
Appeal Decision

Site visit made on 5 August 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/G5180/D/20/3245394
144 Whitebeam Avenue, Bromley, BR2 8DW

- 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 Mrs Jade Santillan-Faithfull against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/14/03497/RECON, dated 1 July 2019, was refused by notice dated 6 November 2019.
 - The application sought planning permission for outbuilding to rear without complying with a condition attached to planning permission Ref DC/14/03497/FULL6, dated 22 October 2014.
 - The condition in dispute is No 3 which states that: The single storey detached building hereby permitted shall only be used for purposes incidental to the residential use of the main house and for no other purpose.
 - The reason given for the condition is: In order to comply with policy BE1 of the Unitary Development Plan and in the interests of the visual and residential amenities of the area.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Planning permission was granted in 2014 for a building to the rear of the residential property at 144 Whitebeam Avenue, described on the decision notice as an outbuilding. Condition 3 limits the use of this structure to purposes incidental to the residential use of the main house.
3. The appellant now seeks to use the outbuilding for Pilates lessons for up to 4 external guests at any one time. Under the proposal the existing condition would be retained but an exception would be created to facilitate this. The hours of use are specified as Monday to Friday 09.30–14.15, and 19.00–21.15 Wednesdays and Thursdays.
4. Were the appeal to succeed, an alternative condition stipulating the limitations set out above would be imposed on the decision. The Council suggest that such a condition would be unenforceable, but no persuasive reasons are provided as to why this is the case. Conditions of this type are common in planning, and a breach could be easily detected by inspection.

Main Issues

5. The effect of the proposed variation on the character of the area and the living conditions of the occupants of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

6. Whitebeam Avenue is characterised by housing facing on to the road in a line, with front driveways and sizeable gardens to the rear. The part of the road on to which the site faces is a cul-de-sac. As such, the volume of traffic is very limited. The area therefore has a quiet, residential character.
7. The building appears to have been used as a Pilates studio for a number of years. There is evidence of local support for its continued use, from neighbouring residents in the surrounding area. However, I cannot be certain that this would continue to be a small-scale facility were permission to be granted for the proposal. Were demand for the facility to increase, its use could significantly intensify given the suggested hours of operation and the maximum number of guests allowed in the building at any time. This could occur even if the permission was made personal to the appellant or granted on a temporary basis.
8. There is the potential for up to 4 additional cars to be parked at the front of the property while the venue is in use, significantly increasing the comings and goings to this part of the road. Whilst the activity of Pilates does not generate much noise and loud music is unlikely to be played, visitors would still need to walk through the rear garden to access the studio on a relatively frequent basis. Given the possible cumulative number of daily attendees, the number of movements through the garden would exceed that which may reasonably occur were the structure to remain as a residential outbuilding.
9. It is also suggested that the number of sessions would be limited to 2 per day, and that the total number of guests across the day would be 4. However, it would be prohibitively difficult for the Council to enforce such rules were they to be reflected in planning conditions, as it would effectively require it to continuously monitor the building and the people accessing it.
10. Consequently, the proposal has the potential to result in harmful levels of additional noise and disturbance, which would be apparent beyond the site boundary. The alternative conditions proposed are insufficient to preserve the quiet character of the area and the living conditions of the occupants of neighbouring residential properties. The proposal therefore conflicts with policy 37 of the London Borough of Bromley Local Plan (2019) ("Local Plan"), which seeks, amongst other things, to ensure that new development respects the amenity of occupiers of neighbouring buildings.

Other Matters

11. There are no objections to the proposal, including from the Council's environmental health officer. However, this does not outweigh the harm identified.
12. The proposal would promote health and wellbeing. There is some local support for the proposal on this basis. The National Planning Policy Framework promotes social interaction and, amongst other things, access to a network of

opportunities for sport and physical activities. This is also reflected in the development plan, including policies 20, 21 and 26 of the Local Plan and those in the London Plan (2016)¹. These considerations weigh in favour of the proposal. However, they do not justify it in the face of the potential harm to the character of the area and the living conditions of neighbouring residents.

Conclusion

13. The proposal conflicts with the development plan, when considered as a whole, and there are no other considerations that outweigh this finding. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR

¹ As identified in the appellants appeal statement.