The Planning Inspectorate

Appeal Decision

Site visit made on 9 July 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 16th July 2024

Appeal Ref: APP/V1505/X/22/3304698
29 Charlotte Avenue, Wickford, Essex SS12 0DZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Miss Kirsty Hall against the decision of Basildon District Council.
- The application Ref 22/00532/LDCE, dated 12 April 2022, was refused by notice dated 24 June 2022.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is incidental use of the external garage as a home-run cosmetics business.

Decision

1. The appeal is dismissed.

Main Issue

2. Whether the Council's decision to refuse to issue the LDC was well-founded.

Reasons

3. The subject garage is set back significantly from the principal elevation of the host dwelling to which it is attached, with its own dedicated entrance facing towards the property's driveway and street. It has been converted for use as a cosmetics business with a treatment table, sink and storage cabinets and shelves. Equipment is limited to small, hand-held devices of negligible noise output. Services provided include make-up, eyelash, nail, waxing and exfoliating treatments.

4. I understand that, on the date of application for the LDC, the business use was conducted by the appellant on a 1:1 basis with clients, with 36 operational hours per week spread over 4 days[1] (with an average of 3 appointments each day). Parking for clients is provided on the property's drive, if required. Access and egress to and from the converted garage is on foot[2] between the flank wall of the host dwelling and the residential neighbour at 27 Charlotte Avenue (no 27). Due to the orientation of the latter dwelling, it has a fenestrated main entrance and two sets of clear-glazed windows approximately 4m away – and facing - the flank wall of the host dwelling on the appeal site. Indeed, the layout and association of the 2 properties is such that the shared boundary (next to which the clients pass) is around 2m from no 27's fenestration - through which there are clear views of the business's entrance over a fence.

[1] Tuesday and Thursday 0900-2000; Friday 0900-1700; Saturday 0900-1500.
[2] Single clients only, with no overlap of clients coming and going due to a 15 minute gap between appointments.

5. I find therefore, as a matter of fact and degree, that the nature and extent of comings and goings associated with the business use in this setting causes significant visual disturbance by reason of clients needing to pass close to the neighbouring property's fenestration on a reasonably frequent basis, over fairly long operational hours and for 4 days per week including part of a weekend[3]. Environmental impact is relevant as evidence that a material change of use (MCU) has occurred.

6. Taking into account case law[4] and the particular circumstances of this site (including plot layout, access and the number of daily coming and goings amongst the relevant factors) I conclude that there has been a definitive change in the character of the use of the land. Moreover, that the business use subject of the appeal is not an ancillary or incidental use to the residential use of the host dwelling. There has therefore been an unlawful MCU (to a mixed residential and business use) requiring planning permission.

7. The comparisons made by the appellant to childminding and hairdressing activities carried out in other residential settings is of no assistance in the appeal, as it has turned (as it must) on the facts of the particular circumstances of the case - including the close proximity to neighbouring windows of comings and goings of members of the public using the business[5]. On that note, I would consider the regular visual disturbance by members of the public passing by the affected windows (likely to be strangers to the occupants of no 27) to be more significant than that caused by family members of the host dwelling and who are likely to be known and familiar to the observer. Further, while no 27's fenestration under discussion might be described as upon the 'public side' of the building, the degree of disturbance caused by clients passing close to the windows is of a far greater scale than that might be caused by users of the public highway a greater distance away.

8. While I have received recent information from the appellant suggesting that there are now fewer appointments and noting the new boundary fence (as seen on my site visit), I must determine lawfulness on the date of the LDC application.

Conclusion

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of incidental use of the external garage as a home-run cosmetics business was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

[3] The cosmetic treatments themselves would be provided inside, behind closed doors with closed blinds, and would cause no outside impacts while being so provided.
[4] Including *Sage v Secretary of State for Housing, Local Government and Communities and London Borough of Bromley* [2021] EWHC 2885 (Admin). Further, while the Inspectors in that case found that a MCU had occurred in the circumstances that were before them – it does not mean that those conditions must exist in all cases as a benchmark in determining whether a MCU has taken place. Notably, with particular relevance to the appeal before me, the court held that 'visual disturbance' was an issue which the decision-maker may wish to consider in deciding whether there had been a MCU.
[5] Neither does it appear that those particular circumstances applied in the appeal decision that the appellant has brought to my attention (APP/G2245/C/18/3215848).