



Appeal Decision

Site visit made on 30 November 2021

by R Walmsley BSc, MSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal Ref: APP/P4605/W/21/3280128

44 Maypole Lane, Birmingham B14 5JQ

- 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 B Patel against the decision of Birmingham City Council.
 - The application Ref 2020/10128/PA, dated 18 December 2020, was refused by notice dated 22 February 2021.
 - The development proposed is alterations to existing ground floor dental surgery (Use Class E) and change of use of first floor from residential flat (Use Class C3) to additional space associated with the ground floor dental surgery (Use Class E).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above has been taken from the Council's decision notice as it more accurately describes the development proposed and has been agreed by the main parties.
3. Since the planning application was decided the Council has adopted the Development Management in Birmingham Development Plan Document, 2021 (DPD). The main parties have had an opportunity to comment on this position and therefore have not been prejudiced by my consideration of this in deciding the appeal.
4. The appeal is retrospective and therefore I have decided the appeal on the basis of the evidence before me and what I saw on site.

Main Issues

5. These are the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to noise and disturbance and on the character and appearance of the area.

Reasons

Living conditions

6. The appeal property has permission for a dental surgery at ground floor level, which includes one surgery for one dental practitioner only, and a first floor flat. Despite the appellant suggesting that the development proposed would only require one additional part-time staff member, the evidence confirms that three full-time and three part-time staff would be employed. This is a notable

increase in the number of staff at the premises, from the one practitioner that the Council has given permission for.

7. The appellant states that no more than three staff members would be present on site at any one time. However, it is not clear what the reasons for this are, who these staff would be and how this would relate to operations. Without evidence to clarify the point, three staff members seems unworkable for the increase in the number of surgeries proposed, assuming that, as a minimum, a dentist and a nurse would be required for each surgery.
8. As well as a notable increase in staff members, there would be a noticeable increase in the number of patients visiting the premises. Whilst numbers may remain low to begin with, there is an expectation that patient numbers could double, owing to the extra surgery.
9. The intensification of use identified would be most apparent to the rear of the site where customers would come and go. Adjoining the rear of the site are two residential properties, one of which has a garden which adjoins the surgery's car park. Notwithstanding the lack of objection from the highway authority with regards to highway safety, the development would result in a notable increase in the frequency of vehicle movements throughout the day. With this comes noise and disturbance from engines, the opening and closing of car doors and noise from people themselves. Given the proposed increase in activity at the site, the development would result in unreasonable levels of noise and disturbance for the adjoining neighbours. The rear garden mentioned is particularly susceptible to noise disturbance given the proximity of the car parking spaces to it. During the summer months most noticeably, when occupiers are in their garden, the development would have a negative impact on their living conditions.
10. The appellant suggests that staff will be employed locally and will travel to the surgery by means other than the car. However, as the staff parking is to the front of the site, this would do little to mitigate the harmful effects of noise and disturbance. Furthermore, without any evidence to suggest otherwise, I am doubtful that the recruitment of staff and their means of travel could be reasonably enforced to weigh favourably in the planning balance.
11. And so, for the reasons given, I find that the development would have a harmful effect on the living conditions of neighbouring occupiers with regard to noise and disturbance and therefore would be contrary to policy PG3 of the Birmingham Development Plan (2017) and policy DM2 of the DPD which, amongst other things, seek development of a high design quality that does not result in unacceptable adverse impacts on the amenity of occupiers and neighbours.

Character and appearance

12. Henlow Road is a pleasant residential street dominated by frontage properties, street trees and a variety of boundary treatments and soft landscaping which gives the street its domesticated and residential character. Maypole Lane also supports residential properties but this street is more of a throughfare and includes commercial uses.
13. In granting permission for a dental unit on the ground floor of the appeal property, the Council have already accepted in principle a commercial use on

the site. However, when the Council granted permission for this use, care was taken to ensure that the commercial use remained subservient to and in-keeping with the site's residential surroundings. As identified above, the change of use would result in a notable increase in commercial activity at the site, particularly at the rear. Here, the comings and goings of vehicles and patients would be out of keeping with the less intense and more domestic activities on the street.

14. The boundary fence to Henlow Road, as shown on the plans before me, is stark in appearance compared to the more subtle forms of boundary treatment and soft landscaping in the street. The fence of 1.8 metres in height is unduly dominant. The gates to the rear access are overly commercial in character and along with the fence are harmful to the more relaxed and pleasing character of Henlow Road.
15. The landscaping plan proposes a border behind the fence. Even if, for the benefit of doubt, I assume that this border will contain substantial planting, it would do little to mitigate the harmful effects of the fence on the character and appearance of the area given that this planting would not be seen from the street. There is some suggestion on the plans before me that soft landscaping would exist street side of the fence although it is not entirely clear from the plan what this would comprise. I wonder if it is a reference to the former hedge. In any case, as this overrides the pavement, I cannot see how any form of soft landscaping here could be implemented.
16. And so, the development would be harmful to the character and appearance of the area and therefore contrary to policy PG3 of the Birmingham Development Plan (2017) and policy DM2 of the DPD which, amongst other things, seek development that reinforces or creates a positive sense of place and responds to local context.

Other Matters

17. The lack of objection raised by third parties does not outweigh the harm that I have identified to the living conditions of neighbouring occupiers and to the character and appearance of the area.
18. Based on the Council's consent for a surgery and flat and the absence of any complaints regarding noise and disturbance, I surmise that the uses are complementary. Changing the use of the first floor, therefore, has no material benefit in environmental terms.
19. The appellant suggests that the first-floor flat is unviable but there is no evidence before me to support this point. This attracts no weight, therefore, in favour of the appeal.
20. The appellant suggests that additional surgery space is needed, not least because of the increased space requirements as a result of Covid. Whilst this may be the case, it does not explain the anticipated increase in patient numbers. The consequences of the pandemic, therefore, does not weigh in favour of the appeal.

Conclusion

21. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination,

that outweigh the identified harm and associated development plan conflict.
For the above reasons, the appeal is dismissed.

R Walmsley

INSPECTOR

