The Planning Inspectorate

Appeal Decision

Hearing (Virtual) held on 27 September 2022
Site visit made on 28 September 2022

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2022

Appeal Ref: APP/G5750/W/22/3300927
669 Romford Road, Manor Park, London E12 5AD

- 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 Pradeep Bagga against the decision of the Council of the London Borough of Newham.
- The application Ref 21/02459/COU, dated 30 September 2021, was refused by notice dated 17 December 2021.
- The development proposed is change of use of the existing ground floor flat to Use Class E (e) to allow an extension of existing dental surgery.

Decision

1. The appeal is allowed and planning permission is granted for change of use of the existing ground floor flat to Use Class E (e) to allow an extension of existing dental surgery at 669 Romford Road, Manor Park, London E12 5AD, in accordance with the terms of the application, Ref 21/02459/COU, dated 30 September 2021, and the plans submitted with it, except drawing no. 100/004 Rev B, subject to the attached schedule of conditions.

Main Issues

2. The main issues are whether the appeal site is a suitable location for an extension of the existing dental surgery (E (e) use class), having regard to:

   - The impact on the Council's supply of housing; and
   - The layout of the proposal in respect of the functionality of the proposal and the adjacent residential uses.

Reasons

Background

3. The appeal site comprises a mid-terrace, two-storey, period property with a single storey rear projection. A dental centre occupies the front part of the ground floor, and the remainder of the property comprises four self-contained flats, two on each floor.

4. The proposal would result in the loss of an existing one-bedroom ground floor flat to accommodate a proposed extension of the existing dental surgery use. Both parties are agreed that the area now occupied by this flat formerly comprised part of the dental surgery. Moreover, the Council's view is that,

based on Council Tax records, the change of use to residential took place in 2007.

5. On the basis of the evidence before me, including details of 3 planning approvals[1] in respect of the ground floor of the property, the former dental surgery use of the area annotated as 'Flat 1' on drawing no. 100/001 Rev A appears to have been lawful, and it is reasonable to assume that this part of the building was previously occupied in conjunction with a dental practice use of the front part of the ground floor. As such, the appeal proposal would comprise a reversion back to a previous use of this part of the building.

6. The Council considers that, on the balance of probabilities, the residential unit is lawful by virtue of the length of time it has existed (over 15 years). However, the evidence before me is that the change of use from an approved dental surgery use to a self-contained flat did not benefit from express planning permission, and that no Certificate of Lawfulness applications have been determined by the Council in respect of the existing flat.

7. It is not for me, under a section 78 appeal, to determine whether or not an existing use or development is lawful. To that end, it is open to the appellant to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal.

8. That said, I must determine the appeal on the basis of the scheme before me, which is for the conversion of Flat 1 to additional surgery facilities in conjunction with the existing dental surgery. As such, Council policies which seek to protect existing housing are relevant to the determination of this appeal.

Supply of Housing

9. Policies SD6 and E9 of *The London Plan* (2021) (the London Plan), and Policies S6 and SP6 of the *Newham Local Plan* (2018) (the Local Plan) support the growth of vibrant town and local centres, which are to act as foci for the community, containing retail, commercial, office, leisure and community uses. The proposal, by expanding an existing community use outside these locations, would not directly divert any existing town and local centre appropriate uses away from these areas.

10. Moreover, the site lies within a mixed commercial and residential area on the north side of Romford Road, one of the Borough's principal streets, which is a designated 'Key Movement Corridor and Linear Gateway', in accordance with Local Plan Policy SP7. The specified functions of such roads include the linking of out-of-centre areas with identified town and local centres, and providing access to areas identified as 'hubs'.

11. Whilst the spatial strategy associated with Policy SP7 emphasises the importance of consolidating ribbon development of commercial and community uses into defined Local and Town Centres and Local Shopping Parades, it also includes the desirability of reclaiming the streets for people through introducing active frontage to their edges that stimulates social activity and interaction along them.

[1] Refs 83/3453/14939, 88/1047 and 88/1048

12. As such, I find that the proposal, by expanding and improving upon the existing community use dental surgery, which is accessibly located and presents an existing active ground floor frontage to the street, would not be at odds with the above objectives of Policy SP7.

13. Having regard to the above, of the development plan policies referred to in the Council's first reason for refusal, and in so far as they are directly relevant to the appeal scheme and the Council's first reason for refusal, I consider Local Plan Policies INF8, H1 and H4 to be most relevant to the consideration of the first main issue.

14. Policy INF8 promotes the development and growth of community facilities, in accordance with a strategy which aligns their delivery and retention with the needs of new and existing communities in the Borough. Whilst prioritising town and local centre sites for the development of community facilities, this policy allows for exceptions to this, where the proposal would not result in a loss of housing in accordance with Local Plan Policy H4, which requires all housing to be protected unless replaced with at least equivalent floorspace.

15. The proposal must also satisfy one of a number of other criteria listed under Paragraph 2. b. of Policy INF8. Of particular relevance, having regard to the submissions by both main parties, is criterion ii. which requires proposals to meet a localised need, and not exceed maximum floorspace and occupancy figures. Both parties are agreed that the appeal would accord with the latter requirement of criterion 2.b.ii.

16. Having regard to the former, during the Hearing, the Council confirmed that there is no defined catchment boundary in relation to the appeal site in respect of the definition of 'localised need' for the purposes of Policy INF8. Notwithstanding this, Paragraph 3.d.i. of the policy requires the submission of evidence, which could be satisfied by demonstrating that at least 67% of users will be ordinarily Newham residents and that existing facilities cannot meet the identified need.

17. The evidence before me is that the existing dental practice has provided a longstanding NHS dental service for Newham residents for more than 20 years. The appellant, a registered dental practitioner and NHS dental surgeon at the practice, has provided a signed affidavit dated 24 November 2021, confirming that the existing dental surgery had a waiting list in excess of 300 patients. During the Hearing, the appellant confirmed that there are currently 450 patients on the waiting list. Whilst the appellant has not provided actual waiting list documentation, I have no reason to doubt the reliability of the evidence provided by the appellant in this respect.

18. The appellant has confirmed that the existing dental surgery catchment area extends to the whole of the Borough of Newham, and that the majority of people on the waiting list reside or work in Newham. The Council accepts that it is likely that a high percentage of the surgery users are Newham residents, and I have no reason to dispute this on the basis of the available evidence before me.

19. The appellant also confirmed that 98% of the existing surgery business relates to NHS services, for which there is an identified need within the Borough, given the high level of low-income households within Newham. Whilst there is no mechanism before me which would ensure the future retention of the surgery

as a primarily NHS practice, I have no cogent reason to disagree with the appellant's view that a private practice would be unlikely to be viable in this location, having regard to the local community demographic.

20. The appellant's supporting evidence of need also includes several published research documents, including a National Audit Office report on *Dentistry in England*, Public Health England's *National Dental Epidemiology Programme for England: Oral Health Survey of 5-year-olds 2019* and *Oral Health Profile* in respect of Newham, a Royal College of Surgeons report on *Child Dental Health in London*, and a *Children and Young People's Joint Strategic Needs Assessment* undertaken by the Council. I acknowledge the Council's concerns that these documents are generic in nature and do not specifically relate to the Manor Park area. However, I find that they provide cogent evidence of a need for improved NHS dental services within Newham Borough as a whole, and are relevant to the determination of the appeal, having regard to the Borough-wide patient catchment area of the existing surgery and its focus on providing NHS services. As such, I am satisfied that there is sufficient evidence before me to reasonably demonstrate a localised need for the proposal. This accords with policies of the National Planning Policy Framework 2021 (the Framework) which seek to achieve healthy communities as set out in Chapter 8.

21. There would also be notable benefits associated with the proposed expansion of the surgery in terms of increasing local primary care capacity by treating more patients and so reducing referral onto secondary care services, reducing hospital referrals for dental radiographs through the introduction of a dedicated DPT machine, increasing the range and number of dental services on offer, and improving the practice on-site health and safety standards.

22. Moreover, I have noted that the appeal site lies within a Policy INF8 defined Community Facilities Opportunity Area (CFOA), whose functions include, according to the Council's Local Plan Issues and Options Public Consultation Document *Evidence Base: D1 Use Opportunity Area*s, reinforcing the appropriateness of key corridor locations for community facilities where town and local centre locations may not be available for example due to site affordability or availability. Although the appellant has not provided substantive evidence to demonstrate the non-availability of alternative sites elsewhere within town or local centres, I attach some weight to the location of the site within a CFOA, which gives some support to the suitability of the site for community uses and echoes the objectives of Local Plan Policy SP7 referred to above.

23. Taking the above need, benefits and locational factors into account, I find that the proposal would accord with Policy INF8 objectives in relation to the retention, development and growth of community facilities in alignment with local need and ensuring all community facilities are located in places that are, or will be, accessible by a range of means of transport, including walking and cycling.

24. Local Plan Policies H4 and H1 aim to ensure the delivery of a mix and balance of housing types and a high quality of residential development. The information before me is that the Council exceeded its housing delivery target by 14% according to the 2021 Housing Delivery Test result. Also, Policy H4 specifically supports the protection of 3 and 4+bed family housing and the de-conversion of flats and HMOs back to family dwelling houses, and Policy H1 seeks to

secure a significant increase in family housing to replace that lost to conversion. These objectives are reinforced in Local Plan Policy S6.

25. Notwithstanding the above, the Council has confirmed[2] that it did not achieve its London Plan housing targets during past two years, and that one-bedroom units comprise 12% of the Borough's housing needs from 2021 to 2038. As such, I am satisfied that there remains an identified need for one-bedroom units within the Borough.

26. I was unable to gain access to Flat 1 during my site visit. However, the information I have before me is that the premises comprise a market rented one-bedroomed unit with a shared living/kitchen/dining room and an overall floor area of 25 sqm. The appellant has advised that the accommodation does not meet the Council's current space standards. This is not disputed by the Council, and I have no reason not to agree either, noting that the flat does not benefit from express planning permission and dates back to before the introduction of the current space standards.

27. Moreover, I saw on my site visit that the property does not benefit from private external amenity space, and that natural light entering the main habitable rooms is likely to be limited by being reliant upon two ground floor side windows located within an enclosed alleyway. As such, notwithstanding an identified need for one-bedroomed flats, it is reasonable to assume that the retention of the existing dwelling would maintain a standard of residential accommodation that current development plan policies seek to improve.

28. The Council has confirmed that a holistic redevelopment of the appeal site building, that also involved significant improvements to the remaining residential accommodation within the building in addition to the dental surgery expansion, could potentially, on-balance, be supported in principle.

29. However, whilst the remainder of the accommodation could feasibly be converted into a single family-sized dwelling in line with the objectives of Local Plan Policies H1, H4 and S6, the appellant has confirmed that such a comprehensive redevelopment of the site would be beyond his control due to a lack of leasehold interest in the remainder of the site. On this basis, I am satisfied that this is not a realistic redevelopment option at this time.

30. Nevertheless, notwithstanding the above, the proposal would result in the loss of a residential unit in conflict with Local Plan Policies INF8 and H4, which require its retention. However, based upon the above factors, I have concluded that the harm arising from that conflict would be limited given the quality of the residential accommodation that would be lost and the inability of the appellant to carry out a wholesale redevelopment of the site at this time.

Functionality of layout

31. The existing flats within the building are currently accessed from a rear service road providing access to an enclosed, onsite alleyway from which the flats are accessed. The dental surgery has its own separate main entrance from the front of the building, and only a secondary, fire exit door onto the rear alleyway.

[2] Newham Strategic Housing Market Assessment (2022)

32. Flat 2, at the rear of the ground floor, is accessed via a doorway located directly opposite the proposed rear wheelchair access to the extended surgery, which would be from an existing door which currently provides access to Flat 1. As such, the existing small shared entrance lobby onto which the flat entrance doors face, currently solely serves residential occupiers. The proposed entrance arrangements would result in an element of overlap of commercial and residential uses within this area and within the alleyway as a whole.

33. A crossover of uses at the rear of the site would also arise from the juxtaposition of the existing entrance to the upper floor residential accommodation and the proposal, as it would result in flat occupiers passing the side of the extended dental surgery to reach the entrance door to the upper flats. This would result in a potential loss of privacy to users of the extended dental surgery facilities due to the existing side elevation windows facing onto the passageway residential access.

34. The Council's suggestion of a holistic approach to the development of the site is reasonable, having regard to the overall functionality of design in relation to the commercial and residential uses. However, as previously noted above, this is not currently feasible.

35. Moreover, I find that the potentially conflicting elements of the two uses are capable of being satisfactorily addressed by means of conditions. These could require the ground floor side elevation windows within the extended surgery to be appropriately designed in respect of glazing and opening measures, so that views into and out of the windows in relation to the adjacent access passage would be eliminated, and could restrict the use of the rear elevation dental surgery doors to that of fire exit doors only.

36. During the Hearing, the appellant confirmed that, notwithstanding the submitted drawings, such amendments to the scheme and these conditions would be acceptable, having regard to the operational requirements of the appeal scheme.

37. Moreover, in respect of the latter, I note that the existing surgery layout already accommodates wheelchair access, and that the appellant has confirmed there has been a low demand for this, and that alternative arrangements, such as home visits and pick-ups, are also available to accommodate the dental requirements of mobility impaired patients elsewhere other than on the appeal site.

38. For the above reasons, I therefore conclude that, subject to appropriate conditions, the appeal site is a suitable location for an extension of the existing dental surgery (E (e) use class), having regard to the layout of the proposal in respect of the functionality of the proposal and the adjacent residential uses. As such, the appeal scheme would accord with London Plan Policies D1, D3, D4 and D8 and Local Plan Policies S6, SP1, SP2, SP3, SP8 and H1, in so far as these policies seek to ensure that new development comprises a high quality of design, including integration and coherence with the local context, responds well to the established pattern of development and does not detrimentally affect neighbouring amenities.

39. For similar reasons, the proposal would accord with policies of the Framework which seek to achieve well-designed places, as set out in Chapter 12, including Paragraph 130, which requires developments to function well.

40. During the hearing, the Council confirmed that Local Plan Policy S1 (Spatial Strategy and Strategic Framework) was included within the Council's second reason for refusal in error. I have no reason to disagree with this and I have dealt with the appeal accordingly.

41. The Council's second reason for refusal also refers to London Plan Policy D8 (Public Realm). This policy relates to publicly-accessible space. Since no changes are proposed to the external appearance of the building, and the shared passageway at the rear of the building is enclosed by a street-facing front door onto the service road to the rear of the site, I do not find this policy to be directly relevant to the determination of this appeal.

Conditions

42. In the event that the appeal was allowed, the Council has suggested a number of conditions. I have considered these in the light of the tests set out in Paragraph 56 of the Framework and the National Planning Practice Guidance (PPG), and imposed them where I consider them to be necessary and reasonable, incorporating amendments for the sake of clarity and precision.

43. In addition to the standard implementation condition (1), it is necessary to define the plans for certainty (2). The list of plans referred to in condition 2 excludes drawing ref 100/004 rev B (annotated as 'Proposed Ground and First Floor Plans'), to enable the approval of a revised drawing confirming that the rear elevation dental surgery doors will be fire exit doors, in the interests of the functionality of the proposed layout (3).

44. Also, having regard to my conclusions in respect of the second main issue, in the interest of achieving a functional layout of development, a condition is necessary to ensure that the ground floor side elevation dental surgery windows are appropriately designed (4).

45. In the interests of the living conditions of neighbouring residential occupiers, having regard to potential noise impacts, a condition is necessary to ensure that appropriate noise insulation measures are installed between the proposal and the adjacent residential properties (5).

Conclusion

46. I have found that the proposal would be in conflict with policies in the development plan that seek to retain housing and therefore the development plan as a whole. However, there is an inherent tension in the policies, and, having regard to the above consideration of the development plan policies listed on the Council's first reason for refusal, in so far as they are relevant to the appeal scheme and the Council's reason for refusal, I conclude that, on balance, the harm arising from the loss of residential accommodation would be outweighed by the community benefits to Newham residents which would result from the proposed improvements to the NHS dental service provision within the Borough.

47. This conclusion is based upon the particular circumstances of the appeal site and proposal, including the accessible location of the appeal site, its planning history, the appellant's limited leasehold interests, the standard of accommodation associated with the existing flat, the evidence of need for improved NHS dentist provision within the Borough and the resulting public

benefits that would arise from the proposed improvements to the existing practice.

48. In this instance, therefore, I conclude that there are significant material considerations that outweigh the conflict with the development plan, and I conclude that the appeal should succeed, and planning permission be granted subject to conditions.

S Leonard

INSPECTOR

Schedule of conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 100/112 rev A, 100/111 rev A, 100/001 rev A, 100/002 rev A, 100/103 rev A, 100/005 rev A and 100/006 rev A.

3) The use hereby permitted shall not commence until a revised 'Proposed Ground and First Floor Plans' drawing to plan ref 100/004 rev B, showing the two rear elevation doors to the dental surgery annotated as fire exit doors, has been submitted to, and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved drawing, and the fire doors shall be retained as such thereafter.

4) The use hereby permitted shall not commence until the ground floor windows on the side elevation of the extended surgery have been fitted with obscured glazing, and no parts of those windows that are less than 1.7 metres above the floor of the room in which they are installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority prior to its installation, and once installed the obscured glazing shall be retained thereafter.

5) The use hereby permitted shall not commence until sound insulation measures have been implemented between the development and adjacent residential accommodation, in accordance with details which have been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be retained thereafter.

*****End of Conditions*****

APPEARANCES:

For the appellant:

- Ms Ambrain Qureshi, MRTPI – Planning Consultant, RightPlan Ltd
- Mr Pradeep Bagga -Appellant

For the Local Planning Authority:

- Mr Charlie O'Sullivan – Planner
- Mr Tajinder Rehan – Principal Planner