The Planning Inspectorate

Appeal Decisions

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing,Communities and Local Government

Decision date: 13 January 2025

Appeal Refs: APP/B5480/C/23/3327334 & 3327335
Land at 13 Harlow Road, Rainham RM13 7UL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Miss Louise Walker and Mr Ajay Patel against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/505/20, was issued on 14 July 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from a dwellinghouse to a mixed use as a dwellinghouse and as a commercial beauty therapy business (sui generis).
- The requirements of the notice are:
  (i) Cease the use of the outbuilding to the rear as a beauty therapy business

  and

  (ii) Remove all equipment associated with the beauty therapy business from the outbuilding

  and

  (iii) Remove all rubbish, debris or other materials accumulated as a resuly of taking steps (i) and (ii) above.
- The period for compliance with the requirements is one month.
- The appeals are proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a correction and variations

Procedural matters

1. The appeals have been made only on grounds (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act). These grounds of appeal do not require me to make any subjective judgments in terms of, for example, the effect of the development on the living conditions of the occupiers of neighbouring residential properties. I am therefore satisfied that I can determine these appeals on the written evidence submitted and that there is no need for me to visit the appeal site.

2. Much of the appellants' evidence focuses on the number of customers attending the site and the availability of parking spaces, citing policies in the London Plan and PTAL levels. Similarly, the representations received in support

of the beauty therapy business, of which there are many, also refer to the availability of car spaces when attending the site as customers of the business.

3. However, these are all matters that go the planning merits of development and as such would more properly fall to be considered under an appeal on ground (a): namely that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The appellants have not made an appeal on ground (a) and have not paid the requisite fee. Consequently, the deemed planning application that arises from Section 177(5) of the 1990 Act does not fall to be considered, such that I am not able to take the comments made by the appellants and in representations in those respects into account.

The Enforcement Notice

4. The Enforcement Notice alleges, without planning permission, the material change of use of the land from a dwellinghouse to a mixed use as a dwellinghouse and as a commercial beauty therapy business. The plan attached to the notice clearly shows the land to which it relates shown edged in black. That plan includes the main dwelling fronting Harlow Road and some outbuildings towards the rear of the garden facing Canfield Road. I am therefore satisfied that the plan attached to the notice clearly identifies the mixed use alleged as taking place across both the main dwelling and the outbuildings. The appellants have clearly understood that to be the case.

5. However, the evidence before me clearly indicates that the alleged commercial beauty therapy business is confined to an outbuilding located at the Canfield Road end of the garden. The requirement at paragraph 5(i) of the notice clearly states that it only applies to that outbuilding. In the interests of clarity, the breach of planning control alleged at paragraph 3 of the notice should also make that distinction. I will correct the notice accordingly.

6. The breach of planning control alleged in the notice is described as a mixed use comprising, in part, a *commercial* beauty therapy *business* (emphasis added). The word 'commercial' and 'business' are important in this context but are not fully repeated in the requirements to comply with the notice at paragraph 5(i) and 5(ii). As a consequence, compliance of the notice as drafted would prevent any use of the outbuilding for any non-commercial beauty therapy treatments: for example, for the benefit of family and friends of the appellants.

7. The use of the outbuilding purely to provide beauty therapy treatments to just family and friends of the appellants would result in a use of a different character to that of a commercial use, and is more likely than not to be ancillary or incidental to the use the dwellinghouse as such. The notice as drafted would remove rights held by the appellants in that respect, which is not permissible. I will therefore vary the notice to refer explicitly to a commercial beauty therapy business. I will consider these appeals, including the appeals on ground (f), on that basis.

8. I am satisfied that no injustice would be caused by correcting and varying the notice in these respects.

The appeals on ground (c)

9. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not

constitute a breach of planning control. An appeal is this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.

10. Where, as in this case, the breach of control alleges the making of a material change of use, it is first necessary to identify the relevant 'planning unit'. In this case, as a matter of fact and degree, I consider that the planning unit comprises the main dwelling, its garden and any outbuildings in that garden. This is the entirety of the land edged in black on the plan attached to the notice.

11. I recognise that the component uses (residential use of the main dwelling and garden, and the beauty therapy business) are physically and functionally separate, but the whole planning unit is a single unit of occupation. Consequently, even though the commercial beauty therapy business only takes place in an outbuilding to the rear of the main dwelling, it is still within the same planning unit as the main dwelling. Accordingly, I am satisfied that the breach of planning control alleged in the notice is accurately described as a mixed use of that planning unit, even though the component uses take place in different buildings within that same planning unit.

12. The beauty therapy business is operated by of the appellants, Miss Louise Walker, as a sole trader with no employees. Miss Walker candidly concedes in her evidence that the business is taking place and operates from an outbuilding at the Canfield Road end of the site. The question as to whether the operation of this business as part of a mixed use of the land constitutes a breach of planning control therefore turns on whether the operation of the commercial beauty therapy business alters the character of the use of the planning unit as a whole.

13. I have no evidence to show that the treatments offered by the beauty therapy business give rise to excessive noise, either in terms of the treatments themselves or any background music that might be playing. The main issue is therefore the pattern of movements associated with the use.

14. The Council contend, and the appellants do not dispute, that the opening hours of the business are from Monday to Saturday at different times, with the latest closing time said to be 20:30 hours. In a statement dated 9 August 2023, Miss Walker explains that she only works three days a week, rarely has more than a few clients on those days and only ever has one client receiving treatments at any one time. It is also confirmed in that statement that an unspecified proportion of her clients arrive on foot or by public transport.

15. The difficulty is that none of this is quantified through evidence. It is reasonable to conclude that each appointment lasts for no longer than one hour. Taking one client per hour over the course of a typical working day as the baseline, and that the business is only operating on three days per week, would equate to seven clients per day arriving at regular intervals at the rear of the property, whether on foot, by public transport or by private car. Or, put another way, a total of 21 movements each week by persons not forming part of the appellants' household.

16. This represents a very different pattern of movements to that associated with a typical family dwelling, possibly extending well into the evening. I recognise of

course that the actual number of movements may be less. But equally it may be more, and/or take place in the evenings and at weekends. The evidence is simply not there either way.

17. In my view, the character of the mixed use that is alleged in the notice, even taking no more than seven clients per day over three days per week as the baseline, would be very different to that associated with a typical family dwelling. Consequently, as a matter of fact and degree, I conclude on the evidence before me that the mixed use alleged in the notice constitutes a material change of use.

18. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

    …the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land (emphasis added).

19. I have found that the use of the outbuilding (which equates to 'any building' for the purposes of section 55(1) of the 1990 Act) as a commercial beauty therapy business as a component of the mixed use alleged in the notice constitutes a material change of the land comprised by the dwelling and associated garden (which equates to 'any ….other land' for the purposes of section 55(1) of the 1990 Act). The mixed use alleged in the notice therefore constitutes development for the purposes of section 55(1) of the 1990 Act. Section 57 of the 1990 Act confirms that planning permission is required for development. There is no planning permission in place for the development alleged in the notice, deemed or otherwise.

20. Accordingly, on the balance of probability, the appeals on ground (c) fail.

The appeals on ground (f)

21. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice (as I propose to vary it) include to cease the use of the outbuilding to the rear as a commercial beauty therapy business. The purpose of the notice must therefore be to remedy the breach of planning control that has taken place.

22. The appellants consider that requiring the use of the outbuilding as a way of working from home to cease, and in which to store items related to working from home, is excessive. The appellants consider that a better solution would be to require visitors (by which I deduce they are referring to clients/customers of the business) to use the private parking on the driveway of their house.

23. The difficulty is that this lesser step would not achieve the purpose of the notice: in other words, it would not remedy the breach of planning control that has taken place. It seems to me that nothing short of ceasing the use of outbuilding as a commercial beauty therapy business would achieve the

purpose of the notice. The step required by paragraph 5(i) of the notice is therefore not excessive in that respect.

24. However, as a consequence of the variation that I propose to make to paragraph 5(i) of the notice, it would be open to the appellants to continue to use the outbuilding to provide beauty therapy treatments for their family and friends on a non-fee-paying basis. It follows that the requirements at paragraphs 5(ii) and 5(iii) of the notice would then be redundant and therefore excessive. I shall delete them.

25. For the avoidance of any doubt, the use of the outbuilding as a commercial beauty therapy business would still be caught by the notice. Continuing to do so after the period for compliance has expired would then be an offence liable to prosecution.

26. Accordingly, the appeals on ground (f) succeed to that extent but otherwise fail.

Conclusion

27. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and variations.

Formal Decision

28. It is directed that the enforcement notice is corrected by:

- in paragraph 3 of the notice, after the words *sui generis* in parenthesis, add the words ", with the latter taking place in an outbuilding to the rear of the dwellinghouse."

29. It is directed that the enforcement notice is varied by:

- in paragraph 5(i) of the notice, inserting the word 'commercial' before the words 'beauty therapy business'
- deleting the requirements at paragraphs 5(ii) and 5(iii) of the notice in their entirety

30. Subject to the correction and variations, the appeals are dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR