access and Flats Lane and as in the previous application the visibility splays at the site access are acceptable.

Based on the appraisal of the development proposals and the supporting information in the planning application the Highway Authority submits a response of **no objection**, subject to the following conditions:

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*Working for
Warwickshire*

1. Within 1 month of the date noted on the decision notice the visibility splay as shown on drawing number DWG-02 Rev A shall be provided. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway and the splay shall thereafter be retained during the approved use of the site.
2. Within 1 month of the date on the decision notice, full details and specifications for the approved improvements to the access shall be submitted to and approved in writing by the local planning authority. The works shall thereafter be carried out in accordance with the approved details and the access shall thereafter be retained as approved.

Yours sincerely

Chris Lancett

Chris Lancett
Development Group

****FOR INFORMATION ONLY****
COUNCILLOR HUMPHREYS – POLESWORTH

OFFICIAL

Christina Fortune

From: Russell Simkiss
Sent: 26 April 2023 11:45
To: Christina Fortune; Simon Powell
Subject: RE: Disabled Swimming offer in NW

Hello Christine

Disability falls within our eligibility for concessionary pricing, so initially there is a price concession.

Our sites are accessible for disabled customers:

In the pool:

- The pool has a hoist similar to the one you described below.
- We have sessions names as 'exclusive swim' where you can book half the small pool, with the aim to give more space and privacy. Although we haven't really advertised it, a number of customers book this as it's a safer space with reduced sensory interruption (or for young babies it's also popular).
- We have a private hire disability group that book out the small pool weekly
- We have school swim lessons for Woodlands and other similar schools

The gym:

- Polesworth fitness hub and Atherstone leisure complex are ground floor, Coleshill is first floor with a lift. We are accessible to wheelchair users
- We have staffed gyms and the instructors (or other staff qualified) can help users of differing abilities in various disabled users come to and use the facility
- We run exercise referral scheme which supports various health needs in improving or maintaining their health
- Our admissions policy allows carers of those with additional needs to go in to the gym for free to support the member.
- Both Polesworth and Coleshill gyms have different schools and groups with varying abilities come in weekly to use the facility.

The site and general:

- Our other facilities where requested are available to disabled populations.
- We have a funded training for staff we expect to be delivered this year about autism awareness. Following this, will be action planning to improve service and the possibility of accreditation. The project is being led by WCC, and although we're yet to have more info, that was the early brief.
- One of our key actions this year as a service (agreed with the team) is looking at our disability and disadvantaged populations offer, with a view to action plan and improve. Not entirely related, but we have a 'poverty proofing' review of the service that will feed into this action planning.

We do not currently have any disability sports clubs, nor do we run our own disability sessions. This is however an ambition for us to action plan and achieve over the next 12 months along side a number of other actions. Part of this review will be how we advertise our offer and connect with community groups.

I hope the above information is useful. Do let me know if I can help any further

Kind regards

Russ

APPENDIX M

From: [Austrey Parish Council Clerk](#)
Sent: 26 April 2023 16:44
To: [planappconsult](#)
Subject: re: PAP/2023/0117

Categories: Emma

Caution: Warning external email

Austrey Parish Council would like to object to the Planning Application PAP/2023/0117 at 89-91 Charity House.

The same arguments apply as per our objection to the original application, albeit with proposed reduced numbers. The application suggests 36 movements on the track each week (the applicants haven't included car movements for swimming teachers or support staff so the number is actually more). 36 plus extra movements on the track is still a lot and would still have a noise and light pollution detriment to the surrounding houses.

There is still the risk of cars meeting each other on the track and needing to potentially reverse into Main Road with absolutely no visibility into the road if in the reverse position. Even driving out facing forwards, this is a busy area of the village, being near to the only village shop, and visibility isn't great.

We are unsure how the reduced numbers / only disabled people would be policed. NWBC would have no way of controlling the situation and the customers that come and go once planning is granted on this basis.

The applicant has a main entrance to the house - we still don't understand why they are determined not to use it, especially if they are so keen to help the disabled community. The front entrance would be much more user friendly.

Also there is a greater risk of emergency medical assistance being required for disabled users. Would an ambulance be expected to use the single track lane?

One final point - There are still plenty of other swimming facilities in our locality that probably have better facilities (hoists, medical equipment for disabled) far in excess of what can be offered in a small 'residential' swimming pool. We would question whether the applicant plans to put any specialist equipment in place to aid the lessons for their targeted clientele.

Best Regards,

**Lynsey Treadwell
Clerk to Austrey Parish Council**



****Please note that I work part time & will endeavour to reply to your email within 3 working days****