



Appeal Decision

Site visit made on 24 April 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2019

Appeal Ref: APP/P3040/W/19/3220908

40 Nottingham Road, Keyworth, Nottingham NG12 5GT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Catriona Stuart against the decision of Rushcliffe Borough Council.
 - The application Ref 18/02213/FUL, dated 11 October 2018, was refused by notice dated 17 January 2019.
 - The development proposed is described as 'Replacing existing building, which had inadequate foundations and was assessed to be unsafe and irreparable, with a new building. The new building has the same footprint in the same position as the original building. We have turned the roof pitch 90° to aid maintenance and give more light to our neighbours. The new building will be used as a therapy room for my counselling and relaxation business'.
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Decision

1. The appeal is allowed and planning permission is granted for replacement outbuilding and change of use to counselling and therapy business (Use Class D1) at 40 Nottingham Road, Keyworth, Nottingham NG12 5GT in accordance with the terms of the application Ref 18/02213/FUL, dated 11 October 2018, subject to the conditions below.
 - 1) The development hereby permitted shall be begun within three years from the date of this decision.
 - 2) The outbuilding hereby approved shall only be carried out in accordance with the submitted site plan and side elevation plan; roof plan; front elevation plan; and boundary drawing.
 - 3) The business use shall only be carried out in the outbuilding hereby approved as shown located in red on the submitted site plan, and no business use shall be carried out within the main dwellinghouse, known as 40 Nottingham Road, Keyworth, Nottingham.
 - 4) The business use permitted shall not operate outside of 09:30 and 19:00 hours Monday to Friday and 09:30 and 11:30 hours on Saturdays. The use shall not operate at any time on Sundays, Bank and Public holidays.
 - 5) The number of clients attending the business use in the outbuilding hereby approved shall not exceed 5 persons at any one time, and the number of group sessions comprising 3-5 persons shall not exceed three times in any given week (Monday to Saturday).

- 6) Apart from uses ancillary to the main dwellinghouse, the outbuilding hereby approved shall be used for a counselling and relaxation therapy business and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Procedural Matters

2. In my decision, I have used the description of the proposal from the Council's decision notice, but have added 'Use Class' for clarity. It adequately and simply describes the proposed development instead of the more detailed description given on the application form.
3. On my site visit an outbuilding had been erected broadly in line with the submitted plans, but was still being fitted out so did not appear to be in use as the proposed counselling and therapy business. Notwithstanding this, I have dealt with the appeal on its merits.
4. The revised National Planning Policy Framework (the Framework) was published in February 2019. I have had regard to it in reaching my decision.

Main Issue

5. The main issue is whether the proposed business use would affect highway safety with regard to parking.

Reasons

6. The appeal site is a semi-detached property with a long rear garden, located within a predominately residential area. Properties are generally set back from the road with driveways. The property has on-site parking for 2-3 cars.
7. The proposed outbuilding is sited at the bottom of a good sized garden, a good distance away from the host dwelling and ample rear garden area remains. The outbuilding is where the appellant intends to operate her counselling and therapy business. There is no dispute between the parties relating to the outbuilding itself or to its use *per se* for a counselling and therapy business.
8. Policy ED3 of the Keyworth Neighbourhood Development Plan adopted June 2018 (the KNDP) supports the conversion of residential outbuildings for new entrepreneurial activities and businesses, provided that various criteria are met, including the development is not a bad neighbour and that the development will be acceptable in highway terms with sufficient parking. Policy GP2(b) of the Rushcliffe Borough Non-Statutory Replacement Local Plan adopted 2006 (RLP) expects new development to have suitable access without detriment to highway safety.
9. The appellant has described that her business would mainly operate on a one-to-one basis, particularly for the counselling sessions, although sometimes the person being treated may be accompanied by someone. Sessions would likely last about an hour, with 15 minute gaps between sessions to allow for paperwork and breaks.
10. The appeal property has potential parking space for 3 cars on the driveway, but this would be reduced due to the appellant's own cars, leaving 1 available

space most of the time. This would be adequate for the one-to-one sessions, and the County Highways officer had no objection on this basis.

11. However, there has been some dispute between the parties during the determination of the application regarding group sessions of up to 5 people. This forms the Council's reason for refusal. Based on there being potentially up to 5 people attending a group session, with no additional on-site parking being provided, the County Highway officer objected, concerned that the increased demand for on-street parking would further reduce the width of Nottingham Road and hence increase the likelihood of danger to other users.
12. I note that the County Highway officer refers to Nottingham Road as being a village distributor road likely to experience Annual Average Daily Traffic Flows of 4350 vehicles. Furthermore, existing on-street parking reduces the width of the carriageway, hence creating highway danger to users.
13. At the time of my visit, albeit a snap shot in time, the road was quiet. I also noted that this section of Nottingham Road was relatively straight and on a hill but afforded generally good visibility of approaching traffic.
14. On-street parking already exists along this part of Nottingham Road on the opposite side of the road to the appeal property. The County Highways Officer comments that drivers exiting adjacent driveways would have a restrictive view of oncoming traffic. However, from my observations the adjacent driveways would be on the same side of the road as the appeal site and I noted there was a traffic yellow line along this stretch of Nottingham Road in front the appeal and adjacent properties. This would prohibit parking at certain times of the day. Visiting clients to the proposed business would be expected to obey the existing traffic regulation order and not park on the yellow lines. Traffic Enforcement is responsible for dealing with parking violations. I did not observe any cars parked on the stretch of yellow line at the time of my visit. There are very few driveways opposite the appeal site that would be affected.
15. I have not been presented with any parking standards to indicate any particular shortfall in provision for the proposed development. Nor have I been persuaded by the submitted evidence that potentially four extra cars parked on Nottingham Road or other nearby roads (as one car could park on site) would create a significant danger to highway users.
16. Therefore, I find there is no substantive evidence to suggest that highway users would be significantly endangered by additional on-street parking that may arise from the proposed counselling and therapy business, subject to conditions below. It would not be in conflict with Policy ED3 of the KDNP or Policy GP2 of the RLP, whose aims are outlined above.

Conditions

17. It is necessary for me to consider whether or not conditions could be imposed to control the risk of future harm. The Council has suggested three conditions to restrict operating hours, number of clients at any one time, and only the outbuilding to be used for the said business. Any condition would have to meet the statutory tests and be necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects. Where necessary and in the interests of precision and clarity I have amended them to accord with the Planning Practice Guidance.

18. It would be necessary to restrict the operating hours to reduce general noise and disturbance to occupiers of neighbouring properties. The appellant has confirmed operating hours as Monday to Friday 9.30am - 3.30pm (counselling classes) and 3.30pm - 7pm (relaxation classes) and 9.30am - 11.30am on Saturdays, with no business use on Sundays or bank holidays. The Council's Environmental Health Officer has no objection based on these hours. The appellant also advises there may be occasions within these operating hours when she does not have any sessions. I find these hours to be reasonable. I note that the Council has not suggested the two separate blocks on Monday to Friday, but instead has suggested 9am to 7pm - starting earlier at 9am and continuing through to 7pm. I do not find it necessary to make a distinction between relaxation and counselling sessions, which are back to back, hence I agree with the Council to allow the business to operate continuously within the hours' band, but to start at 9.30am as the appellant requires (see condition 4).
19. Restricting the number of clients and the number of group sessions would be relevant and necessary to safeguard the living conditions of neighbouring properties and to acknowledge highway safety concerns arising from parking. Limiting the number of clients to 5 at any one time is in line with the appellant's requirements. The appellant has confirmed in her appeal Statement that she has no intention of running group sessions, for practical and financial reasons. However, should the business prove successful, something the KNDP seeks to encourage, allowing some limited group sessions could be acceptable. However, I have amended the Council's suggested condition to limit the maximum size of any group session to 5 people, to bring it in line with the first part of the Council's suggested condition (see condition 5).
20. Limiting the business use to only take place in the outbuilding and not the main dwelling would serve to limit the business to an acceptable level and avoid potentially uncontrolled intensification and excess parking (condition 3).
21. Moreover, I would impose an additional condition removing permitted development rights (see condition 6) and hence restrict to the specific use the appellant has applied for. Class D1 uses (non-residential institutions) include a broad range of uses, such as medical and health, nursery, public religious worship, which may not be suitable or appropriate for a small outbuilding at a residential premises. Other Class D1 uses may be of different nature and have different impacts, including on the living conditions of neighbouring occupiers in close proximity, that could not be assessed. Whilst restriction of permitted development should only be used in exceptional circumstances, I find it is justified here.
22. I would also impose the standard time limit condition (condition 1), and list the approved plans for the avoidance of doubt (condition 2).

Conclusion

23. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should succeed and planning permission should be granted, subject to conditions.

K Stephens

INSPECTOR