



Appeal Decisions

Site visit made on 17 January 2026

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 6 February 2026

Appeal A and B Refs: APP/B5480/C/24/3338560 and 3338561

23 Moor Lane, Upminster RM14 1EB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the “Act”).
- The appeals are made by Mr Tom Alan Harris (Appeal A) and Mrs Penelope Joanne Harris (Appeal B) against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 12 January 2024.
- The breach of planning control as alleged is the material change of use from a single dwelling to mixed use as a dwelling and commercial gym (*sui generis*).
- The requirements of the enforcement notice are to: (1) Cease the mixed use of the property as a dwelling and a commercial gym by ceasing the use of the outbuilding within the rear garden as a commercial premises (gym), and (2) remove all gym and fitness equipment and paraphernalia from the land when taking step (1) above.
- The period for compliance with the requirements is two months.
- The appeals are proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decisions

1. The appeals are allowed and the enforcement notice is quashed.

Ground (c)

2. No. 23 forms a single unit of occupation and the outbuilding is located at the end of the garden. The appellants do not dispute that the outbuilding is used as a commercial gym and no. 23 is a single dwellinghouse. The notice, however, alleges a mixed use of the planning unit because the Council consider the commercial gym has reached a point at which a material change in the use of the appeal property has occurred. The appellants disagree and argue the commercial gym is work from home and that the outbuilding’s use remains functionally linked to the unit’s primary residential use.
3. The onus is on the appellants to make their case and show that the alleged matters do not constitute a breach of planning controls. For example, the matter alleged does not fall within the scope of s55(1) of the Act, which defines the term ‘development’ and includes the making of a material change in the use of land or building. That said, the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such has an exemption by virtue of s55(2)(d) of the Act.
4. The High Court’s judgment in *Sage*¹ is highly relevant. Briefly, the dispute focused on whether a personal-training business with regular client visits from a garden outbuilding was incidental use of an outbuilding and thus lawful or a material change of use. The

¹ *Sage v SSHCLG & LB Bromley* [2021] EWHC 2885 (Admin).

material facts between *Sage* and this case are different in terms of the nature of the activity, but the issues and principles raised in *Sage* are relevant as is the Planning Practice Guidance at paragraph: 014 Reference ID: 13-014-20230726.

5. I pause here. In considering whether a material change of use has occurred that would require planning permission, the Council appears to have placed excessive weight on the details provided with the planning application (Council ref P1590.23). The appellants have argued that, while the application was made in response to concerns regarding the commercial gym use in the outbuilding, it did not accurately reflect the current use of the premises and is both retrospective and part prospective hence the use of the modal verb "*would*" to describe the intended activity. For example, there *would* be 15 sessions per week, or the driveway *would* be used for off street parking support the prospective nature of the application.
6. I should point out that the planning merits of the commercial gym are not of direct relevance to this legal ground of appeal, which requires a matter of fact and degree judgment of matters like the scale and pattern of current activity, evidenced by comings and goings, noise, and disturbance. Amongst other matters, these factors are used to determine if the unauthorised use alters the character of the residential use so that the former is no longer incidental to the enjoyment of the dwellinghouse as such [my emphasis].
7. The outbuilding is roughly rectangular: it is 4.92m long, 4.72m wide and has a flat roof with a maximum height of 2.769m². It is used as a home office and a gym and has its own washroom. It can be independently accessed via the side alleyway and separate from the rear garden. Its floorspace is mainly occupied by training equipment. Closed-circuit television is used to record and or monitor activity.
8. There is nothing before me to cast doubt upon the appellants assertion that the commercial gym is mainly used by family and friends for recreation and leisure and for home working, because the appellants run a contemporary personal training business. Although social media is used for advertisement or promotion, replies to searching questions in the Planning Contravention Notice confirm there is no staff employed.
9. Nevertheless, the Council and interested party, raise concern about intensity of the outbuilding's use as a commercial gym. For example, an increase in comings and goings has resulted in general disturbance, especially early morning and late evening. The evidence shows that, on occasions, there have been multiple sessions in a day and people have attended together. There were 3 early morning sessions and 6 evening sessions. The claim is that on average there have been more than 15 sessions per week but, as the appellants point out, that figure refers to their application for planning permission and does not accurately reflect the current level of use.
10. The record sheet provides information regarding training sessions conducted between February and March 2024. It is important to note that this information represents only a snapshot in time. During this period, approximately twelve sessions were held in the outbuilding, with activities occurring on eight distinct days. On average, each lesson lasted around one hour, with only a small number of sessions extending to two hours. However, the documentary evidence submitted by the appellants, which includes documents relevant for accounting and taxation purposes to which I attach significant weight, suggests that most of the training is delivered online via Internet-based platforms and involves very little, if any, one-to-one sessions at no. 23.

² Detail taken from the officer's report.

11. In addition, the extent and amount of in-person training sessions conducted by the appellants in the outbuilding are confirmed by accurate calendar entries. These records indicate a limited number of customer visitations. Furthermore, there is evidence to confirm that some sessions have taken place in off-site gymnasiums. Based on the available evidence, I am not convinced that the number of visits referenced by the Council or other interested parties demonstrates an intensified commercial use of the appeal property, and particularly the outbuilding.
12. To me, the evidence available does not substantiate the claim that the commercial use of the outbuilding as a gym has led to a notable or dramatic increase in comings and goings at the property given the limited nature and scale of the activity. Despite assertions to the contrary, there is little, if any, concrete or detailed evidence directly linking an upsurge in pedestrian or vehicular traffic to the business activities taking place at no. 23. Furthermore, the Council's investigation does not show to me a sustained or significant increase in customer visitations over an extended period. There is also no clear or specific evidence indicating that these activities have caused any specific concerns regarding highway safety or have adversely affected local parking conditions.
13. I have carefully considered all the evidence presented, including the representations made by interested parties. Nevertheless, as I have previously indicated, the objections to the scheme proposed in the application for planning permission carry little relevance in this context. It is my firm view that, as a matter of fact and degree, the material facts demonstrate the extent, nature, and scale of the contemporary business-related training sessions can reasonably be regarded as either de minimis or incidental to the enjoyment of the dwelling in its ordinary sense.
14. Pulling all the above threads together, I am satisfied that the current personal training commercial use of the outbuilding, as described by the evidence before me, are activities that fall within the scope of the exemption set out in section 55(2)(d) of the Act. The alleged matters do not constitute a breach of planning controls and ground (c) succeeds.

Other matters and overall conclusion

15. I note concerns expressed by interested parties that any commercial or business activity in a residential area might result in a change to the residential character, but that is not the current situation at no. 23. As an aside, should activities dramatically increase in future, then the Council should investigate thoroughly collating relevant evidence to show how the commercial gym has in fact changed the character of the planning unit as a whole. That is a matter for the Council to consider, and it is not for me to determine.
16. For all the above reasons and having considered all other matters raised, I conclude, on the balance of probabilities and the available evidence, that the alleged material change of use does not represent a breach of planning control. The appeal against the enforcement notice succeeds and the notice is quashed. Consequently, grounds (f) and (g) do not need to be considered.

A U Ghafoor

INSPECTOR