
Appeal Decision

Site visit made on 19 November 2019

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 25th November 2019

Appeal Ref: APP/B0230/W/19/3236062

7 Thornage Close, Warden Hills, Luton, Bedfordshire LU2 7AT

- 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 Mandy Gibbard against the decision of Luton Council.
 - The application Ref 19/00108/FUL, dated 27 February 2019, was refused by notice dated 24 June 2019.
 - The development proposed is the Change of Use of garden room to hair salon.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council advise that the property does not benefit from any permitted development rights and has treated the proposal as a retrospective application for the erection of a detached outbuilding for the use as a hair salon. They refer to a fuller description in their decision notice even though the application form refers only to a change of use. At the time of my visit the building was in place and was being used as a hair salon. It has two workstations, and separate backwash and preparation areas. One member of staff was present however there were no customers on the site; it was however clear that the use had already commenced, and I deal with it on that basis.

Main Issues

3. The main issues are the effect of the development on: a) the character of the area; b) the living conditions of the occupiers of adjacent properties with regard to noise or disturbance; and c) Whether the appeal site would be a suitable location for the proposed use having regard to a sequential test.

Reasons

Character

4. The nature of the appeal site is that of a domestic property located on a small cul de sac of dwellings. The hair salon is not visible from Thornage Close being accessed via a walkway at the side of the house. The structure is a simple outbuilding occupying part of the rear garden.
5. As a modest garden building within a domestic setting it is not dominant, overbearing or intrusive in relation to the house. Indeed, I saw several similar sized buildings in surrounding gardens. Such buildings form a commonplace part of the character of this residential area. No objection is raised in terms of

any visual impact of the structure and I have no evidence before me on which to disagree. The Council's concerns relate to the potential for noise and disturbance as a consequence of increased comings and goings, associated with the use.

6. The proposal is intended for two employees however it was apparent on the site visit and from representations that the stylist is not the appellant but a family member. I have no evidence before me as to whether the salon operator (introduced to me as the appellants' daughter) is resident at the appeal site. What is clear is that it is intended to have both a stylist and an apprentice engaged in the business. There is no evidence in the statement of case as to the operating hours of the business such that I can be certain that it would not unacceptably impact on the character of the Close as a quiet residential enclave. It is however possible that this could be limited through planning conditions.
7. Whether a use is genuinely ancillary to the residential use of the property is a matter of fact and degree and will inevitably vary from case to case. In the circumstances outlined within the officer report it indicates that clients would number between 2 to 8 per day. I consider such movements to and from the property, coupled with the movements associated with two members of staff and any deliveries, would lead to a level of usage greater than that which would normally be expected where a use is purely ancillary to the appellants' occupation of a dwelling. The appellants' statement of case is silent on any specific detail in relation to the level of usage; however, the Councils' interpretation of the likely number of clients is not challenged and I therefore attribute significant weight to this aspect of the Councils' evidence.
8. It would seem to me to be very unlikely that clients would arrive by means other than the private car. Consequently, the associated comings and goings would have an impact by reason of a level of activity over and above that of a domestic dwelling. The level of activity associated with up to 8 clients, two staff members and delivery vehicles would be likely to significantly intensify the use, materially changing the use of the appeal site and thereby the character of the site. A substantive change from purely residential to a mixed use would be incompatible with the residential use of the site and its surroundings.
9. For these reasons the proposal would conflict with Policies LLP1 and LLP25 of the Local Luton Plan 2011-2031 Planning and Economic Growth Place and Infrastructure (2017) (Local Plan) and to the aims of the National Planning Policy Framework (The Framework). These policies seek, amongst other things, to preserve or improve the character of an area and make a positive contribution to enhancing its character.

Living conditions

10. Given the size of the building and its relationship to adjacent residential properties I do not find there to be any evidence that the structure itself would affect the living conditions of adjacent occupiers. The intensity of the use of the building would also be limited by its physical size. However, from the evidence before me relating to the volume of customers and staff travelling to and from the site, I consider that they would be significantly greater than those associated with the domestic use of the dwelling. Given that the appellant and the proprietor of the salon are not one and the same person there would also be the normal movements associated with the dwelling to consider.

11. I recognise that there are advantages of working from home and that many small businesses can be carried out successfully in residential areas without detriment to the amenity of neighbours. However, this would not be the case here as visiting clients and at least one, if not both, members of staff would also arrive and leave the property each working day. From the operations involved it is clear that it is not simply ancillary to the use of the main property as a dwelling.
12. The appellant has highlighted that the impact on the adjoining properties has been overplayed. Nonetheless in the absence of any evidence to demonstrate that the use of the site would be the same or similar as a dwelling; nor that the staffing of the business premises would be by personnel resident on the site I cannot come to that same conclusion. Whilst I have no reason to suppose that the nature of the business itself would be particularly noisy, the number of clients using the site is a substantive concern.
13. Taking all these factors together, the level of use would be likely to adversely affect the living conditions of the occupants of adjacent dwellings by reason of noise and disturbance associated with the volume of comings and goings to the property significantly above those attributed to those associated with the dwelling alone. In this regard I consider that there would be harm to the occupants of the adjacent dwellings and an adverse effect on their living conditions contrary to the appellants' view that there would be negligible material harm to the area.
14. Therefore, I find that the proposal would conflict with Policies LLP1 and LLP25 of the Local Plan and the aims of the Framework; in so far as they relate to impacts on residential amenity; improving the character of an area and creating quality places.
15. In reaching this decision I have had regard to the content of Policy LLP19 which is quoted in the reason for refusal and relates to the extension of dwellings and annexes a policy with which I do not find any conflict in relation to the scale and size of the building.

Sequential test

16. The Council suggests that as this is a retail use there should be a sequential test in order to comply with Policy LLP21 of the Local Plan. This policy seeks to ensure that proposals for main town centre uses are located appropriately. A hair salon is a main town centre use for the purposes of the National Planning Policy Framework and a sequential test is required for a location which is not within an existing centre. However, on the basis of the magnitude of this use. I am not persuaded that it would necessarily undermine the vitality and viability of the town or other local shopping centre. In any event, the Council has not produced any robust evidence to suggest that any sequentially preferable sites are available or suitable for a small business of the type proposed. On the basis of the scale proposed I do not find that there would be sufficient conflict with Policy LLP21 of the Local Plan to warrant withholding consent for this reason alone.

Other matters

17. Representations have been made with regard to the impact of traffic and insufficient parking however it was clear that the frontage of the property has

been laid out to accommodate three to four cars and there is an amount of on street parking in the vicinity. On this basis and given that the highway authority raises no objection to the proposal I am satisfied that the site could physically accommodate a moderate amount of parking associated with the dwelling and a small-scale business. This does not however diminish my concerns with regard to the effect of that volume of vehicle movements on the site and the effect that these would have on the character of the site.

18. It has been suggested that the erection of the building would require planning permission by virtue of restrictive conditions including one which restricts the operation of any business activity. Such restrictions are private legal matters independent of the planning process and do not carry weight in the context of the planning decision.
19. I do note that the Council do not take issue with the size or impact of the outbuilding on the adjacent properties and the basis of the evidence I have no reason to disagree, this does not however alleviate my concerns with regard to the level of the business use and its impact on the character of the site.

Conclusion

20. Notwithstanding my finding in relation to the need for a sequential test this does not diminish my concerns in relation to the impact of the salon use on the character of the area nor the impact of the volume of pedestrian and vehicle movements to and from the property associated with the commercial use. For these reasons and having taken all other factors into account the appeal is dismissed.

Janet Wilson

INSPECTOR