
Appeal Decision

Site visit made on 21 October 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 8 November 2016

Appeal Ref : APP/H5960/C/16/3147188

Land at 218 Franciscan Road, London, SW17 8HG

- 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 appeal is made by Mr Mohammed Munir against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The notice was issued on 12 February 2016.
- The breach of planning control as alleged in the notice is without planning permission and within the past ten (10) years, the change of use of the property from a doctor's surgery to two (2) self-contained flats ('the unauthorised use') as shown on the photographs attached to the notice.
- The requirements of the notice are (i) immediately and permanently cease the unauthorised use; (ii) permanently remove from the land any equipment and materials associated with the unauthorised use; (iii) carry out all remedial works necessary to return the property to its former condition for a use falling within Class D1 of the Order; (iv) repair any damage to the property, however caused, resulting from compliance with steps i-iii; and (v) collect and remove all rubbish and debris resulting from compliance with steps i-iv.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Preliminary Matters

1. Since the issue of the notice in February 2016 the Council has adopted the Wandsworth Development Management Policies Document (the DMPD). I must determine this appeal based on the development plan as at the date of my decision and this includes the DMPD.
2. The Appellant complains that the Council did not submit documents on time in this appeal and alleges that this illustrates lapse and improper conduct. This is not a ground of appeal and not a matter I have taken into account.

Ground (a) appeal and deemed application

Main Issues

3. The main issues in the determination of this appeal are the effect of the development on (i) land availability for community use and (ii) the living conditions of occupiers of the flats with particular regard to outlook, privacy and adequacy of outdoor amenity space.

Community land use

4. The development plan (which includes the London Plan, Core Strategy and the DMPD) mirrors the National Planning Policy Framework (the Framework) in emphasising the need for a balance of land uses. Policy DM1 of the DMPD provides that development that would lead to the loss of existing community facility floorspace will only be permitted where specific criteria are met. I have also taken into account as a material consideration the Supplementary Planning Document: Housing (the SPD).
5. The appeal site is a large two storey end of terrace Victorian property located in an area that is predominantly residential. Tooting High Street shopping district is nearby and there is easy access to public transport facilities. The property has been converted into 2 self-contained flats from a doctor's surgery. It has not been used as a doctor's surgery since October 2009. Planning permission for the change of use the subject of this notice was refused in 2014.
6. I saw from my site visit that the local area includes various health care and community facilities. I note the recent construction of the Trevelyan House Surgery with capacity for 36 000 patients and the survey evidence produced by the Appellant which shows a range of health care facilities, doctors' surgeries and clinics within 1km of the appeal site. It appears on the evidence before me that alternative health care facilities, including Trevelyan House Surgery, provide adequate replacement provision for the doctors' surgery on the appeal site.
7. But policy DM1 of the DMPD seeks to prevent the loss of community floorspace and is not restricted to medical use. Policy DM1 provides that permission leading to the loss of community facility floorspace will be permitted only where specified criteria are met. The first criterion is that there is no demonstrable current or future need for the space either in its current use or any alternative community use and evidence of marketing the site for community use has been provided to the Council's satisfaction for any alternative community use. I note the unsuccessful marketing of the property on two occasions between February 2010/November 2010 and January - August 2011 and the descriptions of both parties of the evidence produced in support of the application for permission refused in 2014. I am not persuaded on the evidence before me that the marketing has been specifically directed at community uses and that a lack of demand has been demonstrated. That is not to say that it could not be the case but that the evidence before me is not persuasive. The policy requires the Appellant to provide evidence of marketing the site for community use which has been unsuccessful but the evidence of marketing before me in this appeal does not do so. Therefore, whilst the evidence suggests that use as a doctors surgery is no longer in demand I am not persuaded on the evidence before me that there is no current or future need or demand for community facility floorspace. I am also not persuaded on the evidence before me that the premises are no longer suitable to continue in community use or that a community use would cause undue harm to the character and appearance of the area, as suggested by the Appellant.
8. I have taken into account the contribution of the site to housing stock in the area and the information provided about the planning history of nearby properties. I note the absence of objection from neighbours but this is not determinative of the absence of harm. On balance the small contribution to

overall housing provision does not outweigh my conclusions on the main issues. Taking account of all of the evidence before me I consider that insufficient information has been provided to demonstrate that there is no current or future demand for the property in an alternative community use or that the premises are unsuitable for an alternative community use.

9. In the particular circumstances of this case the loss of community facilities floorspace is not justified and undermines the Council's policy of seeking to retain appropriate community floorspace. It is contrary to the development plan, including policy DM1 of the DMPD, and allowing this development would undermine the Council's objective of seeking to retain appropriate community floorspace.

Living conditions

10. Although not cited as a reason for issue of the notice or a reason for refusal of planning permission for the development already carried out the Council in this appeal argues that the quality of accommodation is poor.
11. There is no dispute that the flats meet minimum floorspace standards and comply with policy DMH6 of the DMPD and I saw at my site visit that they provide adequate room for day to day living.
12. Policy DMS1 of the DMPD provides that planning permission will be granted for development which complies with specified criteria. One of these criteria is that the development does not harm the amenity of occupiers/users and nearby properties through factors including unsatisfactory outlook, privacy or sunlight/daylight.
13. I note that the ground floor flat windows face directly onto the pedestrian footway but the number of windows and the mix of obscure and clear glazing prevents undue loss of privacy for occupiers and there is nothing before me to suggest that levels of daylight are unacceptable. In any event I consider that this matter could, if appropriate, be adequately controlled by condition.
14. There is no outdoor amenity space for the flats. The nature and scale of amenity space should be appropriate to the location of the development and character of the area. I have taken into account the close proximity of the site to Tooting Bec Common and the overall character of the locality. I do not consider that the absence of outdoor amenity space causes undue harm to the living conditions of current or future occupiers and is not contrary to relevant development plan policies.
15. For the reasons given above I conclude that no undue harm is caused by the development to the living conditions of current or future occupiers with regard to outlook, privacy or adequacy of outdoor amenity space and it accords with relevant policies of the development plan, including policy DMS1 of the DMPD.

Conclusion

16. Whilst I conclude that the development does not cause undue harm to the living conditions of occupiers I also conclude that the development undermines the Council's objective of seeking to retain appropriate community floorspace and is contrary to relevant policies of the development plan. The identified harm outweighs my conclusion on living conditions and means that planning permission should not be granted on the deemed application.

17. I have taken into account the Planning Practice Guidance and I do not consider that any conditions could overcome the identified harm. The appeal is dismissed and the enforcement notice is upheld.

Formal Decision

18. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector