



Appeal Decision

Site visit made on 14 February 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2023

Appeal Ref: APP/G5180/W/22/3302006

339 Court Road, Orpington BR6 9BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs C Hollingsworth against the decision of the Council for the London Borough of Bromley.
 - The application Ref DC/21/04892/FULL3, dated 7 October 2021, was approved on 17 May 2022 and planning permission was granted subject to conditions.
 - The development permitted is for the mixed use of dwelling for residential and osteopathic clinic purposes.
 - The condition in dispute is No 3 which states that: The Osteopath Use hereby permitted shall be undertaken by Mrs C Hollingsworth only and limited to one room as set out in the plans hereby approved. At the time Mrs C Hollingsworth vacates the property, the Osteopath Use shall cease, and the room shall revert to the original residential Use.
 - The reason given for the condition is: To protect the character and appearance of the area and protect neighbouring residential amenities. It is also to comply with Policies 37, 87 and 119 of the Bromley Local Plan.
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Decision

1. The appeal is allowed and the planning permission Ref DC/21/04892/FULL3 for the mixed use of dwelling for residential and osteopathic clinic purposes at 339 Court Road, Orpington BR6 9BZ is granted on 17 May 2022 by London Borough of Bromley, is varied by varying condition 3 and substituting the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: LOCPLAN/01, TP/BR/01 and TP/BR/04.
 - 2) The osteopath use hereby permitted shall be limited to only one room within the property at 339 Court Road, Orpington BR6 9BZ. At the time Mrs C Hollingsworth vacates the property, the osteopath use shall cease, and the whole property shall revert to the original residential (Class C3) use.
 - 3) There shall only be one client being treated on the premises at one time with a maximum of 12 appointments per day.
 - 4) The use shall only operate between the hours of 08:00 - 19:00 Monday to Friday; 08:30 - 12:00 Saturdays and there shall be no operating on Sundays and Bank Holidays.

Background and Main Issues

2. Planning permission was originally granted for a mixed use of the dwelling at No 339 Court Road for residential and a single room to be utilised as an osteopathic clinic subject to conditions. Condition 3 was imposed on the original

permission to ensure that the clinic was operated by the appellant only, to ensure that a separate osteopathic operation could not function independently of the use as a dwellinghouse. The application subject to the appeal seeks to amend the condition to allow the clinic to be used by an osteopath from outside the household during periods when the appellant is unable to work.

3. The main issues therefore are whether the disputed condition 3 is reasonable or necessary to i) protect the character and appearance of the area; and ii) protect the living conditions of neighbours.

Reasons

Character and appearance

4. The appeal site consists of a detached bungalow with an attached single garage and off-street parking for several vehicles to the front. The appeal site is located in a mixed-use area with residential and commercial facilities in close proximity to one another, albeit separated by Court Road (A224).
5. The appeal scheme would not change the appearance of the built development and would provide for the use of one room within the existing dwellinghouse as an osteopathic clinic. As observed on site, the use is clearly retrospective, as one of the front rooms has been converted to use as an osteopath's clinic. Given the conversion of an existing room, the clinic has a small domestic scale and appearance, and in this context, would conform to the general pattern of development along Court Road, not appearing out of place.
6. The co-existing mixed use within a single planning unit has been found acceptable through the grant of permission and suitably controlled through conditions restricting number of rooms used, client numbers and hours of operation¹. These prevent any intensification of the use above a domestic type of scale thus maintaining the character and appearance of the area. The proposed amendment to the disputed condition, would allow for the use of a single room in the dwelling by a clinician other than the appellant. There is no substantive evidence to suggest that this would lead to any discernible change to the character or appearance of the area, given the aforementioned restrictive conditions.
7. The property has a large forecourt area allowing adequate off-street parking, similar to the majority of the properties along this stretch of Court Road. This could accommodate parking for clients and temporary clinicians that visit the practice, and with numbers and times restricted by the existing conditions, the use would be akin to a domestic property. Furthermore, the Highways Authority has indicated that there is adequate parking available for the proposed use. As such, given the use of the site has already assimilated into the existing locality, the character of the area would be preserved.
8. Consequently, I conclude that the amendment to the condition would not result in harm to the character and appearance of the surrounding area. The scheme would be compliant with Policy 37 of the Bromley Local Plan, adopted January 2019 (BLP) which amongst other things, requires development to compliment adjacent buildings and the area.

¹ London Borough of Bromley Planning ref: DC/21/04892/FULL3 – Conditions 3, 4 and 5

Living conditions of neighbours

9. The Council are concerned that the variation of condition 3, would allow an osteopathic clinician, not part of the household, to operate within the dwellinghouse of the appellant, to the detriment of the living conditions of neighbours. The Council consider that by varying the condition, there is not sufficient prospect to reassess the impact of the proposal in light of any change that could take place to the nature and intensity of the use.
10. It is unclear how these factors would change, given the restrictive nature of the undisputed conditions already attached to the extant permission and the variation to condition 3 proposed. These conditions would continue to control numbers of clients per day, hours of operation, rooms used and clients on site at any one time, which have previously been found appropriate through the conditional grant of permission. Whilst an osteopath from outside the household could operate at the site, I have been presented with no evidence to suggest this would have any additional detrimental impact to residential amenity with specific regard to additional vehicular or pedestrian traffic, or any increase in noise or other inconveniences.
11. For the reasons above, I conclude that the amended condition would not result in harm to the living conditions of the existing occupiers of the adjoining dwelling with particular reference to any increase traffic or noise and disturbance. I can identify no conflict with BLP Policies 37 and 119 which amongst other things, seek to protect residential amenity from noise and disturbance. However, I acknowledge the conflict with BLP Policy 87 which seeks to ensure that home working businesses are undertaken by the householder. Nevertheless, I find the variation of the condition would be appropriate in this case, given the suitable restrictions proposed and the existing conditions to be reattached which would protect the living conditions of those surrounding the activity.

Other Matters

12. It is acknowledged that there is an extensive planning history associated with the site. These include several planning applications and prior approval schemes for operational development which have been refused by the Council, along with an application for the demolition of the garage and erection of single storey side and rear extensions which is pending a decision². The Council are concerned that the ambiguous details contained in these schemes could lead to an intensification of the use as an osteopath clinic, that would operate independently of the dwellinghouse, to the detriment of the character and appearance of the area and neighbouring residential amenities.
13. Whilst these cases provide background information, none of these schemes have been granted permission, and therefore I am not persuaded that they have direct relevance to the scheme before me now. While consistency in decision making is important, ultimately, each scheme needs to be determined in the light of the specific circumstances and context of each case.
14. The application seeks permission for a development which varies from the original application and for a use which has already been implemented. Whilst I acknowledge the frustration of neighbours, planning legislation allows for such

² London Borough of Bromley Planning ref: 22/03646/FULL6

applications to be made and subsequently judged on the basis of their individual merits.

Conditions

15. This appeal grants a new planning permission. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has been substantially completed, it is not necessary to impose a condition requiring commencement within a set period.
16. It is necessary to specify the amended list of approved drawings as this provides certainty and defines the permission. Due to the nature of the mixed use associated with the premises and its relationship to neighbouring dwellings, it is necessary and reasonable to limit the number of rooms used, restrict the numbers of clients attending the property at any one time and the hours of use, to protect the character and appearance of the area; the living conditions of neighbours and to manage any highway impacts.

Conclusion

17. For the reasons given above I conclude that the appeal should be allowed. I will grant a new planning permission with the original Condition 2 substituted, and now becoming Condition 1. I will also attach the revised wording of the original Condition 3, which will now become Condition 2. I will reimpose the undisputed conditions, where they remain reasonable and necessary now becoming Condition 3 and 4.

Robert Naylor

INSPECTOR