



Appeal Decision

Site visit made on 24 April 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2023

Appeal Ref: APP/N1160/C/22/3309917

97 Lake View Drive, PLYMOUTH, PL5 4LW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Sally Gibbons against an enforcement notice issued by Plymouth City Council.
- The notice, numbered A222-EN-468 was issued on 30 September 2022.
- The breach of planning control as alleged in the notice is in the opinion of the Local Planning Authority the material change of use of the land to include business use for nail, waxing, and massage salon does not benefit from planning consent.
- The requirements of the notice are to cease the use of the premises as a nail, waxing and massage business.
- The period for compliance with the requirement is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), and (c) 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.

Decision

1. It is directed that the enforcement notice is corrected by the deletion of the allegation and its replacement with the words "the material change of use of the land from a dwellinghouse to a mixed use of dwellinghouse and a business use comprising a basement beauty treatment room."
2. Subject to the correction the appeal the appeal 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 of the land from a dwellinghouse to a mixed use of dwellinghouse and a business use comprising a basement beauty treatment room at 97 Lake View Drive, Plymouth, PL5 4LW as shown on the plan attached to the notice and subject to the following conditions:
 - i) No business activity shall take place outside the hours of 10am -1pm and 4pm-7.30pm on Tuesdays and Wednesdays; and 10am—2pm on Fridays and not at all during school holidays.
 - ii) Beauty treatment activity shall be restricted to the basement area at lower ground floor area.
 - iii) The occupier of 97 Lake View Drive, Mrs Sally Gibbons, shall be the only person working in the beauty treatment business at the property.
 - iv) Beauty treatment shall be undertaken by prior appointment and appointment diaries shall be made available to the local planning

authority on request. The number of customers should be limited to no more than two persons per hour of opening.

- v) Customer car parking shall be provided on the area of hardstanding in front of 97 Lake View Drive and shall not be used for any purpose other than the parking of vehicles.
- vi) There shall be no advertisements or signs on the property describing the business.

Preliminary Matters

- 3. I conducted an unaccompanied site inspection to view the neighbourhood as it was unnecessary to view the building internally.
- 4. The Council advises that the wording of the allegation in the notice is incorrect in that the nail and massage treatments referred to are not part of the services provided. The appellant describes the business as "the part time use of the existing basement area within the dwelling as a beauty treatment room involving the provision of body waxing and lash and brow tinting services." As I have a duty to get the notice in order, I will correct the allegation as this can be done without causing injustice. I propose to amend the allegation to "the material change of use of the land from a dwellinghouse to a mixed use of dwellinghouse and a business use comprising a basement beauty treatment room."

The site and relevant planning history

- 5. The appeal property is a two-storey, four bedroom detached house located at the head of a cul-de-sac characterised by detached and semi-detached dwellings in a suburban setting. The allegation relates to use of an externally accessible basement room at the lower ground floor level of the dwelling. Off-street parking for five vehicles is provided on a hardstanding at the front of the house. It is adjacent to an area of woodland.
- 6. In December 2021, the appellant sought pre-application advice prior to purchasing the property for the conversion of part of the attached single garage into a beauty treatment room. The Council advised that the level of activity through footfall and vehicles would cause noise and disturbance and be harmful to the amenity of neighbouring residents.
- 7. A Lawful Development Certificate (LDC) for the partial use of the existing basement as a beauty treatment room was refused in September 2022 (22/01168/PRUS).

The appeal on ground (c)

- 8. An appeal on this ground is that there has not been a breach of planning control. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
- 9. The use of land any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of a dwelling house as such, shall not be taken to involve development requiring planning permission. A material change in the use of land requires a definable change in the character and use of the land and whether this has occurred is a matter of fact and degree.

10. The lawful use of the planning unit is residential. Whether there is a material change of use of land is a matter of fact and degree to be assessed in relation to the specific circumstances in each case. In considering whether a particular use is ancillary it is necessary to look at the overall nature of the use and determine if there is some significant difference in the character of activities undertaken from what has gone on previously. The test to be applied in determining whether a material change of use to a mixed use of residential and beauty treatment has occurred is whether the overall character of the planning unit has changed as a result of the business.
11. The Council cites *Sage v SSLGC* [2021] EWHC 2885 (Admin) in which the distinction is made between working from home, where work-related visitors were few and far between, and working from home which took the form of routine and frequent work-related visitors, notably customers. Although the facts and circumstances of *Sage* are different to this appeal, the general findings in the judgement remain relevant.
12. The appellant states that beauty services under the style "Beauty by Sally" are available on Tuesdays and Wednesdays (10am -1pm; 4pm-7.30pm) and Fridays (10am—2pm) and is closed during school holidays. All treatments are by prior appointment with a maximum of two customers an hour with an average of twenty-four customers per week. All customers park on the driveway. The appellant considers that there are no adverse residential amenity impacts associated with the business; the area used as a treatment room is a very small part of the existing dwelling and the overall character of the dwelling will not change as a result of the business. There are no external advertisements or signs that indicate the use of the basement.
13. Some eight local residents have made representations in support of the appellant indicating that there had been no consequential change in the character of the area as a result of the operation of the business.
14. However, some sixteen local residents and the local councillor have commented about the adverse impacts that they perceive have occurred as a result of the business use of the premises. The main points are that Lake View Drive is a residential area with limited vehicular access and a woodland aspect that creates a peaceful and tranquil environment, generating a feeling of safety, security and well-being for its residents. The business negatively impacts residents. It brings increased traffic resulting in an increase in associated noise and disturbance reducing the peaceful, tranquil nature of the area. The introduction of a significant number of outsiders into the location reduces the feelings of safety and security enjoyed by residents and has a direct impact on their privacy and quiet enjoyment of their property. It is also stated that some fifty clients were booked for the run-up to Christmas; that a resident's car has been damaged by a client; that a client has been offensive when asked to move their vehicle; and, in the absence of a dropped kerb for part of the hard standing, cars are bumping up over the kerb. Furthermore, a number of local residents work from home but this does not result in a stream of visitors. Concern has been expressed that allowing the continuation of the business would set a precedent.
15. The Council have received regular reports raising concerns about business activities, including the recording of twenty-nine customers attending during the school holiday week ending 23 December 2022 from 0830 in the morning. The Council understands that the business hours are flexible and that the comings and

goings of customers are not restricted to the hours stated by the appellant. The appellant challenges these comments as being inaccurate and designed to discredit the appellant's case.

16. It is not the number of representations that have a bearing on a case but the materiality of the comments. In this case, there is concern that the increase in vehicular activity during the day and extending into the evening involving the regular arrival and departure of additional vehicles and the parking activity at the front of the property, creates a level of disturbance uncharacteristic of an otherwise quiet cul-de-sac in a residential area where high levels of residential amenity are enjoyed. The appellant calculates the level of trips to be minor and the business generates a maximum of eight additional vehicular trips over a 9.5 hour period. However the mathematics employed in the calculation are unclear. An average of twenty-four customers per week equates to forty-eight traffic movements (arriving and departure) which over the 17 hours of business equates to 2.8 movements per hour. This would not occur without the use of the property as a mixed use and the impact of the beauty business on the character of the area cannot be regarded as *de minimis*.
17. The appellant has not shown on the balance of probabilities that the use of the basement for beauty treatment is incidental to the use as a dwellinghouse. As a matter of fact and degree, I conclude that a mixed use of the property as a dwelling house and for a business use has occurred and this represents a material change of use for which planning permission is required,
18. I have had regard to the Rochdale and Kent cases referred to by the appellant but the circumstances of those cases are materially different to those in this appeal.
19. The appeal on this ground fails.

The appeal on ground (a)

20. An appeal on this ground is that planning permission should be granted for what is alleged.
21. The location of the appeal property at the head of a cul-de-sac and adjacent to an area of woodland is characterised by family dwellings where residents enjoy high levels of amenity. A business use which involves routine and frequent work-related customers, is uncharacteristic, but the issue to be considered is whether this change in the character of the use is so harmful to residential amenity such that it justifies refusal of planning permission.
22. The level of activity may be noticeable throughout the business day and after normal business hours in the evenings. However, the increase in traffic associated with the property would not, in my view, be so significant in the context of the overall level of traffic from residents, visitors and delivery vehicles in the street which is commonplace. I note that the highway authority raises no objection to the use on highway safety grounds, although this is a different issue to noise and disturbance associated with traffic.
23. In view of the opening hours and level of activity arising, any adverse affects the business use will be minimal and can be controlled by appropriate conditions intended to protect the residential and general amenity of the area. Accordingly, the development accords with Policy DEV1 and DEV 2 of the

Plymouth and South-West Devon Joint Local Plan which seek to protect the health and amenity of local communities.

24. The appeal on this ground succeeds.

Conclusion

25. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected.

P N Jarratt

INSPECTOR

