



Appeal Decision

Site visit made on 16 June 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2026

Appeal Ref: APP/V4630/X/26/3377537

Mitie Tilley Roofing Ltd, Middlemore Lane, Walsall, Aldridge WS9 8SP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended)(the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by By Demi against the decision of Walsall Metropolitan Borough Council.
- The application ref 25/0215, dated 21 February 2025, was refused by notice dated 8 April 2025.
- 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 beautician services.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse the application is well founded.

Reasons

3. An application under section 191(1) of the Act¹ seeks to establish whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Section 55(1) of the Act sets out that, subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development", means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
5. Section 55(2) specifies certain operations or uses of land which shall not be taken for the purposes of this Act to involve development of the land, including (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.

¹ Town and Country Planning Act 1990 (as amended)

6. The main thrust of the appellant's case is that the previous use of the premises as an office fell within use class E(g)(i) of the Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO) and that the use as a beautician studio falls within class E(c) and, given the provisions of the Act and the UCO, the current use does not require planning permission.
7. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the 'balance of probabilities'. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
8. The appeal site comprises a beautician studio made up of various rooms, including Room 14, which is used to provide a variety of training courses to paying customers, as well as treatments. The appellant describes the use as E(c)(iii) – other appropriate services in a commercial, business or services locality. The appellant states that the previous use of the premises fell within use class B1 offices which has been replaced by class E and, since the current use falls within class E, there has been no development.
9. The Council does not dispute that the land was in use as an office for more than 10 years prior to its current use. The Council refused the application on the basis that the application site is in a mixed use comprising a beautician studio (use class E) and training academy (use class F1). The Council also states that the application Location Plan fails to include the customer shuttered entrance and block paved entrance area, which enables access to rooms 16-20 within the red line application site boundary and that no supporting evidence has been submitted to confirm that the (current) use has continued for a period of at least 10 years.
10. A previous application was refused on the basis that the site would be a mixed use, including a training (F1) and a café/hot food takeaway, which it was suggested would be *sui generis*. Since that application was refused it seems the café/hot food takeaway use has ceased. I note the Council carried out a site visit on 21 March 2025 and saw that the unit was still on site, along with the associated outdoor seating area.
11. Given the matters in dispute, it is necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The primary use of land or a building will be the main use or activity of the planning unit that is carried out by the occupier. In *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, it was held 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 separate and distinct, and occupied for different and unrelated purposes. Three broad categories of distinction have been suggested when considering the planning unit:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - 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; and
 - 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.

12. The appellant's case is that the planning unit comprises the land shown edged red on Appendix B. From my inspection of the site, it seems likely that this includes the area previously used as a café. The appellant states the premises comprises a single planning unit with one primary use, with any other activities being incidental or ancillary. This conclusion is drawn because the premises is stated to form a single parcel of land in the same ownership, with Room 14 situated entirely within the planning unit. There is stated to be no physical subdivision of the site, with customers and staff using the same entrances and car parking facilities and the whole site operating the same business hours.
13. The Council's position is that the application site is in a mixed use. It is not clear whether the Council considers the application site to be the planning unit, or the previous application site. The application site and planning unit are not necessarily the same thing, nor do they have to be.
14. During my visit, I saw that the appeal site comprises a main entrance, with reception area, off which are a number of different rooms, within which various beauty treatments are provided. Off the main reception area and hallway are toilets and kitchen facilities, which appear available to be used by other users of the premises. Although accessible from the main building, access to a number of the treatment rooms for customers is gained via a pedestrian entrance door with security shutters. From the evidence, it seems this entrance was also used to access the café/hot food takeaway.
15. Within one of the rooms, Room 14, accessed via a hallway off the main entrance, the appellant offers training courses, as well as beauty treatments. It is stated that the majority of training courses last one day, with training accounting for approximately 7 hours a week (and occasionally 14 hours) per week. The room is stated to hold a maximum of 4 students at a time, with attendees practicing techniques on paying models.
16. I have been provided with a booklet which sets out the range of courses offered, including SPMU² courses, aesthetics and skin courses, wellness courses and laser training. The courses are stated to last between a day and four days³. The tutors are staff employed by the business. The appellant states that all courses relate to treatments routinely provided elsewhere within the studio and that the majority of the training is practical. As part of the training, treatments are provided to paying clients, albeit at a discounted rate.
17. A screenshot of the appellant's website states 'In 2021 I launched my academy and started training. Fast forward 3 years and I have trained over 300 students in semi permanent make up and aesthetics...I now have a successful clinic running within the academy premises with 12 staff and we have our very own onsite café for all customers, staff, students and passing trade.' An officer report for the previous application includes a photograph with advertisements for the 'Outback Café'. The café is identified as 'takeaway/outdoor seating'.
18. The UCO states that no class specified in Schedule 1 or 2 includes use as a hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises. Within the officer report, it is noted that all aspects of the previous refusal still exist, the beautician studio, hot food takeaway and the

² Lip blush and brows

³ 4 Day Ultimate Brow & Lip Beginners

training academy, however, the location of the hot food takeaway unit is now outside the red line application site boundary (albeit, it seems the appellant now seeks to include the land within the red line shown in Appendix B).

19. Where a site is in a mixed use, the use is a single mixed use which comprises its component activities. It is not clear from the evidence whether the planning unit comprised the café, or whether the café would have been *sui generis* or whether it would have been a class E(b) which is for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. While it seems the café use has now ceased, where there has been an intervening unlawful use, land may have a nil use.
20. The appellant refers to the site as an academy within its literature and, has previously referred to it as a 'training academy' on signage. As the appellant points out, signage is not determinative that the use falls within class F.1. The appellant suggests that the room does not meet the definition of an educational facility or training academy due to its limited size, the nature of the activities undertaken and the very small [sic] number of attendees.
21. In support of its case, the appellant has drawn my attention to paragraph 7.5 of the explanatory memorandum to the Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020 which advises '*The 'Learning and non-residential institutions' use class (F1) incorporates those uses from the former D1 Non-residential institutions use class which are more likely to involve buildings which are regularly in wider public use such as schools, libraries and art galleries.*' Reference has also been made to a Government response dated 2021, which is stated to identify schools and other educational establishments as public services.
22. However, while use class F1 includes uses from the former D1 Non-residential institutions use class, such as schools, it is not limited to schools or buildings which are regularly in wider public use, but includes the 'provision of education'. There is no minimum size threshold and, although the duration of the courses given at the appeal site is limited, such matters are, in my view, not determinative. I see no reason why education cannot include training such as that offered by the appellant. Course topics such as facial anatomy, licensing and laws and health and safety, could equally be taught in a school or college setting.
23. I am advised that there are no memberships or subscriptions and that participants pay a one-off fee. Sessions are pre-booked using the same appointment and booking system as the rest of the beauty studio. However, from the evidence provided, it seems the training which is offered is provided to members of the public, who pay to attend the site, rather than in-house training of employees, as would typically be found alongside a beautician or hairdressers.
24. In support of its case, the appellant has provided me with a diary extract which supports the suggestion that training is carried out once or twice a week. I have not been provided with a breakdown of revenue or customer numbers for the overall site. Nevertheless, while there are various other rooms within which treatments can be carried out, given the cost of the courses, it seems likely that the training activities form a relatively significant part of the overall site in terms of revenue. Ultimate Foundation Dermal Filler, Botox, Complications, Vitamins and

Microneedling, for example, is identified as a one day course with up to 4 attendees and is priced at £2,499.

25. The fact that attendees of the training may be visiting members of the public⁴ does not mean that the training use would not constitute the provision of education. Although models pay to receive treatment at a reduced rate, they are there for attendees of the site to practice on. The activities carried out, in my view, comprise a use (not including residential use) for the provision of education. While the spatial extent of the site used for this purpose is limited, this, in my view, is not an incidental or ancillary use but is a primary use.
26. Room 14 is used for training and beauty treatments and when not in use for training, it is used as a standard treatment room. Customers and staff use the same entrances and car parking facilities for Room 14, as well as shared rest rooms, hallways and refreshment facilities. Consequently, as a matter of fact and degree, I find that the appeal site comprises a single planning unit which is in a mixed use comprising beautician services and training, which does not fall within class E. It is not open to me to certify the beautician services in isolation; the use is a single mixed use which comprises its component activities. It is not, therefore, exempted from the definition of development by virtue of section 55(2)(f) of the Act.
27. This does not automatically mean that what has occurred is development. The appellant's case is that, even if I find the use does not fall within class E and is a *sui generis* use, then that change is not material. The basic approach is that, for a material change of use to have occurred, there must be a significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. In support of their case, the appellant has drawn my attention to *East Barnet UDC v British Transport Commission* [1962] 2 QB 484, where it was held that what must be considered was the character of the use of the land.
28. The appellant has compared the activities undertaken within Room 14 with the activities undertaken elsewhere within the appeal site. However, it is necessary to consider what activity would probably be generated by or normally associated with the last lawful use. It should not be compared to a theoretical situation which has not occurred. If the change of use which has occurred is from an office to a mixed use comprising a beautician services and training, it is this use which should be compared with the previous office use, rather than a beauticians without the training use.
29. It is not clear when the training element of the use was established, or indeed the café/hot food takeaway. It is therefore not clear what the baseline against which the current use should be assessed is. It seems that the appeal site has previously been used as offices with a small storage area. While it is not clear from the evidence whether members of the public would have visited the site when it was used as an office, I consider it unlikely to have generated the same level of movements by members of the public as the current use.
30. Although attendees of the training course will stay for a number of hours, from the diary extract provided, it seems customers seeking treatments are likely to stay for less than an hour. Given there are various rooms within which treatments can take place, the number of individuals visiting the site is likely to be significantly greater

⁴*West Suffolk Council v Secretary of State for Levelling Up, Housing and Communities & Ors* [2025] EWHC 861 (Admin)

than the office use and to have materially different impacts in terms of highway movements and parking. Were the last lawful use offices, it seems likely to me that a change to a mixed use comprising beautician services and training would have been material.

31. It is not clear what the consequence of the café/hot food takeaway is and whether, if there was a material change to a mixed use comprising beautician services, training and hot food takeaway, following cessation of the hot food takeaway use, this resulted in the site having a nil use. Significantly, even if there has been no intervening unlawful use, it seems likely, on the balance of probabilities, that a material change of use has occurred. The appellant has therefore not shown, on the balance of probabilities, that the use of the premises was lawful at the date of the LDC application and so the appeal must fail.

Conclusion

32. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for beautician services is 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).

M Savage

INSPECTOR