



Appeal Decision

Hearing held on 19 November 2024

Site visit made on 19 November 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Appeal Ref: APP/X3540/C/24/3344997

Land at Portlight, The Ferry, Felixstowe, Suffolk, IP11 9RZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (1990 Act). The appeal is made by Ms Jennifer Pearson against an enforcement notice issued by East Suffolk Council.
- The notice was issued on 2 May 2024.
- The breach of planning control as alleged in the notice is *"Without planning permission, the change of use of two ancillary outbuildings ("the Buildings") to a beauty salon and hairdressers and a toilet/store room associated with the beauty salon/hairdresser use ("the Unauthorised Use")"*.
- The requirements of the notice are to:
 - (1) *Permanently cease the Unauthorised Use of the Buildings; and*
 - (2) *Permanently remove from the Buildings any furniture, equipment and any other items associated with the Unauthorised Use.*
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal was originally brought on grounds (a) and (c). However, prior to the enforcement notice being issued, the appellant sought retrospective planning permission for the *"change of use of two existing buildings within the curtilage of Portlight from residential to use as beauty salon/hairdressers by owner of Portlight"* (application reference DC/23/1936/FUL). This application was refused by the Council on 26 September 2023, and was not appealed. If this application had been approved, planning permission would have been granted for the matters alleged in the notice. In accordance with the provisions of s174 of 1990 Act, the appellant is therefore precluded from pursuing an appeal on ground (a).
2. Upon learning that the ground (a) appeal could not be pursued, the appellant sought to add ground (g) to their appeal, in a bid to extend the time for compliance with the requirements of the notice. During the hearing, the appellant also sought to raise a ground (f) argument, that the steps of the notice are excessive to overcome the breach. Given the circumstances in respect of the ground (a) appeal, I agreed to consider the appeal on grounds (f) and (g), despite them being introduced at a late stage.

3. The appellant says that use of the outbuildings as a beauty salon/hairdressers is incidental to the primary residential use of the appeal property. In other words, the appellant says a change of use, as alleged in the EN, has not occurred. This argument, being that the alleged breach has not occurred as a matter of fact, is essentially a hidden ground (b) appeal. Notwithstanding that ground (b) has not been formally pleaded, the arguments are very similar to the ground (c) appeal, being that that the matters alleged do not constitute a breach of planning control. For completeness, I have addressed both grounds together.
4. During the hearing, the appellant sought to submit two additional documents into evidence: the first contained submissions relating to estoppel; and the second was an appeal decision¹ relating to a property known as Wild Wood (Wild Wood Appeal). Whilst late, I agreed to accept both documents into evidence, which the Council did not object to.

Grounds B and C

5. The burden is on the appellant to demonstrate their case on each of these grounds, with the relevant evidential test being the balance of probability. To succeed on grounds (b) or (c), the appellant would need to demonstrate, on the balance of probability, that the alleged material change of use either had not occurred as at the date of the EN, or else did not constitute a breach of planning control. As grounds (b) and (c) are both legal grounds of appeal, planning merits are not relevant.
6. The appeal site comprises a detached dwelling, together with two separate outbuildings which are sited within its garden. Prior to operation of the appellant's business, the parties agree that the site's primary use was residential.
7. The two outbuildings are used in conjunction with the appellant's beauty and hairdressing business (Salon Business). The larger of the two buildings is set up as a salon, and includes three hairdressing stations, a nail station, a hair-washing basin, a payment/reception stand, a small kitchenette and a separate room which is laid out with a massage table. There are two chairs at the entrance, which are used as a waiting area. There is also shelving across many of the walls which accommodates various hair and beauty products. Notwithstanding a few domestic items including a games console and some board games, the building's layout and appearance reflect that of a salon and hairdressers, which is indicative of its primary use being the same.
8. The second outbuilding includes a toilet and storeroom, and a separate room containing an additional hairdressing station, an indoor sunbed and a tanning spray tent. There is also a shelving unit which contains products relating to the sunbed. Notwithstanding the domestic items within the building (which include a bike and a lawnmower), the setup of this building, including the equipment within it, are again indicative of its main use relating to the Salon Business.
9. Before constructing the buildings, the appellant says she relied on advice from the Council that they could be used for the Salon Business without planning permission. Notably, she said she would not have risked incurring the high costs of constructing them without this advice. This suggests the buildings

¹ APP/G2245/C/18/3215848

were, at least in part, built specifically for the purpose of her business, rather than for a general domestic use. Consistent with their layout and internal appearance, this factor is indicative of the buildings' primary use being for the Salon Business.

10. The Salon Business operates on an appointment-only basis. Although opening hours vary day-to-day, the salon typically opens on Tuesdays, Thursdays, Fridays and alternate Saturdays, with hours varying between 16–20 hours each week. The appellant says she usually sees between 3 and 8 clients on the days the salon is open. Whilst the business is therefore modest in scale, it still results in more comings and goings to and from the property than a typical residential use.
11. The corresponding impact of the Salon Business, particularly in terms of vehicle movements and parking, is therefore different to a residential use. The appellant says her driveway can accommodate up to 6 parked cars, which is notably more than a typical residential driveway. Although no issues have been raised in terms of parking or traffic generation, this factor still attests to a material difference between use of the site for the Salon Business and a typical residential use. This is indicative of the site's use for the Salon Business going beyond an incidental use.
12. More generally, an incidental use is one which is functionally related to the primary use. As per the *Harrods*² case, this functional relationship should be one that is normally found and not based on the personal choice of the user. Notwithstanding that the appellant's children sometimes use the outbuildings for games or homework, the functional link between the residential use of the appeal site and the Salon Business is otherwise limited. The appellant even said she needs to operate her business from somewhere separate to the main house to ensure peace and quiet, which attests to this point. A beauty salon and hairdressers are also not uses normally found in a typical residential dwelling, which again points to the use of the buildings in this way going beyond an incidental use.
13. Overall, the main use of the outbuildings appears to be for the appellant's beauty salon and hairdressing business. The evidence suggests this is the primary use of these buildings, and not a use which is incidental to the residential use of the appeal site. On the balance of probability, a material change of use of these buildings to a beauty salon, hairdressers and a toilet/storeroom associated with this use, had therefore occurred when the notice was issued. This use, which would amount to development under s55(1) of the 1990 Act, would not be lawful without planning permission. It therefore constitutes a breach of planning control.
14. The appeal on grounds (b) and (c) therefore fails.

Ground F

15. Pursuant to ground (f), the appellant says that the steps required to be taken in the notice exceed what is necessary to remedy the alleged breach of planning control. In particular, the appellant says that the requirement to remove all furniture, equipment and other items associated with the business is excessive.

² *Harrods v SSETRE* [2002] JPL 1258

16. As per s173(4) of the 1990 Act, the purpose of the notice is to remedy the breach of planning control, being the change of use of the outbuildings to a beauty salon and hairdressers and a toilet/store room associated with the beauty salon/hairdresser use. The requirements set out in the notice must achieve this purpose.
17. The first requirement precludes the use of the outbuildings for use as a beauty salon and hairdressers, and goes no further than remedying the breach of planning control. However, much of the furniture, equipment and other items can be used in a personal capacity by the appellant and her family. It still needs to be stored, and could feasibly remain in the buildings without the business operating. In the circumstances, the requirement to remove everything associated with the business is therefore excessive, and goes beyond the scope of remedying the breach of planning control.
18. In turn, I have deleted this step from the requirements of the notice, and the appeal on ground (f) succeeds to this extent.

Ground G

19. Pursuant to ground (g), the appellant says that the time given to comply with the notice is too short. The notice currently requires the steps to be carried out within 3 months of the notice taking effect.
20. The appellant will need to make alternative arrangements to ensure the continued operation of her business, which may include securing new premises. This process is likely to take longer than 3 months. I therefore consider it reasonable to extend the period for compliance to 6 months.
21. The appeal on ground (g) therefore succeeds.

Other Matters

22. The appellant contends that the facts of the Wild Wood Appeal are very similar to the present circumstances. The Wild Wood Appeal succeeded on ground (b). Whilst there are similarities between the two, whether a use is or is not incidental to another use is very fact sensitive to the particular circumstances of a case. In this instance, there are two buildings which appear to be used in conjunction with the Salon Business, whereas the Wild Wood Appeal concerned a single outbuilding. The circumstances of the two cases are therefore different, and a different decision is justified. Based on the evidence before me, including my own observations during site visit, each of the two buildings in this case appear to be used mainly for the Salon Business. This is indicative of the business use being a primary use of the buildings, and not an incidental one.
23. The appellant says she is aware of numerous hairdressers and beauticians who operate from their homes without planning permission. However, without further details, I cannot assess the similarities of these businesses with the appellant's Salon Business, nor can I ascertain whether these other businesses are operating lawfully. In any event, and as noted above, assessment of incidental use is fact sensitive to the particular circumstances of a case, and the evidence in this case suggests the Salon Business use is the primary use of these buildings.

24. As mentioned, the Council allegedly advised the appellant that planning permission was not needed for the development. During the hearing, the appellant raised an argument of estoppel by representation, on the basis she relied on this advice before carrying out the development. Whilst there is no formal record of this advice, even if the appellant had been advised in this way, it would not have been binding on the Council.
25. Expanding on this, it was held in *Saxby*³, that given the Lawful Development Certificate mechanisms introduced by ss191-196 of the 1990 Act (whereby the lawfulness of a proposed use can be confirmed), it is no longer possible for an appellant to seek some informal determination as to whether planning permission is required. The general principle is that public authorities cannot be estopped from performing their statutory duties. In planning terms, any informal advice given to the appellant by the Council would therefore not have constituted a binding estoppel.
26. There is significant public support for the appellant, which attests to the value of her business to the local community, which is commendable. However, these representations pertain to the planning merits of the development, and are not relevant to a ground (b) or (c) appeal.

Conclusion

27. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. The appeal on grounds (f) and (g) succeeds to that extent.
28. However, for the reasons given above, I conclude that the appeal on grounds (b) and (c) should not succeed. I shall therefore uphold the enforcement notice with these variations.

Formal Decision

29. It is directed that the enforcement notice is varied by:
- (a) deleting requirement (2) from paragraph 5 (What You Are Required To Do); and
 - (b) substituting the reference to "3 months" with "6 months" in paragraph 6 (Time For Compliance).
30. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

James Blackwell

INSPECTOR

³ *Saxby v SSE & Westminster CC* [1998] JPL 1132

APPEARANCES

FOR THE APPELLANT:

Gerry Bullard
Jennifer Pearson

FOR THE LOCAL PLANNING AUTHORITY:

Jack Parker
Jacqui Bullen
Nick Clow
Cate Buck
Natalie Levitt
Adine Schrankel

INTERESTED PARTIES:

Andrew Moore
Dougie l'Anson
Colin Lister
Robert Bennet