



Appeal Decision

Site visit made on 20 May 2019

by E Symmons BSc (Hons), MSc

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Appeal Ref: APP/W3005/W/19/3223369

2a Wilson Avenue, Kirkby in Ashfield, Nottinghamshire NG17 8AZ

- 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 Karen Holden against the decision of Ashfield District Council.
 - The application ref V/2018/0732, dated 6 November 2018, was refused by notice dated 29 January 2019.
 - The development is for a change of use of outbuilding to a dog grooming salon.
-

Decision

1. The appeal is allowed, and planning permission is granted for a change of use of outbuilding to a dog grooming salon at 2a Wilson Avenue, Kirkby in Ashfield, Nottinghamshire NG17 8AZ in accordance with the terms of application reference V/2018/0732, dated 6 November 2018, subject to conditions set out in the attached schedule.

Procedural Matters

2. The description of the development within the application form is for a change of use of an outbuilding. The Council acknowledge that had the outbuilding been built as incidental to the dwelling house it would have benefitted from permitted development rights. As such, only the use of the outbuilding is considered within this appeal. As observed during my visit, the outbuilding has been constructed and the dog grooming business is currently operating.
3. A separate appeal against an enforcement notice has also been made in respect of the appeal property/development. I have however, determined this appeal under section 78 of the Town and Country Planning Act 1990 on its own merits and the other appeal has not had any bearing on my consideration.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring occupiers with respect to on street parking conditions, disturbance and noise.

Reasons

Parking

5. The appeal property sits at the end of a residential cul de sac and comprises a detached bungalow with a garage to the side and rear. A single storey outbuilding has been constructed to the side of the existing garage which

separates it from the adjacent property boundary. The outbuilding is constructed from breeze-blocks having a mono-pitched roof and is approximately 3.8m by 3.2m in size. It is currently used to house a dog grooming business and contains equipment for that purpose including a grooming table; workbench; dog drier and dog bath. Customers access the outbuilding via a gate leading from the front drive of the property.

6. The business hours detailed within the appeal statement are shown as 0900-1630 Tuesday to Friday and 0900-1500 on alternate Saturdays. Clients do not stay with their dogs but pick them up at the end of the session. Each session lasts between one and four hours and sessions are separated by 15 minute gaps to prevent multiple clients on site at the same time. The business is estimated by the appellant to generate 1-5 customers each day.
7. The appeal site has a private driveway and there is disagreement between the main parties as to whether this can accommodate customer parking. Neither main party has submitted any substantive technical appraisal and for the purposes of this appeal I have assumed there is no on-site customer parking. There is insufficient street frontage to the bungalow and drive to accommodate a parked car. Unrestricted on-street parking is available elsewhere on Wilson Avenue and Regent Road. Wilson Avenue is a narrow cul de sac which requires cars to park in a staggered fashion to prevent obstruction. Despite this, as most properties on the street have integral drives, and as observed during my site visit, albeit noting this was a 'snap-shot' in time, there appears to be on-street parking available at a time when customers are likely to visit.
8. A lack of on-site customer parking could result in customers obstructing the highway as they may park in the turning head of the cul de sac, park partially on the footpath or block driveways. This view however, assumes that customers would park inconsiderately. The appellant contests that customers are advised to park considerately, and the majority currently park a short walk away around the corner on Regent Street which has unrestricted parking. It has been raised that Regent Street is already used for parking for the nearby care home. However, parking associated with the appeal business is temporary in nature and no substantive evidence has been provided to suggest that it conflicts with existing parking in that area. At the time of my site visit which was mid-afternoon and during what would be the usual business hours, there appeared to be on street parking space available on Regent Street, again being conscious that this was a 'snap-shot' in time.
9. The business generates a relatively low number of journeys spread over four to five days of the week. Technical advice from the Council's Highways Officer indicates no concern regarding vehicle capacity in Wilson Avenue and Regent Road. Although customer car parking may not be directly within the appellant's control, restrictive conditions requiring limited hours, customer numbers and days of operation would substantially minimise potential issues, including inconvenience or undue adverse effects on neighbours living conditions.

Disturbance and noise

10. It has been questioned whether the business would generate more intense and frequent noise and disturbance due to additional vehicles, parking, customers' dogs barking and car engines left running. The maximum number of journeys associated with this business is agreed by the main parties to be up to ten each day Tuesday to Friday and alternate Saturdays (based on a maximum of five

customers a day). Cars stop for between five and fifteen minutes. I accept that there may be occasional barking when dogs are being walked down the street and some customers may leave engines running.

11. The additional visitors to the cul de sac generated by the business has led to fear that this may harm residents' privacy, security and safety. Although I have sympathy with this view, this must be considered within the context of other 'unexpected' visitors to residential streets such as door to door sales or those posting flyers and leaflets. As customers arrive for pre-arranged appointments, and are known to the appellant, I do not consider that there would be an increased risk to personal safety resulting from this business.
12. Issues of noise from the dog drier, barking from within the outbuilding and from dogs waiting within the garden and potential odours have been raised. The size and siting of the outbuilding at the bottom of the garden screened from adjacent neighbours by other buildings and separated from the neighbouring property by the garage mitigates noise, odours and disturbance. Also, any householder may have one or several dogs of their own, and in the absence of evidence of nuisance from barking, I do not consider this to be a severe issue. Waste storage and collection for dog faeces and hair has also been raised however, this could also be controlled through a suitable condition requiring the approval of and adherence to a refuse and waste strategy.
13. In conclusion, conditions which could limit the number of customers each day and business operating hours would considerably mitigate any potential for noise to affect neighbours' living conditions. Limiting business hours would also ensure that clients do not arrive at quiet times such as in the evening and early morning. Such conditions would also restrict the intensity of business and limit the frequency of additional journeys over and above that which would occur within any residential street. In any case, the business is limited by the size of the outbuilding which restricts both numbers of staff and dogs which can be accommodated by the business use within the building at any one time.
14. The change of use from outbuilding to a dog grooming salon would therefore not conflict with Policy ST1 (c) of the Ashfield Local Plan Review 2002 (Local Plan) which seeks that development does not adversely affect highway safety or capacity. It would not significantly harm the living conditions of neighbouring properties with respect to disturbance and would therefore not conflict with Policy ST1 (e) which seeks to ensure that development does not conflict with an adjoining or nearby land use.

Other Matters

15. The potential for customers' cars to restrict access to Wilson Avenue for emergency vehicles has also been raised. Technical advice from the Council's Highways Officer indicates no concern regarding highway safety. Additionally, due to the temporary nature of the parking associated with this business, during which time the driver would in all likelihood be present in the vicinity of the car, I consider that should this occur, the car could be effectively moved.
16. The potential for dog fouling resulting from customer's dogs has been raised. However, I consider that customers would be likely to clear up any fouling on the footpath and this is supported by appropriate legislation. Additionally, conditions limiting numbers of customers would limit numbers of visiting dogs and further mitigate this.

17. The accuracy of information given within the application and appeal has been queried. However, I have been presented with no substantive reasons to doubt that the appellant is operating, or would operate, in any manner otherwise than in accordance with the terms of a consent. Regularising the use with enforceable conditions would enable the Council to ensure the business would operate within the specified parameters of hours and intensity of use.
18. Issues of noise from the appellant's own dogs; effects of the proposal on property values; the potential for advertising and the behaviour of parties during the application/appeal process have been raised. As these matters have not had any material bearing on my assessment, I have afforded them limited weight. There is also concern that business use of a residential property results in empty business properties on the high street. I have no substantive evidence that would indicate that a modest scale business with limited hours and customers would result in harm to the vitality of the high street. The issue of waste water disposal has been raised which is covered by water industry legislation and the construction of the outbuilding is covered by building regulations.

Conditions

19. The conditions set out in the accompanying schedule are based on those suggested by the Council. These conditions have been considered against the tests of the Framework and advice within the Planning Practice Guidance (PPG) on conditions. In the interests of precision and clarity I have undertaken some editing and rationalisation. I have omitted the Council's condition 5 which limited the business use to the applicant. The PPG advises against limiting the benefits of planning permission to a particular person except in exceptional circumstances¹ and these circumstances have not been demonstrated. I have added one condition (5) which is necessary to ensure appropriate storage and disposal of waste produced by the business use.
20. For certainty and clarity there is a need for a condition specifying the plans to which the permission relates. In the interests of preserving the living conditions of neighbours, conditions 2 and 4 limit the business hours and place of operation. Condition 3 restricts the number of customers each day in accordance with the appellant's stated maximum daily capacity.

Conclusion

21. The dog grooming business would operate with restricted business hours so limiting numbers of cars, potential car parking issues and associated noise and disturbance. Also, due to the position of the outbuilding to the rear of the property, and flanked by other buildings, it would be unlikely to cause unacceptable disturbance to occupiers of neighbouring properties. As such the appeal business does not conflict with Policy ST1 of the Local Plan.
22. For the reasons given above, I allow the appeal.

E Symmons

INSPECTOR

¹ Paragraph: 015 Reference ID: 21a-015-20140306.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site plan 1:1250; Proposed block plan 1:500 received 12/11/18; Proposed elevations and floor plans received 28/11/18.
- 2) The use hereby permitted shall only take place between the hours of 0900 to 1630 on Tuesday to Friday and 0900 to 1500 on alternate Saturdays and at no time on Mondays, Sundays or on Bank or Public Holidays
- 3) The maximum number of separate customer visits to the premises in any one day shall not exceed five. All customer appointments in connection with the use hereby permitted must be pre-arranged allowing a minimum of fifteen minutes between the end of one and the start of the next consecutive appointment. A record of all appointments and times must be kept by the operator of the dog grooming salon and shall be made available at all reasonable times for inspection by officers of the local planning authority.
- 4) The use hereby permitted shall only operate within the outbuilding as detailed within the approved plans.
- 5) Unless within one month of the date of this decision a refuse and waste management strategy (the strategy) including details of waste storage and disposal, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site as a dog grooming salon shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within six months of the date of this decision, the use of the site as a dog grooming salon shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved strategy specified in this condition, the use shall thereafter be carried out in accordance with that strategy. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

END OF SCHEDULE