The Planning Inspectorate

Appeal Decision

Site visit made on 18 November 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 5 February 2020

Appeal Ref: APP/W0340/C/19/3228080
Land at 15 Battle Road, Newbury, Berkshire RG14 6QU

- 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 Mrs Victoria Lee against an enforcement notice issued by West Berkshire Council.
- The enforcement notice was issued on 4 April 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the Land from a residential use to a mixed use comprising; a. Residential; and b. use of the Land and existing outbuildings to hair and nail salon and beauty treatment rooms (sui generis use?).
- The requirements of the notice are: (i) Cease using the Land and buildings for all purposes associated with hair and nail salon and beauty treatment rooms. (ii) Remove from the Land all equipment brought on to the Land for the purpose of that use.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

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

The Enforcement Notice

1. The allegation makes reference to a 'sui generis' use – being a use which is not expressly included in any class of use as defined by the Town and Country Planning (Use Classes) Order 1987 as amended (UCO). The use of this term does not add anything to the allegation and the use of a question mark introduces a degree of ambiguity. I shall therefore correct the notice to remove this wording and correct also the typographical error in the use of the word 'to' in this phrase. I do not consider that any prejudice would result from my doing so as this does not alter what is alleged in practice.

The Appeal on Ground (a) and the Deemed Planning Application

Background and Main Issues

2. The issue of the enforcement notice followed refusal of a retrospective planning application: reference 18/02087/FUL - made by the appellant for a change of use of existing outbuildings to hair and nail salon and beauty treatment rooms.

3. The Council refused the previous application and issued the enforcement notice for the same two reasons, but has expanded upon these reasons in its

statement of case which the appellant responded to. On the basis of all of the representations received, the main issues are:

a) Whether the site is an acceptable location for the alleged use, with regard to the character of the surrounding area, the accessibility of the use, and the vitality and viability of Newbury town centre; and

b) The effect of the use on highway safety, with regard to the adequacy and suitability of the parking arrangements.

Reasons

The Location of the Use

The Site and the Alleged Use

4. The appellant is operating a hair, nail and beauty salon business from two separate buildings within the back garden of the dwellinghouse where she lives. The buildings are located by the southern side boundary, and comprise a former garage now containing a hair and nail salon; a single storey building containing two beauty treatment rooms; and a 'tea point' between the buildings used for serving refreshments to the salon clients.

5. There are two parking spaces available on site which are located in front of the main house and to the front of the converted garage. Clients/staff can access the hair/nail salon directly via the front driveway. The beauty rooms are accessed either via the hair/nail salon building or through a side gate to the garden.

6. The property is in a pre-dominantly residential area. The nearest centre as defined in Policy CS11 of the Council's Core Strategy (2012) (CS) is Newbury town centre, which is 40 minutes away on foot (some 2 miles).

7. The 'high end' nature of the business and full service offering apparently means that clients have longer appointments than is usual for these sorts of uses, in turn effectively resulting in fewer clients being seen each day. However, this is not a matter that can be controlled by condition. For clarity, I am simply considering what permission is sought for – namely the alleged mixed use, the scale and extent of which would be limited by the constraints of the site and an opening hours condition.

8. The opening hours have varied in the past, but permission is sought for the business to operate from 9.00 at the earliest until 19.00 on Tuesdays, Wednesdays and Thursdays; from 9.30 to 17.00 on Friday and 9.30-16.00 on Friday.

Planning Policy

9. Policy ADPP1 of the CS is a high level policy which affirms that intensive trip generating uses, such as major mixed use, retail or leisure uses, will be located in those town centre areas where the extent and capacity of supporting infrastructure, services and facilities is the greatest, while the scale of all development will be related to the site's current or proposed accessibility, character and surroundings.

10. CS Policy CS9 largely concerns office, industrial and storage business uses, but includes a general requirement that business development should be in keeping

with the surrounding environment, not conflict with existing uses, and promote sustainable transport. Policy CS19 of the CS similarly seeks to ensure that new development is appropriate in terms of settlement form, pattern and character.

11. Policy CS11 seeks to protect and enhance the vitality and viability of the District's town, district and local centres, which will form the focal point for uses, services, and facilities serving the surrounding population…the main town centre uses identified by the National Planning Policy Framework (2019) (the Framework) will be directed to the town and district centres defined in this policy.

12. The 'main town centre uses' identified by the Framework include retail development. The UCO expressly describes hairdressing as a retail use under Class A1(e). Nail salons and beauty treatment rooms are not mentioned in the UCO at all but are similar in land use terms to hairdressers, and often found alongside hairdressers. On this basis, I consider that the appeal mixed use is sufficiently similar to retail to be a main town centre use.

Assessment

13. The nature of the alleged use and location of the site are such that there is an in-principle conflict with CS11. I am required to determine the appeal in accordance with the development plan, unless material considerations indicate otherwise. The business has grown to such a scale that it would clearly be appropriate to a town centre location, and third party representation refers to vacant buildings within Newbury town centre. Allowing uses such as that alleged in residential areas will exacerbate that situation.

14. The appellant comments that there was previously a post office nearby. I do not have details of the circumstances related to the opening (or indeed closing) of the post office. However, this most likely pre-dated the CS and the Framework. Moreover, post offices can be considered as a convenience store whereas the appellant herself has said that her salon provides high end services. Although people need local hairdressers, the appeal salon is of a kind that I would expect to be located in some kind of designated shopping centre.

15. Consequently, because the use is not in the town centre, it will divert customers from the centre, fail to protect the vitality and viability of the centre and undermine the role of the centre as the focal point for uses and services such as this. Thus, the use conflicts with Policy CS11 and causes the harm that the policy seeks to avoid.

16. In terms of the character of the use, representations from third parties indicate that the staff and customers of the use are taking sufficient parking spaces and creating sufficient activity such that the use is highly evident to, and impacting to various degrees on, nearby occupiers. Even if there is no unacceptable harm to highway safety or living conditions, the scale of commercial activity has seemingly served to increase local activity overall and thereby changed the character of the residential area. Whether or not that change is so harmful as to conflict with Policies ADPP1 or CS9, it is sufficient to add weight to my concern that the use ought to be in the town or another shopping centre.

17. As to accessibility, there are only limited opportunities to travel to the appeal site by modes other than the private car – with the bus route running nearby

offering only an hourly service. Indeed, the appellant's own statistics show that, in spite of her efforts to encourage the use of more sustainable transport modes, some 75% of her customers presently travel to the appeal site by private car. The location of the salon outside of the town centre also means clients are not able to combine multiple activities in one trip, so cannot in this way reduce their overall reliance on the private car. Thus, there is conflict with Policy ADPP1 and this is another consideration which weighs against a grant of permission for the appeal use in this location.

18. Turning to the matters in support of the alleged use, the appellant works full time at the salon herself and she currently employs one full-time worker and one part-time worker. Consequently, there are economic benefits from the use which are in line with paragraph 80 of the Framework, which seeks to ensure that significant weight is placed on economic growth, taking into account local business needs.

19. Dismissing the appeal will deprive the appellant of the opportunity to grow her business and employ more staff as she aims to do, and it will mean that she and others could lose their jobs. There are letters of support for the business, pointing out that the salon provides a service to local residents, and so there are social benefits also.

20. The appellant has not though substantiated her claim that it is not viable for her to relocate the business and I have noted third party evidence which refers to vacancies within the town centre. Thus, the economic and social benefits of allowing the use in this location would not outweigh or justify the economic and social harm caused by undermining the vitality and viability of the town centre.

21. On this basis, I find that the site is not in an acceptable location for the alleged use, with regard to the character of the surrounding area, the accessibility of the use and the vitality and viability of Newbury town centre. There is conflict with Policies ADPP1 and CS11, if not also with Policies CS9 and CS19, for the reasons explained above, and with paragraph 85 of the Framework, which seeks to support the role of town centres in local communities. There are no material considerations of sufficient weight, even cumulatively, to justify a decision other than in accordance with the development plan.

Highway safety/parking arrangements

22. The appeal site itself has space for two cars to park off street. The presence of the business means though that parking spaces are required for the residential occupants of the dwelling, staff and for clients who are using the services available or waiting to be seen. The Council does not have adopted parking standards for this business use but it is apparent that the off street parking at the appeal site alone would not be able to accommodate these requirements.

23. That said, on-street parking is unrestricted in Battle Road and Stuart Road adjoining. Those on-street parking spaces are not always relied on by local residents as many have one or more off-street parking spaces at their properties. Until 6pm, a small number of additional parking spaces are also available in the recreation ground car park at the corner of these two roads.

24. I acknowledge that there would be very likely to be increased parking pressure during the evenings and weekends when the business is open and when residents are at home. I note also the relatively narrow width of both Battle

Road and Stuart Road meaning that cars can only park on one side of the road in order to enable access.

25. However, it is likely that there would be sufficient capacity to accommodate the increased requirement resulting from the appeal business. The parking provision made is therefore adequate in the circumstances. Given also the fact that Stuart Road is a no-through road, the relatively low traffic flow and vehicle speeds mean that any vehicles circulating looking for parking spaces and associated manoeuvres would be unlikely to result in highway safety harm or interrupt the efficient flow of traffic.

26. I conclude then on the second main issue that the use does not have a harmful effect on highway safety, with regard to the adequacy and suitability of the parking arrangements. It complies with Policy CS13 of the CS and saved Policy TRANS.1 of the West Berkshire District Local Plan (2007) which seek to improve opportunities for safe travel and to ensure that adequate parking provision is made in new development, taking into account the availability of alternative modes.

27. It also does not have an unacceptable impact on highway safety nor severe residual cumulative impacts on the road network, and so complies in this way with paragraph 109 of the Framework.

Balancing and Conclusion

28. Notwithstanding the lack of harm caused by the alleged use with respect to highway safety, I find the unacceptability of the use in this location, and particularly the harm caused to the vitality and viability of the town centre, to be the decisive consideration. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction as outlined and refuse to grant planning permission on the deemed application.

Formal Decision

29. It is directed that the enforcement notice be corrected by the deletion of the words "use of the Land and existing outbuildings to hair and nail salon and beauty treatment rooms (sui generis use?)" from paragraph 3 of the notice and substituting "use of the Land and existing outbuildings as hair and nail salon and beauty treatment rooms". Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

V Bond

INSPECTOR