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# Appeal Decision

Site visit made on 12 October 2020

**by Robert Parker BSc (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 November 2020**

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**Appeal Ref: APP/L5240/W/20/3255405**

**5th Floor Capella Court, 725 Brighton Road, Purley CR8 2PG**

- 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 Peer Securities Ltd against the decision of the Council of the London Borough of Croydon.
  - The application Ref 19/04440/FUL, dated 12 September 2019, was refused by notice dated 9 April 2020.
  - The development proposed is change of use of the fifth floor from a medical facility (Use Class D1) to 9 no. residential units (Use Class C3), alterations to the external façade at fifth floor to create glazed door openings, the creation of external private amenity space and the provision of an additional 36 no. cycle parking spaces at ground floor level (in connection with the approved conversion of the ground – fourth floors to residential use under application ref. 19/02578/GDPO).
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. Subsequent to the Council's decision, the Town and Country Planning (Use Classes) Order 1987 was amended. Class D has been revoked and many of the community uses within Class D1, which covers the appeal site, now fall within a broad 'commercial, business and service' use class (Class E). The Regulations provide that where a planning application referring to the old system of use classes is submitted prior to 1 September 2020 that application must be determined by reference to those use classes. Nevertheless, the parties have had the opportunity to comment on the implications for their respective cases.

## Main Issue

3. The main issue is the effect of the proposal on community facilities within the Borough.

## Reasons

4. Capella Court is a 6-storey building comprising a ground floor reception area and office floorspace on floors 1 to 4. The top (fifth) floor was occupied until recently by Purley Dialysis Clinic. This user has relocated and the building is now vacant. The appellant has obtained prior approval for change of use of the ground, first, second, third and fourth floors to 64 residential units, and has applied for permission for change of use of the top floor to create a further 9 apartments. It is the latter application which is the subject of this appeal.

5. Policy DM19 of the Croydon Local Plan 2018 (CLP) seeks to protect community facilities. Criterion (a) is directly relevant to this appeal; this states that the loss of existing community facilities will be permitted where it can be demonstrated that there is no need for the existing premises or land for a community use and that it no longer has the ability to serve the needs of the community.
6. The policy supporting text explains that proposals involving the loss of a community facility may comply with the policy by: a. Explaining why the current use is no longer needed if the building/site is occupied; and b. Showing that the loss would not create, or add to, a shortfall in provision of floor space/sites for the existing community use by providing details of a marketing exercise for a minimum period of 18 months.
7. The dialysis clinic has relocated elsewhere and therefore the first criterion in the supporting text is not relevant. The question for me to consider is whether it has been adequately demonstrated that the site is no longer needed for a community use and whether it has the ability to serve the needs of the community.
8. The top floor of Capella Court has been marketed for D1 use since December 2019, during which time there has been only one tentative enquiry. The floorspace remains on the market and as at 2 October 2020 there had been no confirmed expressions of interest. The appellant acknowledges that the full 18 months of marketing have not been undertaken but contends that little would be gained from completing the exercise as there is little prospect of a D1 user being secured.
9. The location of the site on the fifth floor is likely to reduce the attractiveness of the floorspace to potential D1 tenants. The accommodation is divorced from the street and the principal means of access is via staircase or a lift from the reception area shared with other building users. There is no allocated parking and a footbridge link from the car park at the Royal Oak Centre is due to be removed. However, that is not to say that the fifth floor no longer has the ability to serve the needs of the community. The dialysis clinic was in occupation for over a decade and I have seen no information to indicate that it was unable to operate successfully alongside other uses in the building.
10. I recognise that the clinic came about in response to a specific requirement from a medical user and a situation where the landlord was struggling to let space in the building for B1 office use. However, that does not obviate the need to comply with local plan policy by marketing the site, now that the floorspace has a lawful D1 use.
11. The appellant contends that the siting of a community use above residential use would give rise to additional operational impacts and require potential occupiers to put in place burdensome liabilities. Whilst the juxtaposition of uses is slightly unusual, there is no evidence before me to suggest that it would be impossible from a legal or practical perspective. Much would depend on the nature of the community use. I do not know whether the offices on the fourth floor were empty whilst the top floor was in use as a medical facility, but the clinic took up occupation in full knowledge that there could be other uses on the floor below.
12. Policy DM42 of the CLP allocates Capella Court and the Royal Oak Centre for residential development and a health facility, together with the retention and reconfiguration of existing uses and their floor space. Theoretically, the objectives of this proposals site (Ref 405) could be met by redevelopment of the Royal Oak

Centre, without insisting on the retention of D1 use on the fifth floor of Capella Court. However, in the absence of any specific proposals it is premature to make that assumption. The existence of the site allocation is not determinative.

13. CLP Policy SP5 sets out the Council's strategy towards community facilities. Amongst other things, the policy seeks to ensure the provision of a network of community facilities, providing essential public services. Part of the strategy is to protect existing community facilities that still serve, or have the ability to serve, the needs of the community. CLP Policy DM19 sets out the mechanisms by which this will be achieved.
14. Although the supporting text does not have the force of policy it is part of the development plan and is therefore a significant consideration in determining how policy should be applied. The site has not been marketed for the requisite 18 months and as such it has not been robustly demonstrated that there is no need for a community use at the premises. Whilst it is tempting to speculate on the outcome of marketing, based on the perceived deficiencies of the site, this must be properly tested. Covid-19 and its negative impact on the economy does not justify a shortened marketing exercise.

### **Other Matters**

15. The recent changes to the Use Classes Order open up the possibility that a non-community use within Class E could take up occupation without needing planning permission. Whether or not this materialises does not alter the fact that the site has the potential, at this point in time, to serve the needs of the community. Although more than theoretical, the 'fallback' position is by no means certain, not least because the site's drawbacks, as identified by the appellant, would apply equally to all users. Consequently, whilst I have taken account of the introduction of Class E as a material consideration, it does not, in this particular case, justify an approach that is otherwise than in accordance with development plan policy on community uses.
16. The appellant has suggested a condition which would require the developer to notify the Council in writing of implementation of the permitted development scheme for the floors below. This condition would not meet the test of necessity and I do not consider that it would make the proposal acceptable.

### **Planning Balance and Conclusion**

17. The proposal conflicts with the development plan taken as a whole. The plan is up-to-date and consistent with the National Planning Policy Framework in respect of the need to make sufficient provision for community facilities. I have attached the conflict with its provisions substantial weight. The appeal scheme would provide much needed housing in the Borough, but the social and economic benefit of delivering 9 additional homes does not outweigh the need to maintain adequate provision of community facilities.
18. There are no material considerations to justify a decision otherwise than in accordance with the development plan and therefore for the reasons given above I conclude that the appeal should be dismissed.

*Robert Parker*

INSPECTOR