

Appeal Decision

Site visit made on 28 May 2024

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Appeal A: Appeal ref: APP/M0655/C/23/3320797
125 Park Road, Great Sankey, Warrington WA5 3EU

- The appeal was made by Mrs Renu Singh under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Warrington Borough Council.
- The notice was issued on 4 April 2023; reference ENF/21/08874.
- The breach of planning control was: Without planning permission: the material change of use of the land from a dwelling house, to a mixed use as a dwelling house and beauty salon.
- The requirement of the notice is: Cease the mixed use of the land as a dwelling house and beauty salon by restricting the number of customers visiting to no more than two customers a day Monday to Friday, with no customers visiting on Saturdays, Sundays, and Bank Holidays.
- The time for compliance with the requirement of the notice is one week.
- The appeal was made on grounds (a), (c), (f) and (g) as set out in the amended Act.

Summary of decision: the enforcement notice is varied and upheld.
Planning permission is not granted on the application deemed to have been made

Appeal B - ref: APP/M0655/W/23/3319031
125 Park Road, Great Sankey, Warrington WA5 3EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission.
- The appeal is made by Mrs Renu Singh against the decision of Warrington Borough Council.
- The application dated 30 March 2022 was refused by a notice dated 18 January 2023, (ref: 2022/4132).
- The development is: Change of use of the family room at the rear of the dwelling for use as a beauty salon (use class sui generis).

Summary of decision: the appeal fails. Planning permission is not granted

Costs applications

1. The Appellant, Mrs Renu Singh, made an application for an award of costs against Warrington Borough Council. Additionally, Warrington Borough Council made an application for an award of costs against the Appellant, Mrs Renu Singh. The 2 applications are considered in a separate decision.

Appeals A and B – enforcement notice and planning application use

2. The 2 appeals concern the part-time use by the Appellant, Mrs Renu Singh, of a room in her home, No. 125 Park Road, Great Sankey, as a beauty salon service for her clients. No 125 is a large detached house with a 3 car parking space in front of the house, although the next door house to the west, No. 127 is close to the side of No. 125.
3. One room at the rear of Mrs Singh's house is used for beauty salon purposes for her visiting clients. Access for her clients is gained to the rear of No. 125 alongside the fence with No. 127, rather than through the house.
4. Mrs Singh said she had been running her beauty salon business at No. 125 since 2019. Hours of working were 10am - 1pm and 4.30pm - 6.30 pm Monday to Friday (5 hrs) and 9am - 1pm on Saturday (4 hrs).

Appeal A – enforcement notice

The appeal on ground (c)

5. An appeal on ground (c) asserts that those matters (if they occurred) do not constitute a breach of planning control. The beauty salon use by Mrs Singh and her clients cannot be entirely confined only to the family room at the rear of the dwelling. Their comings and goings will also be using part of the front garden. The planning unit must be the dwelling and its curtilage. The use will be that of a normal domestic residential use and that of a beauty salon. Whether the beauty salon part of the use is significant or insignificant is a matter of fact and degree. If it is significant, it would amount to a change of use of the dwelling from residential use to a mixed use that would require planning permission.
6. It is evident from the wide support of Mrs Singh's beauty salon business she operates at her home at No. 125 Park Road, that she enjoys the patronage of a considerable number of satisfied clients. However, use of land and buildings for operating a beauty salon in a residential dwelling is different to the normal use of and enjoyment of that dwelling. Where a beauty salon use of part of a dwelling is so small and brief as to be of no significance it would not amount to a material change of use.
7. For a use to be considered incidental to the enjoyment of a dwellinghouse and exempted from development under s.55(2)(d), it must be of a scale and nature that is incidental to the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage. In terms of a non-conforming uses, the occupier of a residential dwelling can, for example, repair or service their own car within the curtilage of the house. That is because such activity may reasonably be considered to be part of the activities normally or usually associated with the residential occupation of a dwelling. It may be that an occasional help with a neighbour's car would not amount to a use that required planning permission. But if such repairs or car services were widely offered to the general public, it would be likely to amount to a material change of use of the dwelling to a mixed use of residential and car servicing use. It is a question of fact and degree, based upon the individual circumstances, of the extent of the non-conforming use, not for instance, whether or not that use is run as a business.

8. In the present case, it is clear from the days and hours of opening, the number of Mrs Singh's clients of up to 20 per day 6 days a week and the evidence of her supporters and that of neighbours who have raised objections, the beauty salon use of her home at No. 125 Park Road is far from insignificant. In my view, it amounted to a material change of use of the house and its curtilage to a mixed residential and beauty salon use. That change of use required planning permission. The appeal on ground (c) must fail.

The appeal on ground (a)

9. The deemed application on ground (a) is that planning permission should be granted for the change of use of the dwelling and its curtilage at No. 125 Park Road from a dwelling house to a mixed use as a dwelling house and beauty salon. The planning application is for the change of use of the family room at the rear of the dwelling for use as a beauty salon. The merits of the 2 applications are essentially the same.

10. The Council gave 2 reasons for issuing the enforcement notice, (with minor wording changes in the 18/1/2023 planning application refusal - ref: 2022/4132).

The development does not assist the continued viability and growth of the local economy due to the impact upon viable, accessible sites and buildings used for industrial/commercial purposes or other employment generating uses in local communities. It does not accord with policy SN6 of the Local Plan Core Strategy, and para. 93 of the NPPF.

The development has a detrimental impact on the living conditions of existing neighbouring residential occupiers in relation to noise and disturbance. It does not accord with Policy QE6 and CS1 of the Local Plan Core Strategy.

N.B. The Warrington Core Strategy 2014 has since been superseded by the Warrington Local Plan 2023, (WLP 2023). Core Strategy policies SN6, QE6 and CS1 have been replaced by Local Plan policies DEV4, ENV8 and Vision & Spatial Strategy 6. and 9. The intent and purpose of the policy revisions are not changed and do not significantly affect the planning merits of the ground (a) appeal.

11. The Council's first reason stated that the salon use has an intensity that does not assist the continued viability and growth of the local economy. That could result in the loss of viable, accessible sites and buildings used for industrial/commercial purposes or other employment generating uses in local communities. Expressed thus, the Council's objection is of a lack of a positive contribution, rather than it having a negative effect on the viability and growth of the local economy.
12. I am unconvinced that a reason to issue the enforcement notice based upon policy SN6 of the Local Plan Core Strategy and para. 93 of the NPPF is entirely persuasive. The explanation to policy SN6 says – *"Where retail or leisure uses are proposed outside of a defined centre, the policy approach seeks to protect defined centres by ensuring that such developments demonstrate that no suitable sites are available within the centre or in edge of centre locations through applying a sequential approach and ensuring that there are no significant adverse impacts on that centre(s)."*, (similar wording now in WLP 2023 policy DEV4 at 13.). But para. 93 of the NPPF applies to *"--- small scale rural offices or other small scale rural development."* Para. 94 asks for an impact assessment only where the proposed development is over 2,500m²

gross floorspace, (where no local threshold is set). Neither of those paras. apply to the modest appeal operation here.

13. On the second reason, the effect on neighbouring amenity, there is more concern. That is, the effect of Mrs Singh's beauty salon business intensity on those living close to No. 125. Mrs Singh said she offers beauty services to local clients with proposed hours of use being 10.00 to 1.30pm and 4.30 to 6.30, Monday to Friday, and 9am to 3.30pm on Saturday, with no services on Sunday/Bank Holidays, (appeal statement, p10). Mrs Singh said it was not a business with a large income. She takes about 30 minutes per client. Treatment costs start at £2; the maximum treatment cost is £25.
14. There were differing views on the effect of clients' coming and goings and on the generation of car parking problems. For Mrs Singh it was said that the original officer dealing with the application thought the proposal acceptable, subject to conditions. It was thought a condition to restrict the number of clients to 8 each day might be fitting. The Appellant said restricting the number of clients to 8 per day it would render the business unviable and requested that the officer consider increasing this to 20 as an absolute maximum. I note that this officer no longer works for the Council. There is no reference in Council's appeal submissions to a view of an acceptable number of clients, save for that contained in the enforcement notice requirement – that it be no more than 2 per day.
15. The Council assessed that the majority of Mrs Singh's clients of her business drive to and from her home at No. 125. They said it was inevitable that had consequences for the amenity of the occupiers of adjacent dwellings. It was akin to the number of traffic movements to a commercial premises in a designated commercial area. The noise of engines and the opening and closing of car doors as well as the visual intrusion of the continuous stream of customer vehicles would combine to cause a significant level of amenity harm.
16. It is clear that Mrs Singh's beauty work at No. 125 is well-liked by her clients. A considerable number of them offered sympathetic and kindly support. Some of that support may arise because of the quality of Mrs Singh's service rather than an assessment of its effect on those living close by.
17. I consider that whilst the level of the beauty salon use is not defined in either the enforcement notice allegation, or in the planning application, the number of clients Mrs Singh treats each day is the main determinant as the acceptability or otherwise of her business activity. It was Mrs Singh's wish that she be allowed to see up to 20 clients a day, 6 days a week. In my view, even at half that rate, the character and use of No. 125 would be unacceptably different to that of a normal residential dwelling, such that disturbance in the immediate vicinity of the house would be likely to cause material harm to immediate neighbour residential amenity and would cause some car parking problems.
18. I agree with Mrs Singh that some possible disturbance problems could be controlled by means of a condition or conditions to a permission, even though enforcement might not be easy. But there is no utility in a permission so restricted as to negate its benefit. Such a condition may be unreasonable because it is unduly restrictive. That, in my view, is the situation here. Where it appears that a permission could be given only subject to conditions that

would be likely to be held unreasonable by the Courts, it is necessary to refuse permission altogether.

19. The Council's requirement to the enforcement notice that the use be limited to no more than 2 clients a day on weekdays only applied as a condition on a planning permission would be quite unreasonable. It would also probably be taking the use to a level at, or below where planning permission would be needed.
20. I conclude that the appeal on ground (a) should fail and that planning permission to retain the beauty salon element of the mixed use of the dwelling at No. 125 Park Road should be not granted. I have considered all the other matters raised, including the possibility of the application of a personal limited permission, but find they do not affect my decision.

The appeal on ground (f)

21. Mrs Singh said the requirement to reduce the number of clients to 2 a day was overly restrictive and went beyond what the Council was legally able to enforce based on what can be considered an incidental use to the main dwelling. If the Inspector was minded to uphold this notice, the notice should be amended to allow Mrs Singh to have 10 clients visit the property per day in order to enable the business to remain viable. At that level of use, even though one room of the house might remain dedicated to the beauty salon use, it could be considered too small to amount to a change of use of the residential use of the dwelling.
22. I consider that the main purpose of the enforcement notice was "to remedy any injury to amenity caused by the breach", (s.174(2)(f) of the Act). That is what the requirement of the notice purports to do. That would be a reasonable remedy. In the present instance, the requirement also adds a saving for an element of the mixed use, that is by allowing up to 2 customers visiting a day Monday to Friday. That concession may be of little utility to Mrs Singh, but planning permission for that level of beauty salon use may be treated as having been granted by virtue of s.73A of the Act, (s.173(11) of the Act). The appeal on ground (f) fails.

The appeal on ground (g)

23. The appeal on ground (g) asks that more time is granted to comply with the requirement of the enforcement notice. The notice requires the beauty salon use part of the mixed use of No. 125 to cease within one week of the issue of this decision.
24. Although Mrs Singh may have faced the possibility that the beauty salon business on the scale that she would have wished to continue might be refused planning permission, it would not have been unreasonable to book treatments for some time more than a week beyond any anticipated receipt of a decision on her appeals. I increase the period for compliance to 3 months to allow more time for Mrs Singh to consider any options available to her. Subject to that, the appeal on ground (g) succeeds.

Appeal B – s.78 planning application appeal

25. The planning merits of the application for planning permission to retain the beauty salon activity at No. 125 Park Road are, in all essential parts, as those of the ground (a) appeal above and do not bear repetition. Planning

permission to retain the beauty salon element of the mixed use of the dwelling at No. 125 Park Road is not granted.

FORMAL DECISIONS

Appeal A - Enforcement Notice – s.174 Appeal ref: APP/M0655/C/23/3320797

26. The enforcement notice is varied by the deletion of the words “one week” in line 2 of para. 6 on page 2 of the notice and the substitution therefor of the words “three months”. Subject to that variation, the appeal is dismissed and planning permission is not granted on the application deemed to have been made for the retention of the mixed use of the dwelling at No. 125 Park Road, Great Sankey, Warrington WA5 3EU as a dwelling and a beauty salon.

Appeal B – s.78 Planning application - Appeal ref: APP/M0655/C/23/3320797

27. The appeal is dismissed. Planning permission is not granted for the retention of the mixed use of the dwelling at No. 125 Park Road, Great Sankey, Warrington WA5 3EU as a dwelling and a beauty salon.

John Whalley

INSPECTOR