
Appeal Decisions

Site visit made on 18 February 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 21 February 2020

Appeal Ref: APP/T2215/W/19/3233487

Holy Trinity Church, High Street, Dartford, Kent DA1 1DE

- 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 West Hill Life Ltd against the decision of Dartford Borough Council.
 - The application Ref DA/18/01548/COU, dated 28 November 2018, was refused by notice dated 10 June 2019.
 - The development proposed is the change of use of 43m² of land as play space to rear of the church and erection of a timber fence.
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Appeal Ref: APP/T2215/Y/19/3233491

Holy Trinity Church, High Street, Dartford, Kent DA1 1DE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by West Hill Life Ltd against the decision of Dartford Borough Council.
 - The application Ref DA/18/01549/LBC, dated 28 November 2018, was refused by notice dated 15 February 2019.
 - The works proposed are described as the change of use of 43m² of land as play space to rear of the church and erection of a timber fence.
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Decisions

1. The appeals are allowed and planning permission and listed building consent is granted for the temporary change of use of 43m² of land as play space to rear of the church and for the erection of a timber fence at Holy Trinity Church, High Street, Dartford, Kent DA1 1DE in accordance with the terms of the above applications, subject to the conditions below.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural Matter

3. A fence has already been erected to enclose the outside play space for the children's nursery, which currently operates from the church hall and this external play space at the back of the church on weekdays. This current timber fence and gate is the subject of the listed building appeal. An alternatively designed fence and gate, with horizontal timber slats, is proposed in the same position under the planning appeal.

4. The appellant argues that no change of use has been created or is proposed because the use of the site as a church or as a children's nursery is part of the same Class D1 use in planning terms. That may or may not be the case and would need to be established comprehensively via the submission of a Lawful Development Certificate application. I must determine the planning appeal on its merits; an application for change of use has been applied for and is the subject of this planning appeal and I must determine it accordingly.

Main Issues

5. Consequently, the main issues are:
 - (a) whether the proposed outside play area between the rear of the church hall and the northern boundary of the site abutting the flank wall of the residential units in 82 High Street/1 Bullace Lane would significantly harm the living conditions of the occupiers of those units; and
 - (b) the effect of the timber fence, either the one already installed or the alternative one proposed, on the significance of the Grade I listed church or the Grade II listed 82 High Street/1 Bullace Lane including the effect on their settings, and on the character and appearance of the Dartford Town Centre Conservation Area.

Reasons

Living Conditions

6. There have been a number of complaints regarding the noise of the children playing so close to a number of first floor habitable room windows. The Council's Environmental Health department suggests that it is unlikely that any mitigation measures, including restriction of hours, would be effective in combatting such noise and disturbance to adjoining residents.
7. This is understandable given the fact that these windows directly abut and overlook what is a long and very narrow play area. I can also understand that the queuing up and chatting of parents by the timber gate at pick-up or drop-off times probably adds to any such noise, although I doubt such noise would last for very long or be significantly disturbing in itself.
8. To this end I investigated other possible play areas for the children on the site. I understand that the church is considering improvements to the central play area situated between the church and church hall in the form of an application to remove the redundant old boiler house and to curtail the nuisance of pigeons/seagulls in this area. This area, which is overlooked by the nursery's south facing windows in the church hall, would probably be a better play space for the children and its use would obviously significantly lessen any noise and disturbance to the above adjoining residents.
9. I understand that the front area of the church where it borders the river path was considered by the play group but discounted because the church diocese did not favour this. I also noticed that the changes in level in this area may be a hazard to the young children. I also understand that the children are sometimes walked to the nearby Central Park to play, although such trips probably cannot substitute for an on-site outside play area.

10. I was informed by the staff that there are 24 children currently enrolled at the play school/nursery and that the doors to the external play space are left open between 10 and 11.30am and 1 and 2.30pm so that the children have the option to play inside or outside. I realise that this could result in all 24 children playing outside at once, or more if numbers increased. On my visit I only saw 4 children playing outside, but this was because there were only a few children attending the nursery since it was half-term. I realise that 24 children or more playing in such a narrow outdoor space would obviously be far noisier than 4.
11. In light of the church's plans to progress plans for the central play area as set out above, I consider that a temporary permission for the appellant to continue using the existing external play area would be appropriate for a year, as secured by the condition attached to planning permission below. This will hopefully give the church sufficient time to obtain approval and implement the improvements to the central open space, which could then take over as a permanent outdoor play area for the children in the nursery.
12. In the interim I agree that the above hours suggested by the Council in one of its suggested putative conditions would be appropriate. Narrowing the hours of use of the existing open space to the children would probably only mean that they would have less time available to play outside, which would mean that there would probably be a greater number of them outside at once, and hence probably more noise to residents. I also agree with the Council that the external gate entrance should not be used before 8am or after 6pm in order to minimise any disturbance to residents outside the working day.
13. In conclusion, I understand the adjoining residents' and the Council's concerns about noise and disturbance from the current external play area. But in view of the likelihood of the alternative play area being established I consider that preventing the interim use of the external play area would be excessive and would place an obstruction on the nursery's reasonable operation. In coming to this conclusion I have taken into account that the nursery itself is a useful and important local community facility, as well as helping to provide funds to help maintain and upkeep this Grade I listed church, which itself is an important community facility in Dartford.
14. I am conscious that Policy CS2 of the Dartford Core Strategy (CS) seeks to revitalise the town centre including by encouraging new dwellings within it and that the noise and disturbance to the adjacent residents here may not encourage the bringing forward of additional new dwellings. Likewise Policies DP2 and DP5 of the Dartford Development Policies Plan (DPP) require good design, including facilitating a sense of place and no unacceptable material impacts on neighbouring uses. Whilst I understand that the proposed outdoor play area for the nursery would not comply with these Policies, I have explained above why its impact should be balanced against the temporary nature of the permission as well as the community benefits of the nursery use itself.

Heritage Issues

15. The current 1.8m high fence and gates have vertical slats with one section of trellis, all painted black to match the weather boarding on the first floor of No 82 next door. The alternative proposal envisaged by the planning application would be a continuous close boarded fence of the same height.

16. It is difficult to notice this fence until standing quite close up to it. Certainly, from the street frontage near to the main entrance of the church, it is indistinguishable from the black weather boarding of No 82/No 1 Bullace Lane behind it. Even standing quite close to it the fence and gate are unobtrusive for this reason and would continue to be with the alternative close-boarded black fence.
17. It is also partly shielded by a large evergreen bush in front of it, which screens the western half of it. It is attached to the corner of the modern kitchen extension of the church and to a free-standing wooden post below the overhanging first floor of the adjacent medieval listed building. As such it does not affect any historic fabric. For the above reasons it has minimal effect on the setting of either listed building because it has next to no impact on the gap between them.
18. For these reasons I conclude that the timber fence, either the one already installed or the alternative one proposed, would have no impact on the significance of either listed building and would not harm the character or appearance of the Conservation Area.
19. CS Policy CP2 and DPP Policies DP2, DP12 and DP13 together require designated heritage assets and their settings to be appropriately preserved. For the above reasons either fencing scheme would comply with these Policies and would consequently be acceptable.

Conclusion

20. For these reasons the appeals are allowed, the planning permission subject to the conditions mentioned above are set out below. I do not agree with the Council that there should be a condition seeking the removal of the fence if the nursery use ceased because it is clear that a fence would still be required to prevent criminal activity in the area and prevent this northern open area being used for inappropriate rough sleeping and anti-social behaviour, nor should there be a condition requiring the removal of the existing fencing because it is quite acceptable.

Nick Fagan

INSPECTOR

Planning Conditions

- 1) The fence hereby permitted shall be erected not later than 3 years from the date of this decision.
- 2) The use hereby permitted shall be for a limited period being the period of one year from the date of this decision. The use of the external play area for the nursery next to the northern boundary of the site hereby permitted shall be discontinued and the land restored to its former condition on or before that date in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
- 3) The external play space to the rear of the church hall, hereby approved, shall not be used outside of the hours of 10:00 to 11:30 and 13:00 to 14:30 Monday to Friday.
- 4) The external gated entrance, hereby approved, shall not be used outside the hours of 08:00 to 18:00 Monday to Friday.

There is no need for any conditions to the listed building consent for the reasons indicated above.