



Appeal Decision

Site visit made on 11 November 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 DECEMBER 2022

Appeal Ref: APP/L5240/W/22/3292494

26 Lennard Road, Croydon CR0 2UL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dr R Sagar (Country Park Practice) against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/02550/CONR, dated 12 May 2021, was refused by notice dated 12 August 2021.
 - The application sought planning permission for 'Alterations to existing Doctors Surgery (D1 use) and site layout, and erection of a 3 storey side extension' without complying with conditions attached to planning permission Ref 20/05099/FUL, dated 22 January 2021.
 - The conditions in dispute are Nos 6 and 7.
 - Condition No 6 states: The use hereby permitted shall not take place other than between the hours of: (08:00 - 20:00) Monday – Friday.
 - The reason given for the condition is: To safeguard the amenity of adjacent residents and the area generally.
 - Condition No 7 states: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), the proposed use hereby permitted shall only be used for the provision of a Doctor's surgery (Use Class E(e)) and for no other purposes (including any other use within Use Class E) of the Schedule to the Town and Country Planning (Use Classes) Order 1987.
 - The reason given for the condition is: To safeguard the amenity of adjacent residents and the area generally.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to existing Doctors Surgery (D1 use) and site layout, and erection of a 3 storey side extension, at 26 Lennard Road, Croydon CR0 2UL, in accordance with the terms of the application, Ref 21/02550/CONR, dated 12 May 2021, without compliance with Conditions No 6 and 7 previously imposed on planning permission Ref 20/05099/FUL, dated 22 January 2021, but subject to the conditions set out in the attached schedule.

Background and Main Issues

2. The appeal relates to a semi-detached building in use as a doctor's surgery within an otherwise predominantly residential street. The original planning permission to which this appeal relates was granted in January 2021 for a three storey side extension to the surgery, which appears to have been constructed on site, though I do not have confirmation of this from the main parties.
3. The proposal seeks to vary two of the conditions, firstly to extend the opening hours of the premises and secondly to remove or amend the restriction on use

of the premises only as a doctor's surgery. The reasons given by the Council for the imposition of both conditions was to safeguard the amenity of adjacent residents and the area generally, which I take to mean the living conditions of neighbouring occupants and the character of the wider area. However, it is also argued by the Council that the restriction of the use is necessary to accord with development plan policy relating to the provision of community uses.

4. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance provides further advice in this respect, confirming that these six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.¹
5. The main issues, therefore, are whether the disputed conditions, and the alternative conditions proposed by the appellant, meet these tests, having regard to the living conditions of neighbouring occupants, the character of the wider area and the provision of community uses within the borough.

Reasons

Condition No 6 – Opening Hours

6. The proposal seeks to extend the opening hours of the premises from 8am to 8pm Monday to Friday to 8am to 8pm Monday to Saturday and 10am to 5pm on Sundays.
7. The Council does not oppose the proposed extended hours, pointing to the justification for additional medical facilities put forward as part of the original application, and to the support within the Croydon Local Plan 2018 (the CLP) for increased social infrastructure, including primary care provision, to meet anticipated growth in housing and increased demand over the plan period.
8. No harm has been identified by the Council in respect of the proposed weekend opening hours. These would be during the day and the use as a doctor's surgery would not be expected to give rise to significant levels of noise or disturbance that would harm neighbours' living conditions or detract from the quiet residential character of the area.
9. For these reasons, I am satisfied that a restriction on weekend opening under the existing condition is not required to make the development acceptable in planning terms. Whilst the appellant's proposed hours are acceptable, it is necessary to specify the amended hours in a replacement condition, to ensure the use does not operate at more unsociable hours where unintended effects on neighbours' living conditions may arise.

Condition No 7 – Restriction on Permitted Use

10. The appellant seeks the removal of the condition, arguing that the restriction of the use to a doctor's surgery runs contrary to the recent changes to the Use Classes Order², which introduced a new Class E that incorporates uses formerly

¹ Paragraph: 003 Reference ID: 21a-003-20190723

² Use Classes formerly set out under the Town and Country Planning (Use Classes) Order 1987 (as amended) were replaced in September 2020 by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

falling within Classes A1, A2, A3, B1 and D1. It is argued that the greater flexibility intended by the new E use class is restrained by the existing condition. The appellant adds that the condition may restrict the options for the owners to make use of the building should the doctor's surgery no longer be required in future years. In the alternative to removal of the condition in full, the appellant seeks its amendment through omission of the words, 'and for no other purposes', so as to allow a wider range of medical and health-related activities to take place, such as community health services, physiotherapy, speech and language and exercise classes.

11. The Council points to the application form seeking 'Condition 7 to be deleted or for residential use to be allowed as an alternative use' and refers to case law in *Finney*³ where it was held that it was beyond the powers of the decision maker under Section 73 to alter the description of development, as this is the operative part of the permission and Section 73(2) says that the planning authority must 'consider only the question of conditions'. It follows from *Finney* that where amending a condition would result in a conflict between the new condition and the description of development, that particular amendment is beyond the powers under Section 73 and cannot be made, a fresh planning application being instead required.
12. I agree with the Council that an alternative condition expressly permitting residential use would not represent a minor material amendment to the planning permission and would result in a fundamental conflict with the description of development. However, the appellant ultimately has not specified a replacement condition along these lines, instead seeking either its removal or the aforementioned change in wording to loosen its restrictions, but not specifying an alternative approved use. Therefore, I am content that the proposal with respect to Condition No 7 can be considered under Section 73.
13. On the evidence I have, the original permission was found acceptable by the Council, in large part, on the basis of the argued need to expand primary care facilities in the area, with the appearance of the proposed extension only found to be acceptable on balance in this context. Given the proposed use of the extension was decisive to the acceptability of the application, it is reasonable and justifiable that the Council sought to secure this use through a condition.
14. Moreover, the condition was imposed in the context of Class E already having been introduced. Therefore, it would have been apparent to the Council that without a condition, the facility could have changed to a wide range of uses without planning permission. This would result in the loss of the doctor's surgery which would erase the justification for the overall planning permission. It would also represent the loss of a community facility contrary to Policies SP5 and DM19 of the CLP, which encourage the creation of healthy and liveable neighbourhoods by protecting existing community facilities that still serve, or have the ability to serve, the needs of the community.
15. As such, I do not concur with the appellant that the condition unfairly deprives them of the flexibility of Class E. I acknowledge that the changes to the UCO introduced by the government are underpinned by a recognition of the changing nature of the high street and to provide flexibility for businesses to adapt and diversify to meet changing demands. However, this does not mean that such flexibility to change use is acceptable in every case, and permitted

³ *Finney v Welsh Ministers & Ors* (Rev 1) [2019] EWCA Civ 1868

development rights or restrictions on changes of use may be removed where this can be justified. In this case, the restriction was justified by the particular circumstances of the proposal set out above. The remaining question is whether those circumstances have changed such that the condition is no longer necessary to make the development acceptable in planning terms.

16. Policy DM19.1 specifies where the loss of an existing community facility would be permitted. This includes where it can be demonstrated that there is no need for the existing premises for community use and that it no longer has the ability to serve the needs of the community. The appellant refers to the condition unreasonably impacting delivery of the development and placing unjustifiable and disproportionate financial burdens on them.
17. However, the appellant's evidence is limited as to how the condition is restricting the delivery of primary care facilities at the site, and it is not suggested that the existing surgery is either no longer needed nor that it is unable to serve the needs of the community. This is not surprising, given that a substantial extension to serve a stated need, and presumably to provide new, modern facilities, was permitted less than two years ago. Rather, the evidence refers only to unspecified future scenarios whereby the owners of the building may wish to change the use of, or dispose of, the property. The only reference to financial burdens are to the appellant having to take out a bank loan to fund part of the development. However, how the project is funded is ultimately a matter for the appellant. No evidence of any viability problems in terms of the operation of the surgery has been provided, nor any indication of a decline in demand for primary care facilities. Conversely, given the substantial planned housing growth of the CLP, it is reasonable to consider that primary care facilities will continue to be in strong demand, particularly newer facilities in accessible locations such as at the appeal site. Therefore, on the evidence before me, I am not persuaded that the existing condition is unreasonably restrictive or onerous on the appellant.
18. Moreover, the thrust of the above-mentioned policies is to seek new community uses in buildings before accepting their change to a non-community use. Whilst the additional facilities proposed by the appellant, on their face, may be health-related and potentially supported under Policy SP5 as community facilities, there is no clarity as to the extent to which these would take place within the building; that is to say whether they would be ancillary or incidental uses, whether one would become a new primary use, or whether a genuinely mixed use would ensue. In the absence of any clear evidence in this respect, I am not satisfied that a relaxation of the condition in the terms sought by the appellant would not still undermine the operation of the primary care facilities at the site which justified the original permission. The uncertainty in respect of the proposed mix of uses also means I cannot be satisfied that there would not be any adverse effects on the character of the area or neighbours' living conditions as a result of new activities taking place on site.
19. Therefore, on this evidence, I find that the removal of the condition in its entirety would not be appropriate, as this would circumvent the policy requirements of the CLP and enable the loss of the building to a different Class E use without planning permission. Notwithstanding that changes of use under certain classes of the GPDO⁴, such as to residential, would involve prior

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

approval processes, the ability to change use within Class E without any reference to the Council should the condition be removed means that there are not sufficient other planning controls which render the condition unnecessary.

20. Moreover, the alternative of omitting the words 'and for no other purposes' would render the condition imprecise, as the words following in parentheses, (including any other use within Use Class E), would also need to be removed for the condition to read legibly. However, the amended condition would still specify use as a doctor's surgery, and so would not provide the flexibility sought by the appellant. Without specifying what other services that could be offered, and to what extent they could be offered, the resulting condition would lack precision and certainty in how the building may subsequently be used. Given the lack of detail advanced in this respect, I am not persuaded that there is a suitably precise alternative condition that could be imposed in place of the disputed condition.
21. Therefore, given the evidenced need for primary care facilities in the borough, and to preserve the amenity of the adjacent residents, I am satisfied that the disputed condition restricting the use of the building to a doctor's surgery is necessary to make the development acceptable in planning terms, and satisfies the other tests for conditions. The exceptions to this are minor omissions of the word 'England' from the full title of the GPDO within the condition and to the UCO having been amended. Therefore, I shall alter the condition only in these respects, in the interests of precision.

Conditions

22. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have no information about the status of the other conditions imposed on the original planning permission. Therefore, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
23. The exception to this is the condition relating to the time limit for the commencement of development, which cannot be extended through an application made under section 73. Accordingly, I shall amend this condition to run from the date of the original permission.

Conclusion

24. I conclude that the proposed amendment to Condition No 6 is acceptable, but that Condition No 7 is necessary to make the development acceptable in planning terms and should be retained in substance, with the exception of the minor correction to its wording. I therefore allow the appeal and grant a new planning permission for the development with these new conditions Nos 6 and 7 attached in place of the existing and retaining the other conditions from the previous permission that appear still to be relevant.

K Savage

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from 22 January 2021.
- 2) The development shall be carried out entirely in accordance with the approved drawings and supporting documents submitted with the application listed below: SP-03 Rev PL3 (Dated 18/1/2021 Received 21/1/2021), GA-04 Rev PL3 (Dated 2/11/2020 Received 9/11/2020), GA-02 Rev PL3 (Dated 2/11/2020 Received 9/11/2020), GA-03 Rev PL3 (Dated 2/11/2020 Received 9/11/2020), GA-05 Rev PL2 (Dated 2/11/2020 Received 9/11/2020), EX-01 Rev PL1 (Dated 31/07/2020 Received 2/10/2020), EX-02 Rev PL1 (Dated 31/07/2020 Received 2/10/2020), EX-03 Rev PL1 (Dated 11/08/2020 Received 2/10/2020), EX-04 Rev PL1 (Dated 11/08/2020 Received 2/10/2020), SP-02 Rev PL1 (Dated 31/07/2020 Received 2/10/2020).
- 3) Prior to the commencement of development a Construction Logistics Plan (CLP) shall be submitted to and approved in writing by the Local Planning Authority. The CLP shall include the following information for all construction phases of the development:
 - a) Hours of construction;
 - b) Hours of deliveries;
 - c) Parking of vehicles associated with deliveries, site personnel, operatives and visitors;
 - d) Facilities for the loading and unloading of plant and materials;
 - e) Details of the storage facilities for any plant and materials;
 - f) The siting of any site huts and other temporary structures, including site hoardings;
 - g) Details of the proposed security arrangements for the site;
 - h) Details of the precautions to guard against the deposit of mud and substances on the public highway, to include washing facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances prior to entering the highway;
 - i) Details outlining the proposed range of dust control methods and noise mitigation measures;
 - j) Details demonstrating compliance with the Non-Road Mobile Machinery (NRMM) Regulations 2015;
 - k) Details confirming that all delivery vehicles are registered under the Freight Operators Recognition Scheme (FORS) achieving a minimum of silver status.

All construction phases of the development shall be carried out strictly in accordance with the details so approved.

- 4) Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:

1. External facing materials including samples of all facing materials and finishes;

The development shall be carried out strictly in accordance with the details thus approved.

- 5) No works on site above ground level shall commence until the following detailed design information has been submitted to and approved in writing by the Local Planning Authority:

1. Refuse storage
2. Cycle storage

The approved details shall be provided prior to occupation and retained for the lifetime of the development.

- 6) The use hereby permitted shall not take place other than between the hours of: 8:00am to 8:00pm Monday to Saturday and 10:00am to 5:00pm on Sundays.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the proposed use hereby permitted shall only be used for the provision of a doctor's surgery (Use Class E(e)) and for no other purposes (including any other use within Use Class E) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 8) The roof area of the structure hereby permitted shall not be used as a balcony, roof garden or similar area and notwithstanding anything contained in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015, or any amendment or replacement thereof no alterations shall be carried out to create access to it.
- 9) Any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse shall be obscure-glazed, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor taken from a point immediately below the centre of the window upwards to the opening part of the window. Such measures shall be provided and completed prior to the first occupation of the development, and retained for the lifetime of the development.
