
Appeal Decision

Site visit made on 31 October 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 29 November 2017

Appeal Ref: APP/L5810/W/17/3180450
157A Kew Road, Richmond, Surrey TW9 2PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr Paul Danford against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 15/4433/FUL, dated 16 October 2016, was refused by notice dated 27 January 2017.
 - The development proposed is a change of use from D1 chiropractor to C3 residential.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council has referred to the emerging policies contained within the London Borough of Richmond upon Thames Local Plan Publication Version which was submitted for examination in May 2017. In accordance with paragraph 216 of the Framework, account can be taken of emerging policies. However, the weight to be attached to such policies will depend on a range of factors namely: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
3. In this case, the Council has adopted the Social and Community Infrastructure Policy LP 28 and Affordable Housing Policy LP 36 of the Pre-Publication Local Plan for determining planning applications and for development management purposes. Therefore, these particular policies have some weight in determining the current appeal.

Main Issues

4. The main issues are:
 - Whether the proposal adequately demonstrates that there would be no loss of social infrastructure.
 - Whether appropriate provision is made for affordable housing.

Reasons

Social Infrastructure

5. The appeal site comprises an existing Chiropractic Clinic located in the extended basement of the semi-detached properties comprising Nos 155 and 157 Kew Road with residential uses above. The proposal would involve the change of use of the premises to a 3 bedroom residential flat within the existing clinic without any external changes to the property.
6. The Council's approach to the loss of community facilities/social infrastructure is set out in Policy CP 16 of the Local Development Framework Core Strategy (2009) (Core Strategy) and Policy DM SI 2 of the Local Development Framework Development Management Plan (2011) (DMP). Both these policies state that the loss of social infrastructure will be resisted unless it can be shown that the facilities are no longer needed or that the service could be adequately re-provided in a different way or elsewhere in a convenient alternative location.
7. In considering applications involving the loss of social infrastructure Policy DM SI 2 requires the submission of evidence to demonstrate that (1) the existing facilities are no longer needed or do not meet the needs of users and cannot be adapted in any way; or (2) that the existing facilities are being adequately re-provided in a different way or elsewhere in a convenient alternative location; or that there are sufficient suitable alternative facilities in the locality; and (3) the potential of re-using or redeveloping the existing site for the same or an alternative social infrastructure use has been fully considered. Emerging Policy LP 28 of the Local Plan Publication Version (2016) (LPPV) continues to support this approach.
8. The appellant does not suggest that the existing facilities are no longer needed or do not meet the needs of users and indicates that there is a continuing need to provide a service for existing patients. However, it is argued that the relocation/re-provision of the Chiropractic Clinic has been justified under point 2 of Policy DM SI 2 in that the facilities are proposed to be provided elsewhere in a convenient alternative location and, as such, there is no need to prove that the existing facilities are no longer needed as required by point 1 of the policy.
9. I have no reasons to doubt the appellant's desire to continue operating the practice from premises within the vicinity. The submitted statement indicates that alternative properties from which to operate have been sought through 'Martin Campbell Commercial Agents' and are being considered. However, I have no conclusive evidence of the extent to which any suitable alternative properties either exist or that negotiations have progressed to any advanced stage.
10. I accept that it cannot be expected that the appellant signs any tenancy agreement to secure the delivery of new premises without securing planning permission for an alternative use of the existing premises. However, in the absence of any evidence of an option agreement, planning obligation or other mechanism that provides more demonstrable proof of progress to secure alternative premises, there is insufficient certainty in planning terms that the delivery of alternative premises can be secured or that there is an enforceable mechanism to ensure that the community facility/social infrastructure would not be lost.

11. Although evidence has been provided of attempts to offer the sale of the business and the leasehold of the property to other chiropractic practices such evidence is limited to the period from August 2004 to April 2012 with no recent evidence of any further marketing being provided. Moreover, there is no evidence to demonstrate that the premises has been marketed to other uses within the D1 Use Class such as other health clinics, day centres or nurseries, for example, which would also constitute community facilities/social infrastructure within the context of the policies contained in the development plan.
12. Whilst I accept that the basement nature of the premises may restrict the extent to which any alternative uses may come forward, the fact remains that point 3 of Policy DM SI 2 requires that adequate evidence is provided to demonstrate the potential of re-using or redeveloping the existing site for the same or an alternative social infrastructure use has been fully considered.
13. I recognise the appellant's concerns that more overt marketing of the premises could have an impact on the established client base. However, the requirements of the adopted and emerging planning policy are quite clear. In this case, I do not consider that the limited historical marketing evidence of potential chiropractic practices only that has been provided constitutes an adequate demonstration that the potential of re-using or redeveloping the existing site for the same or an alternative social infrastructure use has been fully considered.
14. Taking the above factors into account, I do not consider that the proposal adequately demonstrates that there would be no loss of social infrastructure. Consequently, it would conflict with Policy CP 16 of the Core Strategy, Policy DM SI 2 of the DMP and emerging Policy LP 28 of the LPPV.

Affordable Housing

15. Policy CP15 of the Core Strategy seeks the provision of a range of housing to meet the needs of all types of households. There is an expectation that a contribution towards affordable housing will be made on all new housing sites and Policy DM HO6 of the DMP provides that where it is not proposed to provide affordable housing on site a financial contribution will be secured via a legal agreement. This approach is also detailed in the Council's adopted Supplementary Planning Document Affordable Housing (2014) (SPD).
16. Policy LP 36 of the LPPV seeks affordable housing contributions from all sites, based on the Council's local circumstances. This approach is in line with the National Planning Policy Framework which requires Councils to meet the full, objectively assessed need for market and affordable housing. This can include requiring financial contributions if they can be robustly justified.
17. In determining this appeal I have had regard to the Court of Appeal judgement in overturning the High Court Decision in the case of *The Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council* which had effectively quashed the Written Ministerial Statement (WMS) of 28 November 2014 regarding contributions for affordable housing. The WMS states that 'for sites of ten units or less...affordable housing and tariff style contributions should not be sought.' This is reflected in the Government's Planning Practice Guidance.

18. The Council has also drawn my attention to some appeal cases in the Borough where it has been concluded by my colleague Inspectors that there are particular circumstances to indicate that the development plan should outweigh the WMS. I have had regard to the WMS as a material consideration and I attach great weight to it.
19. However, in this particular case, based on the evidence before me I find that the WMS does not outweigh the significant and substantial weight which I attach to the Council's strong and compelling local evidence of affordable housing need. Therefore I find that the proposal should contribute to the Borough's affordable housing need.
20. The appellant has confirmed a willingness to make a contribution towards the provision of affordable housing were I to find that such a contribution was necessary. However, I have no evidence of a planning obligation that would secure such a financial contribution.
21. For the above reasons, I conclude that the proposal would not make appropriate provision for affordable housing and therefore would conflict with Policy CP15 of the CS, Policy DM HO6 of the DMP, and emerging Policy LP 36 of the LPPV and the requirements of the SPD.

Other matters

22. I have taken into account the concerns of the freeholder of No 157 regarding the restrictions in the lease that state that the appeal premises can only be used as a chiropractic surgery unless the Lessor agrees to any changes. However, I can see no reason why planning permission would negate or supersede any private legal rights relating to property law and accordingly this matter has not had any material bearing on my assessment of the planning issues in his appeal.

Conclusion

23. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR