

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 19/03598/PLUD

Ward:
Darwin

Address : Dancers End 1 St Winifred's Road
Biggin Hill TN16 3HR

Objections: No

OS Grid Ref: E: 542752 N: 158332

Applicant : Mr Simon Trill

Description of Development:

Use of 1 ground floor room as a tattoo studio for up to 15 customers per week between the hours of 10am-10pm (Monday-Saturday) with no more than one customer present at a time (PROPOSED LAWFUL DEVELOPMENT CERTIFICATE)

Key designations:

Biggin Hill Safeguarding Area
London City Airport Safeguarding
Open Space Deficiency
Smoke Control SCA 24

Proposal

The application seeks a Lawful Development Certificate for the use of one ground floor room within the host dwelling as a tattoo studio for up to 15 customers per week between the hours of 10am-10pm (Monday-Saturday) with no more than one customer present at a time.

The applicant has provided the following additional information:

- Off street parking is available for clients.
- No large scale deliveries are needed.
- No staff will be employed aside from the applicant and their partner.

A Councillor has "called in" this application to be considered at committee.

Location and Key Constraints

The application site comprises a two storey detached dwellinghouse located on south-eastern side of St Winifred's Road, Orpington. The property is not listed and does not lie within a conservation area.

Comments from Local Residents and Groups

Nearby owners/occupiers were notified of the application and no representations were received.

Comments from Consultees

Legal (Summary): The proposal could fulfil the criteria for the certificate, so long as an informative is included which sets out that any intensification beyond the description is likely to require a full planning application.

Policy Context

Section 55 (1) of the Town and Country Planning Act 1990.

Planning History

07/02139/FULL6 - First floor rear extension - Application Permitted.

Considerations

The application requires the Council to consider whether the use of a room within the property as a tattoo studio constitutes development as defined by Section 55 (1) of the Town and Country Planning Act 1990. It is important to distinguish between an ancillary use and uses which are part and parcel of an existing lawful use. Accordingly the issue requires consideration not as to whether there will be an ancillary use, but whether the use engages any material change of use of the land and thus amounts to 'development' as defined within the meaning of Section 55. This is determined by applying a test of fact and degree as set down in *Barling (David W) Ltd v Secretary of State and Swale DC [1980]*. Just because the proposed use goes beyond what would ordinarily be regarded as an ancillary use does not mean there is a material change of use.

The facts of the case are that a room within the dwellinghouse is to be used as a tattoo studio for up to 15 customers per week. The degree of use requires an assessment of the likely impact of the use, for example what impact there will be on traffic and noise levels.

The host dwelling is situated within a street which is residential in character. There will be no staff employed other than the applicant and their partner who both live at the property. The site has suitable off-street parking for customers and no more than one customer will be present at a time which, with the provision of off-street parking, will minimise any impact on traffic and noise levels. In addition the total number of customers visiting the property per week is clearly defined and limited in the application description. Taking this into account it is considered that the number of customers visiting the property, and the level of traffic and noise that they would create, would be comparable to the applicant receiving friends and family to the dwelling.

The home will still mainly be used as a private residence and the number of people visiting over the week will not result in a marked rise in traffic. While a tattoo studio is not a use typically found within the residential area it is not considered that it

would disturb neighbours at unreasonable hours or create any other form of nuisance in the form of noise or smell. It is therefore considered that the nature and intensity of the use would not materially change the use of the dwelling (or this part of the dwelling).

However if these details change, and particularly if staff start to visit the property and/or if other visitor/customer activity is intensified, then this may alter the character and nature of the dwelling and the activity surrounding it. The business activity may no longer be concluded to be ancillary to the residential use of the dwelling and it may be concluded that a change of use has occurred. However the current assessment is based on the details submitted within the application and cannot speculate on whether a use or development would or would not be carried out in accordance with the terms of the permission or consent, and therefore if any changes in the business activity were to occur in the future would need to be assessed at that time. The Applicant could be advised of this by Planning Informative.

Conclusion

Based on the application details the proposal would not comprise development under Section 55 of the Town and Country Planning Act 1990.

RECOMMENDATION: CERTIFICATE BE GRANTED

- 1 The proposal would not comprise development under Section 55 of the Town and Country Planning Act 1990.**

You are further informed that:

- 1 The Applicant is advised that this decision is based on the submitted details only and that if the development/use changes from the submitted details; such as an intensification of the use/activity, then a material change of use may occur and/or external changes to the building which may require the express planning consent of the Local Planning Authority, it may be unauthorised, carried out at the Applicant's own risk and may be liable to planning enforcement action. Should the Applicant have any queries in this regard they are strongly urged to contact the Council for advice.**