



Appeal Decision

Site Visit made on 10 August 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2021

Appeal Ref: APP/Z4718/W/21/3275470

48-48A Lidget Street, Lindley, Huddersfield, HD3 3JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by H Lucitt against the decision of Kirklees Metropolitan Council.
 - The application Ref 2020/62/94406/W, dated 23 December 2020, was approved on 4 March 2021 and planning permission was granted subject to conditions.
 - The development permitted is the change of use from ground floor beauty salon and first floor residential flat to a mixed use of tanning/beauty salon and retail.
 - The condition in dispute is No 3 which states that: *The use hereby permitted shall not be open to customers outside the hours of 09:00 and 19:00 Tuesday to Saturday.*
 - The reason given for the condition is: *To ensure that the proposed use and activities do not give rise to the loss of amenity to nearby residential properties, by reason of noise or disturbance at unsociable hours, to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.*
-

Decision

1. The appeal is allowed and the planning permission Ref 2020/62/94406/W for the change of use from ground floor beauty salon and first floor residential flat to a mixed use of tanning/beauty salon and retail at 48-48A Lidget Street, Lindley, Huddersfield, HD3 3JR granted on 4 March 2021 by Kirklees Metropolitan Council, is varied by deleting conditions 1 and 3 and substituting them for the following conditions:
 - 1) The development hereby permitted shall begin not later than 4 March 2024.
 - 2) The use hereby permitted shall not be open to customers outside the hours of 09:00 and 19:00 Monday to Saturday.

Procedural Matters

2. The revised National Planning Policy Framework (The Framework) was published on 20 July 2021. This document does not however materially change the approach to the main issue arising from this appeal, when compared to its predecessor, and therefore no further comments have been sought from the parties.
3. I have used the description of development and the address stated on the decision notice and appeal form, in the interests of consistency.

Background & Main Issue

4. Planning permission has been granted for the change of use of the ground and first floors of the building to a mixed use of tanning/beauty salon and retail.

The appellant seeks to remove Condition 3 in its entirety, which restricts the hours during which the business can be open to customers. The main issue is the effect that this would have on the living conditions of the occupiers of 50 Lidget Street, with particular reference to noise and disturbance.

Reasons

5. Whilst the plans submitted show access to the staircase within the appeal property can be taken internally, equally there is provision for direct access from the external door in the side elevation close to the residential property at 50 Lidget Street. This door is immediately adjacent to a window on the front elevation of No 50 and the internal staircase to access the first floor runs alongside the party wall between the appeal property and this adjoining dwelling.
6. The proposed removal of the condition would allow for unrestricted operating hours. Given the physical attachment of the appeal site and its close proximity to No 50, operation of a business early in the morning, later into the evening or on Sundays has the potential to cause harm to the living conditions of the occupiers of this dwelling through noise and disturbance, in particular with respect to people arriving and leaving and moving internally to the first floor. In this regard, there is insufficient information before me to demonstrate that such harm would not arise from the completely unrestricted opening hours that are sought.
7. Although it is stated that there were previously no hours of use restrictions on the commercial use, there is no substantive evidence of this before me. In any event, this would have related to the use of the ground floor of the property only. The imposition of the condition in dispute has come about due to the fact that the permitted commercial use has been extended to include the first floor, and that the use of this area in addition to the ground floor for such purposes has a greater potential to affect the living conditions of the occupiers of No 50. I also acknowledge that the first floor was previously a flat, however there is a firm likelihood that the approved use would result in a greater number of movements to and from the site and internally via the staircase than a residential use.
8. The appeal site is within a district centre and there is a public house in close proximity to the appeal site, however this faces onto Lidget Street with its main entrance being from that road and it is physically separate from No 50. Whilst there will be activity associated with the district centre as a whole, by virtue of the fact that the appeal property is physically adjoined to No 50 its use has a greater probability of impacting upon the occupiers of this property than other nearby uses. These considerations do not therefore justify the removal of the condition.
9. The condition as imposed is however unreasonably restrictive in that it prevents opening to customers at any point on a Monday. This is unjustified as there is no reason why opening during daytime hours on a Monday should be more harmful than on any other weekday or on a Saturday. The Council concedes that it has no objection to the removal of this particular restriction, and I conclude that in this respect the condition does not meet the tests of reasonableness and necessity set out in Paragraph 56 of The Framework.

10. For the reasons I have set out, the removal of Condition 3 in its entirety would result in the clear potential for harm to be caused to the living conditions of the occupiers of No 50 through noise and disturbance and would fail to accord with Policies LP24 and LP52 of the Kirklees Local Plan Strategy and Policies 2019, where they seek to protect living conditions. There would also be a conflict with The Framework in the same regard. However, the condition should be varied to allow for opening to customers on Mondays and subject to this it would meet the six tests set out in The Framework. Procedurally this means that the appeal must be allowed, with the original condition substituted with one that allows Monday opening to customers between the hours of 09:00 and 19:00.

Other Matter

11. The planning permission that has been granted does not contain a condition setting out the period for commencement of the approved development. In such circumstances, under the provisions of the Town and Country Planning Act 1990 (as amended) (TCPA) the standard 'three year' condition for the commencement of development is deemed to be imposed. The Council has however acknowledged that there is an erroneous condition (Condition 1) which states '*no development hereby permitted shall be begun within three years of the date of this permission*'.
12. This condition would in effect prevent the implementation of the permission until such time as it would have expired under the deemed provisions of the TCPA. Therefore, I shall take the opportunity to vary this condition as per the request made by the Council, in order to ensure that the permission meets with the legislative requirements for commencement, this being 3 years from the date that the original permission was granted.

Conclusion

13. The appeal is allowed, with the planning permission varied as set out in the formal decision.

Graham Wraight

INSPECTOR