

DELEGATED APPLICATION REPORT - Application No: 152208/VAR

Address: 1 Derby Road, Caversham

Proposal: Removal of condition 4 (physiotherapy clinic use operated, managed or carried out only by person(s) residing in residential part) and variation of condition 5 (Class D1 clinic/consulting room use only) of permission 10/00992/VARIAT to allow wider uses (all medical and health services, education and any necessary office space) at the Class D1 use part of the premises. (resubmission of 151262)

Site Description and Surrounding Area: The site is a detached bungalow circa. 1900 with an integrated physiotherapy clinic located on the northern side of the junction between Derby Road and Peppard Road.

Proposal: In short, the proposal is to remove condition 4 and vary (to widen) condition 5 of permission 10/00992/VARIAT. More specifically, removal of condition 4 (physiotherapy clinic use operated, managed or carried out only by person(s) residing in residential part) & variation of condition 5 (Class D1 clinic/consulting room use only) of permission 10/00992/VARIAT to allow wider uses (all medical and health services, education and any necessary office space) at the Class D1 use part of the premises.

Relevant Planning History:

90/00965/FUL (Alternative reference 900155) - Single storey extension and internal alterations to rear of existing garage to form granny annexe. Granted 24/10/1990.

94/00488/FD (Alternative reference 940771) - Change of use from residential to Physiotherapy clinic and residential. Granted 28/7/1994.

94/01000/FUL (Alternative reference 940389) Extension to garage wall prior to conversion of garage/annex to clinic. Granted 31/1/95.

03/00014/FUL (Alternative reference 031202) - First floor extension to provide additional record storage and admin. room. Approved 5/3/2002.

10/00992/VARIAT (Alternative reference 100042) - Change of use from residential to physiotherapy clinic and residential without complying with condition 6 of planning permission 94/00488/FD - to remove named users from operating clinic. Granted 29/7/2010.

151262 -Removal of condition 4 (physiotherapy clinic use operated, managed or carried out only by person(s) residing in residential part) and variation of condition 5 (Class D1 clinic/consulting room use only) of permission 10/00992/VARIAT to allow wider uses (all medical and health services, education and any necessary office space) at the Class D1 use part of the premises. Withdrawn prior to a decision being issued.

Public Consultation:

Letters were sent to a number of addresses in the vicinity of the site.

11 letters of objection and one letter of support have been received. Issues raised in objections are (in summary):

- Concerns for additional traffic on Derby Road, which is generally a quiet, private, residential road
- The proposal would cause additional traffic at this busy junction
- The plan appears to show parking spaces on the verge outside the site on Derby Road *Officer comment: this is a private road. If this is the case and the residents do not agree to this, then they must take their own legal advice*
- Parking spaces would block the pedestrian gate on Derby Road
- Concerns that this would become an expansion of the prep school next door *Officer comment: this application is being dealt with on its individual planning merits*
- This is a residential area and concerned for the precedent such a use could set *Officer comment: whilst precedent is not a planning matter, impact on the character and amenities of the area is (see below)*
- Concerned that this is an application purely to raise the sale price of the property *Officer comment: impact on land values is not a material planning consideration*
- The property should be returned to residential use, which was the original intention of the original condition 6
- Returning to residential use would be appropriate, given the demand for housing units
- A stand-alone D1 use would not be in keeping with Derby Road
- Concerned that a wider D1 use would have greater transport effects than that stated in the application
- An educational use would be inappropriate due to noise levels on neighbours
- A lime tree was removed to the front of this site and this was unacceptable *Officer comment: this does not appear to be connected to this proposal*
- Only a few adults ever used to visit the clinic, so it is a very quiet use. This would not be the same if it was a school.
- The clinic caused parking issues on Derby Road at busy times

The one supporting comment to this application is as follows:

This is a sensible and pragmatic way to allow the current occupants to sell their property which they cannot do under the current restrictions imposed on them. The current restrictions are far too onerous and in my view were simply unfair

from the start. I do not believe that there will be a material adverse impact on traffic, or on noise. I can see no good reason to refuse this application.

Consultation Responses:

Transport: The site achieved planning permission in June 1994 (Planning Application No 94/0488) for the change of use of part of a dwelling to a physiotherapy clinic comprising of 3 No treatment rooms. A subsequent application was submitted in 2010 under application number 10/00992/VAR to remove the named users from operating the clinic. On this basis, a personal condition (Condition 4) was included in the planning permission stating that the clinic shall not be operated, managed or carried out other than by a person or persons who reside in the residential part of the premises.

This variation of condition is for the removal of condition 4 (physiotherapy clinic use operated, managed or carried out only by person(s) residing in residential part) and variation of condition 5 (Class D1 clinic/consulting room use only) of permission 10/00992/VARIAT to allow wider uses (all medical and health services, education and any necessary office space) at the Class D1 use part of the premises.

The site is located just within Zone 2, Primary Core Area, of the Revised Parking Standards and Design SPD. In accordance with the adopted Parking Standards and Design SPD, clinics should be provided with 1.5 parking spaces/ treatment room plus one space per practitioner. On top of this, there should be 2 additional accessible parking spaces for the residential element.

The updated parking plan illustrates that the site can currently accommodate up to 12no. parking spaces, 10no. parking spaces within the red line of the application site and 2 parking spaces on the road frontage within the blue line area. However, the 10no. parking spaces within the application site are provided in an unconventional layout and do not comply with design standards with only 5 of the spaces being independently accessible. The applicant has indicated that the site worked well for approximately 16 years before the two additional spaces were provided on the road frontage.

I shall deal with the removal of condition 4 first as this primarily relates to the availability of on-site parking for the residential and business use. According to the officer's report for the 2010 application, it was considered that although the 8no. proposed parking spaces did not meet the Council's parking standard, the proposal was acceptable because 2 members of staff would be living in the residential accommodation. On this basis a personal condition (Condition 4) was included in the planning permission. The applicant has indicated that since the original application was granted, there has been an increase in car parking on site and 2no. additional parking spaces are provided on the road frontage on land owned by the applicant. In principle, this arrangement is acceptable on the condition that these spaces are retained for the residential element of the development only. However, can the applicant clarify why these spaces are not within the red line area as I am concerned that the additional two parking spaces on the road frontage could not be conditioned for use by the residential element of the site as they are within the blue line area.

In respect of the variation condition 5, the applicant has undertaken extensive research to establish the operational practices of various other medical and healthcare services. It is clear that some of the potential users could generate a similar number of trips to and from the site as the existing physiotherapy clinic. However, other uses such as doctors, dentists and health centres would generate a significant increase in daily trips to the site.

It was noted in the 2010 application that the 8no. proposed parking spaces did not meet the Council's parking standards, however, it was considered acceptable on this basis a personal condition (Condition 4) was included in the planning permission. Whilst the number of parking spaces has increased, the site can only accommodate 5no. accessible parking spaces plus 2no. parking spaces on the road frontage.

Given that the variation of condition 5 could allow any medical and health services without knowledge of an end user, the maximum parking provisions must be applied. The table below illustrates the Council's adopted standards and the shortfall of parking spaces within the site (assuming 2no. parking spaces on the road frontage are retained for the residential element of the site).

Use Type	Zone 2 Parking Standards	Maximum Parking Requirement	Shortfall of accessible parking Spaces
D1 Clinic/Health Centre	2.5 per consulting room plus 1 per FTE staff	12 spaces (assuming 4 members of staff)	7 parking spaces
D1 Doctors, Dentist & Veterinary Surgery	1.5 per consulting room plus 1 space per practitioner	8 spaces (assuming 3 practitioners)	3 parking spaces

Whilst it may be the case that the existing residential and physiotherapy clinic may adequately manage their appointment times and parking arrangements to ensure the business use does not impact on Derby Road and the surrounding roads, I am concerned that the variation of 5 to allow wider users may lead to intensification of the site without appropriate parking provisions to accommodate the demand from staff and clients. In a worst case scenario, a clinic/health centre could result in a shortfall of 7no. parking spaces.

Further, the variation of condition 5 to allow any education use cannot be adequately assessed as there are too many unknown factors regarding the end user. The Transport Statement has assessed the potential impact of a nursery for children aged 3+ but the variation of condition 5 would allow any nursery/pre-school/primary school use where the age of the children and staff ratios may vary. The Transport Statement also assesses the impact of Caversham Prep School using the site but appropriate conditions could not be applied until the end user is determined.

In summary, I do not object to the removal of condition 4 providing the 2no. spaces on the road frontage are conditioned for the residential element of the development only. However, I object to the variation of condition 5 to allow wider uses (all medical and health services, education and any necessary office space) at the Class D1 use part of the premises on the grounds that the site does not provide a sufficient level of parking.

Suggested reasons for refusal if refused

1. The proposed variation of condition to allow wider uses fails to demonstrate that it complies with the Local Planning Authority's standards in respect of vehicle parking. This could result in on-street parking movements on Derby Road and the surrounding road, adversely affecting road safety and the flow of traffic, and in conflict with Core Strategy Policy CS24 and Sites and Detailed Policies document Policy DM12.

RBC Environmental Protection: not formally consulted

RBC Planning Solicitor: has provided advice in how to deal with Section 73 variation applications and material considerations

Summary of discussions with applicant/agent

Pre-application advice was sought under 151795. Concerns were raised.

There has been extensive discussions with the applicant during this current application.

Equality Act 2010:

In determining this application the Council is required to have regard to its obligations under the Equality Act 2010. However, there is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application. Therefore in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the development.

Relevant Planning Policy and Guidance

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Material considerations include relevant policies in the National Planning Policy framework (NPPF) - among them the 'presumption in favour of sustainable development'. However the NPPF does not change the statutory status of the development plan as the starting point for decision making (NPPF paragraph 12).

In this regard, the NPPF states that due weight should be given to the adopted policies of the Local Development Framework (LDF) (Core Strategy and Sites and

Detailed Policies Document) according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).

A Section 73 application seeks to alter the original planning permission. The new permission would sit alongside the original permission and the two are to be read together.

Accordingly, the National Planning Policy Framework and the following development plan policies and supplementary planning guidance are relevant:

Reading Borough LDF Core Strategy (RCS) (Adopted January 2008 - amended 2015)
CS20 Implementation of the Reading Transport Strategy (Local Transport Plan 2006-2011)
CS24 Car/Cycle Parking

Sites and Detailed Policies Document (SDPD) (2012, altered 2015)
DM4 Safeguarding Amenity
DM12 Access, Traffic and Highway-Related Matters

Supplementary Planning document - Revised Parking Standards and Design (2011)

Appraisal

Background

There has been a lot of discussion in relation to this application between officers, the applicants and the agent. However, further to recent correspondence it is considered prudent to appraise the proposal on the basis of the original submission, and not include subsequent revisions/information received. This has been confirmed by the agent by email 18th May 2016.

Planning Application 94/0488 was for the change of use of part of the dwelling to a physiotherapy clinic comprising of 3 treatment rooms. The proposal was considered acceptable because 2 members of staff would be living in the residential accommodation. On this basis, a condition (condition 6) was imposed to make the D1 physiotherapy use personal to the applicants (Miss Miles and Mrs Hicks), to prevent parking demand that could not be accommodated on site.

Planning Application 10-00992-VARIAT sought the removal of condition 6 of planning permission 94/0488, relating to the personal occupation of the physiotherapy use. It was considered that the purpose of the condition was to ensure that the residential part of the site was occupied by persons who also ran the business, thus reducing the overall demand for parking. However, the

condition failed because it allowed Miss Miles and Mrs Hicks to move away from the residential property, providing they still ran the business, which would satisfy the condition. Accordingly, the personal condition of the 94/0488 permission was removed but with a new condition imposed that linked the running of the business to the occupants of the house, which it was considered was the intention at the time of the original permission.

The original personal condition had the consequence of limiting the D1 of the site to a Physiotherapy Clinic, because this was the applicants' profession and expertise. It was considered that an unfettered D1 use of the building (that could occur providing the persons occupy the dwelling) could be harmful to the amenities of the local area and increase the demand for parking. Therefore, an additional condition was recommended that limited the D1 use of the site to consulting rooms.

On the basis of the above, the following two conditions were attached to 10-00992-VARIAT, the only way it was considered to be acceptable:

Condition 4 states that "The D1 physiotherapy clinic use of part of the premises shall not at any time be operated, managed or carried out other than by a person or persons who reside(s) in the residential part of the premises". The reason stated was to provide adequate parking, turning and manoeuvring space on site.

Condition 5 states that "The D1 use part of the premises shall only be used for a Class D1 clinic/consulting rooms and for no other use that may fall under a Class D1 use (non-residential institution) of the Town and Country Planning (Use Classes) order 1987 (as amended)". The reason stated was so that the local planning authority may properly consider the merits of such an alternative use and control the intensity of use.

The application

This current application seeks to remove condition 4 and vary (to widen) condition 5 of permission 10/00992/VARIAT. More specifically, removal of condition 4 (physiotherapy clinic use operated, managed or carried out only by person(s) residing in residential part) & variation of condition 5 (Class D1 clinic/consulting room use only) of permission 10/00992/VARIAT to allow wider uses (all medical and health services, education and any necessary office space) at the Class D1 use part of the premises.

Of the two conditions, it is considered that condition 5 is the more contentious; however, the potential widening of condition 5 would influence the appropriateness of condition 4 and so they are linked.

Transport and impact on neighbours

The Council's Transport Officer recognises that the applicant has undertaken extensive research to establish the operation practices of various other medical

and healthcare services. It is also recognised that it may be the case that the existing residential and physiotherapy clinic may currently adequately manage their appointment times and parking arrangements to ensure the business use does not impact on Derby Road and the surrounding roads. However, there is a concern that the variation of condition 5 may lead to intensification of the site without appropriate parking provisions to accommodate the demand from staff and clients. There is a greater concern that the variation of condition 5 to allow any education use cannot be adequately assessed as there are too many unknown factors regarding the end user. The Transport Officer has stated that only 5 of the parking spaces shown would be independently accessible and as such the parking layout and provision does not comply with the Council's adopted Parking Standards to allow an undetermined D1 user. It is also considered that appropriate conditions could not be applied to a planning permission until the end user is determined.

Conditions were imposed on the original permission and the 2010 variation application because the parking requirements could not be met for a wider D1 use. Whilst it may be the case that the existing residential and physiotherapy clinic may adequately manage their appointment times and parking arrangements to ensure the business use does not impact on Derby Road and the surrounding roads, there are no assurances that a future occupant/business will operate in the same manner.

Application 94/0488 makes it clear, by way of condition 6, that the circumstances of the applicant are an exceptional justification for allowing part D1 use at the site. An unfettered Class D1 use at the site could be potentially harmful to the amenities if the local area and increase demand for car parking/potentially lead to highway safety issues. This was highlighted to the applicants at the time of the 2010 application and the 2015 application, which was subsequently withdrawn.

Regarding impact on neighbours, many residents are concerned that the proposed change of use would not be acceptable on the character of the area. However, it is probably more accurate to say that these impacts are at present, "unknown". The Council's EHOs have not been consulted on this application and this is because there is nothing to consult them on. It is the case officer's view that this issue remains unresolved and this is largely because of the range of potential D1 uses which would be possible and no comfort/clarification on this matter from the applicant.

Objectors have suggested the house should be reinstated. It would be possible to keep the residential part of the use in any future use, although how and if this would be possible is not clear in the application. This could form a reason for refusal.

Issues to consider in this application

Notwithstanding the discussion which is provided above, the Council's solicitor advises that the way the application has been submitted is a cause for concern.

It is clear that the original planning permission allowed a specific mixed (sui generis) use: that of a retained house with a physio practice (C3 with D1). Applying to vary conditions is complicated and opens up a variety of scenarios

which are unpalatable in planning terms (noise, disturbance, traffic, all of which would need to be considered for the full range of all developments which would be possible under use class D1 and have not been presented.

The reason for the conditions in the first place was that a standalone D1 use was and is not considered to be appropriate to the residential character of the area. It was also necessary to retain the family dwelling, which from the case officer's visit, the C3 element is in fact the dominant element, not the D1 element.

The main issue, however, as advised by the Council's solicitor, is that the conditions cannot legally be varied or removed as has been sought. This is essentially because they are an intrinsic part of the mixed use itself. Put simply, to remove them would leave you with, 'something else' i.e. not the original use, but a materially different use. It is not possible (legal) to do this through a Section 73 application; it would require a new full planning application for a change of use.

It is known that the applicant may be looking at offering the site to the adjacent school to use as part of the School's proposed desire to expand. This use would be fundamentally different to the permission which currently exists at 1 Derby Road, which is a sui generis or mixed use, and a specific planning permission would be required for the school's use of the site.

Therefore, primarily on the basis that the application involves trying to turn the original planning permission into something it is not; the application should be refused. The wording below has been prepared in consultation with the Council's planning solicitor.

Conclusion

The application should be REFUSED for the technical reasons discussed above, but the reason for refusal should also include the potential loss of residential accommodation, which is contrary to Policy CS17 (Protecting the Existing Housing Stock) and the uncertainties in terms of traffic and noise disturbance.

RECOMMENDATION: refuse:

Planning permission 94/00488/FD (as varied by permission 10/00992/VARIAT) permitted a residential use with an interlinked physiotherapy clinic use, comprising three treatment rooms and this constitutes a 'mixed' sui generis planning use. The application seeks to vary (a) condition No. 4: that the persons operating the clinic reside on the premises; and (b) condition No. 5: that it should be a clinic/consulting rooms only. The effect of the application, if granted, would be to remove the link between the uses and allow alternative D1 uses. This is unacceptable as it would change/widen the authorised use rather than simply alter the conditions which regulate it. The application is therefore refused for the following reasons:-

(1) It is outside the terms of Section 73 of the Town and Country Planning Act 1990 (as amended) as it purports to change/widen the authorised use rather than varying the conditions upon which the use is regulated and

(2) The application is unclear as to whether the C3 element would be retained and if retained, how it would operate/be controlled and how it would relate to the other use(s) and

(3) Without prejudice to (1) and (2) above the application

fails to demonstrate acceptability in terms of likely residential disturbance and transport impacts in this predominantly residential area which are likely to arise from the unfettered D1 use which the applicant seeks. The proposal fails to demonstrate acceptability in terms of Policies CS4 (Accessibility and the Intensity of Development), CS9 (Infrastructure, Services, Resources and Amenities), CS20 (Implementation of the Reading Transport Strategy) of the Reading Borough LDF: Core Strategy (2008, as amended 2015) and policies DM4 (Safeguarding Amenity) and DM12 (Access, Traffic and Highway-Related Matters) of the Reading Borough LDF: Sites and Detailed Policies Document (2012, as amended 2015).