



Appeal Decision

Site visit made on 15 August 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 15th September 2023

Appeal Ref: APP/B5480/C/21/3277402

26 Penerley Road, Rainham RM13 9HD (registered under Land Registry Title Number NGL35627)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Manit Kohli against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/417/19, was issued on 21 May 2021.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the garage to use for the Chiropody business.
- The requirements of the notice are to:
 - (i) Cease the use of the garage for the Chiropody business shown in the area hatched in black on the plan attached to the notice;
AND
 - (ii) Remove all equipment associated with the Chiropody business from the garage;
AND
 - (iii) Remove all other debris, rubbish or other materials accumulated as a result of taking steps (i) and (ii) above.
- The period for compliance with the requirements is 4 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (f) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the garage at 26 Penerley Road, Rainham RM13 9HD, as shown on the plan attached to the notice, for use for Chiropody business subject to the following conditions:

- 1) The garage shall be used for Chiropody business and for no other purpose.
- 2) The use hereby permitted shall be carried on only by Mr Manit Kohli.
- 3) The premises shall only be open for customers between the following hours:

0900 – 1730 Mondays - Fridays

Ground (a) and the deemed planning application

Procedural Matters

2. Since the appeal was made, the Council has adopted the Havering Local Plan 2016-2031 (2021) (HLP) which supersedes the Core Strategy and Development Control Policies Development Document (2008). I have determined, as I must, the deemed planning application against the current development plan and not against the superseded policies cited in the enforcement notice.

Main Issues

3. The main issues in the appeal (which are the same as the reasons the Council gave for enforcement in the notice) are the effect of the development upon:
 - the living conditions of neighbouring residential occupiers, particularly as regards noise and disturbance from comings and goings; and
 - parking provision/highway safety.

Reasons

4. The modest outbuilding subject to the appeal sits to the rear of a 1.5 storey residential bungalow and is accessed via a side access shared with a similar dwelling at 24 Penerley Road (No 24). While the side access is amply wide enough to allow vehicles to enter, parking for the host dwelling and the clinic operated from the outbuilding is to the front of the property.
5. The space reserved for client parking to the front of the property entails that noise and disruption that might otherwise be caused by parking within the side access would not result. Further, in terms of parking provision, the reserved space (which would also leave 2 parking spaces at the front of the property for the residential occupiers) would be ample for the appeal use particularly when taking into account the very many street parking bay spaces that I observed were available on my site visit in line with the appellant's submissions to that effect. There would be no implications for highway safety.
6. Albeit situated in a residential area, the scale of the activity that could take place within the relatively small set-back outbuilding would be limited. Due to this limitation, single clients only would be seen by appointment and spread out throughout the working day (Mondays to Fridays only, 0900-1730). It is said, and I accept, that this would entail a maximum of 8 visits each day by clients within times which would be neither too early or late in the day to cause material disruption.
7. Single clients will necessarily walk to and from the outbuilding along the wide side access a short distance but this ungated journey would be simple and quick, and it is difficult to envisage any material disturbance being caused during the stated hours of operation. The side fenestration of No 24 is largely of obscured glazing serving its kitchen and bathroom and, along with its own property entrance, face the entrance door of the appeal dwelling across the wide side access. Consequently, I do not consider that the relatively modest additional comings and goings associated with the development would cause any adverse impact to the occupiers of No 24 over and above the pre-development comings and goings associated with pre-existing use of the side access to enter the main entrances of the dwellings.

8. However, due to the intimate association of the outbuilding with (and proximity to) the host dwelling¹ there would be a significant adverse impact on the living conditions of residents were its use to be separated from residential occupation of the dwelling. This harm can be avoided however by imposing a condition requiring that the appeal use is carried out only by the appellant, who is the residential occupier of the host dwelling. I am also imposing a condition that the permitted use is only that of a Chiropody business, since that is the nature of the business that I have found to be acceptable within the otherwise residential context of the appeal setting while other businesses may create other impacts. I am also imposing a condition restricting the hours of operation in line with what the appellant has described as currently in place, in order to avoid harm from customer activity on the premises at earlier or later times of day. I am satisfied that these conditions meet the tests set out in Planning Policy Guidance: they are necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects.
9. For all of the above reasons, the conditioned development would cause no harm to living conditions or to parking provision and highway safety. Accordingly, there is no conflict with Policies 7, 12, 23, 24, 26 and 34 of the HLP which together (amongst other aims) seek to prevent harm on these issues. For the same reasons, there is no conflict with the National Planning Policy Framework.

Other matter

10. Nothing in this Decision gives consent for the display of advertisements requiring such consent.

Conclusion

11. The development complies with the development plan as a whole, and there are no other considerations which outweigh this finding.
12. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted with conditions. The appeal on grounds (f) and (g) does not therefore need to be considered.

Andrew Walker

INSPECTOR

¹ Which has more significant elements of unobscured glazing on its side elevation near which clients would closely pass (unlike the case across the access at No 24).