

Appeal Decision

Site visit made on 18 April 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 5 May 2017

Appeal Ref: APP/P5870/C/16/3164146

St Jude's Nursing Home, 29-31 Mayfield Road, Sutton SM2 5DU

- 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 Churchill Residential Care and Nursing Home Ltd against an enforcement notice issued by the Council of the London Borough of Sutton.
 - The enforcement notice, numbered EC15/0338, was issued on 27 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey detached building.
 - The requirements of the notice are to:
 - i) Demolish the building;
 - ii) Remove from the land all building material and rubble arising therefrom.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey detached building on land at St Jude's Nursing Home, 29-31 Mayfield Road, Sutton SM2 5DU referred to in the notice subject to the following condition:
 - 1) The building hereby approved shall not be used outside the hours of 08:00 to 20:00 on any day.

Preliminary matter

2. The Appellant withdrew the appeal on ground (f). The appeal proceeds on grounds (a) and (g) only.

Main issues

3. The main issues are:
 - the effect on the character and appearance of the residential area which is situated within the Highfields Area of Special Local Character; and
 - the effect on the living conditions of neighbouring residential occupiers.
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Reasons

Character and Appearance

4. The appeal site accommodates two formerly detached houses which have been considerably extended and linked to provide a nursing home. It lies within the locally designated Highfields Area of Special Local Character. In the main, the roads are lined with attractive detached houses of a generous size in good sized plots. The Council says the rear gardens are an important characteristic of the Area of Special Local Character. I find no reason to disagree. It seems to me it is the quality of the buildings and the verdant setting provided by the front and rear gardens together with the street trees that contribute to the quality of the area.
5. Although the appeal property has undergone significant extension, sufficient garden remains at the rear to provide an appropriate setting for the building. Having regard to the use to which the property is put, great care appears to have been taken in the laying out of the rear garden to provide a number of distinct areas for small groups to sit out and enjoy. Although optimal use of space has been made, I did not find the rear of the property to be unduly cramped or to be overly dominated by buildings.
6. To the northern side of the garden beside the boundary to No.27 is a paved area with a garden table and seating. It is relatively secluded through the use of trellis and planting and I could see that it has been used as a smoking area as there is a structure which has clearly been built for ash and cigarette ends. The shed, the subject of this appeal is tucked into the corner of this paved area. It is a very small structure only 2.05m wide and 1.55m deep with an additional roof overhang. It has a shallow pitched roof of some 2.3m to eaves and 2.6m to the ridge.
7. The structure is the sort of small garden building which would not appear out of keeping in a back garden location such as this. I can understand the Council's concern about the cumulative effect of additional buildings where there have already been large extensions. In this instance, however, owing to its very small size and its inconspicuous position within the garden, the building has no material effect on the attractiveness or spaciousness of the rear garden area. The existing landscaped setting provided for the host building has not noticeably or materially changed.
8. I conclude that the building does not harm the character or appearance of the residential area within which it is situated nor does it result in any damage to the Highfields Area of Special Local Character. There is no conflict with the policies of the Development Plan which seek to maintain and enhance the quality of the Borough's environment, with respect for local context and character (Core Planning Strategy policies PMP2 & BP12 and Site Development Policies DM1 & DM4(b)).

Living conditions of neighbours

9. Whilst the building is situated along the boundary with No.27, it is located towards the end of the rear garden of that adjoining property and the roof does not rise above the dividing boundary fence to any significant degree. Even without the holly tree in the garden of No.27 (which must currently screen the building), the amount of building which would be seen above the existing fence

at the end of the rear garden would not impact upon the outlook for occupiers of No.27. The building is not overbearing in the outlook from adjoining properties and neither does it materially add to the existing sense of enclosure along this boundary arising from the existing main building and dividing fence.

10. Two representations from neighbours have been received and it is clear from these that there is concern about noise and disturbance emanating from the premises generally. That, however, is not a matter before me. I can appreciate that outdoor seating areas located close to boundaries might result in disturbance for neighbours if not used with consideration but that could be the case even with conventional housing and inconsiderate neighbours. Moreover, here the lawful use as a nursing home relates to the entire property and that includes lawful use of the whole of the outdoor area for any incidental or ancillary purpose.
11. The shed has an extremely limited floorspace and it has been positioned so that its doors and the overhang to the roof are located on the side facing away from the boundary. Notwithstanding its size, on the whole, it is likely to assist to a degree by enabling people to smoke, to make phone calls, or by enabling a couple of people to sit and talk within the building which, with the opening facing away from neighbours, would be likely to be less intrusive than conversations taking place in the open. In this respect I conclude that the shed has resulted in no appreciable adverse effect on the pre-existing levels of noise and disturbance experienced by neighbouring residents.
12. On the second issue, I conclude that the erection of the shed has had no materially harmful effect on the pre-existing living conditions of neighbouring residential occupiers either by way of the effect on outlook or as a result of any increase in noise and disturbance. There is thus no conflict with policy DM2 of the Council's Site Development Policies DPD.

Conclusion

13. In view of my conclusion on the two main issues, and having regard to all matters raised in the written representations, the appeal on ground (a) succeeds. I have noted the Council's suggestion that a temporary permission only should be granted but, given my findings, there is no reason to do so. Nonetheless, the restriction to prevent evening and night time use when neighbouring residents might expect a greater degree of peace and quiet at the backs of their houses is appropriate and the suggested condition is imposed.
14. Since the appeal is allowed, permission granted and the enforcement notice quashed, there is no need to go on to consider the appeal on ground (g).

B M Campbell

Inspector