
Appeal Decision

Site visit made on 23 January 2017

by H Butcher BSc (Hons) MSc MRTPI

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

Decision date: 17 February 2017

Appeal Ref: APP/U3935/W/16/3162915
2A Ferndale Road, Swindon, SN2 1EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Les Elms against the decision of Swindon Borough Council.
 - The application Ref S/16/1096/JROD, dated 15 June 2016, was refused by notice dated 2 September 2016.
 - The application sought planning permission for a change of use from rest home/institution (Class C2) to single dwelling house (Class C3) without complying with a condition attached to planning permission Ref S/15/0846/JROD, dated 13 August 2015.
 - The condition in dispute is No 5 which states that: Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (Permitted Development) (England) Order 2015 (as amended) the property shall not be used for any purpose other than as a single dwelling house being a use falling within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The reason given for the condition is: To prevent a change of use of the property to use as a house in multiple occupation (being a use falling within class C4 of the above Use Classes Order 1987) without obtaining planning permission which is likely to have an adverse impact upon the amenity of the area in which it is located. The Local Planning Authority considers that such a proposal should require a planning application to be submitted for proper consideration of its likely adverse impact.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from rest home/institution (Class C2) to single dwelling house (Class C3) at 2A Ferndale Road, Swindon, SN2 1EX, in accordance with application Ref S/16/1096/JROD, dated 15 June 2016, without compliance with condition No 5 previously imposed on planning permission ref S/15/0846/JROD, dated 13 August 2015, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue is the effect removing condition No 5 of permission S/15/0846/JROD, which restricts a change of use from a C3 (dwellinghouse) to C4 (small house in multiple occupation) permitted under the Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended) (GPDO), would have on the amenity of the surrounding area.
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Reasons

3. Ferndale Road is formed predominantly of terrace houses. There is also a church, vicarage, and just along from these, 2A Ferndale Road, which is a detached chalet bungalow. No 2A was previously a care home but was recently granted planning permission for use as a single dwelling house (ref S/15/0846/JROD). Due to its previous use the property has a number of en-suite bedrooms, as well as bedrooms which rely on shared bathroom facilities. In addition to this, there are also multiple kitchen areas and lounges. Within the curtilage of the property there is parking for at least three vehicles.
4. The 2010 Use Classes Amendment Order introduced Class C4 for a House in Multiple Occupation (HMO) from 06 April 2010. This use is for a small shared house occupied by between three and six unrelated individuals who share basic amenities. A concurrent amendment to the GPDO allowed a change of use from Class C3 (dwellinghouse) to Class C4 without the need for planning permission. However, upon granting the above permission (S/15/0846/JROD) the Council imposed a condition removing this right.
5. Paragraph 200 of the National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The Planning Practice Guidance further advises that conditions restricting permitted changes of use should only be used in exceptional circumstances.
6. The reason given for imposing the condition in dispute was that a change of use of the appeal property from C3 to C4 would have an adverse effect on the amenity of the area. What the Council mean by 'amenity' is unclear and no robust evidence detailing any such adverse effects has been provided. The Council state, nevertheless, that they have a right to see the details of such a change of use in order to assess its impact. Permitted development rights, however, specifically allow development which does not require the same scrutiny as that which would require full planning permission. In the absence of any clear justification or exceptional circumstances to conclude otherwise, the Council's approach is therefore unreasonable.
7. I have also considered neighbours' concerns in relation to the occupation of the property for C4 use. These include an increase in traffic along the vehicle access to the property, and increased rubbish, overlooking, noise and disturbance. In my opinion, the use of the appeal property by between three and six unrelated individuals sharing basic amenities would not be materially different to if it were occupied by a family in respect of the concerns raised. Furthermore I find no reason to conclude that a C4 use would increase the risk of criminal or anti-social behaviour at the appeal site.
8. Although there is no objection on highway grounds, parking is discussed. Whilst there is limited on-street parking in the area the appeal site has, as noted above, space for three off-road parking spaces and there is nothing before me to indicate this is insufficient for the uses under consideration in this appeal. Furthermore, I noted on my site visit that the area in which the appeal site is located is well served by local shops and a frequent bus service into Swindon town.
9. The Council raise concern that it would not be known how many people would be residing at the property under a C4 use and refer to previous planning

applications made for 12 bedroom and 10 bedroom HMOs. However, as previously noted, a C4 use is for between three and six unrelated individuals sharing basic amenities. Whilst the property could potentially provide accommodation for more than six unrelated people, were a material change of use to a larger HMO to occur it would require planning permission for a change of use from C4 to a Sui Generis use. This would be an entirely separate matter and is not a reason to restrict what would normally be considered a permitted change of use from C3 to C4.

10. The Council argue that allowing a change to C4 use would reduce the availability of larger C3 dwellings. However, the GPDO allows for a change from C3 to C4 and from C4 to C3. Therefore the C3 use could not be lost by removal of condition No 5. There is no dispute between the parties that there is an over concentration of C4 uses in the area.
11. Taking the above points together I find no clear justification or exceptional circumstances to persuade me that it is necessary or reasonable to impose condition No 5 on planning permission S/15/0846/JROD. The appeal property, in exercising its permitted development rights to change from a use as a C3 dwelling house to use as a C4 HMO would not be harmful to the amenity of the surrounding area. Consequently it would not conflict with Policy DE1 of the Swindon Borough Local Plan 2026 (2015) which requires high standards of design which include consideration of privacy, noise, disturbance and smell, or the Framework, which similarly seeks high quality of design and a good standard of amenity for all existing occupants of land and buildings.

Conditions and Conclusion

12. Given my findings above I have deleted condition No 5 previously attached to permission S/15/0846/JROD. I have also amended the standard time limit condition so that this permission runs from the date of the original permission and reapplied the plans condition to provide certainty. Condition No 2 of the above consent appears to have been fulfilled insofar as a minimum of three car parking spaces are provided on the site. I have therefore amended this condition to simply require the retention of these. The status of condition No 3 on permission S/15/0846/JROD which relates to the enlargement of the access at the site is unclear therefore I have imposed this again. In the event that this has in fact been discharged, that is a matter which can be addressed by the parties.
13. Subject to these conditions the appeal is allowed and permission granted.

Hayley Butcher

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the 13 August 2015.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01 B, 02 G, 03 D, 04 A.
- 3) Three car parking spaces shall be retained within the site in perpetuity.
- 4) No works for the enlargement of the access shall take place until details of the access widening, boundary alterations, construction, materials and means of abutting and delineating the highway shall be submitted to and first approved in writing by the local planning authority. The development shall then be constructed in accordance with these details and thereafter retained and maintained as such.