

Appeal Decision

Site visit made on 20 August 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Appeal Ref: APP/N1160/W/23/3332252

97 Lake View Drive, City of Plymouth, Plymouth PL5 4LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Sally Gibbons against the decision of Plymouth City Council.
 - The application Ref is 23/00835/S73.
 - The application sought planning permission for material change of use of land from a dwellinghouse to a mixed use of dwellinghouse and a business use comprising a basement beauty treatment room without complying with conditions attached to planning permission following appeal Ref APP/N1160/C/22/3309917, dated 2 May 2023.
 - The conditions in dispute are Nos 1 and 4 which state that: *1. No business activity shall take place outside the hours of 10am -1pm and 4pm-7.30pm on Tuesdays and Wednesdays; and 10am—2pm on Fridays and not at all during school holidays; and 4. Beauty treatment shall be undertaken by prior appointment and appointment diaries shall be made available to the local planning authority on request. The number of customers should be limited to no more than two persons per hour of opening.*
 - The reason given for the conditions: *"...to protect the residential and general amenity of the area."*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted at appeal¹ for the material change of use of land from a dwellinghouse to a mixed use of dwellinghouse and a business use comprising a basement beauty treatment room.
3. The appellant wishes to extend the opening hours originally imposed to between 0900 and 1930 hours Monday to Thursday; and 0930 to 1500 on Fridays and not at all during weekends and bank holidays. Actual business operation not to exceed 20 hours per week within these start and finish times.

¹ APP/N1160/C/22/3309917

It is also submitted that only 2 of the 4 evenings would be operated on, typically Tuesday and Wednesday, changing on occasion, as required. Additionally, it is sought to amend the number of customers to no more than 40 clients/vehicles per week.

4. The Council is concerned that the development would be harmful to the character of Lake View Drive and the living conditions of its residential occupiers, with regard to vehicular movements, general activity, and disturbance.
5. I therefore consider the main issue to be whether conditions 1 and 4 are reasonable and necessary having regard to the living conditions of nearby residents and the character of the area.

Reasons

6. The appeal site lies at the bottom of a steep cul-de-sac next to tranquil woodland where occupants of this inherently residential area benefit from high levels of amenity. Here, the unified rhythm of residential properties presents as an overtly domestic environment. Furthermore, the lack of passing traffic adds to an overall sense of calm. The appeal property has an open frontage area where existing customer parking is provided. At the time of my late morning visit, I saw a busy arrangement of parked cars on the narrow street amongst the numerous dropped kerbs. For these reasons, the street would be very sensitive to a change in its character.
7. The permitted term time only business activities limit comings and goings of customers to 3 days a week, between 4 and 6 ½ hours a day. There is little evidence that customer appointments between the current restricted hours of 1300 and 1600 or the school holidays would generate different levels of disturbance beyond that already permitted. This would include unacceptable noise levels, a loss of privacy or security. However, it is the cumulative effect of adding to these timings that is at issue.
8. Business activity during the school holidays would provide the appellant with greater flexibility for customer requirements. There would be opportunities to make additional allowances for illness, emergencies and missed appointments. However, there are a large number of objections which document the experiences of increased traffic movements, disturbances, and a general awareness of the existing business. Based on the evidence and my own observations, even though bank holiday business hours would be avoided, it is likely that the proposed opening times would result in a greater degree of disturbance to local residents.
9. The appellant claims that the proposed changes to condition 1 represent more flexible daytime working hours. However, the suggested 10 business activity hours over 4 days and 6 on another would have the potential to create a more persistent and frequent disturbance to local residents and the tranquil character of the street. Even if well managed on a 1 in 1 out basis, this level of activity up to 4 evenings a week, including vehicle manoeuvres, and disturbance caused by the comings and goings of customers, would be likely to be particularly noticeable and irritating for nearby neighbours.

10. In that context, in addition to what could be over 45 hours of business activity a week, it is suggested that 20 of these hours be set aside for the actual business operation on 2 of the 4 evenings. Even so, the differentiation between business activity and operation is ambiguous and lacks precision. This is also the case in respect of the proposed unspecified evening operation times. Consequently, the monitoring or enforcement of such changes would be extremely difficult, placing unreasonably onerous expectations on the Council. As such, a condition including the above restrictions would not meet the tests set out in paragraph 56 of the National Planning Policy Framework.
11. Additionally, and in respect of condition 4, the appellant says that the suggested 40 clients per week would allow for more flexible appointment times and late arrivals. In respect of the latter, this issue is more closely aligned with business management than the result of an unworkable condition. Nevertheless, they add that 40 clients would be commensurate with 20 hours of actual business operation, or 2 clients per hour.
12. Even if I were to accept that 40 clients per week could be monitored using an accurate diary, the effect of the proposed change when compared with current restrictions would be markedly different. It is conceivable and likely from the evidence that clients book multiple appointments. Assuming that a number of these appointments could be very short, the suggested condition could allow any of the 40 clients to book multiple appointments on different days. Consequently, necessary control over the amount of customer activity would be significantly reduced.
13. For the reasons given, the removal of hourly customer restrictions in condition 4 would have the potential to lead to a bottle neck in customer appointments. This could occur during times of the day or evening where associated activity would be likely to be more noticeable to local residents.
14. Moreover, it is submitted that a restriction on the number of vehicles is typical of other home-based enterprises permitted in the city. However, I am not aware of the site-specific circumstances surrounding these permissions. In any case, I have assessed the scheme on its merits and the evidence before me. Customers could park on the street and may each own a number of different vehicles. As such, the monitoring of the number of vehicles directly associated with the existing business would be very difficult to enforce or monitor. Therefore, its inclusion would not meet the tests set out in the Framework. As written, the condition is precise, reasonable, and necessary to control the flow of customers.
15. Drawing these matters together, there is no intention to stifle an existing business that contributes to the local economy. Additionally, local support for the proposal is acknowledged. However, the amenity of existing and future residents, and the character of an area are important considerations and ones which are embedded within the Framework. The appellant has gone some way towards justifying amendments to the current set of restrictions set out in conditions 1 and 4. However, the cumulative effect and extent of the proposed changes would be likely to result in harm to the living conditions of nearby residents and the character of the area.
16. I therefore conclude that conditions 1 and 4 are reasonable and necessary having regard to the living conditions of nearby residents and the character of

the area. As such, there would be conflict with policies DEV1 and DEV20 of the Plymouth & South West Devon Joint Local Plan which, in part, seek to safeguard the amenity of local communities, protecting and improving the quality of the built environment. There would also be conflict with paragraph 135 of the Framework, which says, amongst other things, that decisions should ensure developments function well and add to the overall quality of the area and create places with a high standard of amenity for existing and future users.

Other Matters

17. In respect of the previous appeal at this site, I am not aware of all the circumstances that led to that decision and its conditions. In any case, I have assessed this appeal on the evidence before me and my own observations.
18. I have paid regard to representations concerning the site history, enforcement matters and restrictive covenants. However, these have no bearing on my decision which is based on the planning merits of the proposal.

Conclusion

19. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR