
Appeal Decision

Site visit made on 26 January 2022

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2023

Appeal Ref: APP/B1415/W/22/3296050

128 Rye Road, Hastings, TN35 5DB

- 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 Ms M Botten against the decision of Hastings Borough Council.
 - The application Ref HS/FA/21/00940, dated 08 October 2021, was refused by notice dated 11 February 2022.
 - The development proposed is described as construction of ancillary garden building for use by applicant in connection with her home-working beauty business.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of ancillary garden building for use by applicant in connection with her home-working beauty business at 128 Rye Road, Hastings, TN35 5DB in accordance with the terms of the application, Ref HS/FA/21/00940, dated 08 October 2021, subject to the conditions set out in the schedule attached to this decision.

Preliminary matters

2. In their statement of case the council has confirmed that it has withdrawn reason three of the refusal notice. In their first reason for refusal the council referred to paragraph 58 of the National Planning Policy Framework (Framework). This was an error and should have read paragraph 185a) of the Framework. The appeal has been determined on this basis.

Main Issues

3. The first main issue is the effect of the proposal on the character of the surrounding area. The second main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance.

Reasons

Character

4. The appeal property is located within an accessible, primarily residential urban area, that is interspersed with occasional commercial and community facilities. The appeal site fronts onto Rye Road (A259) which is a busy distributor road and bus route. On street parking is allowed on both sides of Rye Road and a number of properties have on-site parking. A short distance from the appeal site along the A259 is a controlled pedestrian crossing, with a car wash facility just beyond. A short distance in the opposite direction along the A259 is a

supermarket and associated car park. The appeal site is also situated immediately adjacent to the junction of the A259 with a narrow lane and slip road. The lane and slip road serve a number of dwellings, a primary school, children's nursery and a local recreation ground.

5. The Appeal site forms part of a block of four flats designed to appear as two pairs of semi-detached houses, with gardens to the front, rear and/or side. The flats building is set back from the street behind front gardens and there is a combination of low and tall fences around its curtilage. The appeal property comprises a first floor flat, with a private garden to the side of the building. This side garden is elevated above the ground level of the flats and is separated from them by a narrow pedestrian access. Towards the front boundary of the side garden is a two sided sign which relates to the primary school and children's nursery.
6. The appeal building is sited within the side garden, adjacent to the junction of the slip road and the narrow lane that serves the school and the playing field. It is set back slightly from the front elevation of the flats building and is accessed from the front garden, via a secondary path off the path that serves the two flats.
7. Since the appeal application was refused the Council has granted planning permission for the construction and use of the appeal structure as a building incidental to the use of the appellant's dwelling.
8. Amongst other things policies DM1 & DM3 of the Hastings Local Plan Development Management Plan 2015 (DM), require good standards of design, which includes efficient use of resources. New development should protect and enhance local character, taking account of the surrounding neighbourhoods context. Planning permission will be granted for buildings where their use avoids adverse impacts on the occupiers of neighbouring properties due to privacy, overshadowing or loss of daylight.
9. Paragraphs 124 & 130 of the Framework, similarly seek to ensure that development is sympathetic to local character and maintains a strong sense of place. It should also provide a high standard of amenity for existing and future users and make efficient use of land. Paragraph 185a) of the Framework states that development should avoid noise giving rise to significant adverse impact on health and the quality of life.
10. In 2018 the appellants landlord gave their consent for the appellant to operate her beauty business from her home. This was subject to a number of conditions which included that the business should not cause a nuisance to her neighbours, including parking issues. The appellant initially operated her beauty business from her flat and then from June 2020 she started to operate the business from the appeal structure. The appellant has advised that after she placed a sign advertising her business on her boundary fence a complaint was made to the Council. The appeal application was subsequently submitted to the council.
11. A number of the properties along this stretch of Rye Road have outbuildings that are visible within the street scene. The appeal structure is located to the side of the host building and is modest in form and design. It is sited to the front of an existing larger outbuilding and is partially screened from the street scene by boundary fencing. For these reasons it does not have a harmful effect on the character and appearance of the street scene.

12. Regarding the use of the outbuilding for a beauty business the appellant has advised that in the three years that she operated her beauty business from her flat/outbuilding she received no complaints from existing tenants or neighbours. The council has confirmed that no objections from members of public were received in relation to the appeal application and that no concerns have been raised to the proposal by the highway authority. The Environmental Health department have stated that they have no objections to the proposal and have not received any complaints concerning the appellants beauty business activities.
13. At the time of the appeal site visit there were numerous on-street parking spaces available in the vicinity of the appeal site and the vehicular traffic and associated noise generated along this stretch of the A259 was constant. The appellant has stated that she typically starts work at around 10.30 hours and finishes at 17.00 hours, during which time she sees a maximum of three clients a day. Many of her clients live locally and walk to the premises.
14. Having regard to the above, even if the appellant was to have more than three clients in any one day it is highly unlikely that the operation of her beauty business from the appeal structure would have an adverse impact on the character and appearance of the local area. The size of the proposed structure limits its capacity, although it is of sufficient size to accommodate two clients, should there be any crossover between clients. Also, as suggested by the council, a condition could be imposed which restricts the provision of beauty services to just one client at a time.
15. The council has also suggested the imposition of a condition which restricts the operating hours of the business to usual working hours. These conditions would help ensure the working activities remained low key and would not have a material impact on the character and appearance of the local area, due to noise and activity.
16. I conclude on the first main issue that the proposal would not have an adverse effect of the character and appearance of the local area. Accordingly, in this respect, the proposal would comply with DMP Policy DM25, CS Policy C11, SNP Policy SEA2 and paragraphs 130 and 185a) of the Framework.

Living conditions

17. As stated above, it would appear that the operation of the beauty business from the property has not generated complaints from residents in the past. Also, subject to the conditions suggested by the council, the proposed beauty treatment activities would remain low key and would not generate a level of noise or activity that would likely cause a nuisance.
18. In addition to these conditions, to protect the living conditions of nearby residents, I consider that the proposed use of the building should be restricted to a beauty business or purposes incidental to the occupation of the first floor flat at 128 Rye Road. I also consider that if amplified music was played within the appeal structure it could well result in a level of noise and disturbance that could harm the living conditions of the occupiers of the adjacent dwellings. The imposition a condition which prevents the playing of amplified music would satisfactorily address this concern.

19. Access to the first-floor flat is via a shared path located at the front of the building. When approaching the flat the use of the path facilitates views towards the front windows of the ground floor flat. This same route would have been used by the appellant's customers when she operated her business from the first floor flat and is used by visitors to the flat.
20. The access path to the appeal structure forks off the entrance path before it reaches the flats and so achieves greater separation between the ground floor flat and the beauty business activities. Also, those accessing the appeal structure would naturally be looking in the direction they are going. Accordingly, the proposal would not result in material loss of privacy for the occupiers of the adjacent ground floor flat. As the appeal building is sited further away from other nearby dwellings, the operation of the proposed beauty business from the outbuilding would not result in a material harm to the living conditions of other local residents.
21. For these reasons I conclude on the second main issue that that the proposal would not have an unacceptable adverse impact on the living conditions of the occupiers of neighbouring properties. Accordingly, it would comply with DMP Policy DM3 and paragraphs 130 and 185a) of the Framework.

Conditions

22. In addition to the conditions referred to above, the council has suggested a condition which requires the development to be carried out in accordance with the submitted drawings. This is necessary in the interests of certainty.

Conclusion

23. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Elizabeth Lawrence

INSPECTOR

Schedule of conditions

- 1) The use of the building hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 7036/LBP & 7036/1.
- 3) The building hereby permitted shall be used for a beauty business and/or purposes incidental to the occupation of the first floor flat at 128 Rye Road and for no other purpose, including any other purpose in Class E of Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

- 4) The use of the building for a beauty business hereby permitted shall not be used except between the following hours:-
Monday - Saturday 10:00-17:00 hours
Not at all on Sunday or Bank Holidays.
- 5) The beauty business shall only provide services to 1 client at a time.
- 6) At no time shall amplified music be played inside the building hereby permitted, without the prior written consent of the local planning authority.