
Appeal Decisions

Site visit made on 14 September 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal A: APP/P4415/C/21/3270544

1 Farm Drive, Rawmarsh, Rotherham S62 5HU

- 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 Miss Barbara Kustra against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The enforcement notice, numbered EN2020/0097, was issued on 25 February 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised use of part of the property for hair and beauty and other personal care services.
 - The requirements of the notice are: 'Cease the use of the premises for hair and beauty and other personal care services and remove all fixtures and fittings associated with such activities.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/P4415/W/21/3269768

1 Farm Drive, Rawmarsh, Rotherham S62 5HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Barbara Kustra against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2020/1980, dated 20 October 2020, was refused by notice dated 15 February 2021.
 - The development proposed is described as follows: 'I provide hair service from back of my house, that's conservatory, which was built before I bought house already with this conservatory. I would like to change for part commercial'.
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Decision: Appeal A: APP/P4415/C/21/3270544

1. It is directed that the enforcement notice be corrected by:

- Replacing the text in section 3 (The matters which appear to constitute the breach of planning control) with the following:

Without planning permission, the material change of use of the property from a dwellinghouse to a mixed use of a dwellinghouse and for the provision of hair and beauty services.

- Deleting from section 5 (What you are required to do) the following words:
'and other personal care'.

2. Subject to these changes, 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 1990 Act as amended.

Decision: Appeal B: APP/P4415/W/21/3269768

3. The appeal is dismissed.

Procedural matters

4. The enforcement notice describes the breach of planning control as, 'the unauthorised use of part of the property for hair and beauty and other personal care services'. I have two concerns regarding this. First, 'personal care services' is a rather vague term. The Council officer's report relating to the planning application says that the appellant stated that she provided the following services: hair cutting, colour, blow dry, face & head massage and hair and scalp consultation. The Council has not provided details of any other services at the site. In my view, all of the matters listed could reasonably be described as 'hair and beauty services', and the reference to 'personal care services' is unnecessary.
5. My second concern is that the allegation suggests that the change of use relates to part of the property only. This presumably is to reflect the fact that the appellant uses her conservatory for the business. Be that as it may, the notice relates to No 1 Farm Drive as a whole. The property is occupied by the appellant, who also runs the hairdressing business there. Even though the business focuses around the conservatory, that is an integral part of the dwelling and is reached via the rest of the property. Accordingly, the property as a whole is a single 'planning unit'. The change of use that has occurred therefore does not relate to the conservatory alone but to the property as a whole. Since the residential use of the property has continued, it is now in a mixed use as a dwelling and for hair/beauty services.
6. It is established law that an enforcement notice must tell the recipient clearly what has been done wrong. Consequently, the allegation set out in the notice is unsatisfactory and cannot remain as it is. I have the power to correct the notice, provided doing so would not cause any injustice to the Council or the appellant. In this case there would be no injustice; there does not appear to be any dispute regarding what has actually occurred, which amounts to using the property for providing hair/beauty services in addition to its continued occupation as a dwelling. The changes I shall make will correct and clarify the notice, without changing what it seeks to achieve, and there would be no need for either party to change or add to their case. Accordingly, I am able to correct the allegation along the lines I have outlined, together with a consequential change to the requirements.
7. Similar considerations apply in respect of Appeal B. The description for Appeal B, as set out in the heading above, is taken from the planning application form, and is not entirely clear. In its decision notice, the Council described the development as, 'Use of conservatory for hair & beauty and other personal care services'. Although clearer in some respects, I have the same concerns as those relating to the enforcement notice. It is plain that the planning application seeks permission for the same use that the enforcement notice has targeted. I will therefore consider it on the basis that planning

permission is sought to change the use of the property to a mixed use as a dwelling and for hair and beauty services.

Appeal A: APP/P4415/C/21/3270544

The appeal on ground (c)

8. Appeals on ground (c) are made on the basis that the matters stated in the notice do not constitute a breach of planning control. It is clear that the mixed use of the property as a dwellinghouse and for hair and beauty services, as carried out by the appellant, is materially different from use as a dwelling alone. Indeed, as set out in my consideration of the ground (a) appeal, it has materially changed the character of the use of the property, resulting in harm to the living conditions of neighbouring residents. There are no permitted development rights enabling such a change of use. Accordingly, since planning permission was not obtained, a breach of planning control has occurred and the appeal on ground (c) fails.

The appeal on ground (a)

9. The main issue is the effect of the change of use on the living conditions of neighbouring occupiers.
10. No 1 Farm Drive is a semi-detached house in a residential estate. It is one of a close-knit group of 3 dwellings reached via a shared driveway, the other dwellings being the attached neighbouring No 3 and the detached No 5. Although there are some commercial properties in the general area, the nearest of these are on Claypit Lane, which has a very different, more mixed character, compared to the plainly residential character of Farm Drive.
11. The hairdressing takes place in the appellant's conservatory. It is set up for this purpose with a sink, chair, mirrors and various products and pieces of equipment. The conservatory is at the back of the house, reached by walking through the house or via a side gate which allows access to the rear garden. The appellant advises that she works on her own and does not employ anyone.
12. The appellant says that she accepts 1 or 2 clients per day. A detailed log kept by a neighbour suggests that the number of clients varies but can be significantly higher than 1 or 2, including a claim that 12 clients visited the property in a single day. Most of the visitors appear to have arrived at the property by walking along the shared driveway. While I cannot be sure that every visitor was a client, the log includes sufficient detail to suggest that many were. It also indicates that clients have arrived before 8am on occasion, have left as late as 10pm and that business takes place Monday to Saturday. This is consistent with the hours the Council says that the appellant advertises on social media, which are:
 - Monday & Tuesday 07.00-19.00
 - Wednesday, Thursday & Friday 07.00-22.00
 - Saturday 08.00-12.00
13. Viewing the evidence as a whole, it appears to me that the use that has taken place is a commercial activity on a significant scale within a plainly residential area. It is also a use that relies on customers visiting the property. When combined with the vehicle and pedestrian movements to ordinarily be expected

at a dwelling such as this, the number of movements to and from the property are likely to be excessive. Since the driveway only serves 3 dwellings, the increase in movements along it, close to the neighbouring properties, must be very obvious. As a consequence, the use is likely to cause a significant degree of noise and disturbance at the other 2 properties served by the private drive. The early and late hours that are worked adds to the harm arising from this.

14. The appellant argues that customers can reach the property via an alternative route which obviates the need to pass her neighbours' homes. However, the route crosses land that appears to be part of the forecourt of a shop on Claypit Lane, and it is consequently not clear to me that the appellant can ensure that the route will remain available in the future. Although the appellant says she has spoken to the shop manager about it, an informal agreement such as that does not provide a satisfactory basis for relying on the route. In any event, the route would take customers on an awkward, narrow, uneven route past the back of the appellant's garage, and it seems doubtful to me that many customers would choose it in preference to the far more obvious and straightforward driveway available. Thus, even if the route could be secured, I am not persuaded that it would resolve the matter.
15. I am mindful of the fact that the appellant's immediate neighbour in the adjoining semi-detached house raises no objection to the use. However, the occupier of the detached property served by the same driveway would be similarly affected by comings and goings to the property and has raised concerns. Even if noise arising from the activity within the conservatory is limited, that would not alter my view that excessive noise and disturbance is likely to be generated by comings and goings to the property.
16. The parts of the house used in connection with the business could be limited to contain it within the conservatory and the hours of use could also be limited. Both of these matters could be controlled with planning conditions. However, while this would reduce the harm arising from the use, it would not resolve it and a significant and intrusive commercial use would remain in this residential area. Accordingly, there would be conflict with Policy SP11 of the Rotherham Local Plan, which seeks to ensure that non-residential uses in residential areas do not have an unacceptable impact on the residential amenity of the area. Having considered all the information before me, I consider that there is conflict with the development plan as a whole.
17. The appellant says that the business is needed to enable her to meet her bills and support her family. I understand that there are family and practical difficulties that prevent her working elsewhere. However, in my view these considerations do not outweigh the harm arising from the use. I have noted the appellants comments relating to a business permit, covenants on the property, the Council's handling of the case and her interactions with her neighbours, but none of these considerations alter my assessment of the planning merits of the use.
18. For the reasons set out above I conclude that the living conditions of neighbouring occupiers have been harmed and that planning permission should not be granted. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

19. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. It is evident from the requirements of the notice that it seeks to remedy the breach of planning control in accordance with s173(4)(a). The appeal on ground (f) raises the question of whether the requirements in this case exceed what is necessary to achieve that.
20. Many of the points made by the appellant in relation to ground (f) actually relate to the question of whether planning permission should be granted for the use, and I have considered them in relation to the appeal on ground (a). This includes the suggestion of controlling working hours and the access route to the property, both of which would be most appropriately controlled by planning conditions rather than amended requirements of the notice. No specific proposal is made regarding any lesser steps that could have been required by the notice and I cannot think of any alternative steps that would be consistent with the purpose of the notice. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

21. The appellant regards the time specified in the notice as too short and says that she does not have anywhere to take the items that the notice requires to be removed. However, the fixtures and fittings were quite limited when I viewed the property, and I am not persuaded that the period the Council has required for their removal is insufficient. There is no requirement to remove minor items such as hair products. Accordingly, the appeal on ground (g) fails.

Appeal B: APP/P4415/W/21/3269768

22. Appeal B arises from the Council's decision to refuse planning permission for the same use that is attacked by the enforcement notice. Consequently, the matters to be considered are identical to those set out in relation to Appeal A, ground (a). For the reasons already set out in relation to Appeal A, Appeal B is also dismissed.

Peter Willows

INSPECTOR