



Appeal Decision

Site Visit made on 29 June 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2021

Appeal Ref: APP/R4408/W/21/3271392

13 Cobcar Lane, Elsecar, Barnsley S74 8JQ

- 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 Mr & Mrs Thornton against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2020/1306, dated 11 November 2020, was refused by notice dated 9 March 2021.
 - The development proposed was originally described as *"this is a class C3 & wants changing to a suis generis. This is an out building that was used for my children to have friends round with a pool table & tv in, I now what to start doing beauty treatments in the out building on a self employed basis as a sole trader. I started doing beauty treatments for friends & family in the outbuilding at the beginning of August to gain confidence & help then de stress with this horrible situation we are all experiencing before I decide to go self employed ! the building hasn't had any changes on the outside since it was built 9 years ago its just the inside that has had a refurb"*.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of domestic outbuilding into beauty salon at 13 Cobcar Lane, Elsecar, Barnsley S74 8JQ in accordance with the terms of the application, Ref 2020/1306, dated 11 November 2020, and the plans: Site Location Plan, Location and Elevations Plans, subject to the following conditions:
 - 1) The use hereby permitted shall only take place between the following hours:
11:00 - 17:00 hours Mondays and Fridays
10:00 - 19:00 hours Thursdays
10:00 - 14:00 hours Saturdays
The use is not permitted on, Tuesdays, Sundays and Bank Holidays.
 - 2) There shall be no more than one member of staff (either full or part time) and one client in the premises at any one time.
 - 3) When the use hereby permitted ceases to exist, the outbuilding shall only be used in association with the existing dwellinghouse and it shall not be occupied or sold off separately as an independent unit.

Procedural Matters

2. Notwithstanding the description of development set out above in the banner heading, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises a change of use of domestic outbuilding into beauty salon. I have used this within the formal

decision, as the Council also dealt with the proposal on this basis, and for the reasons of clarity.

3. From the evidence before me, the change of use has already taken place, and this is indicated on the application form, I am therefore considering the appeal as retrospective.

Main Issue

4. The main issue is the effect of the change of use on the living conditions of neighbouring occupants, with particular reference to noise, disturbance and privacy.

Reasons

5. The appeal relates to an outbuilding situated within the rear garden of No.13 Cobcar lane, a semi-detached 2 storey dwelling within a predominantly residential area. The position of the rear garden results in it adjoining a number of neighbouring boundaries, with the outbuilding itself, sited along the boundary with No.2 and No.4 Stafford Avenue and in close proximity to No.10 Stafford Avenue. The appellant's state that the outbuilding was erected some 9 years ago and has been used by their family for various activities, however they now seek to regularise the additional use of the outbuilding as a beauty salon following a complaint to the Council.
6. The detached outbuilding is constructed of a stone base with timber clad, windows are positioned facing towards the west of the garden area and a single doorway to the north. It is utilised as a small beauty treatment room to allow the appellant (*Mrs Thornton*) to work from home and is on a 1:1 basis with clients for those treatments. As I observed, at the time of the site visit the inside of the building is relatively small and still has reminiscence of a domestic outbuilding. It contains one treatment bed, beauty products, a table and chair for nail treatment, a counter area and other small furniture and accessories.
7. Given that the use would be restricted in terms of hours of use and days, I find that the comings and goings would not have any noticeable impact over the existing domestic use of the property and the likely level of general traffic passing through or parking along the residential street. The use itself does not seem to be inherently noisy and, given the generally low number of customers being on a 1:1 basis, and that they would be unlikely to loiter in the garden and any brief conversations would be of a low level frequency. I am satisfied that the business operates and would do so, without having any undue impact on living conditions of neighbouring properties as a result of any noise or disturbance.
8. Furthermore, it would appear there were no objections raised by Regulatory Services and I have no evidence that the Council has received any noise complaints and the assessment against the development having a higher noise threshold or causing a statutory nuisance are unfounded.
9. In terms of privacy or any overlooking, the windows on the outbuilding face west onto the garden, there is a domestic area of garden between the outbuilding and fencing along the boundary with No.15 Cobcar Lane. Although, there is a door positioned towards the north it does not directly look upon into the property or the garden of No.10 Stafford Avenue (No.10). The appellant's have a domestic patio area with seating directly within this corner of the

garden, there is existing boundary fencing and the appellant's have erected additional bamboo screening.

10. Therefore, it appears the use is only visible to a small number of neighbouring occupiers when looking from their upper floor windows into the appellant's garden. I also acknowledge that there has been support for the proposal from adjoining occupiers. Moreover, as I observed at the site visit, even at higher levels of the garden area I was unable to see directly into this garden area of No.10 and I could only see the rooflines of existing garden outbuildings, particularly as the levels do change between these two garden areas. As such, I do not consider that there is a greater opportunity for overlooking the neighbours than that of which currently exists in the residential garden and the proposal does not result in a loss of privacy for neighbouring occupants.
11. For the reasons given above, I conclude that the development does not cause harm to the living conditions of neighbouring occupiers. It complies with Policy GD1 of the Barnsley Local Plan, 2019 (LP), which advises that proposals for development will be approved if there will be no significant adverse effect on the living conditions and residential amenity of existing and future residents.

Other Matters

12. The Council has referred to Policy TC1 of the LP, and that the proposal fails to comply with it, due to the absence of a sequential test. However, this did not form part of the reason for refusal. Furthermore, I have no substantive evidence that the proposal causes significant adverse impacts on the vitality or viability of a town centre, particularly as the development is of such a small scale, limited operating hours and 1:1 client basis.
13. My attention has been drawn to two appeal decisions¹, I do not consider that these are comparable to the proposal before me, including that '*Wilthorpe Road*' was for a dog grooming business for up to 6 dogs and 6 days per week and the key consideration was the unpredictability of animal behaviour, barking and outside garden use. The other '*Hawthorns*' was for a larger proposal for a venue for weddings and events, hosting for up to 30 people. In any event, the appeal is necessarily determined on its individual merits on the basis of the evidence before me.
14. I note that interested parties have expressed additional concerns about the proposal including car parking and highway safety, however, the Council did not raise these points as reasons for refusal and I have no substantive evidence to support those concerns. The fact that the use of the outbuilding has been used without permission is not a reason in itself to dismiss the appeal. The development should be judged against material planning considerations. The boundary/fence ownership issues are a private matter between the relevant parties and not within my jurisdiction.
15. A Representation was made to the effect that the rights of the occupier's son to the property directly behind the proposal, under Article (8)1 of Human Rights Act 1998, would be violated if the appeal were allowed. I do not consider this argument to be well-founded, because I have found that the proposed development would not cause unacceptable harm to the living conditions of

¹ APP/R4408/W20/3257496, APP/R4408/W20/3245976

neighbouring occupiers. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8(1).

Conditions

16. A list of conditions has been sent to both parties, of which in part have been incorporated from those within the Council's appeal evidence. I have no evidence to suggest that the appellants disagree with them. I acknowledge the Council's comments on the conditions. I have considered these in light of the Planning Practice Guidance (PPG).
17. As the development had commenced it is not necessary for the standard time condition. It is necessary to specify the approved plans for the reasons of certainty. I have imposed condition (1) for the hours of opening in the interests of protecting living conditions of neighbouring occupiers. These hours were confirmed by the appellant, I have not restricted the hours of opening to the extent suggested by the Council, as the evidence before me does not support a further reduction and these already avoid early morning and late evening opening.
18. Condition (2) is imposed to limit the number of clients, this is reasonable, necessary and enforceable as it relates to the nature of the business, and relevant to the development being permitted on a 1:1 client basis, in the interests of protecting the living conditions of neighbouring occupiers. I have not imposed the condition suggested relating to boundary treatments as it is not reasonable or necessary as these are already in place.
19. The PPG sets out that planning permission usually runs with the land and its rarely appropriate to provide otherwise, exceptionally development that would normally be permitted may be justified on planning grounds because of who would benefit from the permission.
20. Even if there were special circumstances relating to the appellant's that would justify allowing an otherwise unacceptable scheme, subject to restrictions on hours of opening and clients, the proposal would not conflict with the development plan read as a whole. I have found it not necessary to restrict the permission to '*Mr & Mrs Thornton*'. However, I have imposed condition (3) to ensure that the outbuilding, the subject of the appeal remains ancillary to the dwelling and does not operate as a separate planning unit, in the interests of the character of the area and living conditions of neighbouring residential properties.

Conclusion

21. For the reasons given above I conclude that the appeal should be allowed.

KA Taylor

INSPECTOR