



Appeal Decision

Site visit made on 17 October 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2023

Appeal Ref: APP/J4525/W/23/3327872

6 Eden Villas, Columbia, Washington, Sunderland NE38 7EJ

- 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 Mr Kashif Ahmad against the decision of Sunderland City Council.
- The application Ref 23/00707/FUL, dated 21 March 2023, was approved on 20 June 2023 and planning permission was granted subject to conditions.
- The development permitted is a single storey side and rear extensions, including relocation of waiting area, creation of x-ray room, store room, surgery, disabled WC, decon room, kitchen & staff room.
- The conditions in dispute are Nos 4 and 5 which state that: (4) *'The uses of the rooms within the extension hereby approved, as described by the proposed plans and elevations plan (drawing number 21091/02 G, received 16.05.23), shall not be changed unless the Local Planning Authority first agrees any variation in writing'* and (5) *'The premises shall not be operated for the purposes hereby approved outside the following hours: Monday to Friday (except Bank Holidays) 08:00 to 18:00'.*
- The reasons given for the conditions are: (4) *'In the interests of residential amenity and to comply with polices BH1 and HS1 of the CSDP'* and (5) *'In order to protect the amenities of the area in accordance with policies HS1 and BH1 of the CSDP'.*

Decision

1. The appeal is allowed and the planning permission Ref 23/00707/FUL for single storey side and rear extensions, including relocation of waiting area, creation of x-ray room, store room, surgery, disabled WC, decon room, kitchen and staff room at 6 Eden Villas, Washington, Sunderland NE38 7EJ granted on 20 June 2023 by Sunderland City Council, is varied by deleting conditions Nos 4 and 5.

Background and Main Issues

2. This application seeks permission to carry out the development permitted without complying with condition No.4 which restricts the uses of rooms within the extension to those which are described on the proposed plans and condition No.5 which restricts the operating hours of the dental practice.
3. The Council considers that these conditions are both reasonable and necessary to protect the residential amenity of neighbouring occupiers. However, the appellant objects to the imposition of both of these conditions on the grounds that they are not reasonable, necessary, precise, relevant to planning, or enforceable.
4. Therefore, the main issue is whether the condition Nos 4 and 5 are necessary, reasonable, enforceable, precise, or relevant to planning in the interests of ensuring acceptable living conditions for the occupiers of neighbouring properties.

Reasons

5. The appeal site is a two-storey semi-detached property in use as a dental practice, which fronts onto Oxclose Road. The surrounding area is predominantly residential. However, there are other commercial uses nearby including a convenience store, hot food takeaway and a public house.
6. Policy BH1 of the Sunderland City Council Core Strategy and Development Plan 2020 (CDSP) states that development should retain a good standard of amenity for all existing and future occupiers of land and buildings. Policy HS1 of the CDSP states that development must demonstrate that it does not result in unacceptable adverse impacts which cannot be addressed through appropriate mitigation including, noise and traffic.
7. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
8. The Council has recently granted planning permission¹ for extensions to the front and side of the appeal property which would provide additional patient facilities including an additional patient surgery, X-Ray room, decontamination room, staff area and disabled toilet. This application was approved without any conditions restricting the use of internal rooms or operating hours.
9. The appeal scheme sought the same facilities as approved, but with the addition of an office/meeting room and a staff room/kitchen within a single storey rear extension. During the course of the appeal application, amended plans were provided which addressed some of the concerns of the neighbouring properties, including increasing the set back of the extension from the boundary with No 5 Eden Villas.
10. However, condition No.4 seeks to restrict the use of the rooms in the proposed extension to those annotated on the submitted plan, with any changes to the use of these rooms requiring the prior written approval of the Council. The Council considers that this condition is reasonable and necessary to ensure that any future changes to the room layout, within the extension, can be controlled. However, in determining the application, the Council accepted that there would be no additional noise generating equipment, and the associated comings and goings generated by the potential small increase in patient numbers would not be to such a degree that it would warrant refusal of planning permission.
11. The Council's Environmental Health Team also confirmed that they would have no objection to the proposal and raised no concerns in relation to noise, pollution, or any other amenity issues. Furthermore, the Council's Appeal Statement states that the Council were satisfied that the details submitted with the application indicated that enlarged premises would be operated in a way which would remain respectful of local amenity.
12. Therefore, on the basis of the evidence before me, I am not satisfied that condition No 4 would be either reasonable or necessary in the interests of ensuring acceptable living conditions for the occupiers of neighbouring properties.

¹ Application Ref: 22/02127/FUL

13. Condition No 5 seeks to restrict the use of the premises (as a whole) to 08:00 to 18:00 Monday to Friday. It prevents the practice from opening at any time after 18:00 hours on weekdays, weekends, or bank holidays. However, I understand that the opening hours are not currently restricted. I also note from the evidence provided that the practice did open on Saturdays for a short time period to address patient backlogs and I have not been presented with any substantive evidence that would indicate that this caused harm to neighbouring occupiers. Furthermore, the appellant has not indicated within the application submission documents, any intention to change the current opening hours, but wishes to reserve the right to operate flexibly to meet the changing needs of patients and staff within the practice.
14. I note the Council's and neighbour concerns about the possible expansion of the enterprise and its potential to operate at times which would not respect local amenity and highway safety. However, these concerns relate to future increases in patient numbers beyond those which are indicated in the development permitted. Condition Nos 4 and 5 restrict opening hours and use of the rooms within the proposed extension only, and therefore it may be possible for an increase in patient numbers to occur without any breach of these conditions.
15. Similarly, if the practice is able to operate on a Saturday morning for example, there is no evidence to demonstrate that this would necessarily lead to a harmful increase in patient numbers. Even if patient numbers increase, the nature and scale of the use and the premises is such that comings and goings from the premises would be likely to be less than those for the other nearby commercial premises. Furthermore, in my view, due to the scale of the use operated on the premises any generated noise and disturbance as a result of the premises operating without the restrictions imposed by conditions No 4 and 5 would not be as such a level to cause harm to living conditions of the occupiers of neighbouring properties.
16. Overall, I therefore find that the conditions No 4 and 5 are not reasonable or necessary in the interests of protecting the living conditions of the occupiers of neighbouring properties, in respect of noise and disturbance. As such the proposal complies with Policies BH1 and HS1 of the CDSP, which seek to ensure the living conditions of residents living near to development proposals are safeguarded.
17. For the above reasons, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed conditions.

K Lancaster

INSPECTOR