



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2025

Appeal Ref: APP/R3515/X/23/3332449

31 Woodbridge Road East, Ipswich, Suffolk IP4 5QN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M Silva against the decision of Ipswich Borough Council.
 - The application ref IP/23/00671/CLD, dated 23 August 2023, was refused by notice dated 19 October 2023.
 - 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 described as 'Certificate of lawful use (existing) of premises as a vape shop from previous use as a beauty salon and display of advertisements with deemed consent.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the Council's decision notice, noting this is not the same as that given on the original application or appeal form, specifically the appeal form does not refer to the advertisements.
3. There is nothing in law to prevent a developer from applying for an LDC under section 191 to ascertain whether an advertisement display is lawful. In this case, it seems the matter relating to the advertisements may have been resolved between the parties, and since the details are limited to a photograph, I shall consider the appeal based on the description given on the appeal form.
4. Section 191(2) of the 1990 Act states that uses are lawful at any time if 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, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. The Council raised concern that the appellant has put forward new arguments in support of their case beyond those submitted as part of the application. However, in section 195 appeals, the parties and interested persons may submit additional evidence which was not before the authority at the time of its decision.
6. An Inspector should consider any relevant new evidence advanced at the appeal, including where this evidence was not advanced at application stage, since the purpose of the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.
7. Where an LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities.

8. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site given the dispute.

Main Issue

9. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

10. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987 (UCO). The amendments created a new broad 'commercial, business and service' use class (Class E) which incorporates amongst others, the former Class A1 (shops), and includes other uses which it is appropriate to provide in a commercial, business or service locality.
11. The Council set out the planning history in their statement and stated that the only decision of relevance is IP/12/00621/FUL which granted planning permission for a single-storey rear extension to a hairdressing salon on 10.10.2012. They appear to have accepted that the previous lawful use of the premises was as a Class A1 shop.
12. In broad terms it is the appellant's case that the lawful use of the premises is as a Class E shop and the former use as a beauty salon fell within Class E(c)(iii), accordingly there has been no material change of use to the existing use. Alternatively, if the beauty salon was a sui generis use, the previous and lawful use of the premises now falls within Class E (formerly Class A1) and there is a right of reversion to that use.
13. There is little detail about how the beauty salon operated however, it seems to me that beauty salons are a well-established feature of modern high streets. That they may operate on an appointment only basis would not preclude them from falling within Class E, because as the appellant pointed out, many uses which would be considered to fall within Class E operate on an appointment basis, and in some cases also use chemicals, such as hairdressers, dentists and opticians. Accordingly, I find that a beauty salon could fall within Class E(c)(iii).
14. Section 55(2)(f) of the Act provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class. There appears to be no dispute that a vape shop would fall within Class E, so if the use as a beauty salon was lawful at the time it was instituted there would have been no development.
15. The lawfulness of the use as a beauty salon must be determined by reference to the Order as in force at the time the use was instituted. It does not matter that Class A1 was later incorporated into Class E and that a beauty salon could now fall within Class E.
16. Prior to the 2020 Regulations coming into force, a beauty salon was generally considered to be a sui generis use, as acknowledged by the appellant. Therefore, if the use as a beauty salon began before 1 September 2020 it would have required express planning permission, unless it had been established that the specific use

was not materially different in character to the lawful use of the premises – which the appellant has not sought to establish.

17. The appellant stated that the property was used as a hairdressing salon from around 2009, coffee was also sold from the hairdressers in around 2015. From 2017 - 2020 the premises was a hairdressers and beauty salon, and around 2019/2020 the entire premises was in use as a beauty salon.
18. Therefore, based on the appellant's submissions and the balance of probabilities, the use as a beauty salon began before 1 September 2020 and was development which required an application for planning permission. Since express planning permission was not granted the use was unlawful.
19. As I see it, based on the evidence, the lawful use of the property for Class A1 (now Class E) purposes was lost through the unlawful material change of use to use as a beauty salon (*sui generis*), therefore there is no actual lawful use of the land.
20. Consequently, the use as a vape shop is development which requires an application for planning permission. Since express permission has not been granted the use cannot be lawful.
21. Although referred to by the parties, neither has explained under what provision they consider there to be a right of reversion. The right of reversion to a past lawful use pursuant to section 57(4) of the 1990 Act, only applies where an enforcement notice has been issued, and does not, in any event, provide for resumption of a past lawful use when there have been one or more intervening unlawful uses between that and the current unlawful use.
22. I therefore find, based on the evidence before me and as a matter of fact and degree, that the appellant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probability that the use as a vape shop is lawful.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of; *'Certificate of lawful use (existing) of premises as a vape shop from previous use as a beauty salon and display of advertisements with deemed consent'* 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).

Felicity Thompson

INSPECTOR