



Appeal Decision

Site visit made on 5 December 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Appeal Ref: APP/Q4245/W/23/3323824

196 Dane Road, Sale M33 2LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs Tracey Sutton against the decision of Trafford Metropolitan Borough Council.
 - The application Ref 101085/FUL/20 was approved on 9 December 2022 and planning permission was granted subject to conditions.
 - The development permitted is retrospective application for enlargement of and alterations to outbuilding, change of use of outbuilding to therapy room (*sui generis*) and proposed alterations to driveway to increase parking capacity.
 - The conditions in dispute are Nos 1 and 4 which state that:
 - *1. The business uses hereby permitted shall cease 12 months from the date of the permission hereby granted. The temporary use will then cease and revert back to full residential use immediately on the expiry of the permitted term, unless otherwise subject to the grant of express planning consent for the continuance of the use.*
 - *4. The use of the outbuilding for the business activities hereby permitted, shall operate between the following hours only and with the following restriction on numbers of attendees and operators:*
 - *Monday to Friday 9am to 5pm*
 - *Monday and Tuesday 5pm until 9pm for 1-2-1 sessions only*
 - *Wednesday 5pm until 9pm for 1 group session of up to 10 people*
 - *Saturday 10am – 1pm*
 - *No use Sundays or Bank Holidays.*
 - The reasons given for the conditions are:
 - *1. To enable the Local Planning Authority to assess the effect of the proposed development on the amenities of the surrounding area, having regard to Policy L7 of the Trafford Core Strategy and the National Planning Policy Framework.*
 - *4. To safeguard the interests of occupiers of adjoining and nearby residential properties and in accordance with Policy L7 of the Trafford Core Strategy.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023 and is a material consideration in this appeal. Having considered the revisions to the Framework, as well as the principles of natural justice, together with the nature of the determining issues in this appeal, it is clear to me that there are no material changes in the revised Framework relevant to the substance of this appeal. Therefore, I do not consider it necessary, in this instance, to invite any submissions from the parties on the revised Framework.

3. Furthermore, since the Council's decision and the submission of this appeal, the Council has adopted Places for Everyone¹ as part of the statutory Development Plan for Trafford. Comments have been requested but no policies have been referred to that affect the determination of this appeal.

Background

4. Planning permission was granted for the enlargement and alterations to an outbuilding and its change of use to a therapy room together with alterations to the driveway. This appeal seeks to remove condition 1 to allow for a permanent consent and vary condition 4 to allow for greater hours of use, including for group sessions in the evenings. The Council refer to evidence that the use has existed outside the hours permitted by condition 4. Whether that is the case or not is not for this appeal to assess.
5. With regard to Condition 4, the appellant has confirmed that she wishes to amend it to state the following:-
 - The use of the outbuilding for the business activities hereby permitted, shall operate between the following hours only:
 - Monday to Wednesday – 0900 – 2100
 - Thursday – 0900 – 2000
 - Friday – 0900 – 1700
 - Saturday – 0900 – 1400; and
 - No use on Sundays or Bank Holidays.
6. The appellant's business includes various activities associated with pregnancy and babies including advice and support for expectant mothers and new parents, ante and post-natal sessions, massage, yoga and therapy (not an exhaustive list of the related uses). The submitted information clarifies that as well as the appellant, other therapists / instructors provide these services within the building. The building has two rooms, one capable of taking a group of about 8 to 10 people and a smaller room which is more suitable for one-to-one sessions or small group meetings.

Main Issue

7. The main issue is the effect that removing condition 1 and varying the hours of operation in condition 4 would have on the living conditions of the occupiers of surrounding residential properties.

Reasons

8. The appeal site comprises a substantial three-storey semi-detached Victorian house with a large garden. The outbuilding is located at the end of the garden. To the south and east there are school playing fields, but the area is primarily residential. The appeal outbuilding is accessed from a pedestrian gate to the side of the house, adjacent to the playing fields, and as well as the building there is a covered area for outdoor seating and/or the storage of prams etc.

¹ Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan 2022 to 2039, Adopted 21 March 2024.

9. The building is close to the boundary with the garden to the adjoining house, No 194. There is a tall hedge and fence along the rear garden boundary between the two properties and visitors enter the outbuilding via the pedestrian gate to the side of No 196. Nonetheless, the sought hours are likely to result in significant noise and disturbance from comings and goings. Whilst this would arise mainly from people talking, meeting and greeting each other and generally chatting, 8 to 10 people would generate an unacceptable level of noise in this residential garden location.
10. Furthermore, whilst the building has triple glazing, on summer evenings when the occupiers of No 194 would be more likely to be in their garden, noise and disturbance would also be exacerbated by the uses within the building, especially when its doors and windows are open. It would be difficult to impose a condition that prevented this occurring even if only rear windows were opened and regardless of what fans or other means of ventilation the appellant may choose to utilise. Condition 6 relates to windows and doors opening but this applies to when amplified or other music is played. Attendees are also more likely to gather outside at the start and end of the sessions when weather conditions are more clement.
11. An area for parking is provided at the front of the house. The driveway allows for the parking of numerous vehicles and when in full use requires some vehicles to move before others can exit the drive. Although this may work for groups attending the same session, it would involve manoeuvring vehicles and cause some to wait with potentially their engines running. The sought hours would result in an intensification of the use of the driveway as more sessions would be provided. The resulting number and frequency of vehicle movement would be unacceptable in an area such as this.
12. Consequently, visitors using the driveway or parking on the road near to No 196 would cause noise and disturbance to the occupiers of surrounding residential properties when arriving and departing. This would be significant due to their numbers and frequency throughout the day and evenings.
13. The school playing fields and Dane Road (B5397) generate varying levels of noise and activity. However, it is likely that the noise associated with the playing fields and road would be less in the evenings when residents would expect a quieter environment. The activity associated with the use of the appeal building would be more noticeable during the evenings. The proposal would result in visitors to the appeal site nearly every evening during the week, in addition to the daytime and also most of the daytime on Saturdays.
14. I acknowledge that the appellant informs clients of the availability of public transport and advise on parking arrangements aimed at minimising any impact on local residents. However, there are no mechanisms before me to ensure that clients would comply with this advice and due to the proximity of No 194, in particular, the level of activity is not compatible with a residential area.
15. The restrictions set out in condition 4 are specific and have been imposed as a means of allowing the appellant to operate her business whilst avoiding or minimising harm to the living conditions of the occupiers of surrounding residential properties. Longer hours would lead to more noise and disturbance. As a result, I intend to leave condition 4 unchanged as the sought hours would have a harmful effect on neighbours living conditions through noise and disturbance.

16. Notwithstanding condition 4, condition 1 grants planning permission for a temporary period only. This was imposed to enable the Council to assess the impact of the proposal on the living conditions of the occupiers of neighbouring properties.
17. This condition has now expired and so as a matter of fact, the authorised use of the outbuilding other than for residential purposes associated with the house has ceased. Even if it had not expired, the scale of the services the appellant wishes to provide is not suitable in this residential location. A permanent permission combined with the sought operating times is not appropriate. I have considered whether a new temporary permission may be appropriate. The Planning Practice Guidance advises that it is rarely justifiable to grant a second temporary permission and I see no reason to come to a different conclusion.
18. Local Plan Policy L7 requires development to be compatible with the surrounding area and not prejudice the amenity of the occupants of adjacent properties by reason of noise or disturbance, amongst other things. Paragraph 135 of the Framework also seeks to ensure a high standard of amenity for existing users. Removing condition 1 and varying the hours of operation in condition 4 would conflict with this Policy and the Framework and, for the reasons given above, would have a harmful effect on the living conditions of the occupiers of surrounding residential properties.
19. The Council refer to PG1 (New Residential Development), but whilst requested, a copy has not been provided. Therefore, I am unable to comment on its relevance to this appeal. In any event, I am satisfied that this would not alter my overall findings set out above.

Other Matters

20. The appellant asserts that there are other businesses that offer therapy and classes in the area that open every evening and are on residential streets. She has also drawn my attention to government and other agendas and has indicated that the extended hours are necessary for the business to provide the service it offers. Similarly, I have no reason to doubt that there is a demand for the services on offer, and the letters of support indicate the benefits of the sessions offered. I also appreciate that the appellant has identified a need to carry this out in the evenings and the planning process has been unsettling. Furthermore, I acknowledge that no objections have been submitted by nearby neighbours on the opposite side of the road, and the appellant uses the building for her own personal use. However, given the harm that I have found, the other matters raised do not outweigh that harm.

Conclusion

21. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Consequently, I conclude that the appeal should be dismissed.

J D Clark

INSPECTOR