The Planning Inspectorate

Appeal Decision

Site visit made on 27 May 2020

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 23rd June 2020.

Appeal Ref: APP/X1735/W/19/3243789
19B Frogmore Lane, Waterlooville PO8 9QN

- 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 & Mrs S Perkins against the decision of Havant Borough Council.
- The application Ref APP/19/00988, dated 2 October 2019, was refused by notice dated 19 December 2019.
- The application sought planning permission for construction of timber frame outbuilding in rear garden (retrospective application) without complying with a condition attached to planning permission Ref APP/18/00489, dated 24 July 2018.
- The condition in dispute is No 2 which states that: "*The outbuilding hereby permitted shall be occupied solely for purposes incidental to the occupation and enjoyment of the existing dwelling and shall not be used for any business, commercial or industrial purposes whatsoever or as a separate unit of accommodation, without the prior written approval of the Local Planning Authority.*"
- The reason given for the condition is: "*In the interests of the amenities of the occupiers of nearby properties and having due regard to policies CS16 and DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework*."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellants state that no commercial use was intended when permission was sought and suggest that such a use would require planning permission. However, whatever their original intention, the appellants are now seeking to introduce an element of commercial use. Moreover, they have applied under s73 of the Town and Country Planning Act 1990 (the Act) and not as a fresh application for planning permission, and do not seek to argue that the proposal would be a material change of use. I have therefore dealt with the appeal on that basis.

3. Although the appellants do not consider the disputed condition was necessary when it was imposed, they have nonetheless proposed a specific alternative wording for the condition and have not sought to remove it entirely. The appellants seek to vary the wording of the disputed condition to allow one of them to teach Pilates classes within the building on a 1-to-1 basis, for up to 10 classes of 45 to 60 minutes duration per week, such classes to take place only between the hours of 09.00-13.00 and 17.00-19.00 Monday to Friday and 09.00-13.00 on Saturdays. Although interested parties have raised concerns that this would mean 34 hours of classes per week, the appellant's submissions set out that permission is sought for

classes to take place over a maximum of 10 hours during these periods. I have considered the appeal on this basis.

Main Issue

4. The main issue is therefore the effect that varying the condition would have on the living conditions of neighbours in respect of privacy, noise and disturbance, with specific reference to the activities proposed.

Reasons

Privacy

5. The appeal site is located in a predominantly residential area and comprises a semi-detached house with a modest rear garden. The appeal site and its attached neighbour No 19A are part of a close-knit modern development together with Ash Copse, in which dwellings sit on relatively small plots in comparison to surrounding properties. Land levels rise from Frogmore Lane, such that the garden and the outbuilding subject of the disputed condition are at a higher level than the house.

6. At my site visit I was able to see into both the lounge and kitchen at the rear of No 19A from the garden and outbuilding of the appeal site, due to the relatively low boundary fence between them. Limited views into the bedrooms were also possible from the outbuilding and upper part of the garden. There is therefore already some degree of overlooking between the two properties.

7. Due to the modest size of the garden and the slope of the land, clients coming to Pilates classes would pass relatively close to the boundary with No 19A. Although they would probably move through relatively quickly, they would nevertheless be afforded clear views into the neighbouring dwelling and garden on their way to and from the outbuilding. The number of clients coming to and from classes would go well beyond what might be expected from day-to-day use of the appeal site by the appellants, their family and visitors, and would be in addition to such normal activity. Furthermore, visiting clients would not be familiar to neighbours which could increase the feeling of intrusion. Consequently, the occupiers of No 19A would experience a significant increase in overlooking while in their dwelling or garden, particularly in the early evening, when it might reasonably be expected that the lounge and kitchen would be well used. As such, the proposal would result in a significant loss of privacy for the occupiers of No 19A.

8. The potential for overlooking from the outbuilding itself could be mitigated by the use of curtains or blinds, which could be secured by planning condition. This would not however address the impact of clients passing through the garden to get to the building.

9. A tall brick wall between the appeal site and No 1 Ash Copse means that visitors to the appeal site would not be able to see into the garden of that property and would have only oblique views towards upper floor windows. Although clients coming to classes would be able to see into the front windows of No 1, similar views are already achievable from the public realm. Therefore, the proposal would not materially impact the privacy of the occupiers of No 1.

10. Accordingly, varying the disputed condition as proposed would result in significant harm to the living conditions of the occupiers of No 19A in respect of privacy and would therefore conflict with Policy CS16 of the Havant Borough Local Plan Core Strategy 2011 (CS), which requires, amongst other things, that development does not cause unacceptable harm to the amenity of neighbours through the loss of privacy and overlooking.

Noise and disturbance

11. The appellants do not propose to hold classes outside the outbuilding, and this could be controlled by a planning condition. There would however be some external activity associated with clients coming and going from the site, including vehicles entering, leaving and manoeuvring in the relatively restricted parking layout proposed and car doors closing. There is also likely be some degree of conversation, as it is unrealistic to expect that all greetings and farewells would take place inside the building with the door closed.

12. Although such external activity is common in a residential area, a further 10 clients per week visiting the appeal site would be a significant increase in the level normally associated with a single dwelling. In the evenings and on Saturdays, when people are more likely to be at home, this additional activity would be particularly noticeable to the immediate neighbours. As such, the proposal would result in the occupiers of No 1 and No 19A experiencing a modest amount of additional noise and disturbance, to the detriment of their living conditions.

13. The existing wording of the condition would allow the use of the outbuilding for many domestic activities, including working from home and participating in Pilates, which might involve family members or friends coming to and from the appeal site and consequent external activity. Nonetheless, there is no compelling evidence before me that such day-to-day activities taking place within the limitations of the existing condition would generate the same frequency and number of people visiting the site per week as the appeal proposal, during the same periods. As such, it has not been demonstrated that the use of the outbuilding in accordance with the existing condition would result in external noise and disturbance comparable to the effects of the proposed variation of the condition.

14. Given the separation distance and level changes between the appeal site and properties at the rear, the occupiers of those dwellings are unlikely to perceive a material change in activity and as such would not be adversely affected by this aspect of the proposal.

15. The appellants advise that Pilates is generally a mat-based form of exercise involving stretching, balance and focused exercises and using hand-held equipment and exercise balls. Although I am aware that mechanical equipment can also be involved, the appellants have not indicated any intention of using such equipment. As such, it is likely to be a relatively quiet activity. While background music is proposed, this would be at a level allowing the instructor to be heard by the client and no use of microphones is proposed. The appellants also propose to keep the doors of the outbuilding closed during classes. Subject to such restrictions, the Pilates activity within the building is unlikely to generate sufficient noise to disturb neighbouring occupiers. All of these restrictions could reasonably be secured by planning conditions.

16. Some form of cooling is however likely to be required as physical activity will generate heat, and this has the potential to generate noise. I have not been provided with details of the standalone air conditioning tower which the appellants propose to use, and cannot therefore be certain that it would be effective in cooling the building or that it is not audible outside the building, as the appellant contends. However, the use of cooling, ventilation or extraction equipment could be controlled by a suitably worded planning condition.

17. Subject to such conditions, the level of internal noise from use of the outbuilding for Pilates classes is unlikely to exceed that which might arise from domestic activities that could take place within the outbuilding under the existing condition, which

would not be subject to such restrictions. No conditions have been put forward however, that would address the external noise and disturbance from the proposal and I am not convinced, based on the evidence before me, that a condition attempting to do so would be effective and capable of implementation.

18. The use of the outbuilding would revert to its primary incidental domestic use outside of the 10 classes per week, however this would not mitigate the impacts experienced by neighbours during those 10 hours, and as such would not overcome the harm identified.

19. Accordingly, varying the condition as proposed would result in modest harm to the living conditions of neighbouring occupiers in respect of noise and disturbance. The proposal would therefore conflict with CS Policy CS16 insofar as it seeks to prevent development that would cause unacceptable harm to the amenity of neighbours through noise.

Other Matters

20. The Council refers to policies IN3 and E22 of the pre-submission Havant Borough Local Plan 2036, which deal with transport and parking, amenity and pollution. I have not however been provided with details of the extent to which there are any unresolved objections to the policies. Therefore, having regard to Framework paragraph 48, I can afford them very little weight.

21. The Council has suggested that permission could be granted on a temporary basis to allow the impacts of the proposed use to be monitored. However, as the harm I have identified would be experienced from a temporary use I am not convinced that such an approach would mitigate the harmful effects and in any event the appellants have made it clear that they would not accept such a condition. As such it would not be reasonable to impose one.

22. While I appreciate that this proposal represents a scaling-back of the appellants original aspirations in response to the concerns of interested parties, I have considered the proposal before me on its own merits and identified that the proposal would result in harm to neighbours' living conditions even at the scale now proposed. Therefore, the reduction in scale does not in itself make the current proposal acceptable.

Planning Balance and Conclusion

23. The proposal would promote physical activity and provide 1-to-1 classes at a local level for which there is evidently a demand, particularly for clients for whom group classes may not be suitable. As such, the proposal would benefit health and wellbeing, for which there is support in the CS and the National Planning Policy Framework (the Framework). Given the small scale of the proposal however, this benefit can be afforded only modest weight.

24. Framework paragraph 80 affords significant weight to the need to support economic growth, and paragraph 2.03 of the CS sets out that the Borough is 'open for business'. I am also advised that the CS supports working from home, however I have not been directed to a specific policy on this matter or provided with any relevant text. In any event, there is no compelling evidence before me that the proposal would represent an increase in economic activity compared to the appellants existing teaching activities elsewhere, and as such I can afford this very limited weight.

25. Furthermore, the proposal would conflict with the provisions of Framework paragraph 127f) which requires development to achieve a high standard of amenity for existing and future users.

26. The proposal did not attract an objection from the Council's Environmental Health Officer subject to conditions, and I have reached a similar conclusion in respect of use of the outbuilding itself. Parking provision could also be made for the dwelling and visitors in a manner that would avoid adverse effects in terms of safety or inconvenience to others. These are, however, neutral effects and do not weigh in favour of the proposal.

27. Bearing in mind the specific wording with which the appellants wished to replace the condition, and considering that without that condition there is the potential for a limited degree of commercial and other non-domestic uses of a particular nature which might be carried out in the outbuilding without perhaps materially changing the use of the site or building, I have found no convincing reasons to conclude that the condition is not necessary to ensure that neighbours' living conditions can be protected.

28. I have found that the proposed variation of condition would harm the living conditions of neighbouring occupiers and as such would conflict with CS Policy CS16 and the Framework, a conflict to which I afford substantial weight. Therefore, although it would comply with some CS policies, overall the proposed variation of condition would conflict with the development plan when read as a whole. While the proposed variation of condition would result in modest benefits, these would not be sufficient to outweigh the totality of the harm that I have identified. There are no material considerations that would indicate that the decision should be taken otherwise than in accordance with the development plan. Consequently, I conclude that the appeal should be dismissed.

L McKay

INSPECTOR