
Appeal Decisions

Site visit made on 23 June 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 31 July 2025

**Appeal Refs: APP/E0345/C/24/3354050 and APP/E0345/C/24/3354051
Land at 18 Richmond Road, Caversham, Reading GG4 7PP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Joseph Deasy & Mrs Amy Deasy against an enforcement notice issued by Reading Borough Council.
 - The enforcement notice was issued on 19 September 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of a garden building incidental to the enjoyment of the dwellinghouse to a mixed-use that includes business purposes (treatment room receiving customers).
 - The requirements of the notice are to cease the use of the garden building as a treatment room and/or for a business purpose.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeals are allowed and the enforcement notice is quashed

Procedural Matters

1. The breach of planning control as alleged in the notice is, without planning permission, the material change of use of a garden building incidental to the enjoyment of the dwellinghouse to a mixed-use that includes business purposes (treatment room receiving customers). It follows that the Council accepts that the garden building as originally constructed constituted permitted development under Class E, Part 1, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO) as a building within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse as such.
2. The Enforcement Notice is directed at the subsequent use of the garden building and not the structure itself. The latter would include any lighting within the building or affixed to the outside of it. It is no part of the Council's case that any aspect of the lighting to the garden building requires planning permission in its own right. I see no reason to take a different view.
3. The Enforcement Notice only attacks the use of the building as a treatment room receiving customers. It follows that the use of the remainder of the building as an office used by Mr Deasy in connection with his business is not attacked by the notice, and is accepted by the Council as being required for a purpose incidental to the enjoyment of the dwellinghouse as such.

The Planning Unit

4. Where an Enforcement Notice alleges a material change of use, as in this case, it is first necessary to establish the planning unit as it existed prior to the breach of planning control that is alleged taking place. It is settled case law that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically and/or functionally separate and distinct, and/or occupied for different and unrelated purposes. The case law identifies three broad categories of distinction:
 - a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary
 - b) A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another;
 - c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
5. In this case, the dwelling is occupied by Mr & Mrs Deasy and their family as their primary place of residence. The dwelling itself, the parking area to the front, the rear garden and the building in the rear garden are all physically connected through the main dwelling. All four of these physically connected elements are used by Mr & Mrs Deasy and their family in connection with the enjoyment of their home. They are therefore functionally related. It is not possible to identify any part of the planning unit is used for a different and unrelated purpose.
6. Consequently, I conclude that, as a matter of fact and degree, the planning unit as it existed prior to the breach of planning control that is alleged in the Enforcement Notice taking place comprised the dwelling itself, the parking area to the front, the rear garden and the building in the rear garden taken as a whole. There is no dispute that the primary use of that single planning unit was residential, a use falling within Use Class C3 as defined in the Town and Country Planning (Use Classes) Order 1987.

The appeal on ground (c)

7. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
8. I noted at my site visit that the dwelling known as 18 Richmond Road comprises a living area, kitchen, bathroom, utility room and a total of four bedrooms. I have not been provided with details of the internal floor area of the dwelling. Nevertheless, it displays all the characteristics of a moderately sized family home.
9. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E1, Part 1, Schedule 2 of the GPDO. Moreover, in this case, it is not the size of the garden building as a whole that is at issue: the enforcement notice is only directed at

that part of the garden building that is used by Mrs Deasy as (in the Council's terminology) a treatment room receiving customers. I understand that this is specifically as a beauty salon providing treatments for eyelashes.

10. Again, I have not been provided with details of the internal floor area of that space in absolute terms. However, the appellant does indicate that the area of the space amounts to less than 10% of the dwelling as a whole. This figure has not been challenged by the Council and, from what I observed at my site visit, is patently correct.
11. The appellants indicate that the use as a beauty salon by Mrs Deasy is only occasional, amounting to no more than 10-12 hours per week. I have no reason to dispute that evidence, and the Council has not done so. In any event, the area used by Mrs Deasy as a beauty salon is a relatively small space and in that sense is proportional to the size of the main dwelling and the accommodation that it provides. The use of the space as a beauty salon is not of a scale such that it is a primary use of the planning unit, either in terms of floor area or hours of use.
12. I therefore consider that, as a matter of fact and degree, the floor area of the space in the garden room used by Mrs Deasy as a beauty salon is of a size that is reasonably required for a purpose incidental to the enjoyment of this particular dwellinghouse. Moreover, I consider that the overall nature, scale and purpose of the use of that space is not unreasonable in the particular circumstances of this case.
13. In that context, the Courts have held that for a material change of use to have occurred, there must as a matter of fact and degree be some significant difference in the character of the activities from what has gone on previously. This should be assessed in relation to the planning unit taken as a whole.
14. I am aware that the use of the space in the garden building as a beauty salon has given rise to complaints from the occupiers of neighbouring properties regarding light pollution. Whilst I have been provided with some photographic evidence of the light pollution that can result when the use is taking place, I am not persuaded that this level of light pollution for no more than 10-12 hours per week has resulted in a definable or significant difference in the character of the planning unit when taken as a whole.
15. The situation could change should the hours in which the garden building is used as a beauty salon were to increase but, based on present levels of use, as a matter of fact and degree I am satisfied that the planning unit as a whole retains a residential character. In this respect, it is a relevant consideration that the internal and external lighting of the garden building could equally be used in connection with a use of that building not associated with the beauty salon operated by Mrs Deasy: for example, as a study or as a gym for use solely by the occupiers of the main dwelling.
16. The above should not be taken to mean that the light pollution experienced by the occupiers of the neighbouring properties is not locally significant and does not adversely affect the living conditions enjoyed by the occupiers of those properties. In this respect, there may be remedies available to those occupiers through other legislation. However, the exterior lighting that has given rise to the complaints of light pollution only applies to a small part of the planning unit when taken as a whole. Consequently, for present purposes, at present levels

of use of the beauty salon the level of light pollution experienced by the occupiers of the neighbouring properties does not significantly change the character of the planning unit when taken as a whole.

17. The same is true in relation to other aspects of the use of the planning unit for residential purposes. This matter has also been raised anecdotally by the occupiers of neighbouring properties. However, there is no evidence before me to suggest that the number of vehicular and/or pedestrian movements generated by the use of the garden building as a beauty salon has resulted in a significant change in the residential character of the planning unit as whole. Similarly, there is no evidence before me that car parking generated by the use has resulted in a significant change in the character of the planning unit, or that a change in noise levels has had that effect.
18. In summary, I am satisfied that as a matter of fact and degree the use of the garden building for the use alleged in the notice is incidental to the use of the main dwelling as such, and has not resulted in a significant change to the character of the planning unit taken as a whole. The single planning unit retains the primary use as residential, to which the use alleged in the Enforcement Notice is incidental. The use of part of the garden building as beauty salon has not resulted in the mixed use of the planning unit alleged in the Enforcement Notice when taken as a whole.
19. Consequently, on the balance of probability, I conclude that a material change of use of the planning unit has not taken place, such that the matters stated in the enforcement notice do not constitute a breach of planning control. Accordingly, the appeals on ground (c) succeed.

Conclusion

20. For the reasons given above, I conclude that the appeals should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

21. The appeals are allowed, and the enforcement notice is quashed.

Paul Freer
INSPECTOR