



Appeal Decision

Site visit made on 7 February 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2023

Appeal Ref: APP/C2741/W/22/3306060

3 Malham Grove, York YO31 0QG

- 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 Mr Niel Hartley against the decision of City of York Council.
 - The application Ref 22/00740/FUL, dated 6 May 2022, was refused by notice dated 23 June 2022.
 - The application sought planning permission for change of use of existing garage to hair salon without complying with a condition attached to planning permission Ref 21/01923/FUL, dated 11 March 2022.
 - The condition in dispute is No 3 which states that: *customers shall only be present at the business between the following times: 09:00 hours to 16:00 hours Monday to Friday and not at all on Saturdays, Sundays and Bank Holidays.*
 - The reason given for the condition is: *to protect the residential character of the area.*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of existing garage to hair salon at 3 Malham Grove, York, YO31 0QG, in accordance with the application Ref 22/00740/FUL made on the 6 May 2022, without complying with condition No 3 set out in planning permission 21/01923/FUL granted on 11 March 2022 by the City of York Council, and subject to the attached schedule of conditions.

Preliminary Matters and Main Issue

2. The Council's reason for refusal refers to the City of York Draft Local Plan Incorporating the Fourth Set of Changes - Development Control Local Plan (2005) (DCLP) and the emerging Local Plan (the emerging LP) which is currently undergoing examination. Although the DCLP does not form part of the statutory development plan for the purposes of S38(6) of the Planning and Compensation Act 2004, it is a material consideration in determining planning applications. I have given both the DCLP and the emerging LP weight only in so far as they are consistent with the National Planning Policy Framework (the Framework).
3. A hairdressing salon approved under planning application 21/01923/FUL is operating from the appeal site. The appellant is seeking to extend the opening hours from 09:00-16:00 hours Monday to Friday as restricted by condition 3 of the planning permission, to between 09:00 and 18:00 hours Monday to Friday. The reason given on the Council's decision notice for the imposition of condition 3 was to protect the character of the area. However, application reference

22/00740/FUL which sought to vary the opening hours condition, was refused due to concerns in relation to the living conditions of neighbouring residents.

4. Interested parties suggest that the hair salon has been operating in breach of condition 3 of the original planning permission (reference 21/01923/FUL). However, it is unclear from the evidence as to whether the condition is currently being breached. I have therefore determined the appeal under section 73 of the Town and Country Planning Act 1990 (s73 of the Act).
5. The Planning Practice Guidance (PPG) is clear that under s73 of the Act, only the condition the subject of the application is to be considered. A complete re-consideration of the original proposal cannot be made. The reference by an interested party to a previous appeal decision¹ that discussed the need for a sequential test for a hairdressing use, therefore has no bearing on the determination of this appeal. Planning permission has already been granted and implemented for the hair salon the subject of this appeal (reference 21/01923/FUL), and this permission will remain, regardless of the outcome of this appeal.
6. In light of the above, the main issue is therefore the effect that varying the opening hours of the hair salon would have on the living conditions of neighbouring residents, with particular regard to disturbance.

Reasons

7. The appeal site comprises a semi-detached dwelling with a detached single garage within the rear garden, now converted to a hairdressing salon. Car parking is within the front garden from which pedestrian access to the salon is gained through a gate to the side of the dwelling.
8. Malham Grove is a residential cul-de-sac which due to the lack of passing traffic is quiet in character. Conditions 3-6 of the original planning approval (reference 21/01923/FUL) work together to control the amount of commercial activity at the appeal site, in the interests of protecting the living conditions of neighbouring residents. These conditions restrict the hours of operation, the number of customers allowed on the premises per day and at any one time, as well as preventing the employment of any additional members of staff.
9. The proposed variation of condition would enable the hours of operation to be extended by 2 hours per day Monday to Friday, in order to accommodate customers that require appointments outside of regular working hours. The appellant's evidence indicates that they do not wish to increase the number of clients beyond the 6 per day permitted by the original permission (21/01923/FUL). Therefore, whether or not the extension of hours would align with hairdressing uses located within shopping parades, the proposal would not materially change the character or intensity of the permitted use at the appeal site. Rather, it would allow the activity from visiting clients to be spread over a longer period of time. In my view, such activity would be less discernible to neighbouring residents as a result.
10. Neighbouring residents may be more likely to be at home Monday to Friday from 16:00 hours onwards, as this is typically the time residents may start to return home from school or work. However, given that condition 5 of the

¹ APP/A4520/W/21/3272435

original approval (21/01923/FUL) prevents more than 1 customer attending the appeal site at any time, this is likely to result in a low number of visiting customers during the additional period between 16:00-18:00 hours. Even with the quiet nature of the street, the arrival of one or maximum 2 vehicles in connection with the salon use during this 2 hour period, is unlikely to be particularly perceptible. This is especially the case given it would be the time when other vehicles are accessing neighbouring properties as their occupants return home.

11. Regardless of how long each appointment takes, conditions 4 and 5 of the original approval prevent any more than 1 customer at a time and a maximum of 6 per day. Therefore, even if customers accessed swifter hair services such as a cut and finish, than colours or hair extensions that are more time consuming, the appellant cannot offer appointments to more than 6 customers per day. Otherwise, they would be in breach of the condition that limits the total number of customers per day and which the Council could choose to enforce.
12. An interested party suggests that other salons in shopping parades can operate viably whilst closing at 17:00-17:30 hours. Be that as it may, the operation of 1 hairdresser in isolation at a residential property on an appointment only basis and subject to a limitation on the number of customers per day, is a somewhat different enterprise to a salon where several hairdressers may be working on multiple customers simultaneously.
13. Malham Grove is a narrow unadopted road consisting of semi-detached dwellings with relatively small front gardens. Any visiting vehicles not accommodated within the plots of the dwellings, would have to be parked on the pavements to prevent blocking the road. There may be a degree of parking distress within the street given that bollards have occasionally been erected to prevent parking on the pavement.
14. Although I acknowledge it was a snap-shot in time, during my visit on a weekday evening after 16:30 hours, no on-street car parking was occurring within Malham Grove. The Council's evidence indicates this to be the same circumstance during their daytime call, while 2 vehicles were parked on the street during their evening visit. From the evidence before me therefore, it does not appear that on-street car parking has reached saturation point. Given that there is space to accommodate 3 vehicles within the front garden of the appeal site if carefully parked, I see no reason why customers of the hair salon cannot be adequately accommodated on the appeal site. Even if a vehicle was to park on the pavement outside, it is unlikely to cause significant congestion or disturbance to neighbouring residents, particularly given the restriction to one customer and therefore one vehicle at a time.
15. Whilst photographs have been put to me showing cars parked on the pavement outside the appeal site, it is not sufficiently compelling to demonstrate that such parking has occurred in connection with the hair salon use, or that it has caused disturbance which is harmful to the living conditions of neighbouring residents. I find the circumstance to be no different to what is likely to occur when visitors attend neighbouring dwellings.
16. For the above reasons, the increase in hours of operation to between 09:00-18:00 Monday to Friday only, would not result in a significant degree of activity

that would adversely affect the living conditions of neighbouring occupiers, with particular regard to disturbance. It would therefore accord with Policy E10 of the DCLP and Policy EC3 of the emerging LP. These policies seek to support proposals for small business uses within residential areas where they would not adversely affect the amenity of neighbouring properties. Likewise, the proposal would comply with paragraph 130 of the Framework which requires new development to have a high standard of amenity for existing users.

Other Matters

17. The Council did not refuse the variation of condition application (reference 22/00740/FUL) on highway or pedestrian safety grounds. Thus, I am not required to consider this matter further. Nonetheless, given the context of Malham Grove is a narrow cul-de-sac where vehicle speeds will typically be low and that the proposal would not result in an increase in the number of customers coming and going to the appeal site overall, an unacceptable impact on highway safety or a severe impact on the road network would not be exerted contrary to paragraph 111 of the Framework.
18. Reference is made to the appellant agreeing to condition 3 at the time the original planning approval was granted (reference 21/01923/FUL). Be that as it may, it does not prevent a proposal to modify the previous permission from coming forward, which is to be considered on its own merits.
19. Whilst planning permission has been granted for the hair salon, it does not follow that this would set a precedent for other commercial activity to take place within Malham Grove. In the event that other residents were to come forward with proposals to operate commercial uses from other dwellings within the street, planning permission is likely to be required, which would be considered on its own merits in accordance with the development plan and any material considerations.
20. The presence of a restrictive covenant is not a consideration material to the grant of planning permission and as such, it has no bearing on my decision.

Conditions

21. The PPG makes clear that decision notices for the grant of planning permission under s73 should also repeat the relevant conditions from the original permission that continue to have effect. I shall impose all those that I consider remain relevant.
22. I have listed the approved plans the subject of this appeal for the avoidance of doubt and in the interests of certainty. Conditions to control the use of the appeal site, the number of customers visiting at one time and on one day, doors and windows to remain closed and the business tied to the occupancy of 3 Malham Close are retained in the interests of protecting the living conditions of neighbouring occupiers. Uncontested by the appellant, the Council advises that condition 7 of the original approval (reference 21/01923/FUL) relating to details of noise emitting plant and equipment has not been discharged. Given that there will be noise generating equipment used within the salon it is reasonable and necessary to reimpose this condition. I have however amended the wording to reflect the fact that the use has already commenced and to

allow time for the appellant to submit the required information. The amended wording is agreeable to both parties.

23. Also varied is the wording of condition 3 to reflect the revised hours of operation. The condition relating to the provision of car parking spaces is reimposed to ensure that the area laid out for parking is retained for its intended purpose in the future. Finally, I have reimposed previous condition 11, in the interests of the character and appearance of the area to prevent the erection of advertisements.

Conclusion

24. The proposal would be in accordance with the development plan as a whole and material considerations do not lead me to decide otherwise. For these reasons and having regard to all other matters raised, the appeal is allowed.

M Clowes

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following plans and elevations unless otherwise indicated by other conditions:-
 - Site location and block plan 0399/001.
 - Proposed parking plan 0399/004 rev A.
 - Proposed floor plan and elevations 0399/003.
2. Customers shall only be present at the business between the following times:
 - 09:00 hours to 18:00 hours Monday to Friday and not at all on Saturdays, Sundays and Bank Holidays.
3. No more than 6 customers in total shall attend the premises on any single day.
4. Customers visiting the approved development shall be by appointment only and there shall be no more than one customer at the property at any one time.
5. The use hereby approved shall only be used for the approved purposes and shall be operated by one permanent residential occupier of 3 Malham Grove and no additional members of staff shall be employed at the premises.
6. Details of all machinery, plant and equipment, including any audible devices to be installed in or located on the premises, which are audible outside of the boundaries of 3 Malham Grove, shall be submitted to the Local Planning Authority for written approval within 2 months of the date of the decision. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational within 2 months of the written approval of the Local Planning Authority and shall be maintained as such thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed the representative LA90 1 hour during the hours of 07:00 to 23:00 or representative LA90 15 minutes during the hours of 23:00 to 07:00 at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014+ A1 2019, inclusive of any acoustic feature corrections associated with tonal, impulsive, distinctive or intermittent characteristics.

7. The car parking spaces as shown on drawing number 0399/004 rev A and as laid out on site, shall be retained and kept available at all times solely for the parking of vehicles.
8. All external doors and windows in the salon shall be closed when hairdressing is taking place.
9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order) or the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any Order revoking or re-enacting that Order), the salon area indicated on the approved plans shall only be used as a hairdressing salon, a dwellinghouse or for purposes ancillary or incidental to a dwellinghouse.
10. Notwithstanding the provisions of The Town and Country Planning (Control of Advertisements) Regulations 2007, no advertisements shall be displayed at the premises.