Ward: Thames
Appeal No: APP/E0345/W/16/3152909
Planning Ref: 152208/VARIAT
Site: 1 Derby Road, Caversham
Proposal: Change of use from residential to physiotherapy clinic and residential without complying with condition 6 of planning permission 94/00488/FD – to removed named users from operating clinic' without complying with conditions attached to planning permission 10/00992/VARIAT, dated 29 July 2010.
Decision level: Delegated
Method: Hearing
Decision: Appeal allowed (application for award of costs refused)
Date Determined: 27 April 2017
Inspector: David Cliff BA Hons MSc MRTPI

SUMMARY OF DECISION

This was a complicated case. The appeal related to a refused application to vary an existing planning permission where the applicant was attempting to 'adjust' an existing mixed-use (sui generis) planning use, in order to provide an unrestricted D1 use to take place.

The reasons for refusal of the variation (Section 73) approval were twofold and in summary were:

(1) That this was not lawful under the Planning Acts (this was permitted only as a mixed use and it cannot be turned into something else via a VARIAT application); and
(2) Notwithstanding (1) above, the issues associated with the use being something else within the D1 Use Class (traffic generation, neighbour disturbance, etc.) had not been properly presented.

At the hearing, the Inspector gave consideration to whether it was possible to determine this as a (simple) s.78 appeal, ie. a normal appeal against the refusal of planning permission. However, in the end, the Inspector decided that it was not possible to determine the application as anything other than a variation and his reasoning for this appears at least in part to be in response to officers' concerns that the views of local residents would not be taken into account.

Therefore, he considered the relative merits of what was being asked for in the application.

Condition 4 requires an occupancy link between the physiotherapy clinic part of the premises and the residential part (the reason for the condition was to provide adequate parking, turning and manoeuvring space). He found, however, that both uses would remain intrinsically linked and there was no indication that there would be a separation of the planning unit. Therefore, he did not feel that he was able to require that the condition should remain, because any increase in parking requirements arising from the removal of the condition would not be significant and give rise to harm. He therefore found that the condition could be removed because it failed to pass the test of necessity.

Condition 5 restricted the use to physiotherapy and residential (the reason is in order that the LPA may properly consider the merits of such an alternative use and control the intensity of use). Again, the Inspector found the condition unnecessary, as a new

planning permission would be needed to introduce a further use or uses. As a consequence, the Inspector also removed condition 5.

He did not agree with the Council's concerns for the possible loss of the residential dwelling, because at the hearing, the Appellant confirmed that that was not the intention. Not only was that dwelling still (largely) evident on site at the site visit, but this also lends weight to the continued existence of a mixed use at the site.

Head of Planning, Development & Regulatory Services Comment:

This is a welcome decision in your officers' view, as it supports the officer contention that the approach of the applicant was unlawful and the original purpose of the application was to circumvent the proper control of a wider range of D1 uses within this predominantly residential area. To do so would have prejudiced the ability of neighbours to express their views on any such proposals, or for officers to properly evaluate the various impacts which may have arisen.

In allowing the appeal, the authorised use of the property remains in the mixed physiotherapy/residential use as approved in 1994; albeit without the previous conditions, which for the reasons above, the Inspector decided were superfluous.

Officers are relatively content that the controls afforded by the original planning permission in 1994 (as amended in 2010) are still suitable.

Whilst this appeal was in train, a separate application had been submitted to use the premises as part of the adjacent Caversham Preparatory School (ref. 161168). Your meeting on 7 September 2016 resolved to grant planning permission for this change of use, subject to a s106 legal agreement that the residential element be retained in conjunction with the school and for the D1 use to only be operated as part of the Prep School. However, following long delays by the (by then) new owner of the site, planning permission was eventually refused under delegated powers on 6 January 2017, 3 ½ weeks before the hearing took place.

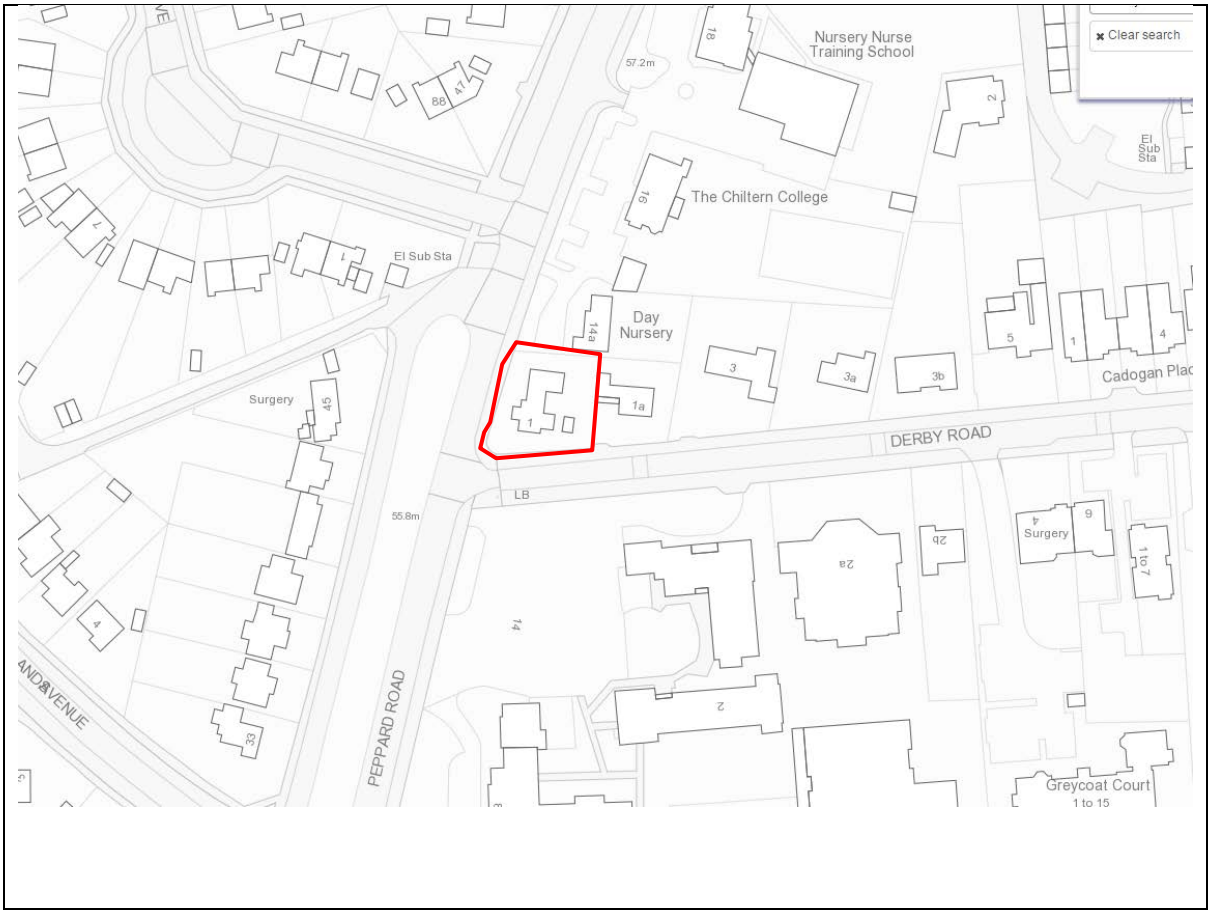
The Inspector made it plain in his decision that although technically allowing the appeal, he appreciated that it may not provide the Appellant [or indeed, the owner] with the authorisation sought for a widening of uses, including for an educational use.

Accordingly, the use for educational purposes which the Inspector saw on the site visit and which continues, is unauthorised and the new owner has been advised to submit a further application for retrospective planning permission by 6 July 2017; if such is not received by this date, officers will consider the expediency of enforcement action.

Regarding the application for costs, whilst the Inspector agreed that officers had taken longer than was necessary to find concerns with the application, he accepted your officers' assertions that this application was not as simple as was being presented by the applicant/Appellant. He was content that this delay would not have altered the eventual decision in any case,(as the planning merits of the proposal were not acceptable) and he therefore rejected the Appellant's claim for costs.

Case officer: Richard Eatough

Site Plan: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