The Planning Inspectorate

Appeal Decision

Site visit made on 12 May 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 14 June 2017

Appeal Ref: APP/T5150/C/16/3161386
Beverley House, 78 Beverley Drive, Edgware HA8 5NE

- 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 Dr Samir Al-Ali against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 12 September 2016 under ref. E/16/0015.
- The breach of planning control as alleged in the notice is set out as follows:
  "Without planning permission, the material change of use of the premises to a mixed use as residential and a clinic. ("the unauthorised change of use")".
- The requirements of the notice are set out as follows:
  "STEP 1 Cease the use of the premises as the clinic.
  STEP 2 Remove all items, equipment and facilities associated with the unauthorised change of use from the premises.
  STEP 3 Remove the additional entrance door located at the front of the side extension, and replace with brickwork and window, which match the house."
- The period for compliance with the requirements is three 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. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.

Summary of Decision: The appeal is allowed on ground (a), the enforcement notice is quashed after variation and planning permission is granted in the terms set out below in the Formal Decision.

The enforcement notice

1. I am concerned about STEP 2 of the enforcement notice. The "unauthorised change of use" is a mixed use consisting of a residential property and a clinic. Thus, on a plain reading of STEP 2 the appellant would be forced to remove all items, equipment and facilities from the premises even those that relate to the residential use. This cannot be correct and I have therefore varied STEP 2 to ensure that only items, equipment and facilities relating to the clinic element of the mixed use are removed from the premises. I am satisfied that such a variation would not give rise to any injustice to the parties.

Background and matters of clarification

2. The appeal property is a two-storey, semi-detached dwelling located opposite a sizeable and attractively landscaped roundabout on Beverley Drive. The surrounding area is predominantly residential in character with many similar properties.

3. The appellant first occupied the property in September 2003. A narrow single-storey side extension was built in 2010. It was around this time that the appellant began to operate a male circumcision clinic from part of the property.

4. The clinic's sole treatment room occupies the former front sitting room. There is a reception area (with a toilet) in the side extension. Patients enter via the second front door in the front of the side extension. The public are not able to access any areas of the building other than the treatment room and the reception area. Behind the reception area there are storage and office spaces. The rest of the property functions as a three-bedroom house with a large living room, kitchen and shower room remaining on the ground floor. There is an area of hardstanding at the front of Beverley House large enough to comfortably accommodate three vehicles.

5. Even though the clinic has been in operation since 2010 for male circumcision, the Council's enforcement case does not appear to have commenced until January 2016 when a complaint was lodged alleging the change of use of the premises to a plastic surgery clinic. The appellant did evidently attempt to make use of the clinic for cosmetic surgery around this time in addition to providing male circumcision services, as evidenced by the websites and the email attached at appendices 5 and 6 of the Council's statement. It would appear from the appellant's evidence that there has been little public interest in using the clinic for cosmetic procedures. He says that the two websites (one of which was not complete) relating to such procedures have been taken down and that he would accept a planning condition which ensures that the clinic is only used for male circumcision. Given these matters and the appellant's response to the planning contravention notice on 23 February 2016 that the premises had not by then actually been used as a cosmetic clinic, I shall treat the clinic as one being primarily involved with male circumcision.

6. Both parties tell me that the Unitary Development Plan (UDP) was replaced by the Development Management Policies (DMP) document in November 2016 after the enforcement notice was issued. The Council now relies on Policy DMP1 from the DMP, the development management general policy which gives a broad overview of issues that developments should address and seek to satisfactorily resolve. The appellant has also referred to this policy and to two other development plan policies; Policy 3.17 of the London Plan (LP) covering health and social care facilities and Policy CP 23 of the Council's Core Strategy (CS) covering the protection of existing and provision of new community and cultural facilities. The National Planning Policy Framework (NPPF) and the Planning Practice Guidance are material considerations.

The appeal on ground (a) and the deemed planning application

7. Reading the reasons for the issue of the notice, the main issues in deciding if planning permission should be granted are firstly whether the change of use serves a local need and secondly the effect of the change of use upon the character and general amenity of the area and neighbours' living conditions.

8. Whilst a male circumcision clinic may not be a primary health-care facility as such, the appellant explains how male circumcision is an important and widespread procedure across the Muslim and Jewish communities. Most of the time, Muslim families will demand a Muslim practitioner and Jewish families will

demand a Jewish practitioner. Circumcisions for medical reasons are also often referred to the clinic by GPs because of waiting times within the NHS. Three such GPs have provided letters in support at appendix 5 of the appellant's full statement of case, two of whom can be said to be local. There is a sizeable Muslim community in Brent and the appellant provides detailed evidence to show that residents would have only one other circumcision clinic in Brent to choose from if the appeal clinic was closed down. The appellant points out that this will lead to increased travel, an increase in the number of home circumcisions which are more dangerous than those carried out in the clinic and an increased pressure on local NHS services.

9. Some clients may travel to the clinic from further away on account of the appellant's good medical reputation, but that does not mean the clinic is not also catering for a significant demand from the local area. Whilst a number of vacant commercial properties may be available in the borough, patients (especially adults) prefer circumcision to be a discreet and confidential procedure. I agree with the appellant that this procedure does not lend itself readily to a high street or other commercial location.

10. The Council has produced a map at appendix 7 of its statement of case showing nine other clinics within a three-mile radius of the appeal site which are said to offer similar services. However, the map is rather vague. No names or addresses are provided. The exact services offered are also not made clear. I prefer the appellant's more rigorous and detailed examination of local demand and supply for male circumcision he has provided in appendix 5 of his own statement, noting that the Council has not specifically challenged it in their final comments.

11. I find on this issue that the clinic serves the cultural and medical needs of Brent's diverse community in an area of under provision of male circumcision facilities. There is no conflict with LP Policy 3.17, CS Policy CP 23, DMP Policy DMP1 and the NPPF in this regard.

12. Turning to the second main issue, whilst the appeal site lies within a predominantly residential area, this should not automatically rule out Use Class D1 uses or a mixed use of the type alleged in the notice as a matter of land use principle. Various non-residential uses may well be found in the Queensbury shopping parade about 500 m away, but I noted other non-residential uses well beyond that parade along or near to Beverley Drive, a road which appeared to me to have a greater width and see higher traffic levels than a number of the roads that lead off it. Those non-residential uses include the Queensbury Methodist Church, the Pegasus Clinic (registered osteopath) within the dwelling at 156 Beverley Drive, the North Stars Nursery at 73 North Way just off the roundabout opposite the appeal property and the Kings Edge Medical Centre at 132 Stag Lane on the junction with Beverley Drive.

13. The NPPF supports flexible working practices such as the integration of residential and commercial uses within the same unit. Whether a clinic is classed as a small-scale operation or as a large-scale one will depend very much upon the number of treatment rooms, patients and staff members. The provision of a separate entrance, a toilet for the use of patients, a small waiting area and ancillary storage or office space is indicative of a professionally-run practice rather than necessarily a large-scale one.

14. There is only one treatment room. Even if the ancillary storage and office space is allocated to the clinic use rather than the residential use, the clinic occupies under half the total ground floor area of the property. In terms of overall floor space, the residential use remains dominant and I read that the appellant lives at the property with his family.

15. The average number of visitors/clients is 0-10 each day, 5-10 each week and 10-40 each month, as set out in the appellant's response to the planning contravention notice. The Council also reproduces these figures in its statement of case. All treatments are organised through prearranged appointments only. The clinic's management plan stipulates that a maximum of two adults are permitted with each patient in the clinic. The numbers given are consistent with the appellant's contention that the clinic does not attract many appointments with most days not having any appointments. With six opening days a week, the figures equate to less than two patients a day on average. Clinical waste collections only occur once a month.

16. As set out in the response to the planning contravention notice, there are six members of staff all of whom work in part-time roles. I assume that the appellant is one of the two part-time doctors. There is no evidence that the staff are all present at the same time on a daily basis. Given the limited number of appointments and the single treatment room, this would appear to be unlikely. It is not clear how the staff (other than the appellant) travel to the premises. If the hardstanding at the front is kept clear for clients who arrive by car, as seems to be the case, then any member of staff arriving by car would have on-street parking opportunities on the wide, straight part of Beverley Drive to the south of the appeal property and to the west of the roundabout. A number of free spaces were available there at the mid-morning time of my site inspection.

17. On balance, I find that the clinic can be described as a small-scale operation. Another indicator of this would be the fact that the clinic did not apparently come to the attention of the Council between 2010 and January 2016. That is presumably when the appellant attempted to diversify into plastic surgery and when an advertising board naming the "Beverley Clinic" was attached to the front wall of the building.

18. At appendix 3 of the appellant's statement, there are 11 letters from various local residents who state that in their opinion the clinic has not had any negative effect on the neighbourhood or on their properties. They are all happy for the clinic to remain open. This appendix includes a letter from the occupiers of no. 80, the adjoining property in the semi-detached pair and from a former occupier of no. 76, the property on the other side, who was resident there from 2007 to 2013. These local residents would have had direct experience of the appeal site over a number of years in terms of any changes in its appearance or activity levels. Their contribution cannot be ignored even though the letters were not submitted directly to the Planning Inspectorate in response to the appeal. Moreover, a number of them would not have received the Council's appeal notification letter of 1 February 2017.

19. I have taken into account the representations made by the current occupier of no. 76. The Council has not pointed to any infringement of its local parking standards. There appeared to me to be ample off-street parking space in the

front garden and reasonable on-street parking opportunities on the straight part of Beverley Drive, without the need to park on the frontage to the roundabout between nos 72 and 80 or to block any driveways. Part of the appellant's management plan involves resolving any parking issues that may arise through the use of CCTV linked to a screen next to the receptionist. The clinic's opening times do not include evenings, early mornings or Sundays. This could be controlled by a planning condition, as suggested by the appellant, so as to prevent activity during unsocial hours. The CCTV also enables the receptionist to see if people are congregating outside the clinic which could potentially result in noise and disturbance being experienced by the occupiers of the neighbouring properties, particularly no. 76. Any overlooking towards the front windows of no. 76 is unlikely to be sustained for any length of time or result in any security issues. The installation of CCTV may well have made the front gardens of the neighbouring properties more secure.

20. However, more generally this is a relatively peaceful residential area and I must also consider the future occupants of the neighbouring houses. It is inevitable that the mixed use at the premises is likely to generate more traffic and pedestrian movements than would be the case with a sole residential use. The increase will not be so significant as to have an adverse impact on the movement network as such but the increased comings and goings to the premises have the potential to cause noise and disturbance even if good management practices are in place. It is finely balanced as to whether the mixed use results in the sort of noise and disturbance that would be unacceptable in this particular residential area. To that extent, this points to a grant of temporary planning permission so that the Council can properly review the use over a period of time. I note that the appellant himself has suggested such an outcome. To some degree, it would also cover the Council's point about a potential increase in business over time although there is only one treatment room and the clinic has already been established for several years.

21. Turning to more physical aspects, I do not accept that the clinic element of the mixed use is especially noticeable to passers-by. The separate entrance, window signage, other signage and the yellow bin for clinical waste are rather subtle external manifestations of a commercial use. I saw that the front hardstanding remains enclosed by boundary features and there is no large-scale signage. I could not identify any adverse impact on the residential character of the area in this respect.

22. I have considered the planning history of the osteopathic clinic at 156 Beverley Drive. I viewed the outside of this property on my site inspection and saw an open forecourt and a large sign between the ground and first floor windows. Looked at in the round, this mixed use clearly shares some similarities with the subject mixed use but there are some differences too. It does not provide a particularly strong case in favour or against the appeal development which I have assessed on its merits.

23. Subject to suitable controls, I find on this issue that the change of use would not have an unacceptably adverse effect upon the character and general amenity of the area or upon neighbours' living conditions. To avoid repetition, the controls are summarized in paragraph 25 concerning planning conditions. I find no conflict with DMP Policy DMP1 or the NPPF in this regard.

24. Each case must be judged on its individual merits. In this case I have not been able to identify any significant adverse planning considerations and as explained elsewhere in this decision there is no failure to comply with relevant development plan policies. Therefore, there is no problem with precedent arising from this decision.

25. The Council has not suggested any planning conditions in the event of the appeal on ground (a) succeeding. In addition to a condition restricting the clinic to male circumcision only, the appellant suggests six other conditions at section 6.1 of his statement. Given the mixed residential/clinic use of the property, a planning permission personal to the appellant would be appropriate. The Council should be able to review the position in the light of a temporary period of controlled use and I favour a two-year period, not a three-year period which would be too long if serious problems were to arise. Ensuring that the clinic operates with one patient at a time, on an appointment-only basis and at certain fixed opening hours would help to protect neighbours' living conditions. For the same reason, it should not come as a surprise to the parties that I have also included the appellant's management plan and staff meeting guidelines and referred to the use of a single treatment room.

26. I have not attached a condition to ban advertising. Advertisements are dealt with under separate legislation. I would not expect the appellant to require or to utilize large advertisements at the property referring to a male circumcision clinic given the need for discretion.

27. Taking into account all other matters raised, I conclude that the appeal on ground (a) and the deemed planning application should succeed. Conditional planning permission has been granted. As the notice will be quashed, grounds (f) and (g) no longer fall to be formally considered.

Formal Decision

28. It is directed that the enforcement notice be varied by deleting the text within STEP 2 in SCHEDULE 4 in its entirety and substituting therefor the following text: "Remove from the premises all the items, equipment and facilities that are associated with the use of the premises as a clinic."

29. Subject to the above variation, 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 Town and Country Planning Act 1990 as amended for the development already carried out, namely the material change of use of the premises to a mixed use as residential and a clinic at Beverley House, 78 Beverley Drive, Edgware HA8 5NE referred to in the notice, subject to the following five conditions:

    1) The mixed use hereby permitted shall be for a limited period being the period of two years from the date of this decision. The clinic element of the mixed use hereby permitted shall be discontinued after that period and all the materials and equipment brought on to the premises in connection with that clinic shall be removed.

    2) This permission shall enure only for the benefit of Dr Samir Al-Ali whilst he is the owner and occupier of the residential property and clinic.

3) The clinic element of the mixed use hereby permitted shall be used for male circumcision only and for no other purpose, including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

4) The clinic element of the mixed use hereby permitted shall be: used for the treatment of only one patient at a time; operated on an appointment-only system; based on one treatment room only as shown on the ground floor plan submitted at appendix 1 of the appellant's full statement of case; and organised in accordance with the management plan and staff meeting guidelines produced at appendix 2 of the appellant's full statement of case.

5) The clinic element of the mixed use hereby permitted shall not be open to patients outside the following times: 0900 to 1700 hours on Mondays to Fridays and 1000 to 1500 hours on Saturdays. The clinic shall not be open to patients on Sundays, Bank Holidays or Public Holidays.

Andrew Dale

INSPECTOR