

Appeal Decision

Hearing held on 15 November 2016

Site visit made on 15 November 2016

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 09TH December 2016

Appeal Ref: APP/F0114/W/16/3152280

33 Englishcombe Lane, Bath, BA2 2EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Cedar Care Homes against the decision of Bath & North East Somerset Council.
 - The application Ref 15/05125/FUL, dated 12 November 2015, was refused by notice dated 19 January 2016.
 - The development proposed is the change of use from Class C2 (Residential institutions) to a large house in multiple occupation (HMO) (Sui Generis).
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Decision

1. The appeal is dismissed.

Procedural matter

2. The proposal has been submitted as a change of use of a property in Class C2 use to a Sui-Generis use but this term is a description of an independent use outside any use class rather than a specific use. Following discussion on this issue at the hearing the main parties agreed that the use should be described as a change of use from Class C2 to a large house in multiple occupation (HMO) and I will consider the appeal on this basis.

Main issue

3. The main issue is the effect of the use proposed on the living conditions of the occupiers of the neighbouring residential properties.

Reasons

Background

4. The appeal site comprises a large detached two storey property, with accommodation in the roof space, which lies on the corner of Englishcombe Lane and Englishcombe Way in a mainly residential area, with long distance views over Bath. The Statement of Common Ground indicates that the property is in use as a 19 bedroom care home for the elderly. The site is located within the Bath World Heritage Site and Conservation Area.
 5. The adjacent residential property to the east is No. 31a Englishcombe Lane and this property is used for bed and breakfast accommodation. The house of No.35 lies on the western side of Englishcombe Way.
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6. The existing care home has 20 elderly residents and 8 members of staff through the day and 3 staff overnight. The staff do shift work and the shifts tend to swap over at 8am and 8pm. It is proposed to use the property as a large HMO with 18 bedroom units and other communal facilities. The appellant company operates 6 care homes locally and in order to attract staff, particularly from abroad, and retain them, it proposed to convert the appeal site building to affordable accommodation for staff. Each residential unit would have a bed/sitting room with a washbasin and there would be shared toilet and washing facilities and communal kitchens and lounge dining rooms on both the ground and first floor. The occupier of each room would be a permanent member of staff of Cedar Care Homes but the company do not envisage any other management or supervision on the premises of the occupiers on site.

Effect on living conditions

7. For this issue the relevant provisions of the development plan are saved Policies D.2 and HG.12 of the Bath and North East Somerset Local Plan (adopted 2007). These will be superseded by the emerging Draft Placemaking Plan which has reached an advanced stage in the formal plan-making process but the provisions contained within policies H2 and D6 are similar in terms of assessing this effect. Policy HG.12 advises, in summary, that the reuse of buildings for multiple occupation will be permitted if (along with other criteria) the use does not seriously injure the amenities of adjoining residents. Further, policy D2 is a general policy indicating (in summary and along with other criteria) that to be acceptable, development should not cause significant harm to the amenities of existing occupiers. In both cases the policies carry significant weight.
8. The appellant company submits that the change of use will not give rise to a material change in the form of noise and disturbance which would harm the living conditions of neighbours when compared to the existing use as a large residential care home. In support of this the appellant commissioned a Noise Assessment from acoustic consultants who undertook noise measurements on site regarding the existing use and the results of this show that the typical levels for both day time and night time are low.
9. The assessment goes on to predict the levels of noise that are likely to arise from the proposed use including noise stemming from car movements by staff. However, as this prediction is not based on similar noise measurements taken at a large HMO use I have to afford it less weight. It is submitted that the results demonstrate that the increase in noise level would be very low - less than 1 dBA at all nearby sensitive receptors. In terms of noise from the outdoor use of the garden, the assessment indicates that this is still likely to be low. It is said that appropriate behaviour by the tenants resulting in no noise disturbance will be specified in their tenancy agreement. Finally, the noise consultants recommend a condition which stipulates that a noise level at the boundary with 31a Englishcombe Way does not exceed 50 dBA during the day and 45 dBA at night.
10. The Council draws attention to the operational comparison of the existing care home and the proposed HMO submitted with the planning application. From this the Council says that the current use gives rise to comings and goings of about 86 trips per week whereas the proposed HMO use would give rise to at

least 252 trips just based on each occupier leaving the premises and returning once each day.

11. The table in paragraph 5 of the section dealing with Noise in the Planning Practice Guidance sets out ranges of the 'noise exposure hierarchy' (Ref.ID: 30-0054-20140306). At the hearing the appellant's team submitted that the proposal would fall within the second category of the table resulting in 'no observed adverse effect' whereas the Council said the evidence indicates that the effect of the use would be 'noticeable and disruptive' and there would be 'significant observed adverse effects' as per the fourth category in the table.
12. In weighing up the evidence it appears to me that in numeric terms the figure mentioned by the Council of the present level of use of the care home does not take into account the trips made by staff, whereas the figure attributed to a future HMO use does. Nevertheless, the weekly movement said to be 252 trips is an underestimate as the staff are unlikely to just go to work and then sleep in the premises all week and therefore the assessment of total movements is likely to be much higher. Notwithstanding the predictions made in the appellant's noise assessment, in my view, the general comparison of movements shows that there would be a significant increase in the 'comings and goings' associated with the change of use. This reflects the low-key nature of the existing use where the care home is a low key, self-contained and much controlled residential environment where the residents are sedentary and are looked after. To my mind there is a clear difference in the character of an HMO use where the occupiers are likely to be much younger, independent, and seek a life and social interest both inside and away from the premises. The occupiers are likely to be more active themselves and have visitors. Further, I have to consider the use on its individual merits rather than how a specific owner/landlord may choose to operate and regulate the premises.
13. Although much of the movement of staff would be associated with staff shift changes around 8am and 8pm, and thereby outside the hours generally regarded as unsocial, that is between 11pm and 7am, I consider that the HMO use is likely to result in a much greater scale of 'comings and goings' as normal rather than as unusual events, both inside the building; around the premises with the movement and parking of cars, and outside in the garden for example for socialising and smoking. Further, I noted at my site visit the close proximity with No.31a and the rising of the land from where parts of the rear garden of the appeal site overlook this neighbouring property.
14. Overall, taking account of the general setting of the site in a suburban area of mainly individual houses, I find that the activity associated with a large HMO use of the scale proposed would be likely to result in a use of a fundamentally different character when compared to the current residential institutional use and be more likely to have a significant and adverse discernable effect on the occupiers of the neighbouring No.31a as the Council alleges.
15. I have considered whether the use is capable of being mitigated by conditions. However, it would not be reasonable or enforceable to limit the occupiers of the HMO to those employed by the appellant company only as planning permission should normally run with the land and because the ownership of the company may change. I have also considered the condition recommended in the Noise Assessment but I agree with the Council that it would be

impractical to carry out the necessary monitoring required to enforce the condition and I do not consider that it meets the tests set out in the National Planning Policy Framework (NPPF).

16. I conclude on this issue that the character of the HMO use proposed is likely to result in a materially different character and level of activity of the premises and its garden which would substantially harm the living conditions of the adjoining property of No.31a Englishcombe Lane and be contrary to the provisions of saved policies D.2 and HG.12 of the Bath and North East Somerset Local Plan.

Other considerations

17. Although not issues raised by the Council in the reasons for refusal, neighbours raise concerns about the large HMO use resulting in pressure on parking facilities; and in causing overlooking and a material loss of privacy.
18. In terms of highway safety, I noted at my site visit that both Englishcombe Way and Englishcombe Lane are not subject to on-street parking restrictions and that on-street parking took place on these highways. I also noted the raised tables that have been installed at junctions and that the junction of the above roads adjacent to the appeal site has a wider bell-mouth painted onto the road to improve visibility. Given these local traffic calming measures, and fact that the highway authority do not object to the application, there is little expert evidence before me to substantiate a case that the proposal would result in an increased risk to highway safety.
19. Regarding overlooking, at the site visit I visited one of the rooms in the care home at first floor level and considered the aspect from the window towards No. 31a. The side elevation of this neighbouring property is blank with no windows other than a minor opening to the attic. Although the proposed HMO use would utilise 8 individual rooms with, in total, 8 windows on the east facing elevation of the existing building, I have to take into consideration the fact that the same rooms are now used for elderly residents. Given this residential occupation of the rooms as existing and as proposed, I do not consider that there would be a greater degree of overlooking or a material loss of privacy.

Planning balance

20. On the main issue in the appeal, I have found on the evidence put to me that the present use as a care home for the elderly has little impact on the surroundings of the site. However, the proposal to change the building to a large HMO with up to 18 residents living independently would be likely to result in a use with materially different characteristics and where the increased level of activity would be likely to cause substantial harm to the living conditions of the occupiers of the residential property adjacent to the site. This renders the proposal non-compliant with the tests set out in the relevant parts of the development plan. It also conflicts with a core principle of the NPPF which recognises that planning decisions should ensure a good standard of amenity for all existing occupiers of buildings.
21. I appreciate that the HMO use is put forward in order to help provide and maintain the staffing requirements of the other care homes that the appellant company operates. There are likely to be wider social and economic benefits

in maintaining these care homes. However, these factors do not outweigh the harm that I have identified would result and which cannot be reasonably mitigated by conditions. Nor are there any other considerations which outweigh the adverse effects and the conflict with policy.

Conclusions

22. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J Coombs	Planning Consultant, Pegasus Group
Mrs A Reed	Noise Consultant, 24 Acoustics
Mrs M Desai	Cedar Care Homes

FOR THE LOCAL PLANNING AUTHORITY

Mr C Griggs-Trevarthen	Senior Planning Officer, Bath and North East Somerset Council
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INTERESTED PERSONS:

Mr W Sandry	Local District Councillor
Mr and Mrs Taylor	Neighbours
Mrs K and B Kay	Local residents
Mr A Wilkie	Local resident
Ms H Self	Local resident
Ms S Pike	Local resident
Ms S Westbrook	Local resident
Ms S Hamilton	Local resident
Ms A Workman	Local resident

DOCUMENTS

- 1 Appeal decision - APP/X5990/A/08/2081608 from appellant.