

PROPOSED DISPOSAL OF VARIOUS COMMUNITY BUILDINGS FOR AFFORDABLE HOUSING

ADVICE

1. I am asked to advise as to the correct approach to the planning justification for the grant of permission for 100% affordable housing schemes on three areas of land whose historic lawful use is D1.

Essential Facts

2. Meadows Hall day care centre (Age Concern) has been moved to a newer facility – the site has been vacant since 2013 and the buildings demolished. Mereway Day Centre closed in 2012 having been declared surplus to the Council’s requirements and alternative provision was commissioned elsewhere. The Strathmore Centre was used by Social Services and Youth Offending Service (“the SS/YoS Centre”) - following reconfiguration and commissioning of services the relevant services are now provided elsewhere. The SCAMPs nursery in that building would be re-provided in any redevelopment scheme.
3. I am told that:
 - a. at the point of closure, detailed consideration was given to the existing need for the then current uses, how that need was to be met in the future elsewhere and whether there were other needs for D1 space, before the sites were declared surplus to requirements;
 - b. neither the Council as provider and (more commonly) commissioner of services nor its partner agencies had then or have now any identified need for the sites (or shortage of sites) for *any* D1 use. The Council has and continues to work with service providers to ensure that there is adequate provision for community uses;
 - c. the Council (as landowner, service provider/commissioner and a body representing its community) has conducted an audit of community facilities/premises in these areas and is satisfied that there is adequate provision locally. I proceed on the assumption that all needs for D1 space that it is important to meet are currently met in this area and that there are no identified gaps in provision which could be met at these sites; and
 - d. the remaining buildings are in poor condition and of a generally poor layout. They are unlikely to be fit for purpose (or viably capable of being made fit for purpose) for any significant D1 use (including because of asbestos).
4. Using the tests in LP28, there is therefore no longer an identified community need for the facilities, they no longer meet the needs of possible users, the facilities have been adequately re-provided in a way suitable for the community served and there are sufficient suitable alternative facilities in the locality. The Council has assessed the position and has concluded that that there is no realistic potential for the re-use or redevelopment of the sites for alternative social infrastructure for which there is an identified local need.
5. On the other hand, the SHMA, housing trajectory and most recent figures on the Council’s website show that the position in respect of Affordable Housing delivery in Richmond is (to put it at its lowest) poor - both in terms of past delivery and current pipeline. There is a huge unmet need. The prospect of meeting even a reasonable proportion of that need absent significant 100% affordable housing schemes is remote. The private sector is not bringing forward high volumes or percentages of affordable housing. Whilst weight is a matter for

planning judgment and not of law, it goes without saying that the weight to be attached to affordable housing need in the circumstances of Richmond is great. The policy framework is not currently delivering to meet that need.

The Planning Balance

6. In that context, I am asked to consider what is the correct approach to the planning balance and the justification for a limited departure from a part of policy LP28C3 (the policy relating to the marketing of D1 uses). The marketing requirement is designed to avoid unjustified loss of D1 to other uses on the application of developers who seek to maximise land value – the only way they can demonstrate lack of D1 demand is by marketing the site. Of course the Council is in a very different position. It is corporately closely involved in *provision* of D1 space and associated services and has rigorous processes for deciding where provision needs to be made and where sites are surplus to requirements. The marketing requirement may be thought to be of much less direct relevance in the circumstances.
7. Given that all the Council's and its service providers needs are being met and the Council has not identified any unmet needs which it considers important to meet, LP28A and LP28C points 1 and 2 are met. The purpose of point 3 is met - the Council has assessed whether there is a local need for which the sites could be used - and given the absence of any identified local need has concluded not. The justification for the *partial* departure from LP28C point 3 and not *fully*¹ marketing lies in the points at paragraph 3 above. The Council corporately has not identified any local need which is not being met or for which these buildings/sites could realistically be used. Marketing would not change that.
8. The central question therefore becomes whether there is a justification for the limited departure from a small part of LP28 (whose application on the facts here may be thought of limited relevance) when the purpose of the marketing requirement has been met by other means – as set out in para 3; and which has demonstrated that there is no important unmet need in this locality and that there is no identified use for which these premises could/would be viably suitable. It seems to me that that question answers itself – given the importance of the unmet affordable housing need, the lack of realistic scope to meet that need, and what might be viewed *on the detailed facts* as just a technical departure from the words and not the purpose of LP28C3.
9. This is not a case where existing or important possible future D1 uses are being lost but where there is no identified unmet local need for any D1 use of these sites/buildings by the Council or its service providers. It seems to me that that is a significantly different balancing exercise from loss of either (1) a current D1 use; (2) a loss of potential for an important D1; or (3) loss of a D1 building fit for that purpose.
10. In respect of Meadows Hall, the fact that the D1 building has been demolished and the land is vacant is another highly important factor in the balance. There was then no identified need for the buildings or site for D1 uses. The former use has been relocated. No other D1 use of the vacant site has been identified. This is thus a cleared vacant site with no current “social or community infrastructure” (which in para 8.1.2 is defined by reference to floorspace).

¹ The sites have been marketed but not in full accord with LP28C point 3 – the availability of the sites has been published on the Council's website for a number of years and there has thus been passive marketing.

11. It seems to me that, in the light of para 3, there is a powerful case applicable to all the sites that there is a strong justification for the (minimal technical) departure from a part of LP28C3 because all key needs are being met and very powerful other material considerations to justify that departure.

David Forsdick QC

Landmark Chambers

15th May 2019