The Planning Inspectorate

Appeal Decision

Site visit made on 9 November 2020

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 17 March 2021

Appeal Ref: APP/N1920/D/20/3255407
5 Field View Road, Potters Bar EN6 2LY

- 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 Abbey Hope-Evans against the decision of Hertsmere Borough Council.
- The application Ref: 20/0451/HSE, dated 27 March 2020, was refused by notice dated 29 May 2020.
- The development proposed is described as 'retrospective construction and use of an outbuilding for a home business ancillary to the use of the dwellinghouse'.

Decision

1. The appeal is dismissed.

Procedural Matters

2. At the time of my site visit I observed that the outbuilding had been constructed and I have therefore considered the appeal scheme before me on this basis.

3. I have considered the appeal before me on the basis of the operating hours that were originally applied for. I have then gone on to consider whether reducing the daily number of classes would make the scheme acceptable. This alternative operating arrangement formed part of the original application and therefore I am satisfied that relevant parties have had the opportunity to consider this option and comment accordingly. As part of the appeal, further alternative operating arrangements have been put forward by the appellant. These include individual attendance at each class, reduced hours of operation on a Friday, no hours of operation on a Friday, a maximum of 5 clients per day or 15 clients per week. It is not clear on the information before me that interested parties views have been sought on these and therefore I cannot be satisfied that no party would be prejudiced by my consideration of these matters. Moreover, there are limited details before me on how the suggested alternatives might operate and whether alone or in combination. Consequently, I have determined the appeal on the basis of the scheme and plans that were before the local planning authority when it made its decision.

Application for costs

4. An application for costs was made by Abbey Hope-Evans against Hertsmere Borough Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are the effect of the proposed development on the character and appearance of the surrounding area and the living conditions of the occupiers of neighbouring dwellings with particular regard to noise and disturbance.

Reasons

Character and appearance

6. No 5 Field View Road comprises a semi-detached dwelling with hardstanding to its front that can accommodate three parked cars. To its rear is a modest sized private garden with a single storey flat roof outbuilding (the studio) constructed in the rearmost part of the garden. It broadly fills the full width of the plot. The internal space is mainly open plan, but there is a smaller separate storage room positioned forward of the main front build line. The building has been in use for pilates classes although it is not given over to the exclusive use of the business. It is also used by the appellant for her own enjoyment and personal exercise.

7. Access to the outbuilding is pedestrian only and can be gained via a side gate and by walking through the garden to the outbuilding. The appeal property is located within a relatively quiet residential estate with unrestricted roadside parking available close by.

8. The point in contention is whether the outbuilding would be provided for a purpose incidental to the enjoyment of the dwellinghouse at No 5 or whether it would amount to a material change of use of a property so that it is no longer a single dwellinghouse. Whether something amounts to material change of use is a matter of fact and degree in each case, to be assessed in the context of the planning unit. For a use to be considered incidental to the enjoyment of a dwellinghouse, it must be of a scale and nature that is incidental to the reasonable enjoyment of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage. In this regard, the key tests are reasonableness and whether the overall character of the dwelling changes as a result of the non-residential use.

9. The studio is relatively small and contained pilates equipment at the time of my site visit. It is the appellant's evidence that classes last for just short of an hour. This allows transition in-between clients. Classes are generally attended on a one to one basis, although the size of the building is capable of accommodating two clients simultaneously and has done so infrequently in the past. Given the limited size of the outbuilding, I accept that it is likely to preclude more than two clients being within the studio at any one time.

10. Pilates classes do not appear to be inherently noisy. Although some clients would be likely to walk to access the classes, it is not likely to be the case for all clients. Moreover, given the availability an off-street parking space within the curtilage of the appeal site and an absence of any restrictions on parking on-street, this would be likely to readily encourage access to the appeal site by private motor vehicle.

11. I appreciate that there is little neighbour objection to the proposal and no instances of nuisance have been drawn to my attention. However, on the appellant's evidence, the existing use of the outbuilding for pilates is presently

in the region of 9 people per week. It is the Council's case that by reason of the extent of the hours sought and the dual attendance of clients to each session, there could be in the region of 68 visitors weekly. The future situation could therefore be very different to that which is experienced at present.

12. There is dispute between the main parties concerning the number of visitors to the appeal site as a consequence of the proposal. On the basis of the hours stated within the application, if planning permission were to be granted it would allow use of the studio for pilates classes between the hours of 9am to 5pm each Monday and Friday, 9am to 3pm every Tuesday, Wednesday and Thursday, and 6pm to 8pm every Tuesday evening. Although there are few classes proposed during evening hours, the hours of operation would be for a significant part of the day during a large part of the working week. The business would be capable of operating all year round.

13. Although the appellant suggests only a 'modest desire to grow the business' and that the number of visitors would be greatly reduced from the 'worst case' scenario envisaged by the Council, I am mindful this position could change over time. On the basis of the proposed business hours and dual occupancy of classes, the proposal would be capable of allowing some 68 visitors over the course of a week.

14. Whilst the introduction of the outbuilding has not brought about a significant change in the external character of the property, I find that there would be a marked rise in people calling at the property and vehicular traffic over each week and potentially for the entire year. The degree of disturbance would be worsened by reason of the short period of transition between clients and the attendance of multiple clients at any one time. In my view, this would result in the scale of the business exceeding what might be expected at a family dwelling of this size. Consequently, the business is of a kind that could not operate from a residential property on an ancillary basis without there being a significant adverse impact on the character and appearance of the surrounding area.

15. I have had regard to the appellant's willingness to reduce the operating hours and/or the number of visitors to each class. Reference has been made to limiting the occupancy of each class to a maximum of two persons and a daily limit of five classes. However, even when taken in combination, the scheme would be capable of generating in the region 10 visitors per day. To my mind, this would not be sufficient to reduce the adverse harm I have described above.

16. Reference has been drawn to comparisons with other home working uses within a number of appeal decisions[1]. There is limited detail before me concerning the site-specific circumstances of those developments. Furthermore, the nature and scale of the ancillary uses of those schemes are not directly comparable to the appeal proposal before me. For instance, I note that the number of visitors to those schemes was found to range between '*one or 2 customers calling per week*'[2] to '*an average of 6 clients per day (Thursday, Friday, Saturday)*'[3]. The appeal at Egerton Road[4] concerned a

[2] APP/D0121/C/19/3225137
[3] APP/G2245/C/18/3215848 & 3207591
[4] APP/J0350/W/18/3209360

workshop/outbuilding/home office and made little reference to persons calling at the property. In the Woodfield Rise appeal[5], despite the number of attendees for each session being greater than the number proposed within the appeal scheme, the total number of sessions over the course of a week was limited. By reason of the differences between those schemes and the appeal proposal, a comparison is of limited relevance in this instance and I have considered the appeal before me on its individual planning merits.

17. Therefore, the use of the outbuilding as a pilates studio would conflict with Policy CS8 of the Hertsmere Core Strategy (January 2013)(CS) and Policy SADM30 of the Hertsmere Local Plan Site Allocations Development Management Policies Plan (November 2016)(SADM) insofar as these policies are supportive of development proposals in appropriate locations, recognise and complement the particular local character of the area in which it is located and is of high quality that is appropriate in scale, appearance and function to the local context.

18. The Council's reasons for refusal also cite a conflict with CS Policy CS9 and SADM Policy SADM42. These policies are concerned with the appropriateness of development proposals within Local Significant Employment Sites and town and district centres. It has not been put to me by the Council that the appeal sites falls within any of these locations and as such, I do not find that there would be conflict with these policies. Nonetheless, this does not affect my findings with regards to the conflict I have found with other policies of the development plan.

Living conditions

19. By reason of the close-knit arrangement of dwellings and their modest sized rear garden areas, their private amenity areas would be highly sensitive to noise arising from the comings and goings of individuals arriving and leaving the appeal property. Taking into account that the business would operate for a significant part of the and day during a large part of the working week and given the relative peacefulness of these areas, the noise and disturbance arising from the proposed scheme would be harmful to the living conditions of neighbouring occupiers and materially compromise their living conditions.

20. Accordingly, I find that the living conditions of neighbouring occupiers would be unduly compromised by reason of noise and disturbance. The proposal would fail to accord with CS Policies SP1 and CS16 and SADM Policy SADM30 insofar as these policies seek to ensure a healthy living environment where pollutants such as noise are minimised and a high quality design that has limited impact on, among other things, the amenity of neighbours with regard to nuisance. It would also conflict with the aims of the Framework which, among other things, seeks to create places which promote health and well-being with a high standard of amenity for future users.

Other Matters

21. I have had regard to the evidence concerning the operation of the air-conditioning unit. This supports the appellant's case that there would be no adverse harm arising from its usage. Additionally, given that the majority of hours of operation are during daylight hours, I am not satisfied that the use of lighting within the rear garden would be of a scale that would be unduly

[5] APP/N1920/W/19/3221875

harmful. However, the absence of harm is a neutral matter that weighs neither for nor against a proposal.

22. I am not satisfied that the absence of an express reference to 'homeworking' within the development plan engages the tilted balance. Other policies within the development plan adequately provide for a consideration of the scheme's benefits and disbenefits. I recognise that home working would enable the appellant to work flexibly and care for a young family, however, these are personal benefits that seldom outweigh general planning considerations. Although working from home would deliver some environmental benefit in terms of the appellant avoiding the need to travel for work purposes, any benefit is reduced given that clients would be likely to use a private motor vehicle to access the appeal site.

23. I have had regard to a letter in support of the proposal. As the proposal would achieve improvements to the physical health and mental well-being of those individuals utilising the classes provided, this would be a modest benefit weighing in favour of the proposal.

24. Reference has been made to the current Covid-19 situation and a move to online classes thus reducing the number of in-person visits to the appeal site. Whilst this may be the situation at present there is nothing before me to demonstrate that there will not be a return to physical classes at a future date.

Conclusion

25. For the reasons given above, the appeal is dismissed.

E Brownless

INSPECTOR