



Appeal Decision

Site visit made on 20 December 2021

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeal Ref: APP/E2340/W/21/3280963

8 Park Avenue, Barnoldswick BB18 5AT

- 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 Oliver Hayes (My Dentist) against the decision of Pendle Borough Council.
 - The application Ref 21/0482/FUL, dated 28 May 2021, was refused by notice dated 4 August 2021.
 - The development proposed is the change of use of first floor from apartment into accommodation ancillary to ground floor dentist.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development proposed on the living conditions of neighbouring occupiers at No. 6 Park Avenue, with particular regard to noise and disturbance.

Reasons

3. No 8 is a three storey terraced dwelling with dentist premises at ground floor level and residential use above situated in a residential area. The first floor of the property comprises a full width lounge at the front of the property, a kitchen/ dining room abutting the party wall with the neighbouring dwelling at No. 10 and a rear bathroom abutting the party wall with the neighbouring dwelling at No. 6. The staircase from the ground floor also runs along the shared wall with No. 6.
4. The proposal seeks to use the first floor as accommodation ancillary to the dentist. I observed on my site visit that the first floor is presently empty, albeit any active use thereof would entail some liability for noise transmission between properties. The lounge would be a changing and store room, with the kitchen/ dining room to be used as such by staff. The bathroom would be a local decontamination unit (LDU). The plans indicate that the current bedroom on the second floor would remain unused.
5. While no new surgery or consulting rooms are proposed on the first floor, the change of use would nonetheless result in an increase of activity at this level associated with the functions of the dentist below. I further acknowledge that the kitchen area would see an increase in use when compared with that of the current one bedroom property.

6. However, given its separation from the party wall with No. 6, this use is unlikely to cause significant disturbance. Similarly, while multiple members of staff would use the changing and store room, this is likely to be for short periods of time. In my experience noise may be generated by any use which may be intrusive to neighbours, and therefore there are parallel provisions under the Environmental Protection Act 1990 as amended to address where statutory nuisance occurs (irrespective of the outcome of this appeal).
7. Nevertheless, as a result of these uses, the activity on the staircase would significantly increase. While this would be primarily confined to the operating hours of the business, during this time individual movements of various staff members would occur going up and down the staircase when arriving, leaving, taking breaks or accessing the LDU. This would be of a notably different character and frequency to the current staircase movements associated with access to and movement within a one bedroom apartment. As a result of the positioning of the staircase along the party wall, this level of additional movements would likely cause increased disturbance to the residents of No. 6 by virtue of noise transmission between properties.
8. I have been provided with a copy of a previous appeal decision¹ relating to the site. It concluded that ancillary business use of the upper floors of the property would cause significant disturbance for the residents of No. 6 but noted that no acoustic survey had been submitted in this regard. The appellant has submitted such a survey with this appeal, which acknowledges that impact on the stairs could generate excessive levels of noise and disturbance and as such recommends a variety of mitigation measures.
9. As a result of the survey a wide range of measures have been proposed and detailed on the plans submitted with the application. Soundbloc plaster board would be installed along the party wall of the ground floor hall, first floor landing and the LDU, including in the underside of the staircase. In addition, acoustic underlay and carpet tiles would be fixed to the stairs themselves. It is likely that the combination of these measures would reduce noise transmission through the party wall to some extent.
10. However, while parties disagree regarding the appellant's ability to access No. 6 for the purposes of the survey it remains that noise heard through the party wall has not been measured. As such, there is no substantive evidence before me detailing the comparability of the noise likely to be generated by the proposal with that currently experienced by the residents of No. 6 or to what extent, if any, this would be reduced by the proposed mitigation measures. On this basis, I am unable to conclusively determine that the residual levels of noise and disturbance experienced by the residents of No. 6 would be of an acceptable level.
11. For the reasons given above I have insufficient evidence to conclude that the development would not cause significant adverse harm to the living conditions of neighbouring occupiers at No. 6 Park Avenue, with particular regard to noise and disturbance. As such, it would be unacceptable in terms of achieving good design consistent with ENV2 of the Local Plan for Pendle Core Strategy 2011 – 2030 and in providing a high standard of amenity consistent with the National Planning Policy Framework (the Framework).

¹ APP/E2340/C/09/2103535

Other Matters

12. The appellant has pointed out that the proposal would have no negative impacts in terms of character and appearance or highway safety. While this is acknowledged, this represents a lack of harm, which is neutral in the overall planning balance.
13. It has been stated that the use of the upper floors of the property in connection with the dentist surgery would be short term only, until another premises nearby is extended. However, I have no further information on this and, in any event, the application has not sought a temporary permission.
14. The appellant has stated that the LDU is required as a result of a change in working practices following the COVID-19 pandemic, and that without this at the surgery the dentist practice will be unviable. Be that as it may, neither the support for business in the development plan nor Framework is at the expense of ensuring appropriate living conditions. I furthermore note that there is no robust evidence before me on that point one way or another.
15. I acknowledge that the principle of a dentist practice within a residential area is common and acceptable. However, it remains that there is insufficient evidence to demonstrate that this specific proposal would not cause unacceptable harm to the living conditions of the residents of No. 6.

Conclusion

16. For the reasons given above, having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR