



Appeal Decision

Site visit made on 5 April 2019

by Jan Hebblethwaite MA Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 9th July 2019

Appeal Ref: APP/T2215/W/18/3218969

46 Lowfield Street, Dartford, DA1 1HJ

- 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 Mr Segun Kingsley, of the Redeemed Christian Church of God against the decision of Dartford Borough Council.
 - The application ref DA/17/01929/COU, dated 30 November 2017, was refused by notice dated 8 November 2018.
 - The development proposed is the change of use of first floor from night club to Use Class D1 (place of worship with ancillary office and ancillary community centre use) for a temporary period of 5 years and demolition of existing steel framed structure to provide additional parking.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of first floor from night club to Use Class D1 (place of worship with ancillary office and ancillary community centre use) for a temporary period ending on 9 July 2023 and demolition of existing steel framed structure to provide additional parking at 46 Lowfield Street, Dartford DA1 1HJ in accordance with the terms of the application, Ref DA/17/01929/COU, dated 30 November 2017, subject to the conditions listed in the Schedule at the end of this decision letter.

Procedural Matters

2. The appeal documents contain a number of submissions about the potential for abandonment of the previous use of the premises as a night club. The legal concept of abandonment in town and country planning applies where a use has not been carried out for many years. The appeal site is in a very poor state and clearly no nightclub use (or any other use whether related to a night club use or not) has been carried out for some years, possibly since 2012, when the last business rates tax liability arose. That period would generally be regarded as insufficient to qualify as legal abandonment. However, use as a place of worship would require planning permission whether the previous use had been abandoned or not and I do not propose to take the concept of abandonment any further. However, the appellant also raises the issue of the night club as a fall-back use to be compared with the appeal proposal and I deal with that issue below.

3. The original application requested permission for the use for a temporary period of three years. During the course of the application, the parties agreed to amend the time period to five years.
4. On my site visit, I could not view the area of the first floor which is not currently in use, but which forms part of the application. From the state of the staircase, I have no reason to believe that the unused part of the first floor is in any better state than the ground floor.

Main Issues

5. The main issues in this appeal are:
 - (1) The impact of the partial redevelopment of the building on the regeneration plans for this part of the town centre and the building as a whole;
 - (2) The effect on the living conditions of the occupiers of dwellings permitted to be constructed at the rear and to the side of the appeal site;
 - (3) The effect of the continued use of the existing access into the appeal site on traffic and pedestrian safety.

Reasons

6. The appeal site consists of the whole of the first floor of the building. The area currently in use as a place of worship was accessed on my site visit from the street, under scaffolding, via a roller shutter door and up a flight of stairs. The stairs and the existing area are well decorated and comfortable. However, the rest of the building is in a very poor state and would require considerable work to refurbish it. The steel framed structure referred to in the application houses the equipment and storage facility for a food bank. I also noted on my site visit that the land to the rear of the appeal site and for some distance along Lowfield Street was the subject of works of demolition and site clearance. I noted a housing developer's hoardings for a considerable distance along Lowfield Street.
7. I note that the current church use is unauthorised, as a previous temporary permission expired on 11 November 2017.

Partial Redevelopment

8. Lowfield Street has several buildings which appear to be at the end of their life, and others have been demolished. The area is identified by the Council in its DDPP¹ Policy DP16 and DCS² Policy CS2 as one which is in urgent need of regeneration. Policy CS1 identifies the Lowfield Street area as a priority area for development and as an opportunity area. The Council's aim is to revitalise the town centre as a shopping leisure and service centre for surrounding communities. Policy CS12 sets out the criteria for planning applications in the town centre and places an emphasis on the need for scheme to attract shoppers from the immediate catchment. The DTCF³ also identifies land east of Lowfield Street including the appeal site as an opportunity area. It states that development will be largely residential, with

¹ Dartford Development Plan Policies July 2017

² Dartford Core Strategy September 2011

³ Dartford Town Centre Framework Supplementary Planning Document July 2018

town centre uses at the northern end. One of the key objectives of the DTFC is to improve the perception of Dartford Town Centre through the enhancement of the built environment ... to create a place of quality.

9. The application is for a temporary period and any opportunity area regeneration scheme is likely to take a number of years to come to fruition, in accordance with the DTCF, which was adopted in July 2018. I note that although the Council promoted a compulsory purchase order in 2013, this was abandoned when the prospective developer decided to proceed no further with development in the Town Centre. I also note that the appellant has not commenced the preparation of plans for the redevelopment of the whole building and adjoining land, nor have any pre-application discussions taken place with the local planning authority. However, the appeal proposal is for a temporary change of use; the building itself is likely to remain as it currently appears in the short term, whether or not the appeal is allowed. On that basis the regeneration plans of the Council would not be undermined by a temporary use of the first floor of the building. The Council has already granted a one-year temporary permission to enable the appellant's predecessor to find alternative accommodation, and a second temporary permission would not normally be acceptable. However, the intended regeneration plans mean that the area is likely to be in a state of flux during the period proposed for the temporary permission, at least. Therefore, I do not consider that a temporary change of use would undermine the Council's regeneration plans and the proposal is not contrary to the regeneration policies of the DCS or the DDPP.
10. The original application was made some eighteen months ago and during discussions the parties agreed to vary the application to request a temporary permission for five years.
11. The Council has granted temporary permission for a change of use for residential purposes of the first floor of other buildings in the applicant's ownership also fronting Lowfield Street. That permission authorised the residential use for a period of five years, expiring on 9 July 2023. The Council must have considered that the temporary use of those buildings would not cause delay to or undermine the regeneration proposals for the area in the same way as set out in the Council's statement in this appeal. However, the statement does not explain the difference between the two applications which mean that a temporary first-floor residential use would not undermine the regeneration policies but would prohibit a first-floor community use.
12. I also note from the appellant's statement that there are other properties in the regeneration area which are yet to be acquired by the Council or by a prospective developer.
13. The current use has been the subject of a previous temporary permission which was granted on the basis that it would allow the Church time to make other arrangements. The PPG⁴ at paragraph 014 in the section on Use of Conditions deals with circumstances where temporary permissions may be appropriate. These include the temporary use of a vacant building pending longer term regeneration plans coming forward (a "meanwhile use"). I

⁴ Planning Practice Guidance 2019

conclude that the appeal site falls within the circumstances envisaged by the PPG and that a temporary permission should be granted.

14. For these reasons, I conclude that the appeal scheme, subject to the conditions set out in the Schedule, would not undermine or prejudice the regeneration of the town centre, and would not be incompatible with the regeneration potential of the appeal site. Therefore, there is no conflict with Policies CS1, CS2, CS12 or CS 21.
15. However, the Council's policies for the regeneration of this part of the town centre should not be frustrated by a series of temporary permissions and for that reason, I am imposing a condition which requires the use of the appeal site to cease at the same time as the expiry of the temporary permission on the other land in the appellants ownership, namely 9 July 2023. The appellant confirms at paragraph 3.11 of the written grounds of appeal that this would be acceptable. Such a period would be sufficient for the appellant and the Council to enter negotiations which would allow for the site to be part of the regeneration plans going forward.

Neighbours' living conditions

16. The proposal is to convert the in-use part of the first floor as a community centre and related offices and to move the church hall to the unused part together with other offices. The church hall is roughly the same size as the existing facility, but I note that this plan was not submitted as part of the original application. It is dated 17 September 2018 although this precedes the date of the decision by the Council. The appellant refers to the "agent of change" provisions of the Framework⁵ (Paragraph 182). This paragraph seeks to protect existing facilities from complaints from new sensitive developments which are built close by.
17. As referred to above, the Council has recently granted permission a temporary residential change of use permission for other buildings on the appellants land. Both parties' statements refer to the housing development around the appeal site which has been commenced to the extent that site clearance works were well under way at the time of my site visit.
18. The existing use of the appeal site is unauthorised now that the previous temporary permission has expired. The legal position is that the last authorised use of the premises was a night club, with permitted operating hours well in excess of those proposed for the church. Despite that, planning permission was granted for residential development on adjoining land and on the appellants land, and the relationship with the appeal building must have been regarded as acceptable. For that reason, I conclude that there is no conflict with Policy DP5 which seeks to prevent unacceptable material impacts on neighbouring uses.
19. The existing building is in a poor state and is highly unlikely to have any existing noise attenuation measures. However, in view of the condition of the appeal site, the appellant will need to undertake substantial refurbishment work and it would not be unreasonable to require some attenuation. For that reason, I am imposing appropriate conditions to protect the occupiers of any new housing close to the appeal site.

⁵ National Planning Policy Framework July 2018

20. I understand the Council's concerns that the appellant would need to invest funds in refurbishing the property, including any noise attenuation measures which are required by condition. In view of the state of the building, it would seem that the funds required would be considerable, and the Council has concerns that the grant of a temporary permission might encourage the appellant to spend more funds might seem appropriate for a relatively short-term use, or that because of the investment, the appellant might be encouraged to believe that the use would be allowed to continue after the expiry of the period of the permission. However, the cost of refurbishment and whether such expenditure is economically viable is a matter for the appellant. Equally, I am imposing the standard condition which requires the cessation of the use at the end of the temporary period and it would be clear to the appellant that the use must cease on the specified date, unless other arrangements have been agreed with the Council.

Car Park and Access

21. The application shows that the car park to the side of the appeal building would be provided for use by the church. The temporary residential permission referred to above would have six spaces in the rear yard in addition to the spaces for the church.
22. The appeal scheme is for a more extensive floor area than is currently occupied. The appellant suggests that the congregation will increase to about 150 people after five years, from the number of 100 at the time of the appellant's grounds of appeal in December 2018. The appellant states that the church services and meetings are generally held on Sunday mornings (9.30 am – 12.00 noon); one Saturday per month (7am to 10am and on Wednesday evenings (7pm– 9pm). The offices are to accommodate various community services so are likely to be open during normal office hours. The parking for the church services is therefore likely to be tidal, that is arrival and departure based on the times of the services, whereas the parking for those staffing the office uses will be tidal, based on the opening hours of the offices. Those times would generally be different to those of the church services. Any parking required by visitors to the office uses would be likely to be spread throughout the working day.
23. The proposed development would include 30 car parking spaces and the appellant has calculated (on the basis of the SPD⁶) that 12 spaces would be required for the church use and the community services use on the first floor. This result is shown in the table at paragraph 6.28 of the appellants statement and is obtained by taking the floorspace of the church hall (94 ²m) at 1 space per 10 ²m plus 106 ²m for ancillary uses and meeting rooms etc, at 1 space per 60 ²m.
24. The appellant has asked me to compare the car parking and access arrangements for the proposed use to the "fall-back" use as a night club. Whilst I have agreed that the night club use has not been legally abandoned, I need to consider whether there is any likelihood that a nightclub use would restart. The building itself is in a very poor state and the ground floor has been stripped back to the basic walls and ceiling structures. I conclude that there is almost no prospect of the nightclub use being resumed. On that basis, I do not find that any comparison with the level of use of the car park

⁶ Parking Standards Supplementary Parking Document 26 July 2012

and pattern of trips generated by the nightclub use is helpful in determining this appeal.

25. The Council calculates that 63 spaces would be required, based on the total floorspace of the first floor of the building, at 1 space per 10²m.
26. I do not believe that either calculation is correct. The appellants statement at paragraph 6.22 sets out the floorspace of the different types of use in the appeal scheme. The table agrees with the Council's calculation that the total first floor area is 630²m. The table breaks down the space into the church hall and ancillary church facilities at 277²m and other community uses at 210²m. The remaining 143²m is presumably circulation space. However, the SPD provides that the figures are gross and would therefore include the circulation space. I agree with the appellant that a proportion of the floorspace should be assessed at the less onerous rate of 1 space per 60²m, but on the appellant's table of floorspace uses, 31 spaces are required. I conclude that there is a shortfall of one space under the standards set out in the SPD. Although the SPD is not a development plan document, it is the document which has been adopted by the local planning authority against which all development should be tested, and I afford it significant weight. There is public car parking in Market Street to the north of the appeal site which would mitigate against the shortfall of one space.
27. Whilst the Highway Authority's response on the application confirms that there have been no accident records in the vicinity of the site in the last three years, the Council's view is that this is a result of a low level of usage of the site and lack of passing pedestrians due to the run down state of this part of Lowfield Street.
28. The access to the car park is narrow with limited visibility of the pavement for drivers exiting the site and for pedestrians crossing the access. The access is also opposite the junction of Lowfield Street and Instone Road which would be busy at peak times. I note that the Council has phased key junction improvements for the Lowfield Street/Instone Road junction immediately outside the appeal building. These works are in phase 2 of the improvements and (at the time of the Council's statement, were anticipated to start in early 2020. However, I note that the highways authority made no comment on these works nor on the implications for the use of the access either before, during or after the future highway works are completed.
29. The Council's Project Manager advises that whilst the existing access is to be accommodated in the junction improvement scheme, any change to the access could not be incorporated without considerable additional expense. However, I have been no details of the improvements, how long they will take to implement, and the implications of the use of the access on the finished junction. I do understand that the Council had hoped to deal with the highway improvements in Lowfield Street at the same time as the regeneration plans were proceeding. The history of the Lowfield Street regeneration shows that this has not been possible.
30. I note from the development plan and the Framework that local planning authorities should seek to achieve improvements in pedestrian and cyclists' safety. There is no physical change proposed to the access. Any change is to the number of vehicles which might be entering and leaving the site via the

access at any one time and I have been given no details of the extent to which a maximum number of 30 vehicles entering or leaving the site would have on the functioning of the improved junction.

31. To conclude on this issue, the parking provision tested against the parking standards has a shortfall of one space, but the site is well served by transport links and public car parking. Whilst the access is narrow, the cars entering and leaving are likely to be tidal, that is entering and leaving at the same time. The highway improvements can accommodate the existing access and without evidence that the proposed number of cars using the junction would be prejudicial to highway safety, I am satisfied that there is no highway reason why the access would be so inadequate as to warrant a refusal of a temporary permission.

Conditions

32. I have taken on board the conditions suggested by the Council, although I have tailored some of them and provide reasons as follows: -

Condition 1 - I have given a date by which the use must cease, to match the temporary condition for the residential units. I have also deleted the requirement to remove works and reinstate the land, as the works will be entirely internal, and reinstatement is unnecessary in the light of the regeneration plans and/or any other development for which the appellant might obtain planning permission.

Conditions 2 to 7 are imposed to enable the local planning authority to monitor the use within the building and to prevent disturbance to neighbours. I have amended the Council's condition which requires the development to be carried out in accordance with the plans, to require the layout to remain as approved.

Condition 6. As drafted, the Council would have some difficulty in monitoring and enforcing the condition. I have required that the travel plan is implemented and maintained, with discretion to the Council to call for details of the works done. I have limited the requests to no more than every six months.

Conclusion

33. I have taken into account all other matters raised in the appeal documents, but none change my conclusion. The appeal is allowed subject to the conditions listed in the Schedule.

Jan Hebblethwaite

INSPECTOR

Schedule of Conditions

1. This permission shall be for a limited period expiring on 9 July 2023 when the use hereby permitted shall be discontinued.
2. The use permitted shall not be carried out outside the hours of 08.00 to 23.00 Monday to Saturday and 09.00 to 22.00 Sundays and Public Holidays

- unless otherwise agreed in writing by or on behalf of the Local Planning Authority.
3. The development (and the layout in particular) shall be carried out in strict accordance with the plans submitted with the application and retained as such unless prior permission has been obtained in writing from the Local Planning Authority. The use hereby permitted shall be carried out on the first floor of the building only which shall not be subdivided into more than a single planning unit.
 4. The use hereby permitted shall cease and all associated works be removed within 28 days of the date of the failure to meet any one the requirements set out below:
 - i) Within 1 month of the date of this decision a Car Park Management Plan shall have been submitted to and approved in writing by the Local Planning Authority. The Car Park Management Plan shall include:
 - day to day operation;
 - definition of special events;
 - details of traffic control during events and how this will be managed;
 - measures to monitor car park usage;
 - programme for implementation.
 - ii) If within 6 months of the date of this decision the Local Planning Authority has either refused to approve the scheme or failed to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by the Secretary of State.
 - iii) If an appeal is made pursuant to (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 5. The use hereby permitted shall cease within 28 days of the date of the failure to meet any one of the requirements set out below:
 - i) Within 1 month of the date of this decision a written Noise Impact Assessment (NIA) shall have been submitted to by the Local Planning Authority. The NIA shall include:
 - an assessment of the noise levels from the use existing before this permission is implemented and an estimate of the noise from the use expanded use, together with a summary of how those figures were reached;
 - the future impact of the use on the residential units which are likely to be constructed adjacent to the site;
 - appropriate measures to mitigate the impacts shown to occur; and
 - a programme for implementation of those mitigation measures.
 - ii) If within 6 months of the date of submission of the NIA, the local planning authority refuse to approve the scheme or fail to give a decision within that period, an appeal shall be made to the Secretary of State.

iii) If an appeal is made pursuant to (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

The approved noise mitigation measures shall be implemented in accordance with the approved programme and shall be retained until the expiry of the temporary period set out in condition 1.

6. The Travel Plan submitted with the application shall be implemented within one month of the date of this decision and shall be retained until the expiry of the temporary period set out in condition 1. If called upon to do so by the local planning authority (at intervals no more frequent than every 6 months), details of the measures carried out to implement and comply with the Travel Plan shall be submitted within 14 days of the request.
7. No additional doors or window openings shall be created in any elevations of the building

End of Schedule