



Appeal Decisions

Hearing held on 2 November 2021

Site visits made on 12 November 2020 and 2 November 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2022

Appeal A Ref: APP/X0360/C/20/3254137

Land at 40 Erleigh Court Gardens, Earley RG6 1EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr S Chaudhry against an enforcement notice issued by Wokingham Borough Council.
 - The notice was issued on 15 May 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of land and buildings from dwelling house, associated residential land and outbuilding to a mixed use of dwellinghouse, associated residential land and outbuilding for educational purposes.
 - The requirements of the notice are to:
 1. Cease the use of the outbuilding for educational purposes.
 2. Remove the advert, the canopy, and the teaching equipment including: the white board, the lap trays/desks and all the teaching materials and paraphernalia associated with the unauthorised teaching use from the "Land".
 3. Remove all resultant material and debris resulting from step 2 from the "Land".
 - The period for compliance with the requirements is 3 months from the date the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Appeal B Ref: APP/X0360/W/20/3254135

Land at 40 Erleigh Court Gardens, Earley, RG6 1EH

- 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 Mr Shazam Chaudhry against the decision of Wokingham Borough Council.
 - The application Ref 200230, dated 14 July 2019, was refused by notice dated 21 April 2020.
 - The development proposed is described in the application form as: Teaching of kids, maximum of 10 kids. I have been teaching from 2014 to family and friends. Recently through word of mouth more families have approached me to teach their kids hence the number has gone to 9.
-

Summary Decision Appeal A: The appeal is dismissed in part, but allowed on ground (a), the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Summary Decision Appeal B: The appeal is allowed.

Preliminary Matters

1. Originally, the appeal was to be determined by way of the written representations procedure, and a site visit was undertaken in November 2020. However, the appeal procedure was changed to a hearing held in November 2021, when a second site visit was also undertaken.
2. Appeal A was originally made on ground (a) only. However, the appellant's evidence deals with matters that are relevant to a ground (c) and ground (f) appeal. These additional grounds of appeal were discussed at the hearing and are addressed in this decision.
3. The description of development given for Appeal B in the banner heading above is taken from the application form. However, this lacks sufficient clarity in terms of the development for which the permission is sought. I note the description used on the decision notice is not consistent with that provided on the application form. There was also a suggestion that this change to the description of the development may not have been agreed by the appellant. Accordingly, the description of the development subject of Appeal B was discussed at the hearing.
4. The decision notice description refers to 'C3' and 'D1'. I am concerned that reference to classes of use within The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order) is not correct in this case. A mixed use is a sui generis use and does not fall within any particular class of the 1987 Order.
5. Furthermore, the development is described as 'a change of use'. Section 57 of The Town and Country Planning Act 1990 as amended (the 1990 Act) provides that planning permission is required for the carrying out of any development of land. Development is defined in section 55(1) of The Town and Country Planning Act 1990 as amended (the 1990 Act) as including 'the making of any **material** change in the use of any building or other land'. The appellant has applied for planning permission and must, therefore, seek permission for a **material** change of use.
6. Finally, the application clearly sought permission for development that has already occurred. The application site includes the whole of the property, not just the outbuilding. This is consistent with the land identified on the enforcement notice plan (Appeal A). In the section below I have considered the breach of planning control as alleged in the enforcement notice. I have concluded that the appeal site is the planning unit and that the material change of use of the planning unit, rather than just the outbuilding, to a mixed use has occurred. In reaching this conclusion I acknowledge that the education element of the mixed use is primarily taking place within the outbuilding.
7. Having regard to all of the above, and noting the appellant's agreement at the hearing to a change in the description of the development to that of a material change of use to a mixed use, I shall consider Appeal B on the basis of the material change of use from a dwellinghouse to a mixed use as a dwellinghouse and a use for the purposes of education. This allows me to consider the appeal on ground (a) for Appeal A and Appeal B together.

The Notice

8. In a pre-hearing note and at the hearing I raised concerns with regard to the allegation of a mixed use. Having visited the site for the second time and considered the representations of all parties on this matter at the hearing, I am satisfied that the allegation of a mixed use is correct in this case. Neither of the uses are incidental to the other and I find that, as a matter of fact and degree, the uses are not physically or functionally separated.
9. Notwithstanding this, the notice does not describe this mixed use with sufficient clarity. I acknowledge that the allegation seeks to identify the part of the appeal site within which the education element of the mixed use primarily takes place (i.e. the outbuilding). However, the outbuilding alone is not the planning unit in this case. The education use may well primarily occur within the outbuilding, however the outbuilding and the remainder of the appeal site is used as a dwellinghouse. The use of the outbuilding is not physically or functionally separate from the rest of the appeal site. Accordingly, the appeal site (i.e. the land outlined in red on the enforcement notice plan) is the planning unit and within this the mixed use is taking place. The notice should, therefore, be corrected to allege a material change of use from a use as a dwellinghouse to a mixed use as a dwellinghouse and a use for the purposes of education.
10. Powers transferred to me to make this correction can only be exercised where injustice would not be caused to either party. Such a correction would still include an allegation of a mixed use, as stated in the notice, and would also still refer to the two components of the mixed use, i.e. use as a dwellinghouse and a use for the purposes of education. The correction would not make any fundamental change to the existing allegation, but it would make it more precise. In these circumstances, I am satisfied that the appellant would not have approached his appeal in a different way, had the notice made the allegation I intend to use. Accordingly, the correction would not cause injustice.
11. The above correction would also necessitate a subsequent correction to the first requirement of the notice, so that this reflects the change of the description of the allegation. This would be in the manner of simply requiring the cessation of the mixed use as described. It is not, however, necessary for me to make this correction in the formal decision as my decision on this appeal means that the notice will be quashed.

Ground (c)

12. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant.
13. Although not operating at the time of the hearing, the appellant suggests that ordinarily two, hour long classes run from the property Mondays to Fridays, and that up to 10 children attend each class, with a turnover of pupils after each class. The appellant suggests that the size of the outbuilding limits the number of children that can attend the classes. That this number is not excessive beyond the private childminding limitation of 6 children, which he suggests could take place from a residential property without the need for planning permission.

14. I have not been provided with evidence sufficient to substantiate the appellant's claim that the use of a dwelling house for the purposes of child mining for up to 6 children would not constitute a material change of use of the property for which planning permission would be required. In most cases this would be a matter of fact and degree. Nevertheless, the education element of the mixed use does not compare to that of a childminding use in terms of its character. Whilst the education element of the mixed use takes place over a short period of around 2 hours, the pattern of movement to and from the site is particularly intense for that period, with both classes generating up to 10 movements (pedestrian and vehicular) either side of each class. Furthermore, there is a formality to the teaching environment in this case, which is unlikely to occur in the case of a childminding use.
15. All things considered, I cannot be satisfied that the appellant has discharged the burden of proof in this case. I have not been made aware of any reason why the material change of use in question would not require the benefit of express planning permission, in accordance with section 57 of the 1990 Act, and it has not been suggested that the necessary planning permission has otherwise been granted. Accordingly, and on the balance of probability, the material change of use alleged in the enforcement notice, as I intend to correct it, constitutes a breach of planning control. For this reason the ground (c) appeal must fail.

The ground (a) appeal, the deemed application for planning permission and the appeal against the refusal of planning permission

Main Issues

16. Having regard to the Council's reason for refusal of the planning application and the substantive reasons for issuing the enforcement notice, I have identified the following main issues:
- i. The effect of the development on the living conditions of the occupiers of the appeal site and the adjoining residential properties, with particular regard to any noise and disturbance that might be generated by the development; and
 - ii. Whether or not the development results in inconveniences for road users and is prejudicial to highway safety, with regard to any vehicle movements to and from the site, and any additional demand for on street parking.

Reasons

Living Conditions

17. At the hearing the Council confirmed that its objection to the development in respect of noise and disturbance is not with regard to activity within the outbuilding itself, rather it is confined to the activity of pupils arriving and leaving the site. Having considered all the evidence before me, including representations from interested parties, I have no reason to disagree with the Council with regard to activity within the outbuilding.
18. The appeal site is within a predominantly residential area characterised by semi-detached and detached properties with linear gardens to the rear. The site is occupied by a semi-detached property and the outbuilding is located to

the rear, at the end of the garden. There is a lane to the side of the house and garden from which access to the outbuilding and garden can be gained. The outbuilding can also be accessed from the garden itself.

19. As noted above, the education element of the mixed use primarily takes place in the outbuilding, and this is confined to two hours each day starting at 5.30pm Mondays to Fridays. Although the appellant suggests that vehicles can use the side lane to park in order to drop off or pick up pupils, I do not have any evidence to suggest that this currently occurs; pupils access the outbuilding via the side lane on foot, rather than by vehicle. The appellant confirms that up to 10 children attend each class, and that around half of the children arrive on foot, with the rest arriving by car. Whilst I have not been provided with a traffic survey to support this, neither has the Council provided any evidence to demonstrate the appellant is inaccurate with regard to the suggested vehicle and pedestrian numbers, or the pattern of movements generated by the development.
20. I note that Erleigh Court Gardens is a through road linking to the highway network in the area. During my visits to the site, which were during daytime hours, I observed a low but steady flow of traffic on the highway to the front of the site. I have seen third party representations referring to Erleigh Court Gardens as a 'rat run', suggesting that the appeal site is not on a particularly quiet highway with regard to the flow and movement of traffic.
21. Turning to the evidence of noise and disturbance, the Council suggests that it received complaints from Thames Valley Police. I was not, however, provided with the correspondence to confirm the nature of these complaints or their relevance to the development that is the subject of these appeals.
22. Having regard to the evidence before me, I find no reason to conclude that an unacceptable degree of noise and disturbance is generated by pupils arriving on foot. The Council has not referred to any particular type of noise that this activity generates and it has not pointed to any other incidents in this regard.
23. With regard to any noise and disturbance generated by pupils that arrive by vehicle, the appellant's evidence suggests that the development generates around 5 vehicle movements prior to the first class, around 10 between the two classes, and around 5 at the end of the second class. The Council has not specified the particular noise or type of disturbance it is concerned with in respect of pupils arriving by car. Nevertheless, such activity is likely to result in the noise of vehicles stopping and accelerating away, and car doors closing.
24. I acknowledge that the number of vehicles arriving at the site is likely to be above what might be expected of a family home in this area and that such activity is not characteristic of a dwellinghouse. I also acknowledge that any noise and disturbance caused is likely to be discernible from within the nearby dwellings. However, the evidence suggests that the number of vehicle movements are limited, and that these are within a short time before and after the two classes, amounting to three short periods in total. The class times are also during the early evening, when there is likely to be other activity in the street from neighbours arriving home from work.
25. Having regard to the character of this residential area, the limited number of vehicle movements, the limited time within which these take place, and the times of the classes, it is difficult to conclude that the pupils arriving by car

cause an unacceptable degree of noise and disturbance, and that this has a detrimental effect on the living conditions of residents.

26. I have had regard to the concerns of interested parties in relation to additional classes being provided at the site and a potential increase in pupil numbers. Indeed, the appellant confirms that his class sizes have increased over time. An increase in pupil numbers and/or the duration of classes would increase the likelihood of incidents of noise and disturbance. The conditions suggested by the Council would, however, adequately control these matters so as to avoid any adverse effects.
27. All things considered, the evidence does not lead me to conclude that the development has an unacceptable effect on the living conditions of the occupiers of the appeal site and the adjoining residential properties with regard to any noise and disturbance. As I have no reason to conclude that the development causes an adverse impact with regard to noise, it does not conflict with Policy CC06 (Noise) of the Wokingham Borough Development Plan adopted February 2014 (WBLP). Furthermore, the development does not conflict with Policy CP1 (Sustainable development) or Policy CP3 (General Principles for development) of the Wokingham Borough Local Development Framework Adopted Core Strategy Development Plan Document January 2010 (CS), which permit development that, amongst other matters, maintains the high quality of the environment, and does not cause detriment to the amenities and quality of life of adjoining land users. For these reasons, I do not find conflict with the National Planning Policy Framework (the Framework).

Highway Matters

28. The likely number of vehicle movements to and from the site that are generated by the development are set out above. The appellant suggests that in general those driving pupils to the site do not park and wait while pupils are in the class, instead they drive away and return at the end of the class. This may not, however, always be the case for every vehicle arriving at the site in the future. The appellant's evidence points to there being a turnover of pupils as younger pupils join the class and older pupils move from the earlier class to the later class, depending on their age¹. The classes are also only an hour long, which is not a long period for a driver to wait. There might also be incidents where a driver would arrive early to pick up a pupil, causing that vehicle to park and wait, even if only for a short period. As such, it is unlikely that the current pattern would always remain the same.
29. In terms of the Council's parking standards for the site, the Council confirms that a dwelling of this size is expected to provide three off street parking spaces. Whilst I note the concerns of local residents with regard to parking provision at the site and the loss of parking within the outbuilding, the Council acknowledge that the three spaces required are already provided to the front of the property, albeit these can only be used by a vehicle either reversing into the site from the highway, or out of the site into the highway. With regard to the education element of the mixed use, the Council confirms that none would be required, provided all staff associated with this activity were resident at the site. The appellant confirms this to be the case. In this regard, the Council confirmed at the hearing that its objection to the development is principally in

¹ At the hearing the appellant referred to there being an age range for pupils in each classes, with younger pupils attending the earlier class.

respect of the manoeuvring of vehicles in the highway and the potential for conflict with other road users.

30. At present it is suggested that vehicles drop off and pick up on the highway to the front of the appeal site. In mitigation of any harm that might result from this, the appellant has suggested that there is space available at the end of the side lane (in front of the outbuilding) for vehicles to drop off and pick up pupils, and that there is also space for up to 5 vehicles. I have not, however, been provided with any evidence to demonstrate that this can be achieved. Having visited the site, I find it unlikely that the space available is sufficient for vehicles to manoeuvre whilst other vehicles are also parked. Even if there is space for a vehicle to turn at the end of the side lane, the lane is not of a sufficient width to allow for two vehicles to pass at any point. There is a short period during which drop off and/or pick up occurs. I also note that the lane provides vehicular access to the rear of other properties along Erleigh Court Gardens. As such, there is likely to be conflict in the lane between those vehicles leaving the lane and those entering, causing vehicles to reverse into the highway. Such manoeuvring is likely to cause inconvenience for road users and detriment to highway safety on Erleigh Court Gardens.
31. Accordingly, the proposed use of the side lane for parking and pupil drop off and pick up would not be an appropriate alternative to the current situation of drop off and pick up on the highway at Erleigh Court Gardens. Furthermore, the suggested alternative would be far less convenient for drivers than the current situation. It is, therefore, likely that some drivers will continue to drop off and pick up on the highway, even if a parking and turning area were available at the end of the lane.
32. In view of my conclusions above, I now turn to consider any harm that arises from the existing pattern of drop off and pick up. I note that most properties in the close vicinity of the appeal site have the benefit of on-site parking and, as such, vehicle crossovers are prevalent along the highway. Nevertheless, there are opportunities for on street parking in the area, and it has not been suggested that there is a particularly high demand for such parking, which is consistent with my observations at the site visits.
33. Notwithstanding the above, drivers only dropping and picking up pupils will do so as close as possible to the appeal site, particularly for younger pupils. This would be done within or close to the junction of Erleigh Court Gardens with Milton Road, which is almost directly in front of the appeal site. At my first site visit I observed inconsiderate parking at the junction, which is likely to limit visibility at the junction and would be a hindrance to vehicles manoeuvring in this area. In view of this, I cannot conclude that the addition of vehicles associated with the development stopping at or near this junction would not have caused an inconvenience to road users and would not have been prejudicial to highway safety.
34. However, since my first visit to the site, and prior to the hearing, double yellow lines have been provided at this junction, and these extend not an inconsiderable distance along the highway from the junction. In this case these prohibit vehicles waiting (i.e. parking), but allow for vehicles to stop while passengers board or alight. Although the double yellow lines might well reinforce the usual restriction on parking opposite or within 10 metres of a junction, in my judgement the recent traffic regulation order (TRO) is a visual

deterrent and a material change to the circumstances relevant to these appeals. Indeed, at my second visit to the site I did not see any of the parking I had previously observed at the junction, although I acknowledge that this was only for the duration of the visit.

35. Whilst the TRO was put in place prior to the hearing, the appellant confirm that classes have not been provided at the site for a while, in view of the restrictions imposed as a result of the Covid-19 pandemic. Furthermore, despite discussions on this matter at the hearing, neither the Council nor the appellant has provided sufficient evidence that responds to the material change resulting from the TRO at the junction, particularly with regard to its effect on road users and highway safety with the existing pattern of drop off and pick up on or close to the junction. Indeed, that a TRO is now in place was only drawn to my attention part way through the hearing.
36. I acknowledge the Council's concerns with regard to vehicles manoeuvring in the highway on Erleigh Court Gardens, which stem from the concerns of the highway officer as set out in his consultation response². I note, however, that these concerns did not amount to an objection from the Council's highways service, but instead a request for further information. I also note that both the reason for refusal and the enforcement notice refer to the absence of satisfactory information with regard to the effect of the development on highway safety. I am mindful of paragraph 111 of the Framework, which informs that 'development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'.
37. Notwithstanding the above, my determination of these appeals must be in accordance with the development plan unless material considerations indicate otherwise³. CS Policy CP6 (Managing Traffic Demand) only grants permission for development that, amongst other matters, provides appropriate vehicle parking, enhances road safety, and does not cause highway problems. I do not have sufficient evidence before me to conclude that the development complies with this policy. Neither is there sufficient evidence for me to conclude that the development does not result in inconveniences for road users and is not prejudicial to highway safety, with regard to any vehicle movements to and from the site and any additional demand for on street parking. For these reasons the balance tips against the grant of planning permission.

Material Considerations

38. Having regard to my conclusions above, it is necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
39. The education element of the mixed use provides lessons exclusively for pupils of the Islamic faith. The appellant explained that this includes both religious and language education, as well as education on society, all centred on the Islamic faith. In this regard, the pupils are considered to share a protected characteristic. Accordingly, under the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010, I must have due regard to the need to

² WBC Highway consultation response dated 24 March 2020.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004.

eliminate discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

40. The Council has drawn my attention to the Aisha Masjid & Islamic Centre, which is a short walk from the appeal site. It suggests that this provides classrooms and a library within the building. The appellant acknowledges that classes similar to those provided at the appeal site are offered at the nearby centre. However, he suggests that class sizes at the centre are far larger, whereas at the appeal site classes are more intimate. Furthermore, he suggests that the centre does not provide the same extent of tuition. This was not disputed by the Council.
41. I do not have any evidence sufficient to demonstrate that there is sufficient capacity at the centre to accommodate the educational needs of the surrounding Islamic community, such that I can conclude that there is not a need for the education services provided at the appeal site. Indeed, the large class sizes at the centre indicate that there is a benefit of additional provision in the area. Notwithstanding this, the alternative provision at the appeal site provides choice for the Islamic community. In view of this, I can only conclude that people who share a protected characteristic would be disadvantaged should the appeals be dismissed. This adds weight in favour of the grant of planning permission.
42. This benefit of the scheme weighs against any conflict with the development plan and harm that might arise from this. With regard to the first main issue, my conclusion is that the evidence before me does not lead me to identify harm or conflict with the development plan. As for the second main issue, my conclusion is finely balanced. I have concluded that I do not have evidence sufficient for me to find the development acceptable with regard to its effect on road users and highway safety, such that it complies with the development plan. There has, however, been a material change to the circumstances relevant to this second main issue which has not, in my view, been adequately assessed.
43. With this in mind, I note the second condition suggested by the Council, which would grant a temporary permission for the development in this case. Paragraph 014 of the Planning Practice Guidance on Use of planning conditions (PPG) informs that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area. These circumstances clearly apply to this case and the grant of a temporary permission would allow for the classes to continue whilst the necessary assessment of the effects of the development on road users and highway safety can be made.

Conditions

44. I note the list of conditions suggested by the Council, most of which were agreed by the parties. I consider each of these, as follows, and where necessary I have amended the wording suggested in the interests of precision and clarity in order to comply with advice in the PPG.
45. The deemed planning permission will not be granted for development as shown on the set of plans listed, but will be for the development that is alleged in the notice, as carried out on site. Whilst necessary for the permission granted by

reason of Appeal B, it is not appropriate to impose a condition requiring the development permitted by the deemed planning permission to be completed in accordance with the plans listed.

46. Conditions limiting the education element of the mixed use to the outbuilding alone, as well as conditions limiting the hours of operation, the number of pupils per class, and the use of amplifying equipment are necessary in order to limit the extent of the use. They are also necessary in the interests of highway safety and to mitigate the effects of the development on the living conditions of nearby occupiers as a result of noise and disturbance.
47. With regard to the number of pupils in each class, my conclusions in this decision are based on the use providing classes for up to 10 pupils. This was also proposed on the planning application, subject of Appeal B. I have been given no substantiated reason to limit the class sizes to 5, as suggested by the Council. A condition requiring all staff to reside at the appeal site is, however, necessary as the representations of the Council's highway engineer and the parking standards suggested were on this basis. I see no reason why such a condition would not be enforceable.
48. The suggested hours of operation would have prohibited classes during the school holidays. The only reason given for this was to bring the education element of the mixed use in line with school term times. The appellant confirms that classes would ordinarily continue during these times. I have no reason to conclude that this causes additional harm to local residents, road users or highway safety. I have not, therefore, included this element of the suggested condition.
49. I have already considered the use of a condition limiting the grant of the permissions to a temporary period. This condition is necessary in order to assess the effect of the development on road users and highway safety. A requirement to cease the use and return the building back to its former condition at the end of the temporary period is also necessary to ensure the use does not continue beyond the period granted.
50. I acknowledge that the permission is for a temporary period only and that the appellant's capacity to comply with conditions requiring details and implementation of a travel plan and cycle storage are limited. Nevertheless, such conditions are necessary in the interests of sustainable development. Cycle storage and the implementation of a travel plan would also mitigate the effect of the development on road users and highway safety.
51. I note the Council's suggested condition in relation to a parking and turning area. However, for the reasons given earlier in this decision, it is likely that the use of the side lane for parking and turning would cause detriment to road users and highway safety. I have not, therefore, imposed the condition.
52. As the Council confirms that it did not object to the development on the basis of noise and disturbance from activity within the outbuilding, I do not find the suggested condition requiring sound insulation necessary in this case. Furthermore, the matter of advertisement consent is not within the remit of this appeal; the suggested condition relating to this is not necessary.

Planning Balance and Conclusion

53. As noted earlier in this decision, the determination of these appeals must be in accordance with the development plan unless material considerations indicate otherwise. The evidence before me is not sufficient for me to conclude that the development in this case accords with the development plan. I have, however, reached this conclusion being mindful of a lack of evidence in response to the material change to circumstances relevant to the determination of this appeal. I have attributed weight to the material considerations in this case; that people who share a protected characteristic would be disadvantaged should the appeals be dismissed. These lead me to conclude that the determination of the appeals should, on balance, be made otherwise than in accordance with the development plan. I only reach this conclusion on the basis that the use permitted would occur for a period no longer than 1 year, during which time the necessary assessment of the effects of the development on road users and highway safety can be made.
54. Having regard to my findings above and all matters raised, I conclude that Appeal B should be allowed and that Appeal A succeeds on ground (a).

Overall Conclusions

55. For the reasons given above, and having regard to the correction set out in 'The Notice' section of this decision, I conclude that the appeal on ground (c) for Appeal A should not succeed, but that Appeal B should be allowed and that Appeal A succeeds on ground (a). I shall grant planning permission for the material change of use of the land from a use as a dwellinghouse to a mixed use as a dwellinghouse and for the purposes of education as described in the notice, once corrected as intended.
56. The appeal on ground (f) for Appeal A does not fall to be considered.

Formal Decision - Appeal A

57. It is directed that the enforcement notice is corrected in part 3 by the substitution of the words 'of land and buildings from dwelling house, associated residential land and outbuilding to a mixed use of dwellinghouse, associated residential land and outbuilding for educational purposes. The outbuilding is shown in blue on the attached plan for identification purposes only' with the words 'from a use as a dwellinghouse to a mixed use as a dwellinghouse and a use for the purposes of education'.
58. Subject to the correction, Appeal A 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 1990 Act as amended for the development already carried out, namely the material change of use from a use as a dwellinghouse to a mixed use as a dwellinghouse and a use for the purposes of education on land at 40 Erleigh Court Gardens, Earley RG6 1EH as shown on the plan attached to the notice and subject to the following conditions:
- 1) The use hereby permitted shall be for a limited period being the period of 1 year from the date of this decision. At the end of the period of 1 year from the date of this decision the use hereby permitted shall cease and the outbuilding indicated in blue on the plan attached to the enforcement

notice and attached at the end of this decision returned to its former condition.

- 2) Only the outbuilding indicated in blue on the plan attached to the enforcement notice and attached at the end of this decision shall be used for the purposes of education.
- 3) No more than 10 pupils shall be present on the land at any one time.
- 4) All education staff must reside on the land.
- 5) The use hereby permitted shall not operate other than between the hours of 5:30pm to 7:30pm Mondays to Fridays and shall not operate at all on Weekends, Bank or National Holidays. There must be a minimum of 15 minutes break between the conclusion of any one class and the commencement of the next class.
- 6) No sound amplifying equipment shall be used on the land.
- 7) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 1 months of the date of this decision a scheme for cycle storage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii. If within 3 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme of cycle storage specified in this condition, that scheme shall thereafter be retained in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 1 month of the date of this decision a travel plan shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The

travel plan shall include means of promoting alternative forms of transport to and from the site, other than by the private car.

- ii. If within 3 months of the date of this decision the local planning authority refuse to approve the travel plan or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved travel plan specified in this condition, that travel plan shall thereafter remain in use in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Formal Decision - Appeal B

59. The appeal is allowed, and planning permission is granted for the material change of use from a dwellinghouse to a mixed use as a dwellinghouse and a use for the purposes of education on land at 40 Erleigh Court Gardens, Earley RG6 1EH, in accordance with the terms of the application 200230, dated 14 July 2019, subject to the following conditions:

- 1) The use hereby permitted shall be carried out in accordance with the drawings numbered P1926-01 (Location Plan and Block Plan) and P1926-02 (Existing Plans and Elevations). Only the outbuilding identified on plan number P1926-02 shall be used for the purposes of education.
- 2) The use hereby permitted shall be for a limited period being the period of 1 year from the date of this decision. At the end of the period of 1 year from the date of this decision the use hereby permitted shall cease and the outbuilding identified on plan number P1926-02 returned to its former condition.
- 3) No more than 10 pupils shall be present on the land at any one time.
- 4) All education staff must reside on the land.
- 5) The use hereby permitted shall not operate other than between the hours of 5:30pm to 7:30pm Mondays to Fridays and shall not operate at all on Weekends, Bank or National Holidays. There must be a minimum of 15 minutes break between the conclusion of any one class and the commencement of the next class.
- 6) No sound amplifying equipment shall be used on the land.
- 7) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i. Within 3 months of the date of this decision a scheme for cycle storage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii. If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme of cycle storage specified in this condition, that scheme shall thereafter be retained in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- v. Within 3 months of the date of this decision a travel plan shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The travel plan shall include means of promoting alternative forms of transport to and from the site, other than by the private car.
- vi. If within 6 months of the date of this decision the local planning authority refuse to approve the travel plan or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- vii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- viii. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved travel plan specified in this condition, that travel plan shall thereafter remain in use in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

J Moss

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Shazam Chaudhry
Nadia Safir

The Appellant
The Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Narinda Brar
Baldeep Pulahi
Sarah Castle
Roger Johnson
Senjuti Manna
Henry Mirams
James Bewick

Wokingham Borough Council
Wokingham Borough Council
Wokingham Borough Council
Wokingham Borough Council
Wokingham Borough Council
Wokingham Borough Council
Wokingham Borough Council



Plan

This is the plan referred to in my decision dated: 26 January 2022

by J Moss BSc (Hons) DipTP MRTPI

Land at: Land at 40 Erleigh Court Gardens, Earley RG6 1EH

Reference: APP/X0360/C/20/3254137 and APP/X0360/W/20/3254135

