



Appeal Decision

Site visit made on 23 September 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/D1780/C/19/3222884

Land at 85 Bitterne Road West, Southampton SO18 1AU

- 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 Tony Taylor Still against an enforcement notice issued by Southampton City Council.
 - The enforcement notice was issued on 14 January 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, change of use of the Land from a mixed use comprising D1 use and residential use to solely D1 use.
 - The requirements of the notice are: Cease the use of the premises solely for clinic purposes; Remove any fixtures or fittings which enables the unauthorised D1 use; Reinstate the building to its authorised use as per planning permission 07/00672/FUL.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal is allowed, the enforcement notice as corrected is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

2. The appellant asserts that his business has been operating from the first floor of the property for over 10 years and provides correspondence from patients which he considers supports this contention. However, there is no ground (d) appeal before me and I have not been made aware that an application for a certificate of lawfulness has been made and subsequently granted by the Council. Accordingly, the lawfulness of the use enforced against is not before me and I proceed to determine the appeal as pleaded, which is on ground (a) only.

The Enforcement Notice

3. The issued enforcement notice only specifically requires the cessation of the clinic use. It would therefore not prevent any other use within Class D1 taking place. It would also not prevent a mixed use involving a clinic use alongside a different use from taking place. Furthermore, an enforcement notice cannot actively require that the remainder of the property be used, in this case, for

residential purposes. I however do not consider that any injustice to the parties arises from correcting the requirements of the enforcement notice, which I shall set-out in my formal decision.

Main Issue

4. The main issue is the effect of the change of use on the City's housing stock.

Reasons

5. The site fronts onto Bitterne Road West but is accessed from Englefield Road and consists of a detached property on a corner plot. The surrounding area is predominantly residential in character although commercial uses are present.
6. Planning permission was granted¹ in 2007 for '*change of use of two rooms in residential dwelling to be used as Osteopathic clinic (use class D1) with alterations to boundary fencing*'. It appears that these two rooms were on the ground floor of the property. Condition 5 of the planning permission required all other rooms to be retained for residential use.
7. During my site visit the property was not in residential use. The ground floor consisted of two treatment rooms as well as a formal reception area. There was also a storage room and toilet. The first floor consisted of three treatment rooms, an office and a toilet.
8. Policy H6 of the City of Southampton Local Development Framework Core Strategy Development Plan Document Amended Version incorporating the Core Strategy Partial Review 2015 (the development plan), seeks to retain housing unless one, or more, of eight listed exceptions apply.
9. To this effect, whilst the use relates to that of a private healthcare business, I have not been provided with a specific definition of a community facility for the purposes of Policy H6 of the development plan. I also have little evidence to convince me as to why a private healthcare business should reasonably be excluded. On this basis it therefore appears to me that the provision of healthcare, whether private or not, should not be excluded as a desirable community facility for the purposes of this policy. Moreover, the Council recognises that some members of the community may benefit from the services provided. Whilst detailed evidence on the levels of local need have not been advanced by the appellant, I am satisfied, given the scale of the business, that it is very likely to meet an identified need for the given provision of healthcare within the neighbourhood. The loss of the residential use should therefore not be resisted.
10. In addition, Policy CS16 of the development plan only seeks to resist the loss of family homes, which are defined, amongst other things, as having three or more bedrooms. I have been provided with little evidence that the use enforced against has resulted in the loss of a family home as defined by this policy.
11. Furthermore, condition 4 of the planning permission required that the '*residential accommodation shall be occupied by at least one person directly associated with and employed by the use hereby approved*.' Whilst I appreciate this was intended to ensure that the D1 use remained ancillary to a residential

¹ Council Ref 07/00672/FUL

use, it also significantly restricted the occupation of that unit of accommodation such that it no longer formed part of the City's stock of open market housing.

12. I conclude that that the change of use does not have a harmful effect on the City's housing stock and so accords with Policies H6 and CS16 of the development plan. For the same reasons, it does not contravene the delivering a sufficient supply of homes objective of the National Planning Policy Framework.

Planning Conditions

13. The Council has suggested five conditions in the event the appeal is allowed, to which the appellant does not appear to raise any specific objection. In any event, I consider it is necessary to control the hours of operation and staff numbers in the interests of the living conditions of nearby occupiers of residential properties. This also addresses the Council's concern in relation to Policy SDP1(i) of the development plan. The provision of cycle stands as well as car parking retention is also necessary in the interests of encouraging sustainable forms of transport and to minimise the impact of traffic generation on surrounding roads. Details to confirm satisfactory refuse storage is also necessary in the interests of protecting the character and appearance of the area.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decision

15. It is directed that the enforcement notice be corrected by:
- the deletion of the words "*Cease the use of the premises solely for clinic purposes; Remove any fixtures or fittings which enables the unauthorised D1 use; Reinstate the building to its authorised use as per planning permission 07/00672/FUL.*" and their replacement with the words "*1. Cease the use of the premises as a clinic (Class D1) except in the two rooms within which planning permission was granted in 2007 under reference 07/00672/FUL. 2. Remove any fixtures or fittings which enables the unauthorised D1 use. 3. Reinstate the building to its authorised layout as per planning permission 07/00672/FUL.*"
16. Subject to these corrections the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the D1 use at Land at 85 Bitterne Road West, Southampton SO18 1AU referred to in the notice and subject to the following conditions:
1. The premises to which this permission relates shall not be open for business outside the hours of Monday to Friday 0800 – 1930 and Saturday 0800 – 1230.
 2. No more than four members of staff shall work at the premises to which this permission relates at any one time.

3. Within three months of the date of this permission, four cycle stands shall be provided and made available for visitors to the premises. The cycle stands shall thereafter be retained in perpetuity.
4. The existing car parking area shall be retained and maintained for the parking of staff and visitors in perpetuity.
5. Within one month of the date of this permission, details for the storage of refuse and recycling at the premises shall be submitted to the Local Planning Authority for approval in writing. The facilities shall be provided within a period of two months following the written approval and retained in perpetuity.

Paul T Hocking

INSPECTOR