



Appeal Decision

Site visit made on 11 October 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2022

Appeal Ref: APP/C1055/W/22/3295492

46 Quarn Drive, Derby DE22 2NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Samantha Beckett (nee Stokes) against the decision of Derby City Council.
 - The application Ref 21/01956/VAR, dated 10 November 2021, was refused by notice dated 24 December 2021.
 - The application sought planning permission for the change of use of part of dwelling house from domestic garage (Use Class C3) to hairdressing salon (Use Class E) without complying with conditions attached to planning permission Ref 21/00154/FUL, dated 23 July 2021.
 - The conditions in dispute are Nos 2, 4 and 5 which state that:
 - 2. The use hereby permitted shall be discontinued and the dwellinghouse restored to its former residential use only on or before: 23.7.2022, unless an application to continue its use has been made to the Local Planning Authority and is under consideration.*
 - 4. No customers shall remain on the premises outside the hours of 9am to 5pm on Monday to Saturday.*
 - 5. The beauty salon business shall operate on an appointment only basis with a minimum of 15 minutes between appointment times. A record shall be kept of the appointments and shall be made available to view by Council staff if required.*
 - The reasons given for the conditions are:
 - 2. To enable the Local Planning Authority to assess the effects of the use over a temporary period and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.*
 - 4. To safeguard the residential amenity of nearby occupiers and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.*
 - 5. To ensure the level of activity generated by the business remains compatible with the site's residential context to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.*
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Decision

1. The appeal is allowed in respect of conditions 2 and 5 and planning permission is granted for the change of use of part of dwelling house from domestic garage (Use Class C3) to hairdressing salon (Use Class E) at 46 Quarn Drive, Derby DE22 2NQ in accordance with the terms of the application, Ref 21/01956/VAR, dated 10 November 2021, without compliance with conditions 2 and 5 previously imposed on planning permission Ref 21/00154 (FUL) dated 23 July 2021 and subject to the conditions in the attached schedule.

2. The appeal is dismissed in respect of condition 4.

Procedural Matters

3. Planning application Ref 21/01956/VAR, which was refused by the Council on 24 December 2021, sought the removal of conditions 2 and 14 and the variation of conditions 4 and 5 of planning permission Ref 21/00154/FUL. Condition 14 required the ground floor window in the north elevation of the property which serves the hairdressing salon to be made non-opening and glazed with obscure glass, with the window being permanently maintained as such thereafter. The appellant however has since confirmed that the removal of condition 14 is no longer being pursued and that the appeal is made in respect of conditions 2, 4 and 5 only. I have therefore determined the appeal on that basis.
4. The Council has confirmed that two decision notices were issued in relation to planning permission Ref 21/00154/FUL. The first decision notice was issued on 23 July 2021 and contained condition 5 which erroneously refers to a 'beauty salon business' as opposed to a hairdressing salon as stated in the description of development. This error was noticed by the Council and a second decision notice was subsequently issued on 6 August 2021 which rectified the error contained in condition 5.
5. The Council however cannot re-issue decision notices, even where it is in relation to an administrative mistake. Powers are available to Council's under Section 97 of the Town and Country Planning Act 1990 (TCPA) to revoke or modify planning permissions, however Section 97(3)(b) of the TCPA stipulates that, where the permission relates to a change of use of the land, these powers may be exercised at any time before the change has taken place. As the change of use has already taken place this power would not apply in this case.
6. It is established case law¹ that a decision notice is to be treated as valid until and unless it is declared invalid by order of the court, or it is revoked through the statutory procedure. As the original decision notice has not been declared invalid by the courts, or revoked or modified through the statutory procedure, it remains valid. It is therefore the decision notice issued on 23 July 2021 that I have taken to be the correct and extant decision notice for the purposes of this appeal.

Background and Main Issue

7. Planning permission Ref 21/00154/FUL was granted retrospectively for the change of use of part of the dwelling house from domestic garage to a hairdressing salon. Several conditions were attached to the planning permission, including condition 2 which required the permitted use to be discontinued and the dwellinghouse restored to its former use on or before 23 July 2022, unless an application to continue the use had been made to the Local Planning Authority and was under consideration. The appellant wishes to remove this condition which would have the effect of making the permission permanent.
8. Condition 4 states that customers are only allowed on the premises between 09:00 and 17:00 from Monday to Saturday. The appellant wishes to vary this

¹ R (Gleeson Developments Limited) v Secretary of State for Communities and Local Government [2014] EWCA Civ 1118

condition so to allow the business to operate between 09:00 and 18:00 on Tuesdays and Wednesdays, between 09:00 and 19:30 on Thursday and Fridays, and between 09:00 and 17:00 on Saturdays, with no activities on Sundays or Mondays.

9. Condition 5 states 'the beauty salon business shall operate on an appointment only basis with a minimum of 15 minutes between appointment times. A record shall be kept of the appointments and shall be made available to view by Council staff if required'. The appellant wishes to remove this condition.
10. The main issue is therefore the effect that the removal or variation of the conditions in dispute would have on the living conditions of neighbouring occupants, with particular regard to noise and disturbance.

Reasons

11. The appeal property is a semi-detached dwelling located within a predominately residential area. The former integral garage at the property has been converted into a small hairdressing salon which is accessed via a door on the front elevation. The entire area to the front of the property has been hard surfaced and provides off-street parking.

Condition 2

12. Condition 2 of planning permission Ref 21/00154/FUL has the effect of making the permission temporary. The Planning Practice Guidance² (PPG) advises that circumstances where a temporary permission may be appropriate include '*where a trial run is needed in order to assess the effect of the development on the area*'. The PPG goes on to state that '*It will rarely be justifiable to grant a second temporary permission*' and that '*Further permissions can normally be granted permanently or refused if there is clear justification for doing so*'.
13. The hairdressing salon has now been operating at the property for over two years, which is a more than sufficient period of time to be able to assess any effect of the use on the area. The test therefore is whether there is clear justification for refusing permission, with particular regard to its effects on the living conditions of neighbouring occupants.
14. Although there will be some noise associated with the hairdressing salon, such as noise from hair drying equipment, I do not consider that it is an inherently noisy use nor one which could not be accommodated within a residential area if appropriately controlled by relevant planning conditions. I also observed during my site visit that the hairdressing salon was moderate in size which further controls the scale of the use, and its subsequent impact on the living conditions of the occupants of neighbouring residential properties.
15. I acknowledge that the hairdressing salon will likely generate a larger number of vehicle movements to and from the property than what would usually be associated with a residential dwelling. However, given both the size of the salon and its operation by a single person which restricts the number of customers that can attend the property during its opening hours, I find that the increase in vehicle movements would not be significant. Furthermore, the hard standing area to the front of property provides off-street parking for three cars

² Paragraph: 014 Reference ID: 21a-014-20140306

which further reduces any impact to the highway and subsequent disturbance to neighbouring occupants.

16. I also note that, although complaints have been received by the Council's Environmental Health team relating to noise since the hairdressing salon began operating, no evidence has been drawn to my attention indicating that a complaint has been substantiated. Similarly, the Council's Highways Team also raised no objection to the proposal including that there was no evidence to suggest that the existing use was having 'a severe impact on the surrounding highway network'.
17. In view of the above, I do not consider that there is clear justification for refusing planning permission for the proposed development. I am therefore satisfied that the proposed removal of condition 2 would not have an adverse effect upon the living conditions of neighbouring occupants, with particular regard to noise and disturbance. It would therefore comply with saved Policy GD5 of the City of Derby Local Plan Review (adopted January 2006) (LP) which seeks, among other matters, to ensure that developments do not cause harm to the amenity of occupants of nearby property including through traffic generation, noise pollution and loss of privacy.

Condition 4

18. The appellant seeks to vary the hours during which customers are permitted to remain on the premises. This variation would result see the total number of hours that the hairdressing salon would be open to customers reducing from 48 hours to 47 hours per week. The salon would also be closed for one additional day (Mondays) to the previous planning permission, although it would open for longer hours on Tuesdays, Wednesdays, Thursdays, and Fridays. Saturday opening hours would remain unaltered.
19. Whilst I acknowledge that some of the appellant's clients may wish to have appointments outside of normal office hours, this must be balanced against any impacts this may have to the living conditions of occupiers of neighbouring properties. Given the premises location within a built-up residential area and its proximity to neighbouring residential dwellings, I find that extending the opening hours later into the evening when there are likely to be more people at home and fewer vehicle movements would only serve to exacerbate any impacts of the use.
20. As detailed above, I do not consider that the vehicle movements or noise generated by the use to be excessive, however their impact would be intensified the later the use was operated in the evening. Notwithstanding there being no objection to the revised opening hours from the Council's Environmental Health, I find that the operating of the hairdressing salon beyond 17:00 and up until as late as 19:30 would greatly increase the potential for noise and general disturbance to occur. Whilst this disturbance may not reach the threshold for being a 'statutory nuisance' it would nevertheless result in harm being caused to the living conditions of the occupants of neighbouring properties.
21. The appellant contends that the proposed variation of condition 4 would lessen the impact of the use due to an overall reduction in the opening hours and due to the salon being closed for two days per week as opposed to one. I find however that the reduction in the overall opening times by one hour per week

would be negligible and would have no noticeable impact. Whilst there would be some benefit to the salon being closed for one additional day, this would not overcome the harm that would arise by the later opening hours on Tuesdays to Fridays.

22. I therefore conclude that the proposed variation of condition 4 would have an adverse effect upon the living conditions of neighbouring occupiers. It would therefore conflict with saved Policy GD5 of the LP, the requirements of which are set out above.

Condition 5

23. As outlined at the outset of this decision, condition 5 erroneously refers to a 'beauty salon business' and therefore at present the condition does not relate to the current use of the site. Under Section 73 of the TCPA the condition can be varied and amended through the appeal process, and consequently could be changed so that it refers to the hairdressing salon business if the condition overall is considered both reasonable and necessary.
24. The decision notice states that the Council's reason for imposing the condition was to 'ensure the level of activity generated by the business remains compatible with the site's residential context'. In their statement of case the Council expands on this and make it clear that the intention of this condition was to keep activity levels consistent with a residential street by avoiding having more than one customer on site at any one time, and to allow a reasonable period between customers to minimise peaks in activity.
25. The appellant initially sought to vary the condition to remove the requirement for the minimum 15 minutes between appointment times, but now considers that it should be removed in its entirety due to the size of the premises and the restrictions already imposed by conditions 3, 10 and 11 of planning permission Ref 21/00154/FUL.
26. Although conditions 3, 10 and 11 limit the use of the hairdressing business to the current location within the former garage, and that it can only be operated by a single person residing at the host property, they do not require the hairdressing business to operate on an appointment only basis. Whilst these conditions assist in restricting the size and scale of the business, they do not prevent the business operating a 'drop-in' service and customers attending the property un-announced.
27. The absence of a condition specifically requiring the business to operate on an appointment only basis could result in two or more customers attending the property at the same time and subsequently having to either wait on site until space was available, or alternatively leaving to return at a more appropriate time. Such an occurrence would cause an increase in the level of activity at the property and result in greater disturbance being caused to neighbouring occupiers. Accordingly, I consider that a condition requiring the business to operate on an appointment only basis to be both reasonable and necessary.
28. The imposition of a minimum 15-minute gap between appointments however appears to be rather arbitrary and overly restrictive. Due to the size of the premises and condition 3 which restricts the use to being operated by a single person, the number of customers able to visit the property in a single day is already limited. Whilst I note the Council's intention of seeking to avoid one

customer leaving around the same time as another was arriving, the provision of the off-street parking spaces negates such concerns. Additionally, the imposition of a 15-minute gap between appointments would not prevent customers arriving early and potentially waiting onsite or parking on the highway and would not lead to any noticeable reduction in the number of vehicle movements or customers at the property on any one day. I shall therefore remove this requirement from the condition.

29. In view of the above, I shall vary condition 5 firstly by rectifying the administrative error on the initial decision so that it refers to the hairdressing business, and secondly by omitting the requirement for a 15-minute gap between appointments. This is in accordance with saved Policy GD5 of the LP, the requirements of which are set out above.

Other Matters

30. I have given careful consideration to the numerous objections and representations received from neighbours and other interested parties. In addition to matters that I have already dealt with in dealing with this appeal, the concerns raised are predominantly in relation to the non-compliance with the planning conditions attached to planning permission Ref 21/00154/FUL. These include customers attending the property outside of the permitted hours, the ground floor window on the north elevation being open, and the obscure glazing and vinyl's to the door and windows on the front (west) elevation of the property not being in situ.
31. The appellant has conceded that she has previously breached condition 4 of 21/00154/FUL relating to the permitted hours of operation, and it would appear from the third-party representations received that there have also been occasions when conditions 14 and 15 have also been breached in relation to the windows and doors on the northern and western elevations. I have found however that, subject to these conditions, the proposed development is acceptable and will not result in unacceptable harm being caused to the living conditions of the occupiers of neighbouring residential properties.
32. These conditions have subsequently been re-imposed. Should the appellant not comply with any of the attached planning conditions going forward, then the Council has the power to take enforcement action should they consider it expedient to do so.

Conditions

33. The PPG³ makes it clear that decision notices for the grant of planning permission under section 73 should set out all the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect. For clarity and precision, I have undertaken some minor editing of the restated conditions where necessary.
34. I have deleted the disputed condition 2 as indicated above. I have also deleted condition 5 from the original planning permission and replaced it with an amended condition (No 4) which relates to the use subject of this planning permission and removes a requirement for a minimum 15-minute gap between appointments.

³ Paragraph: 040 Reference ID: 21a-040-20190723

35. I have re-imposed condition 1 of the original permission which specifies the relevant drawings, albeit with amended wording. Conditions 2 and 3, 8, 9, 10 and 14 (formerly no's 3, 4, 9, 10, 11 and 15) have been re-imposed from the original permission without modification.
36. Conditions 6 and 12 of the original planning permission required details relating to waste management on the site and the accessibility of the entrance to disabled customers and visitors to be submitted to and approved by the Local Planning Authority within a specified period. The appellant contends that these details have been formally discharged which has not been disputed by the Council. I have therefore attached conditions (nos 5 and 11) to ensure that these elements of the proposal are carried out in accordance with the details approved under the discharged conditions.
37. Similarly, conditions 7 and 8 of the original planning permission required the parking area to the front of the property to be surfaced in a hard bound material and an extended vehicular footway crossing to be made available for use. It was readily apparent during my site visit that these works have been carried out, and therefore I have attached conditions (nos 6 and 7) which require these works to be retained for the lifetime of the development. Condition 13 of the original permission also required provision to be made within the site for the parking of one or more bicycles, and I have attached an amended version of this condition (no 12).
38. Finally condition 14 of the original planning permission required, within three months of the date of that decision, that the ground-floor window on the north elevation which serves the hairdressing salon should be made non-opening and glazed with obscure glass and thereafter retained. I noted during my site visit that these works had been undertaken and therefore I have re-imposed this condition (no 13) albeit with slightly amended wording.

Conclusion

39. For the reasons given above I conclude that the appeal should be allowed in part, and condition 2 should be removed and condition 5 varied. The appeal should be dismissed in relation to condition 4.

David Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan – Ordinance Survey 0100031673 Scale 1:1250, Block Plan – Ordinance Survey 0100031673 Scale 1:500, Floor Plans for Local Planning Authority Approval – SS/0121/001.
- 2) The hairdressing salon shall be operated only by a single person who is resident at the associated dwellinghouse 46 Quarn Drive and no other person(s) shall be employed at the premises in connection with the hairdressing salon business. The building shall not be sub-let at any time.
- 3) No customers shall remain on the premises outside the hours of 9am to 5pm on Monday to Saturday.
- 4) The hairdressing business shall operate on an appointment only basis. A record shall be kept of the appointments and shall be made available to view by Council staff is required.
- 5) The on-site management, storage and collection of waste and recycling associated with the business shall be carried out in accordance with the scheme approved by letter dated 17 December 2021 under planning permission Ref 21/00154/FUL.
- 6) The parking area to the front of the development shall be maintained in a hard bound material and shall not be used for any purpose other than the parking of vehicles for residents and for customers for the life of the development.
- 7) The dropped vehicular footway crossing to the front of the property shall be retained for the lifetime of the development.
- 8) No advertisements or other signage shall be installed at the site or on adjoining land unless otherwise agreed in writing with the Local Planning Authority.
- 9) The part of the building approved as a hairdressing salon shall be used for that purpose only and for no other purpose in Schedule 2 Part A Commercial, Business and Service Use Class of the Town and Country Planning (Use Classes) Order 1987 (as amended) or any use that might ordinarily be permitted under Schedule 2 Part 3 Changes of Use of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or in any equivalent provision in any statutory instrument revoking and re-enacting those Orders with or without modification.
- 10) The approved hairdressing salon use shall only take place in the converted garage as shown on approved drawing SS/0121/001 and in no other part of the building.
- 11) The entrance to the hairdressing salon shall be made suitable to meet the needs of disabled customers and visitors in accordance with the

specification approved by letter dated 18 February 2022 under planning permission Ref 21/00154/FUL.

- 12) The existing provision within the application site for the parking of one or more bicycles shall be retained for the lifetime of the development and shall not be used for any purpose other than the parking of bicycles.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order), the side facing ground-floor window in the site's north elevation that serves the hairdressing salon shall be permanently maintained as non-opening and glazed with obscure glass.
- 14) The existing obscure glazing and vinyls to the salon's entrance door and west facing windows shall be retained with a similar level of screening for the life of the development, unless otherwise agreed in writing by the Local Planning Authority.