



Appeal Decision

Site visit made on 8 October 2009

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an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:
10 November 2009

Appeal A: Ref: APP/T5720/C/09/2105894 34-38 Upper Green East, Mitcham, Surrey CR4 2PB

- Appeal A is made by Razina Karim under section 174 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against an enforcement notice issued by the Council of the London Borough of Merton.
- The notice (ref: 42081) was issued on 7 May 2009.
- The breach of planning control alleged in the notice is "change of use of the ground floor of the premises from a training and conference facility to use as a primary school".
- The requirement of the notice is to "cease the use of the premises as a primary school".
- The period for compliance with the requirement is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. An application for planning permission is deemed to have been made by section 177(5) of the Act as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with a correction.

Appeal B: Ref: APP/T5720/A/09/2105923 34-38 Upper Green East, Mitcham, Surrey CR4 2PB

- Appeal B is made by Razina Karim under section 78 of the Town and Country Planning Act 1990 against a refusal by the Council of the London Borough of Merton to grant planning permission.
- The application Ref 08/P3280, dated 3 December 2008, was refused by notice dated 20 February 2009.
- The application is for the variation of Condition 2 imposed on planning permission 05/P2432, dated 27/03/2006, to allow the use of the premises as a primary school within Use Class D1.
- Condition 2 is as follows: -
"The premises shall be used for a training and conference facility and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town & Country Planning (Use Classes) Order 1987 (as amended) or any statutory instrument revoking or re-enacting that order with or without modification)."
- The reason given for the condition is as follows: -
"In order to properly assess the impact of other uses included within Class D1 of the Town & Country Planning (Use Classes) Order 1987 (as amended) and to protect neighbouring amenity by ensuring that other uses which could result in a loss of amenity do not occur without the prior approval of the local planning authority."

Summary of Decision: The appeal is dismissed.

Appeal A – the breach of planning control

1. The notice incorrectly describes the breach as the change of use from a training and conference facility to a primary school. Since both uses are within Use Class D1, the change is excluded from the definition of development by section 55(2)(f) of the 1990 Act. The breach that has occurred is the failure to comply with the planning condition referred to in Appeal B. I am satisfied that there will be no injustice if I correct the description. The correction is in the formal decision below.

Appeals A & B – whether planning permission should be granted

2. The main concerns relate to the suitability of the premises for use as a school because of their size and layout and to the effect of the school use on (i) the character and appearance of the area, (ii) the shopping frontage, (iii) the amenities of nearby residents and (iv) traffic and parking conditions.

The suitability of the premises for use as a school because of their size and layout

3. This concern is not one of the matters mentioned in Policy C.14 of the Merton Unitary Development Plan (UDP), which indicates that applications for new educational facilities will be considered favourably subject to various matters. It is not a significant planning factor, bearing in mind the premises' authorised use as a training and conference facility. It is primarily a matter for the school inspection body, who did not raise any concerns about it in the report received by the appellant earlier this year.

The effect on the character and appearance of the area

4. The school use has not resulted in a change in the appearance of the premises from what they could be expected to look like as a training and conference facility or a change in the character of the area as a town centre location with a wide variety of uses, including the authorised part of this school on the other side of the road. The school use has not harmed the character or appearance of the Mitcham Cricket Green Conservation Area.
5. The school use complies with UDP Policies C.14 and BE.22 in these respects.

The effect on the shopping frontage

6. The premises are on the fringe of a secondary shopping frontage and were used as a tool-hire shop prior to 2005. The approval of the training and conference facility in 2006 indicates that the use of the premises for a Class D1 purpose is compatible with the shopping frontage. Retail vitality and viability is not likely to be harmed and may be enhanced by additional footfall arising from school use, compared to use as a training and conference facility. The school use therefore meets criteria (i) and (ii) of UDP Policy S.3.

The effect on the amenities of nearby residents

7. UDP Policies C.14 (criterion (iv)), PE.2, PK.3 (residential convenience) and S.3 (criterion (iv)) indicate that the use of the premises as a school should not have an unacceptable impact on nearby residents. Three issues arise here in particular, namely (a) the extent to which people living in the flats above the

school would be disturbed by noise, (b) the effect on people living in Langdale Avenue when children are brought to school by car or are picked up by drivers at the end of the school day and (c) the extent to which residents could be protected by planning conditions if permission were granted for the school.

8. Schools are usually located in residential areas and the sound of children playing in the grounds is a normal experience for nearby residents. However, the circumstances here are not comparable, since the school and people living in the flats occupy parts of the same building. The sound of children playing in the hall area and outside the building, and even the noise generated from time to time during normal class work, will inevitably be audible in the flats and is likely to cause substantial disturbance.
9. Residents in Langdale Avenue already experience a loss of amenity because of parking congestion caused by the proximity of the road to the town centre. The school is no different to many other primary schools, in that many pupils are brought to and picked up from school by car, but because of traffic regulations on the main road, Langdale Avenue is the nearest point to the school where this can take place. The representations I have received show that residents here are experiencing significant inconvenience because of the use of the road as a pick up and drop off point.
10. Soundproofing could be required by a planning condition, but in my view it is unlikely to provide adequate mitigation having regard to the volume of the noise and the confined space. Restricting the use to normal school hours would not prevent substantial disturbance arising during the day.
11. Conditions putting a limit on the number of pupils and requiring a travel plan that encouraged walking to and from school, using public transport and car sharing could be imposed. These would help to reduce the impact on residential amenities, but the extent to which this would be achieved would be unlikely in my opinion to bring it within acceptable limits.
12. The residential amenity provisions of Policies C.14, PE.2, PK.3 and S.3 would therefore not be met.

The effect on traffic and parking conditions

13. There is little movement of pupils across the main road between the two parts of the school and in any event a pelican crossing provides a safe crossing point for supervised pupils. There is a safe pedestrian route between the school and nearby play and sports areas.
14. Concerns have been expressed that the school use has led to unlawful stopping and waiting on the main road frontage and to traffic problems in Langdale Avenue (in addition to the amenity issue dealt with above). Whilst the highways/transport planners acknowledge these concerns, they do not consider them to be significant enough to justify refusing permission for the school, subject to conditions requiring the dropped crossing on the frontage to be closed and a travel plan to be implemented. I have considered the concerns carefully and have inspected traffic and parking conditions in the vicinity. However, nothing I have seen or read leads me to take a different view.

15. The traffic and parking provisions in UDP Policies C.14, PK.3, LU.3 and S.3 would be met.

Conclusions

16. The determining issue in the appeals is the impact of the school use on the amenities of nearby residents and, for the reasons given above in connection with this issue, I conclude that permission should not be granted. I have considered the fall-back position, but the impact of the school use on residential amenities will be more severe than that of a training and conference facility, because primary school pupils will create much more noise and far more of them will be dropped off and picked up by car drivers than would be the case with those attending a training and conference facility. I also consider that Condition 2 meets the guidance in Circular 11/95 in the circumstances arising at the premises and their surroundings and that its retention is necessary to allow the Council to consider the implications of alternative proposals within Use Class D1.
17. Accordingly, I will dismiss Appeal B and I will not grant planning permission in connection with Appeal A.

Appeal A – ground (f)

18. The steps put forward by the appellant as an alternative to ceasing the school use could all be imposed as planning conditions if permission were to be granted. I have already considered them in that context and found that they would not overcome the objections to this use.
19. The requirement to cease the use is normal in an enforcement notice of this kind and it does not exceed what is necessary to remedy the breach and the injury to amenity that has been caused. The appeal on ground (f) fails.

Appeal A – ground (g)

20. The appellant points out that when the notice was issued it required the use to cease in the middle of the academic year. She indicates that the compliance period should expire at the end of the academic year if the notice is upheld.
21. The notice takes effect on the date of this appeal decision. The 9 months' compliance period will therefore allow the academic year to be completed before the school use has to cease. This period does not fall short of what should reasonably be allowed. The appeal on ground (g) fails.

Formal decisions

Appeal A: Ref: APP/T5720/C/09/2105894

22. I direct that the enforcement notice be corrected by replacing paragraph 3 with the following paragraph: -

“3. THE BREACH OF PLANNING CONTROL ALLEGED

A conditional planning permission was granted on 27 March 2006 for the change of use of the premises from a shop to a training and

conference facility (ref: 05/P2432). Condition 2 restricts the use to a training and conference facility only. There has been a failure to comply with Condition 2 because the premises are in use as a primary school.”

23. Subject to this direction, I dismiss the appeal, uphold the enforcement notice as corrected and refuse to grant planning permission on the application deemed to have been made by section 177(5) of the 1990 Act as amended.

Appeal B: Ref: APP/T5720/A/09/2105923

24. I dismiss the appeal.

D.A.Hainsworth

INSPECTOR