
Appeal Decision

Site visit made on 10 May 2018

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 04 June 2018

Appeal Ref : APP/G2245/C/17/3181008

Land at Woodside, Rushetts Road, West Kingsdown, Sevenoaks, Kent, TN15 6EY.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs M. Moriarty against an enforcement notice issued by Sevenoaks District Council.
- The notice was issued on 29 June 2017.
- The breach of planning control as alleged in the notice is without planning permission the making of a material change in the use of the site from a dwellinghouse with ancillary use to mixed use as a dwellinghouse and a dance school with residential courses including overnight accommodation.
- The requirements of the notice are to cease the use of the land as a mixed use dwellinghouse and dance school with residential courses including overnight accommodation, so far as any use is not incidental to use as a site as a dwellinghouse with ancillary use; cease using the land as a dance school for classes for more than 2 students at any one time and for residential based courses that include overnight accommodation.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Ground (a) appeal and deemed application

Main Issues

1. The main issues in the determination of this appeal are the effect of the development on the (i) safe and efficient operation of the highway network in the vicinity of the appeal site and (ii) living conditions of the occupiers of neighbouring residential properties with particular reference to noise and disturbance.

Highway safety

2. The appeal site is a detached large dwellinghouse located in a predominantly residential area. Adjoining residential properties share a boundary with the appeal site. The space used as a dance studio is located in a former garage building. Full width glazed doors lead into the garden area. The studio includes two upstairs bedrooms each capable of sleeping 2-4 guests and three

bedrooms in the main house are used from time to time as residential accommodation for students on residential courses. The dance studio is used for lessons and residential courses currently for upto 30days and the Appellant seeks consent for upto 45 days a year. It opens to a maximum of 12 guests and most are young people between the ages of 12-18. The studio operates at weekdays and weekends during residential courses.

3. The development plan (including the Sevenoaks Local Development Framework Core Strategy (the Core Strategy) mirrors the National Planning Practice Framework (the Framework) in emphasising the need for development to have regard to matters of highway safety. Policy T1 of the Core Strategy provides that new development will be required to mitigate any adverse travel impacts, including the impact on congestion and safety and environmental impact such as noise. Policy EN1 of the Core Strategy lists criteria to be met by proposals including (EN1(d)) satisfactory means of access for vehicles and pedestrians and adequate parking.
4. The site is located on the southern side of Rushetts Road an unadopted road and restricted byway which serves the surrounding residential area. It is set back from the road and accessed via a narrow access drive located between neighbouring dwellings. Vehicles turn from the access drive onto a driveway which has two parking areas. The site is not within immediate proximity of public transport facilities and most trips to the site are by car.
5. The Appellant produces a highways and transport statement. It concludes on the basis of the sample period monitored that the pattern of arrival and departures does not pose a threat to highway safety and that the configuration and layout of the appeal site makes sufficient provision for on site parking avoiding on street parking on Rushetts Road.
6. The access drive is narrow with no passing bay and the availability of car parking within the site is not readily apparent when turning into the drive. There is no marked parking layout meaning that cars are unlikely to maximise use of available space. I consider that when vehicles for as many as 12 students arrive in a short space of time on the same day there is a potential risk of on street waiting or parking causing harm to highway safety. Neighbours describe incidents of this kind, albeit denied by the Appellant.
7. I consider that there is undue harm to highway safety by reason of the potential for on street waiting and parking, contrary to relevant policies in the development plan, including policy T1 of the Core Strategy.
8. I have considered whether, if appropriate, this identified harm could be controlled by condition and I have taken into account the Planning Practice Guidance and the conditions proposed by the parties in the event that the appeal is allowed. I note the proposed parking layout submitted by the Appellant in the course of this appeal. I conclude that a condition requiring a clear parking layout is necessary and reasonable. It would reduce the risk of vehicles stopping or parking on Rushetts Road when collecting or dropping off students. I therefore consider that the harm can be adequately controlled by condition and therefore do not consider this issue a reason to refuse planning permission.

Living conditions

9. Policy EN2 provides that development should not result in excessive noise, vibration, odour, air pollution, activity or vehicle movement.
10. Neighbours describe noise from dance classes and recreational activities taking place in the garden and cars (including occasional late night limousines) running engines whilst dropping off or collecting students. I note that the Appellant denies holding classes in the garden or that cars leave their engines running whilst waiting for students.
11. The Appellant has commissioned an environmental noise survey to assess the impact of the studio on neighbours. It considers noise from within the envelope of the studio only and applies a commercial (rather than a dance specific) standard. It concludes that sound pressure levels produced by the studio on day courses is likely to be of low impact on neighbouring dwellings. I note that a noise limiter is installed in the studio and that air cooling systems reduce the potential for open windows and doors in summer months. I am satisfied that subject to adequate controls music levels from inside the studio would not be unduly discernible to neighbours.
12. The survey identifies a section of wall on the south façade that requires acoustic treatment and I agree with the parties that if appropriate a condition would be reasonable and necessary to address this issue.
13. Neighbours complain of noise and disturbance from children's activities (including dance lessons) in the garden (denied by the Appellant). There is no suggestion before me that the activities have resulted in statutory nuisance or that environmental health have any serious concerns arising from complaints. But the potential for excessive noise and disturbance exists and I consider that controlling the number of events and maximum number of students by condition would be necessary and reasonable to ensure that any noise and disturbance would not be materially greater than that potentially generated by a normal household.
14. However, the comings and goings of pupils and vehicles is unduly intrusive for residents in this quiet residential area. This is particularly the case for residential events which can take place at weekends during the summer when residents have a reasonable expectation of peace and quiet to enable enjoyment of domestic gardens. The car parking areas are in close proximity to garden boundaries. The separation distances are such that the noise and disturbance from multiple vehicle movements and the congregation of students is likely to cause undue harm to neighbours inconsistent with the quiet enjoyment of a residential area.
15. I conclude that there is a real risk of undue harm to the living conditions of neighbours with particular regard to noise and disturbance from vehicle movements and the comings and goings of students. I have considered whether this could be controlled by a Noise Management Plan. I need to be satisfied that there is a real likelihood that the identified harm could be controlled by such a plan. But there is no draft plan before me and I am not satisfied that this is a practical and enforceable option for addressing the identified harm.

16. Whilst I acknowledge that some business uses may exist in residential areas without detriment to residents' living conditions, the nature of this development and its close proximity to neighbours does not persuade me that such mixed use development is acceptable in this location.
17. I have taken into account the personal statement of the Appellant and whilst I do not doubt the positive outcomes for dance students I am not satisfied that her personal circumstances warrant exceptional circumstances that justify a grant of personal permission. The benefits to students do not outweigh concerns about the living conditions of neighbours.
18. Whilst some aspects of the identified harm I have found to be controllable by condition these do not outweigh my concerns. I have found objections to the development (namely the harm to the living conditions of neighbours by reason of noise and disturbance from vehicle movement) that could not be resolved by imposing conditions on a grant of planning permission. I therefore conclude that the development causes undue harm to the living conditions of occupiers of nearby dwellings with regard to noise and disturbance with particular regard to vehicle movement contrary to relevant policies in the development plan including policy EN2 of the Core Strategy.
19. For the reasons given above I conclude that the ground (a) appeal should not succeed and planning permission should not be granted on the deemed application.

Ground (g) appeal

20. This ground of appeal is that the period for compliance is too short. The notice provides for a period of one month. The Appellant argues that one month is not a sufficient time to reschedule planned events and does not allow enough time to identify alternative premises. She suggests that nine months would be reasonable and practical. The Council maintains that one month is reasonable given the length of time since the issue of the notice and the ongoing harm.
21. The way the Appellant uses land must be proportionate taking into account competing public and private interests. I have balanced the Appellant's business needs and personal circumstances against the identified harm to the living conditions of neighbours. The Appellant should not be penalised by exercising her rights of appeal and I therefore I have not taken into account the time since issue of the notice. I consider that four months would be a reasonable time in which to expect the requirements of the notice to be met. It would strike an appropriate balance between competing interests and be proportionate so as not to violate individual rights. It would enable the Appellant to complete the summer programme whilst putting in place steps to relocate and provide notification to clients. It would ensure the identified harm is not prolonged any further than is necessary. To this limited extent the ground (g) appeal succeeds.
22. For the reasons given above I conclude that a reasonable period for compliance would be four months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Other matters

23. The appeal has attracted much local objection from neighbours, including a petition and representations made on their behalf by an agent. I have

considered some of their comments under the main issues. Some other issues raised such as damage to fencing, waste, fumes, subletting and fire issues are not main issues in this appeal and I note that many of the allegations are disputed by the Appellant.

24. The Appellant refers to the views expressed by Council officers in support of the development but this is not a ground of appeal and not something that I have taken into account in determining this appeal.

Formal Decision

25. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of the one month period for compliance and the substitution of four months as the period for compliance. Subject to this variation the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector