



Appeal Decision

Site visit made on 21 February 2022

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2022

Appeal Ref: APP/T5720/W/21/3285361

Dundonald Recreation Ground, London, SW19 3QH

- 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 Dundonald Rec Tennis Club against the decision of the London Borough of Merton Council.
 - The application Ref 19/P4183 dated 19 November 2019, was refused by notice dated 23 August 2021.
 - The development proposed is erection of temporary building to provide community space, tennis club and café and erection of separate temporary toilet facilities.
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Decision

1. The appeal is allowed and planning permission is granted for erection of temporary building to provide community space, tennis club and café and erection of separate temporary toilet facilities at Dundonald Recreation Ground, London, SW19 3QH in accordance with the terms of the application ref: 19/P4183, dated 19 November 2019, subject to the following conditions:
 - 1) The development to which this permission relates must be begun not later than the expiration of three years, beginning with the date of this decision;
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 18013-0090, 18013-0100, 18013-0101 Rev 1, 18013-0102 Rev 1, 18013-0103 Rev 1, 18013-0104 Rev 1, 18013-0105 Rev 1;
 - 3) The facing materials to be used for the development hereby permitted shall be those specified on the approved plans unless otherwise agreed in writing by the Local Planning Authority;
 - 4) The use of the buildings hereby permitted (community use and tennis club use only) shall operate only between the hours of 07:00 to 22:00 on any day;
 - 5) This permission is for a temporary period and the use and buildings hereby permitted shall cease, buildings removed and the land restored to its former condition on or before 5 years from the date of this appeal decision;
 - 6) No development [including demolition] pursuant to this consent shall commence until an Arboricultural Method Statement and Tree Protection Plan, drafted in accordance with the recommendations and guidance set out in BS 5837:2012 has been submitted to and approved in writing by the Local Planning Authority and the approved details have been installed. The details and measures as approved shall be retained and maintained, until the completion of all site operations;
 - 7) Site supervision: The details of the Arboricultural Methods on site shall include the retention of an arboricultural expert to supervise, monitor and report to the Local Planning Authority not less than monthly the status of all

tree works and tree protection measures throughout the course of the demolition and construction period. At the conclusion of the construction period the arboricultural expert shall submit to the Local Planning Authority a satisfactory completion statement to demonstrate compliance with the approved protection measures;

- 8) No work shall be commenced until details of the proposed design, materials and method of construction of the foundations to be used for both buildings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority and the work shall be carried out in accordance with the approved details.

Procedural Matters

2. I have utilised the Council's description as it more concisely describes the proposed development.
3. The Council have recommended conditions in the event the appeal is allowed. I have reverted back to the appellant for their comments on the proposed conditions where the suggested opening hours were challenged by the appellant. In the interest of being open, fair and transparent I have reverted back to the Council with regard to the appellant's suggestion as to opening hours. I have taken the comments of both parties into account in considering conditions to be attached to this appeal outcome.

Main Issues

4. The main issues are the impact of the proposal upon i) the character of the designated Open Space (Dundonald Recreation Ground) and a requirement for its need and ii) the setting of the rose garden part of the recreation ground with regard to visual intrusion.

Reasons

Character of the designated Open Space and need

5. The appeal site is located within a designated open space (Dundonald Recreation Ground). The recreation ground comprises open fields, tennis courts, a children's play area, pavilion and associated paths and landscaped area. At the time of my visit I found the area to be in generally poor repair and, even taking into account the time of year being winter, much of the grass appears to have been worn away with paths around the site cracked and in need of repair. The appeal site is surrounded by a predominantly residential area but there are a number of schools and nursery facilities within the vicinity.
6. The proposal seeks permission for two single storey, flat roofed, buildings within the north-western corner of the rose garden adjacent to Dundonald primary school. The facilities proposed would appear to replace those which were lost due to demolition of the previous pavilion as a result of the extension to Dundonald Primary School. The appellant's submissions have outlined the benefits of such a facility for sport and that it is directly related to outdoor sport and recreational use.
7. As noted by the Council the proposal can be considered under Merton's Local Plan Sites and Policies Plan 2014 (LP) Policy DM O1 b) iii). This states that in accordance with the National Planning Policy Framework 2021 (the Framework) existing designated open space should not be built on unless the development

is for alternative sports and recreational provision, the needs for which clearly outweigh the loss. The Greenspaces Manager has objected to the proposal mainly on the basis that there are sufficient facilities in existence.

8. It should be kept clearly in mind that appearance is the outward, visible qualities whereas character is the sum of all the qualities which distinguish an area. At the time of my site visit I noted that the area of the recreation ground, within which the proposal would be located, has a formal rose garden layout with flower beds and footpaths within the space. The existing layout of the space I found to be relatively symmetrical with grass areas and benches. The proposal would be sited to the western side of the path and flower beds and would, to some extent, conflict with this symmetry. Despite this I note that the proposal would not project past the formal paths albeit the pavilion structure's corners would be immediately adjacent to the path as can be seen in drawing no. 18013-0100 (proposed site plan). From the plans before me, and my site visit, I find that the proposal would avoid the removal of trees but it would result in the loss of an of a small area grass within the garden as well as introduce built form into an area of Open Space.
9. I note that as part of the Recreation Ground planning permission was granted under reference 12/P1058 which made provision for changing rooms, shower and changing/toilet facilities accessible from the recreation ground as well as a pavilion hall, kitchen and store. This facility has been constructed and at the time of my site visit I noted the toilet facilities on the ground floor due to the signage on the doors. Whilst I note that my visit is only a snapshot in time the toilets were closed at the time of my visit and there was no access to such facilities on site. Submitted correspondence with Idverde, who manage the site, has confirmed that the public toilet facilities are only open at the weekend for sports bookings leaving no toilet facilities during the week. This is reiterated in many of the third party comments submitted during the consultation period for the application.
10. The Council assert that this building is currently underutilised but I do not find that the Council has provided evidence as to this statement to assist in it being attributed weight. The presence of existing facilities does not explain how such facilities are utilised and the evidence before me supports that the pavilion is not available for community use due to exclusive use by the school on weekdays, cricket in the summer and football in the winter. It is also confirmed within the submissions that due to operational reasons the pavilion is not passed as suitable for hire by the Council's facilities team.
11. Whilst the plans submitted by the Council (for 12/P1058) demonstrate that this facility has changing facilities and a community room the appellant had provided several pieces of evidence, via appendix D, that the facilities have not been available for community use given their use by the school and football/cricket clubs. Based on the evidence before me I find it has been evidenced that the existing facilities are not available for community use and neither are they under-utilised either.
12. The appellant states that the first building would provide facilities for hire, for hosting exercise classes and meetings. Examples of the likely use of this building, via an indicative timetable, have been provided and third party comments from the community indeed support a general desire for such facilities for a variety of activities. The second building would provide public

toilet facilities for users of the community building and wider park area. Whilst I acknowledge that it is stated that it is only common practice for toilet facilities to be available where, for example, Idverde have a presence I am also mindful of comments evidencing need for such facilities by those utilising the ground particularly toilets for small children. I acknowledge that management of public toilets can bring issues with anti-social behaviour or use, however, the statistics put forward by the appellant in their statement coupled with the London Plan's support for public toilets as a vital facility leads me to place weight upon provision of such a facility.

13. Overall, a large number of supporting comments are noted as part of the proposals during the original application period. A large number of these comments do specifically evidence a general need and desire for the proposals for meetings, social clubs and groups etc. There is also a large volume of support evidencing need for the toilet facilities as part of the proposal. This, alongside the evidence supplied by the appellant, I find to provide evidence of a need for the facilities.
14. I do not find that the newly built facility caters for needs given that whilst such facilities may be in existence, they are not available for use as outlined. I find that it has been demonstrated that there has been a requirement for the proposals need and that the proposal would bring notable benefits to local users of the buildings. Whilst there would be a loss of some grassed area and symmetry within the designated Open Space I find the proposal is for alternative sport and recreational provision and that the need clearly outweighs the temporary loss of the space in question.
15. The proposal would be consistent with LP Policy DM O1 which requires that designated open space should not be built on unless the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss. The proposal would also be consistent with Core Strategy 2011 (CS) Policy CS13 which provides support to facilitate and enable delivery of culture, sport, recreation, play facilities and events for community benefit.

Setting of the rose garden

16. During my site visit I walked through the rose garden, around the tennis courts and came out of the site further down Dundonald Road where I walked back to the site entrance near Goodenough Road. During this time I noted that the site was relatively busy with general traffic on the road and also noted a number of schools and nurseries within the immediate vicinity. This, combined with the existing facilities on site leads me to conclude that the appeal site is likely to already be subject to a good level of general activity and people walking through the site to access the recreation ground which, from the submissions before me (including photographs), looks to become extremely busy on some days as a result of it being one of the main entrances.
17. I do not find that the area would realistically be classified as tranquil due to the site context and activity as outlined above. Whilst the appeal proposal would bring a greater level of activity into this area I do not consider this to be uncharacteristic for a recreation ground in an urban setting given the proximity to the play area and schools as outlined. It would not harm the function of the space which is essentially still for a recreational use. This finding is supported by evidence from the Friends of Dundonald Park Committee.

18. The proposed buildings would be single storey and adjacent to the Primary School. The larger building would be on the same building line as the adjacent school building. Taking into account the adjacent built form I do not find the proposal would cause visual harm to the streetscene of Dundonald Road and, once in the rose garden itself, the proposed planting and climbing plants on the elevations I find would positively benefit the site compared to the existing dark corner of the rose garden which is noted as receiving limited sunlight.
19. The proposal seeks temporary planning permission for 5 – 7 years, despite the buildings being constructed on foundations. This time period is able to be controlled by condition, I do not find there would be harmful impact on the setting of the rose garden as a result of the temporary timing of the proposal.
20. The proposal would be consistent with LP Policy DM O1 which requires proposals to be of a high quality design and not harm the character, appearance or function of the open space, LP Policy DM D2 which requires proposals to relate positively and use appropriate forms, detailing and materials that complement and enhance the character of the wider setting and CS Policy CS13 which supports proposals for new and improved opportunities in culture, sport, recreation and play.

Other Matters

21. Both the Council and the appellant agree that the proposal would have an acceptable impact on local residential amenity, trees, highways and parking. Based upon the evidence before me I have no evidence to conclude differently on these matters which do not form any basis for refusal.
22. I note the appellant raises the length of time taken to determine the proposal as well as the channels taken throughout this, however, such matters are not within the scope of this appeal. I also note that the appeal form confirms that the appellant is not making an application for costs based upon the comments made regarding the handling of the application by the Council. Pre-application advice is made without prejudice to the determination of an application.
23. I note that an objection, which has been submitted multiple times as varying versions, has raised previous court cases which are stated to have been decided against the claimant. I do not, however, have copies of these court decisions before me to be able to consider their outcome or findings as part of this appeal. I can only consider the appeal based upon the evidence before me at the point of determination.
24. Claimed protest to previous applications on the site are not matters within the scope of this appeal and I have no evidence before me which suggests an award of costs against the appellant is necessary. I acknowledge that the landowner has stated they do not support the proposal. Despite this landownership is a private matter which is outside the scope of this appeal. Approval of the landowner, to implement any permission granted, would be a separate matter and not a planning consideration. Planning applications can be submitted on land outside the applicant's ownership alongside the appropriate ownership certificates which have, in this case, been completed as can be seen in the completed application forms (section 25).
25. I have considered the information which has been submitted in relation to application 12/1058, however, this is limited to the approved plans which were

submitted with the Council's statement of case. I do not have copies of all the submissions or comments made within that previous application. Despite this I am conscious that the application in question was made several years ago meaning that the circumstances around use of the site do have time to have evolved since these submissions. As previously stated I can only consider the proposal based upon the evidence before me within this appeal.

26. I note concern regarding use of the overall site including the multi-use games area and historic disagreement between parties. I have no copy of any Community Use Agreement (CUA) before me and indeed the Council's delegated report makes very limited reference to such an agreement. The planning policy officer, under social and community use in their consultation response, refers to a CUA but even they specifically confirm they do not know the details specifically. Despite this compliance, or non-compliance, with such an agreement is not a planning matter within the scope of this appeal. I have no evidence before me to suggest that the provision of such facilities would result in a risk of nuisance to other users of facilities on site.
27. I have no evidence to suggest this proposal would create a precedent for other enterprises on land in similar ownership structures and, in any case, fear of a precedent is not a reason for refusal. Each case must be considered on its own merits. I have dealt with matters relating to the character and appearance of the rose garden within this decision and the Council's refusal reason does not raise impact to, or destruction of trees, and such matters can be further controlled via condition to protect trees within the appeal site. The Council's Greenspaces Managers comment is noted with regard to arboricultural impacts but in direct contrast the Council's tree officer has not objected to the proposal subject to conditions for tree protection.
28. It has been clarified that the appeal site is not a designated holocaust memorial but that there is a plaque which commemorates the planting of a rose on Holocaust Memorial Day in 2003. I also note that it is stated that the proposal is supported by the Wimbledon Jewish Community and Rabbi Adrian Schell.
29. Matters relating to how the proposal would be financed or maintained are not planning considerations and I can only consider the proposal as is before me, which is for a temporary consent which would, if granted, be time controlled via condition. Any intent to retain or replace the facilities in question at the end of that time period would be subject to further planning control measures or applications to be considered at that point in time.

Conditions

30. A condition requiring the development to be in accordance with the approved plans is required in order to control and define the development which is granted consent. A time condition is attached to comply with section 51 of the Planning and Compulsory Purchase Act 2004. A condition relating to the materials to be utilised is required to ensure a satisfactory appearance for the lifetime of the development.
31. A condition relating to opening times is required to protect the amenities of the surrounding residential uses. As outlined within procedural matters I have taken account of both parties comments with regard to opening hours. The Council originally suggested 09:00 to 20:00, however, the appellant has suggested 07:00 – 22:00 and that the proposal should have the same

restrictions as to other pavilions in Merton. I am mindful that the appeal site before me is within an area which does include residential properties. The amenity of these residents must be considered but the proposed hours are acceptable when considering night hours and I do find that there would likely be some demand beyond the hours initially suggested by the Council. The Council have been given opportunity to comment and have not objected to the proposed opening hours suggested by the appellant in the event this appeal is allowed. These hours, I find, would give the site flexibility to cater for varying community groups and needs but still respect the amenity of residential properties within the vicinity.

32. A condition requiring removal of the buildings within five years is required due to the temporary nature of the permission and to ensure reinstatement of the site once the buildings are removed with regard to foundations. A condition requiring an arboricultural method statement, tree protection plan and protection measures are required to ensure the trees adjacent to the appeal site are appropriately protected for the lifetime of the proposal.

Conclusion

33. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Eleni Randle

INSPECTOR