The Planning Inspectorate

Appeal Decision

Site visit made on 18 July 2017

by Simon N Hand MA

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

Decision date: 25 July 2017

Appeal Ref: APP/D1780/C/17/3170656
Land at 159-163 Shirley Road, Southampton, SO15 3FG

- 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 Joe Robinson against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 7 February 2017.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the Land from Dance Studio (Use Class D2) to Car Sales (Sui-Generis).
- The requirements of the notice are i) Cease the use of the land for storage, display and sales of vehicles; ii) Remove all vehicles in association with storage, display and vehicle sales; iii) Remove all signage in association with vehicle sales; iv) Remove all hardstanding from the side to the rear of the property (the area hatched black on the plan attached).
- The period for compliance with the requirements is 28 days.
- 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 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 Act as amended for the development already carried out, namely the use of the land and buildings at 159-163 Shirley Road, Southampton, SO15 3FG, as shown on the plan attached to the notice, for the sui generis use of car sales subject to the following condition:

    1) The development hereby permitted shall be carried out in accordance with the approved layout plan attached to this decision and the approved layout shall be retained thereafter.

The Appeal on Ground (a)

2. The site lies in a busy commercial area of Southampton and is now used for the sale of cars. The building was apparently built in the 1950s by Ron Povey as a dance hall, and seems from the comments from local residents to have been much loved. However, it was sold at auction recently and purchased by the current owners who operate a car sales show room from the site. An appeal to regularise the conversion to car sales was refused in November 2016.

Reasons

3. The previous Inspector found the proposal to be acceptable in all areas except that it was contrary to policy CS3 of the Core Strategy. This policy says that

proposals for the loss of a "*Community facility will not be supported if it is viable for the commercial, community or public sector to operate it and if there is no similar or replacement facility in the same neighbourhood*".

4. The appellant argues the site is a private and not a community facility and so policy CS3 of the Core Strategy is not relevant. He relies on the local plan Inspector's comments on CS3, where the Inspector comments that such a policy is difficult, in practice, to operate especially in relation to commercially run facilities. However, the Inspector only recommended pubs and cafes should be deleted from the list and otherwise found the policy to be sound. Most of the community facilities referred to in the policy could well be privately run and there would be little point in a policy that only protected Council owned buildings.

5. This is in accord with the previous appeal Inspector's decision where he found CS3 to be relevant and the loss of the dance hall to be contrary to that policy because there was no evidence as to lack of demand for alternative and viable uses and no information as to what alternative premises, if any, were available.

6. The Council themselves appear to operate the policy with some flexibility as shown in the Freemantle social club decision where the number of alternative premises offering similar services seems to have been a deciding factor in applying policy CS3, there did not seem to have been a great deal of information on viability provided in that case. However I also note on that case the Council decided that paragraph 70 of the NPPF was not relevant as the social club was a private not community use. This statement is clearly wrong as paragraph 70 of the NPPF lists examples of "community facilities" including shops, sports venues, pubs and churches, most of which would be privately owned.

7. There does, however, seem to be a tension between paragraph 70 and CS3 as the former urges Council's to "*guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs*", but no mention is made of "valued facilities" in CS3 and there is no mention of a viability test in paragraph 70. I assume this is why CS3 is being applied flexibly by the Council. In this case I consider it reasonable to assume the dance hall was a valued facility and its sale at auction suggests the dance school may not have been commercially viable any longer, but I do not consider this test to be consistent with the NPPF and so the key issue is whether the loss of the dance hall would "*reduce the community's ability to meet its day-to-day needs*". In other words whether there are alternative sites available for a school of dance or similar to operate from.

8. I have been given no evidence as to the state of dance facilities in the area. In my experience schools offering lessons in dance for children, but also for tap, salsa, zumba, ballroom and so on are popular but do not necessarily require purpose built premises. The appellant has provided evidence of 7 facilities within 10 minutes' walk of the site and details of three of them which show they have halls for hire of various sizes. This evidence is unchallenged and suggests that there are alternative facilities available that could serve the local community so that the loss of the dancehall while it may be unfortunate it is not contrary to policy CS3 nor the NPPF. Therefore subject to the conditions referred to by the previous Inspector concerning site layout, car parking and

turning space, the use would be acceptable. For the avoidance of doubt I shall attach the site layout plan to this decision. I shall quash the notice and grant planning permission accordingly.

Simon Hand

Inspector

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 25 July 2017

by Simon Hand MA

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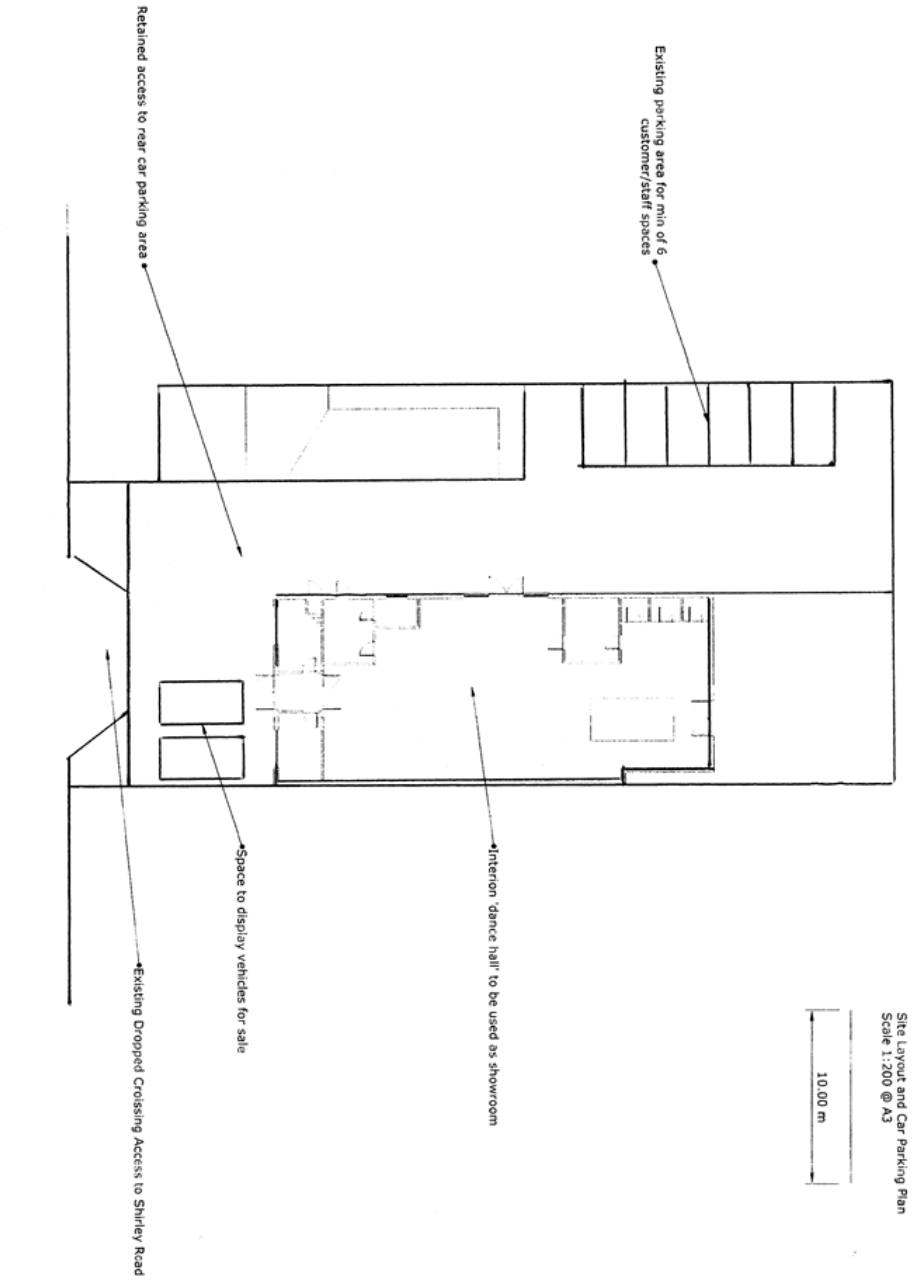
Reference: APP/D1780/C/17/3170656

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