

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/17/3166577

Wallington Sports and Social Club, 34 Mollison Drive, Wallington SM6 9BY

- 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 Wallington Sports and Social Club against an enforcement notice issued by the Council of the London Borough of Sutton.
 - The enforcement notice, numbered EC16/0474, was issued on 6 December 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey building.
 - The requirements of the notice are to demolish the building and to remove from the land all building materials and rubble arising therefrom.
 - The period for compliance with the requirements is 4 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.
-

Decision

1. 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.

Application for costs

2. An application for costs was made by Wallington Sports and Social Club against the Council. This application is the subject of a separate decision.

Main Issue

3. The main issue in this case is the effect of the development on the Council's Open Space strategy for the Borough.

Reasons

4. Wallington Sports and Social Club occupies a large, rectangular and primarily open sports ground flanked by the rear gardens of houses along Redford Avenue, Link Lane and Mollison Drive on its western, northern and eastern sides with another sports ground to the south. The substantial main clubhouse or pavilion is located along the eastern boundary of the site with a bowling green, no longer used for that purpose, located immediately to its north.
 5. The appeal site is designated as Urban Green Space on the Proposals Map, part of the Development Plan for the area. As such it forms part of the Open Spaces Network of the Borough which policy DM16 of the Council's Site Development Policies DPD (also part of the Development Plan) seeks to protect and enhance. Policy DM16(c) says permission for small scale structures on
-

Urban Green Space will only be granted where the development is directly related and ancillary to any recreational use of the land and the predominant character of the open space is maintained.

6. The building, the subject of this appeal is small scale. It occupies a relatively inconspicuous position to the north of the main clubhouse or pavilion and is sandwiched between the bowling green and the eastern boundary with the gardens of houses in Mollison Drive.
7. The Appellant says the building is a like for like replacement of that which previously existed, but no contemporaneous evidence has been provided to show what was there. The aerial photographs provided by the Appellant are not clear enough to assist although they do suggest that there was a structure or structures in a similar position. Drawings provided by the Appellant show an identical replacement but, as the Council points out, the drawing of the previously existing building is dated some 2 years after it was demolished (most likely when the architect was commissioned to make a retrospective planning application). Moreover, the exact same plans and elevations appear to have been used on the Existing (drwg 105) and the As Built (drwg 115) drawings.
8. Nonetheless, even if it could be concluded that the new building is a like for like replacement, the previous structure was removed and so does not present a fall back. The true fall back is now no building at all. That being the case, the new building inevitably erodes the openness of the site since without the unauthorised building, the site it occupies would form part of the overall open area. Contrary to what the Appellant says, therefore, there is a loss of protected open space.
9. Policy DM16 does not exclude the provision of small scale structures on Urban Green Space but requires them to be directly related and ancillary to the recreational use of the land. Initially the Appellant said the building was for ancillary office use and I saw that it had indeed been fitted out to accommodate such a use with a large number of electrical and internet sockets arranged at regular intervals around the sides of the room. However, there was no office furniture or equipment and no active office use at the time of my visit. Rather, it was largely empty although there were a few chairs and some sparse storage of sports equipment. In his final comments, the Appellant says the building is now used as a changing room and kit room for football fixtures and photos of the interior as I saw it are provided.
10. The initial argument that "the outbuilding is required to ensure the running of the sports ground continues" and that the building is required for "additional office 'overflow' space which cannot be accommodated elsewhere" was not borne out by what I saw. The northern end of the main pavilion, shown on the Appellant's Plan sketch¹ as administrative offices appeared very little used. My distinct impression was of a generous area which had formerly been actively used but was now, in the main, unused with much equipment removed or left discarded (although I did note a couple of copying (or similar) machines and a CCTV monitor which was working). Nobody was working in that area at the time of my visit. In addition, the annotation on the Appellant's Plan sketch suggests that some of that office space had been used by Price Building Services, the Appellant's company. That is not part of the lawful use of the site

¹ Figure 7

and if it had displaced the ancillary Sports and Social Club offices that might explain why additional space was needed elsewhere.

11. There is no evidence to demonstrate that ancillary administrative offices required for the day to day running of the Sports and Social Club could not be accommodated within the existing building. Indeed all the available evidence leads to the opposite conclusion. In addition, there are changing rooms available within the main building and sufficient underused space, such as that within the former office area, to accommodate the minimal amount of storage that I saw in the new outbuilding.
12. The small scale building, albeit in a relatively inconspicuous position, erodes the predominant open character of the Urban Green Space by establishing built development where, without it, there would be none. With existing unused office space within the pavilion building, its intended use for offices has not been shown to be directly related and ancillary to the recreational use of the land and its current minimal storage use and as a changing room, albeit an ancillary use, could be accommodated elsewhere within the main building.
13. The Appellant makes the point that the alleged breach of planning control addresses the building and not any use of it and that is so. However, if the building was allowed to remain without any evident need for it for purposes connected to the Sports and Social Club use, it would be difficult to resist proposals for other additional small buildings dotted around the site. The cumulative effect would be to severely damage the open character of the site. The protection of the Urban Green Space would not be achieved by allowing further buildings for which there is no justification. To allow the development in such circumstances would conflict with objective of the Development Plan to protect and enhance the open space network of the Borough and with policy DCM16(c) in particular. On the main issue, I conclude that the development undermines the Council's Open Space strategy for the Borough.
14. For the reasons given the appeal on ground (a) fails and permission is not granted for the application deemed to have been made under section 177(5) of the 1990 Act.

Other matters

15. In his final comments the Appellant talks of the structure falling within "the 4 year exemption bracket". No appeal has been brought on ground (d) that it was too late to take enforcement action. The Council issued an enforcement notice within four years of the substantial completion of the building and it was not, therefore, too late to take action (s171B(1) of the Act). Whilst four years might now have passed since the building was completed and the enforcement notice has yet to come into effect, s171B(4) provides for the taking of further action within a period of four years from the service of the notice, so the time for taking action has still not passed. Any appeal brought on ground (d) would have failed.

B M Campbell

Inspector