
Appeal Decision

Site visit made on 19 May 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Appeal Ref: APP/N5090/C/20/3258237 37 Monkfrith Way, London N14 5LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Alptekin Aydin against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0480/20, was issued on 22 July 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the material change of use of the property to a mixed use of residential dwelling and health clinic/therapy room.*
- The requirements of the notice are to:
 - (1) Cease the use of the property for the provision of health/therapy services
 - (2) Restore the land to its condition before the breach took place as per the plan 1402-100 labelled Existing Floor Plans of the Lawful Development Certificate reference 20/2475/192 date 19/06/2020.
- The period for compliance with the requirements is 1 Month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Main Issues

1. The appeal on ground (b) is to the effect that the matters stated in the notice as constituting a breach of planning control have not occurred as a matter of fact. Therefore the main issue under this ground of appeal is whether the appellant can show, on the balance of probability, that the matters alleged in the notice have not occurred. Subject to the outcome of that ground, the appeal on ground (a) is to the effect of seeking planning permission for the matters alleged in the notice.
2. The Council's reasons for issuing the notice address the planning merits of the alleged development. They relate to the effects of the development on, first, the residential character of the local area and, secondly, on the living conditions of neighbouring residents, citing particular concerns relating to noise, disturbance, congestion, parking and disruption. These are therefore the main issues relating to the appeal on ground (a) and the deemed application for planning permission.

Reasons

The appeal on ground (b)

3. The Planning Practice Guidance advises¹ that planning permission will not normally be required to home work or run a business from home, provided that a dwelling house remains a private residence first and business second (or in planning terms, provided that a business does not result in a material change of use of a property so that it is no longer a single dwelling house). A local planning authority is responsible for deciding whether planning permission is required, and will determine this on the basis of individual facts. Issues which they may consider include whether home working or a business leads to notable increases in traffic, disturbance to neighbours, abnormal noise or smells or the need for any major structural changes or major renovations.
4. The appeal property constitutes a building designed as a semi-detached dwelling. At the time of my site visit I saw that an upstairs room in the property was being used as a therapy consultation room with some machinery present.
5. There is some dispute about the number of visitors to the property and the hours of operation. Neighbours contend that appointments are held until up to 21:00 with one or two members of staff present and clients both inside the property and waiting outside. The appellant however confirms that his hours of operation cease at 17:30 and that he has one member of staff who functions as his receptionist, welcoming clients into the property, receiving telephone calls and making appointments and the like.
6. The employment of a receptionist/telephonist at the property is a clear indication in my view that the property has not retained its function as a private residence, but suggests that the property now shares that function with the established business that is being run there.
7. A lawful development certificate application was made and refused for the use by the Council who, when analysing the likely number of visitors to the property, assumed 7 hour-long appointments per day over 5 days resulting in some 70 vehicle movements weekly. The appellant suggests this is 'calculated as a worst case scenario providing the maximum' and derides the assumption as 'ridiculous', but does not set out the numbers of appointments made and thus visitors to the property during his stated working hours of 09:00 to 17:30 other than to say that there are short breaks between clients.
8. Neighbours contend to the contrary; that clients arrive at the property in small family groups and that new clients may be admitted to the property before a previous client has left. Some loitering outside the property also occurs, with photographs submitted of persons waiting whilst sitting on the garden wall and milling around the driveway. It is said by objectors that on occasion up to three or four cars of customers may be parked around the road, and with engines left running in the colder months whilst those persons accompanying clients to their appointments wait in their cars. An increase in parking has been observed locally, and complaints are made of litter and negative privacy impacts as a result of the increase in the number of visitors to the property.

¹ Paragraph: 014 Reference ID: 13-014-20140306

9. In the absence of any information from the appellant about actual client numbers, his means of staggering appointment times, modes of travel, or whether or how clients are accompanied to their appointments I have no reason to disbelieve the accounts of the neighbouring residents as to the significant off-site effects of the use of the property to include that as a health clinic/therapy room. Overall I conclude that there has been a material change in the use of the property, and that this is not merely 'working from home' in a way consistent with the residential character of the neighbourhood. I find that the Council's allegation is made out, and therefore the appeal on ground (b) must fail.

The appeal on ground (a) and the deemed planning application

Living conditions

10. A number of development plan policies are cited in support of the Council's decision to issue the notice, and it is not disputed that the development consists of the provision of a 'community use' to which policy DM13: Community and Education Uses of Barnet's Local Plan Development Management Policies DPD (September 2012) applies. That policy requires such new uses to be located where they are accessible by public transport, walking and cycling, preferably in town or local centres. Although neighbours contend that the vast majority of clients arrive at the premises by private car, the lack of accessibility is not said by the Council to justify its decision to issue the notice, although its low PTAL rating is raised. Whilst the lack of parking restrictions in the vicinity may encourage travel by private car, I do not find the location to be unsustainable *per se* although it is not in a local or town centre as encouraged by the policy.
11. However, the policy also expects any new community uses to protect the amenity of residential properties. I accept the accounts of neighbours that the number of comings and goings to the appeal property, and the associated parking and waiting outside the property by clients of the business, is not commensurate with the level of activity to be expected of this residential area and that this has resulted in detriment to the amenity of neighbouring residents. I do not find these concerns to be delusional or an utter nonsense, as contended for by the appellant, but that the neighbour's complaints of detriment to their residential amenity are substantiated as a result of the increased activity at the property compared with what may reasonably be expected in this residential area. Consequently I do not find that the development accords with policy DM13.
12. The particular nature of the appellant's business as a clinical psychologist involves the use of Transcranial Magnetic Stimulation (TMS) therapy which requires the application of electrically-powered machinery. At my site visit I witnessed the machine being run, producing a loud 'clicking' sound. The occupiers of the adjoining semi-detached dwelling claim to be able to hear this machinery being operated, and say that the voices of clients of the business are also audible at times causing some distress to the children of the family. I have no reason to disbelieve this account which (save as to the hours of operation, which contradicts previous information given by the appellant to the Council) is not disputed by the appellant, and this augments my findings as to the unacceptability of the use in protecting neighbouring residents' amenity

and is contrary to policy DM04 of the 2012 DPD which proscribes developments generating unacceptable noise levels close to noise sensitive uses.

13. Whilst I agree with the appellant that policies CS9 and CS13 of the Barnet Core Strategy of 2012 appear to be inapplicable to the matter of living conditions, I have concluded that the development is contrary to the DPD policies DM04 and DM13 for the reasons set out above. Additionally there is some conflict with policy DM01 which seeks to ensure attractive streets and to create safe and secure environments. Overall I find that the development conflicts with the development plan for the area inasmuch as it seeks to preserve adequate living conditions for residents.

Character of the area

14. Policy DM01 of the 2012 DPD appears primarily directed towards proposals for built development, but not exclusively so, and it contains a clear requirement for development to preserve or enhance local character. The location of development close to noise sensitive uses, as well as concerning residential amenity, is a general environmental consideration raised by policy DM04. I find that the character of the neighbourhood is adversely affected by the development at the appeal site. The intensity of the use and the number of comings and goings are not commensurate with what could reasonably be expected for a dwellinghouse in this area, and consequently I find that it is out of character thus contrary to policy DM01.
15. I also consider the development to be contrary to policy DM04 for the reasons previously given. As to the Core Strategy, I find that the development does not respect its local context or maximise community cohesion, contrary to policy CS5. Overall therefore I conclude that the development conflicts with the development plan for the area.

Other considerations

16. The appellant raises a number of other sites benefitting from planning permission for the use of houses for business purposes. The Council explains that these properties benefit from lawful development certificates, rather than planning permissions, and distinguishes them from the business at the appeal site. In each of them the only employee was to be the applicant, and none involved visits by members of the public. Consequently these decisions do not persuade me to take a different view on the development here, whether in relation to the appeal on ground (b) or on ground (a).
17. The appellant appears to provide a valuable community service and I am conscious that my decision is likely to result in some disruption to the business and possibly to its clients. Nonetheless it is not suggested that the business could not be continued from other, more suitable, premises and the appellant does not suggest that the period stipulated for compliance with the notice is unreasonably short. Again therefore this consideration does not outweigh my findings in the case.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

19. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR