



Appeal Decision

Hearing Held on 28 September 2021

Site Visit made on 28 September 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19/10/2021

Appeal Ref: APP/T2215/W/20/3248157

46 Lowfield Street, Dartford, DA1 1HU

- 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 against the decision of Dartford Borough Council.
 - The application Ref 19/01266/COU, dated 4 September 2019, was refused by notice dated 8 November 2019.
 - The development proposed is Change of Use of first floor from night club (including use of existing vacant part) to Use Class D1 (place of worship with ancillary offices and various ancillary community centre uses) for a temporary period until 10th July 2023 plus demolition of existing steel framed structure to provide additional parking (resubmission of DA/17/01929/COU).
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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 (including use of existing vacant part) to Use Class D1 (place of worship with ancillary offices and various ancillary community centre uses) for a temporary period until 10th July 2023 plus demolition of existing steel framed structure to provide additional parking at 46 Lowfield Street, Dartford, DA1 1HU in accordance with the terms of the application Ref 19/01266/COU, dated 4 September 2019, subject to those conditions list within the schedule of conditions.

Applications for costs

2. An application for costs was made by Mr Segun Kingsley against Dartford Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.
4. At the hearing I was provided with drawing number 2101_0010 revision J which illustrates a phasing plan for the build out of development north, east and west of the appeal site. I have had regard to this phasing plan in reaching my decision.

Main Issues

5. The main issues raised by the appeal are: -
- a) The effect of the change of use of the first floor on the regeneration plans for the Lowfield Street part of the town centre;
 - b) The effect on the living conditions of those occupiers of surrounding developments; and
 - c) The effect of the continued use of the existing access on traffic and pedestrian safety.

Reasons

6. There has been a previous allowed appeal (appeal ref: APPT2215/W/18/3218969) at the site for much the same proposal as is before me for temporary permission up to 9 July 2023, however, that decision has lapsed as the conditions imposed upon that permission were not complied with by the required timeframe. The Council advance that the development works underway that wrap around the site, with planning permission having been granted relating to this, have brought about improvements to the town centre more quickly than envisaged by the previous Inspector. It is also advised that there is advancement toward works commencing at the Lowfield Street/Instone Road junction, however there is not a specified point in time yet as to when these are likely to commence. It is put forward that these are material changes relating to the consideration of this proposal.

Change of Use

7. The area is identified within the Dartford Development Plan Policies July 2017 (DDPP) Policy DP16 and Dartford Core Strategy September 2011 Policy CS2 (DCS) as an area which is in urgent need of regeneration. Policy CS1 of the DCS identifies Lowfield Street area as a priority area for development and as an opportunity area. The Council seeks to rejuvenate and revitalise the town centre as a shopping, leisure and service centre for surrounding communities. The Dartford Town Centre Framework Supplementary Planning Document July 2018 (Dartford SPD) identifies land east of Lowfield Street as an opportunity site. This includes the appeal site, adjacent 46 – 58 Lowfield Street that is in the applicant's ownership, and land north, east and south that wraps around the appeal site and numbers 46 – 58. One of the key objectives of the Dartford SPD is to improve the perception of Dartford Town Centre. Indeed, further north of the appeal site public realm improvements to the streetscape have taken place and the Council has listed examples, such as Acacia Mansion House, where improvement works have achieved visual betterment of the town centre and improved accessibility.
8. The appeal site comprises a two-storey building in a very poor state of repair. That said, I saw that the current area within the building at first floor used as a place of worship is well decorated. I also observed at my visit that Phase 1 relating to the adjoining redevelopment scheme had been completed and Phase 2 was well under way. The site has been cleared relating to Phase 3 but construction has not commenced.
9. The Council has granted a temporary planning permission until 9 July 2023 for the use of the first floor of 46 to 58 Lowfield Street use as a house in multiple

occupation (HMO). In granting that permission the Council must have considered that temporary use would not prevent or delay the regeneration proposal for this opportunity area. The proposal before me seeks use of the first floor up to 10 July 2023, a similar point in time to that of the HMO use. Whilst it is contended that use of 46 to 58 is a lower intensity use to that of the church and the HMO use could be terminated with the serving of appropriate notices upon tenants, these matters do not remove the fact that 46 to 58 Lowfield Street benefits from a temporary planning permission until 9 July 2023.

10. There is currently an undetermined planning application before the Council relating to the appeal site and 46 to 58 Lowfield Street. Clearly the temporary permission in place at 46 to 48 is not preventing plans coming forward relating to the future redevelopment of the collective site within the church's ownership. I understand also that the Council has drawn up a Compulsory Purchase Order (CPO) for the site, but this has yet to be served.
11. Concern is raised as to the appearance of the building, which I acknowledge to be a poor-quality building in a neglected condition. Its ongoing presence would maintain, to some extent, the perception of a declined centre and create a poor outlook and environment for future adjoining occupiers and pedestrians traversing the new access within phase 2 that will abut the appeal site. Furthermore, with regard to the vitality and viability of the town centre, I accept that the proposal would offer limited benefit in these respects. The existing inactive frontage of the building and the perception of the property being closed and boarded up would remain and this could negatively impact on investors and influence buyers of properties close to the appeal site. However, there is no substantive evidence before me that would clearly indicate this would be the case.
12. There is no planning permission yet in place for the redevelopment of the appeal site, and even if there were, that permission would be subject to a timeframe for implementation. As I see it, whether or not the appeal is allowed, the existing building is likely to remain as it currently appears in the short term as there is no mechanism in place as yet that would facilitate the site's redevelopment in the near future.
13. This site has been subject to a series of temporary planning permissions and, given planning policies set out in the development plan, there is clear aspiration to develop this site integrally as part of the identified opportunity area. The issuing of a temporary permission to 10 July 2023 would not preclude negotiations and plans being progressed over this period that could allow for the site to come forward for development. Indeed, the fact that there is a current planning application for development at the site before the local planning authority demonstrates this to be the case.
14. It was clear to me that the development at this opportunity area is advancing. Phase 2 is being built out and other phases benefit from planning permission. However, taking the above into account, allowing temporary use of the site would not prevent its redevelopment. The phased development wrapping around the appeal site has come forward at different stages under different planning permissions as an integrated development. I see no substantive reason why development of the appeal site would not come forward in the same way and integrate with the other phases of development. I conclude that

the Council's regeneration plans would not be significantly undermined by a temporary use of the first floor of the building. Consequently, I do not consider that the proposal would substantially prejudice or significantly delay the comprehensive regeneration of this part of the town centre.

15. The Council's updated Infrastructure Delivery Plan 2020 does not identify any need for further community provision in the town centre other than the health and well-being hub for primary health and social care services. However, the church with its congregation exists and is in need of a venue, whether identified by the Delivery Plan or not. Whilst the Council has provided a list and map of existing places of worship in the town centre, I have no substantive evidence before me that would indicate those venues would be available or suitable for use by the church.
16. The Planning Practice Guidance (PPG) deals with circumstances where temporary permission may be appropriate. These include the temporary use of a vacant building pending longer term regeneration plans coming forward. Whilst I acknowledge the PPG seeks to avoid a proliferation of temporary permissions at a site, for those reasons set out above the appeal site would, to my mind, be such a site where a temporary planning permission could be considered appropriate in this particular case.
17. The description of proposed development provided on the planning application form seeks use of the first floor as a church up to 10 July 2023. It is clear to me that the church is fully aware of what permission it is seeking and timeframe for that use. It was advised at the hearing that the church is currently looking for a suitable alternative site. In granting temporary permission I do not consider that this would create false hope for the church that they could potentially stay longer, as suggested by the Council. It is also suggested that in granting permission this might create unrealistic land values for the site, however there is no clear evidence before me that would indicate this to be the case.
18. The implementation of this permission would require works to make the first floor suitable for use by a large number of people. However, the cost of refurbishment would be a matter for the appellant.
19. For these reasons, I conclude that the temporary proposal to change the use of the first floor would not prevent, undermine or prejudice the regeneration plans for the Lowfield Street part of the town centre. Therefore, the proposal would not materially conflict with Policies CS1 and CS2 of the DCS or Policy D16 of the DDPP or the Dartford SPD.

Living Conditions

20. A Noise Impact Assessment (NIA) supports the proposal. This dealt with noise escaping from the building when the premises is in use. However, the Council's concern relates to times when the church congregation and people involved in those other activities arrive at and leave the premises and the NIA does not deal with this issue.
21. The housing development taking place to the north of the appeal site is being built out but not to such an extent that it is presently fit for occupation. However, given the progression of development it would be fair to say that by July 2023 that development would be complete and those residential units

closest to the appeal site could be occupied. Nonetheless, those residential developments planned immediately east and south of the appeal site have yet to commence.

22. The existing use of the appeal site is unauthorised given the non-compliance with conditions imposed upon the temporary planning permission granted by the previous Inspector. Despite the former night club use of the premises the previous Inspector noted that planning permission was granted for residential development on adjoining land. The Council has also granted a temporary planning permission for HMO at the first floor of 46 – 58 Lowfield Street. It appears, therefore, that the relationship of those developments to the appeal building was considered acceptable. Policy DP5 of the DDPP seeks to prevent unacceptable material impacts on neighbouring uses. Given the above, I conclude that there would be no conflict with Policy DP5.
23. The appellant advises that it is anticipated that the congregation will increase from 100 presently to 150. Church services and meetings are held on Sunday mornings 09:30 to 12:00 (noon); one Saturday per month 07:00 to 10:00 and on Wednesday evenings 19:00 to 21:00. Those arriving and departing would coincide with the times of services. Given the congregation size this would generate peaks in noise and activity during arrivals and departures. The other community uses proposed are likely to see comings and goings over the course of the day.
24. The car park relating to the premises would be to the south side of the appeal building. Access to the first floor is from Lowfield Street and at the southern end of the frontage. Although the development to the north may be occupied at some point before July 2023, the appeal building is sited between the car park and that development. There is also a space between the residential properties and the appeal site for a pedestrian route linking Lowfield Street to the park east of the development. I consider this would provide adequate separation to ensure that those arriving by vehicle would not impose unreasonable noise and disturbance on adjoining residents. Although the developments east and south of the appeal site may come forward, from what I heard at the hearing, it is extremely unlikely that those units would be occupied prior to July 2023.
25. Some members of the congregation and other users may choose to walk to the venue. However, that would involve the public highway which is freely available to use and where ambient noise from users is to be expected.
26. Despite the internal sub-division of the first floor into separate rooms concern is raised over the number of people the first floor of the premises could accommodate. The existing building is in poor condition and some noise attenuation would be likely to be required. The previous Inspector imposed conditions to protect the occupiers of any new housing close to the appeal site. I consider it would be appropriate to again impose such conditions.
27. In imposing conditions limiting the use of the premises to times of use and requiring it to cease on 10 July 2023, the future occupiers of the adjoining residential developments would not be harmed by noise and disturbance generated by the use of the premises for the proposed purposes. Furthermore, the imposition of a condition requiring a NIA would enable the local planning authority to monitor the use of the building and prevent disturbance to neighbours who may occupy adjoining development before July 2023.

Car park and Access

28. Junction improvements are planned for the Lowfield Street/Instone Road highway junction to the front of the appeal site. Although delayed, it is possible that the improvements to this junction may come forward prior to July 2023. I have been provided a plan that illustrates the intended improvements. The local planning authority advised at the hearing that although the highway improvements for the town centre, that include the improvements to this junction, are being led by Dartford Borough Council, the Highway Authority are actively involved in partnership with the Council in delivering these highway improvements.
29. The yard is intended to provide 30 parking spaces associated with the proposed use. The previous Inspector found this parking provision to be acceptable. On the evidence available to me I have no substantive reason that might lead me to come to a different view on this point. The access to the site is very narrow and there is poor intervisibility of vehicles emerging from between buildings and pedestrians walking along the pavement.
30. Whether or not the highway improvements take place prior to July 2023 to create a signalled controlled junction, vehicles would block the free flow of the pedestrian footpath as they wait to join the vehicular highway. Lowfield Street is a main route into the town centre. The first phase of the development south of the appeal site has been built out. Given these facts, there would be a reasonable movement of pedestrians to and from the town centre along Lowfield Street.
31. Under the previous refusal, the Council's Transport Planning unit raised concern about the lack of visibility and commented that a visibility splay of 2.4m x 40m (for a highway with a vehicle speed of 30mph) is required to allow adequate vehicle visibility, as recommended by Manual for Streets. This is not achievable at the site. A driver leaving the site would be required to drive some way onto the pavement before being able to see pedestrians. Pedestrians would not be aware of egressing vehicles until they are emerging from the vehicular access. Whilst the access is sub-standard and unsafe for passing pedestrians, it is acknowledged by the parties that this is an existing access.
32. The intensification in use of the access would increase conflict between pedestrians and vehicles using the access and this would increase safety concerns for passing pedestrians. Whilst the access is narrow, the cars visiting the site are likely to be entering and leaving the site at around the same time before and after events. This would draw attention to passers-by a flurry of vehicular activity at the access. Also, given the proximity of the car park to Lowfield Street, the narrowness of the access and lack of visibility on leaving the site, vehicles would be in a low gear and travelling slowly when exiting the site. Whilst the access is sub-standard, I am satisfied that there is no substantive highway reason why the access would be so inadequate as to warrant a refusal of temporary permission to 10 July 2023.
33. The Highway Authority has commented suggesting that it would be beneficial if the appellant reconsider the access as the temporary period of proposed use is likely to affect the detail of the planned highway junction improvements. Drawing number 771-012-J1-WLD-DR-C-01102 Revision 101 that supports the Council's case, confirmed at the hearing to be the agreed proposals for the junction, annotates the existing vehicular access between 46 and 58 Lowfield

Street to remain. Whilst it is suggested that retaining the existing access with intensification in its use will likely affect the scheme detail, I have not been provided information as to what changes may be required to the junction that might make it acceptable to the Highway Authority. Notwithstanding this, it appears to me that the planned junction improvements have been drawn up with the existing access in mind having included its retention on the planned highway junction improvements drawing.

34. The Local Plan seeks to improve the pedestrian environment in the town centre. The Dartford SPD supports this aim and sets out principles for pedestrian movement in the town centre. A sub-standard access that has the potential to make pedestrian and cycle movement unsafe on a main route into the town centre would undermine the aims of the Local Plan and Dartford SPD to improve safety and movement in the town centre.
35. In granting planning permission for the proposal, this would continue the impacts of the existing access and intensify its use when compared to that of its use over recent times. However, the permission would be temporary.
36. The local planning authority raises concern over the possibility of the appeal site, along with 46 – 56 Lowfield Street, not coming forward as part of an integrated development with the adjoining phased development. It is suggested that the existing access could remain. As such, this could place the Council under pressure to allow redevelopment of the site with further intensification of the access use rather than a development that would connect and integrate with the highways within the adjoining phased development. However, I see no reason why a proposal could not come forward that would integrate with the approved highway layout within the adjacent site. Indeed, the phasing plan submitted at the appeal illustrates the layout south of the site to incorporate a highway with access onto Lowfield Street directly abutting the south of the appeal site.
37. If the junction improvements take place prior to the use discontinuing in July 2023, this will result in visitors to the site having to travel around the eastern part of the town centre ring road and through Market Street. Whilst this scenario could take place, I do not consider this matter to warrant refusal of temporary permission.
38. Concern is expressed as to the ground floor of the premises not being taken into consideration and the footfall that it could create. However, the proposal clearly relates to the first floor only.
39. For these reasons, I conclude that the proposed temporary continued use of the existing access would not significantly prejudice traffic and pedestrian safety. As such, the proposal would not materially conflict with Policy CS2 of the DCS, Policies DP3, DP4 and DP5 of the DDPP and the Dartford and Parking Standards SPDs that seek, amongst other matters, schemes giving greater priority to pedestrians.

Other Matters

40. The appellant has commented with regard to planning conditions pertaining to the planning permission associated with the adjoining site. In light of my conclusions on the main issues, I do not consider the issues raised require my detailed scrutiny.

41. I have been referred to the Council's pre-submission Dartford Local Plan to 2037 but given this plan is in a relatively early stage in its preparation, very limited weight can be given to it. The Council agreed on this point at the hearing.

Conditions

42. I have considered the planning conditions suggested by the Council in light of paragraph 56 of the Framework and the advice in the PPG.
43. I have given the date by which the use must cease, as per that requested on the planning application form which I note is similar to the temporary condition for the residential units at 46 – 58 Lowfield Street (condition 1). I have added the drawing numbers to condition 3 to avoid doubt as to what has been granted.
44. 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. With regard to conditions 4 and 5 I have increased the requirement to submit a Car Park Management Plan and Noise Impact Assessment from one to two months to allow flexibility for the appellant to commission and produce these documents. Although the proposal has already been supported by both these documents, amendments to these documents may need to be made to make them acceptable to the local planning authority. I have required that the travel plan is implemented and maintained, with the discretion of the Council to call for details of the plan to be provided for scrutiny. The conditions imposed reflect those imposed by the previous Inspector.

Conclusion

45. For the reasons set out above, and subject to the conditions listed below, this appeal should be allowed.

Nicola Davies

INSPECTOR

ATTENDANCE

FOR THE APPELLANT:

Paul Nicholls, Graham Simpkin Planning
Julius Zubair
Emmanuel Komolafe

FOR THE LOCAL PLANNING AUTHORITY:

Simon Bullock, Dartford Borough Council
Jas Bansil, Dartford Borough Council
Wayne Beglan, Cornerstone Barristers

INTERESTED PERSONS:

Harrison Thomas, Bellway
Ben Thomas, Savills
Abigail Lavery, Dartford Borough Council
Samantha Mitchell, Dartford Borough Council

DOCUMENTS SUBMITTED AT THE HEARING:

Drawing Number 2101_0010 Phasing Plan
Record of Attendance

SCHEDULE OF CONDITIONS

1. The permission shall be for a limited period expiring on 10 July 2023 when the use hereby permitted shall be discontinued and the site vacated.
2. The use permitted shall not be carried out outside of hours of 08:00 to 23:00 Monday to Saturday and 09:00 to 22:00 Sundays and Public Holidays.
3. The development (and the layout in particular) shall be carried out in strict accordance with the following approved plans: 01 Rev C, 02 Rev B, 04 Rev d, 05 rev B and 06 Rev B, and thereafter shall be retained as such. 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 of the requirements set out below:

- i) Within 2 months of the date of this decision a Car Park Management Plan shall be submitted in writing to 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; and
- programme of 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 the Secretary of State.
- iii) If an appeal is made pursuant to (ii) above, the appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

The approved Car Park Management Plan shall be implemented in accordance with the approved timetable and shall thereafter be maintained until the expiry of the temporary period set out in condition 1.

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 2 months of the date of this decision a written Noise Impact Assessment (NIA) shall be submitted to the local planning authority.
- The NIA shall include:
- An assessment of the noise level from the use existing before the permission is implemented and an estimate of the noise

- from the use and 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 the submission of the NIA, the local planning authority has either refused to approve the scheme or fails 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, the 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 timetable and shall thereafter be retained until the expiry of the temporary period set out in condition 1.

6. The Green Travel Plan (dated December 2017) 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 elevation of the building.

End of schedule