



Appeal Decisions

Site visit made on 26 June 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal A Ref: APP/G3110/C/22/3300556

Appeal B Ref: APP/G3110/C/22/3300557

11 Harpes Road, Oxford, Oxfordshire OX2 7QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Ms Alison Cooke and Appeal B by Mr Richard Wigmore against an enforcement notice issued by Oxford City Council.
 - The notice was issued on 12 May 2022.
 - The breach of planning control as alleged in the notice is the material change of use of the land from use as a dwellinghouse in Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a mixed use of C3 dwellinghouse and F1 learning and non-residential institution, for the provision of singing/music lessons.
 - The requirement of the notice is to: Cease the mixed use of the land comprising Use Class C3 dwellinghouse and Use Class F1 learning and non-residential institution, by ceasing the provision of singing and music lessons.
 - The period for compliance with the requirement is: 1 month.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is corrected by the deletion of the allegation in paragraph 3 of the notice and its replacement with the words “the material change of use of the land from a dwellinghouse to a mixed use of dwellinghouse and the provision of singing/music lessons”.
2. Subject to this correction, the appeal is allowed and the enforcement notice is quashed.

The Notice

3. The wording of the allegation specifically references the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and refers to a material change of use to a mixed use of C3 dwellinghouse and F1 learning and non-residential institution. However, as a mixed use consisting of two primary uses, case law has established that it would fall outside of any use class rather than within one or both of its component use classes.
4. As I have a duty to get the notice in order, I will correct the allegation and remove any reference to the UCO and any of its specific use classes. I can undertake this correction using the broad powers available to me under section 176(1) of the Act without causing injustice to the parties.

The appeal on Ground (b)

5. To succeed on ground (b) the onus is on the appellants to show that what is alleged in the notice has not occurred as a matter of fact.

6. The breach of planning control alleged is that of a mixed use, namely as a dwellinghouse and its use for singing/music lessons. The appellants have clearly stated that singing lessons take place at the property, predominantly in an outbuilding in the rear garden, and have provided details of the days and times that pupils visit the property for these lessons.
7. It is therefore clear from all the evidence presented that pupils visit the property for singing/music lessons and that the alleged breach of planning control has occurred as a matter of fact. Accordingly, the appeal on ground (b) fails.
8. Much of the appellants representations are based on the argument that the use of the property for singing lessons does not amount to a material change of use and therefore is not a breach of planning control. This issue is addressed under the ground (c) appeal below.

The appeal on Ground (c)

9. To succeed on ground (c), the appellants must demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellants.
10. 11 Harpes Road is a two-storey semi-detached dwelling located within a predominantly residential area of Oxford. To the front of the property is a modest sized driveway capable of accommodating a single car, although time limited on-street parking is also available on surrounding roads. A single storey detached outbuilding is located at the northern end of the rear garden which can be accessed either through the dwelling itself or via a gate to the side of the property.
11. The use of any buildings or land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of a dwellinghouse 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.
12. The lawful use of the planning unit is residential. Whether there has been a material change of use of the land is a matter of fact and degree to be assessed in relation to the specific circumstances of each case. The test to be applied in determining whether a material change of use to a mixed use of residential and singing/music lessons has occurred is whether the overall character of the planning unit has notably changed as a result of the singing/music lessons. This will include considering matters such as any notable increases in traffic, disturbances to neighbours caused by the frequency or timing of visitors or noise, and whether there was any need for any major structural changes or major renovations.
13. In October 2020 the Council received a complaint that a business providing singing/music lessons was operating from an outbuilding in the rear garden of No. 11. The Council subsequently issued a Planning Contravention Notice (PCN) on the appellant Ms Cooke in April 2021. In the written response to the PCN it was stated that lessons took place during term time only for a maximum of 11 hours per week which were spread across three days, Mondays (2.5 hours), Tuesdays (2.5 hours), and Saturdays (6 hours). Each lesson was said to last for 30 minutes.

14. In February 2022 a second PCN was served on Ms Cooke to cover the period since the issuing of the first PCN. In the written response it was revealed that the number of days and hours per week that the lessons took place had reduced. Lessons now took place for a maximum of 7.5 hours per week spread across two days, on Tuesdays (2 hours) and Saturdays (5.5 hours). However, in the six-month period covering September 2021 to February 2022 inclusive the total number of hours that singing/music lessons took place ranged from 6.5 hours to 17 hours per month, signifying that the full 7.5 hours per week of lessons were not consistently being taken up. The Council has not provided any evidence to indicate that these details are inaccurate and concluded that a material change of use had occurred on that basis.
15. The months which saw the highest level of activity were October and November 2021 which both saw a total of 17 hours of lessons. This equates to an average of just over 4 hours of lessons per week during those months and, given that each lesson lasts for 30 minutes, an average of between 8 and 9 lessons per week over the two days. Over each month this amounts to an average of just over 1 lesson per day. Given the low number and infrequency of the lessons I find that the associated comings and goings would not have any notable impact over and above the likely level of general traffic in this residential area. Any impact is further reduced by the fact that lessons only take place during school term time meaning that at certain times of the year, such as over Christmas and during the summer holidays, there are periods during which there are no lessons at the property at all.
16. The Council however consider that the level of activity is higher and state that there have been 'consistently' 450 lessons per year at the property, which could conceivably result in 900 comings and goings per year. This figure has been obtained from the response to the first PCN, however the appellants contend that this figure was the maximum number of lessons per year and not the number of lessons that had actually taken place. As the response to the first PCN is clearly marked as 'total max 450 lessons' and 'max 225 hours per year' I share this view.
17. The response to the second PCN, which required a more detailed breakdown on the number of lessons and hours that had taken place, details that a total of 159 lessons had been provided at the property over the six-month period covered. As the appellants highlight, even doubling this figure would not give a total near to 450 lessons per year. Particularly when considering that the six-month period not covered by the second PCN would include the easter and summer holidays when no lessons would have taken place, I find that there is no substantive evidence that indicates that there have been consistently 450 lessons per year at the property.
18. I acknowledge that the complaints received by the Council have also raised issues concerning the vehicles dropping off and picking up pupils, including blocking driveways and leaving engines running. Although I accept that most pupils are likely to travel to the property via car, and whilst I do not dismiss these concerns lightly, I have been provided with no documentary or photographic evidence to substantiate the concerns expressed. Furthermore, given the availability of on-street parking on surrounding roads for up to 4-hour periods and the infrequent nature of the lessons, I am not persuaded that the car parking and highway usage is materially different to what occurred before singing/music lessons commenced at the property.

19. With regards to noise disturbance, the appellants contend that the outbuilding in which the lessons are provided is well insulated and therefore measures are in place to reduce noise egress. Whilst I observed during my site visit that the outbuilding was a relatively substantial structure, I have not been provided with any details relating to its construction or of any noise insulation included. In any event, it is apparent that the outbuilding is not entirely soundproof given the complaints made and that the immediately adjacent neighbour has taken to use ear defenders and ear plugs in an attempt to block out any such noise. Nevertheless, the mere presence of audible noise does not necessarily equate to detrimental harm being caused to the living conditions of those nearby or to a material change of use of the land.
20. A noise complaint was made to the Council's Community Response Team in October 2020, however there is no evidence before me to suggest that the noise levels recorded were found to be unacceptable or resulted in any formal action being taken. Furthermore, whilst there are objections from a small number of local residents, two of these appear to be from the same adjacent property indicating that the lessons do not have a significant impact on the wider area. The appellants have also provided copies of correspondence from two nearby residents, including the occupier of the adjoining semi-detached dwelling, which both state that although audible they do not consider that the lessons cause a disturbance or nuisance. When taking these factors together, along with the limited frequency of the lessons, and that they do not take place beyond 18:00, I am satisfied that the lessons have not had an unacceptable impact on the living conditions of occupiers of nearby properties and that the overall character of the planning unit has not changed.
21. The outbuilding represents a small part of the overall planning unit. I saw during my visit that it included a double bed, bookcase, toilet, desk, chairs, keyboard, and music stand. Despite the presence of a small number of music related items and its occasional use for singing/music lessons, the outbuilding did not have the appearance of a 'purpose-built music room' but instead had the character of a domestic study and additional guest bedroom. Similarly, the overall character of the host dwelling itself remained residential and I saw no evidence of any major structural changes or renovations having been carried out to facilitate the activities. Therefore, the overall character of the planning unit has not changed as a result of the use of the property for the singing/music lessons.
22. Thus, I am satisfied that at the date of issue of the notice, and subsequently, the singing/music lessons provided at the property are incidental to the enjoyment of the dwellinghouse and not of such a scale and effect as to result in a material change of use of the land. Accordingly, there has not been a breach of planning control and the appeal on ground (c) succeeds.

Conclusion

23. For the reasons given above, I conclude that the appeal succeeds on ground (c). The enforcement notice is therefore quashed. In these circumstances, the appeal on ground (f) does not fall to be considered.

David Jones

INSPECTOR