The Planning Inspectorate

Appeal Decision

Site visit made on 19 March 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 08 May 2019

Appeal Ref: APP/H1840/W/18/3219129
44 Corbett Avenue, Droitwich Spa WR9 7BE

- 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 Mr and Mrs Nagra against the decision of Wychavon District Council.
- The application Ref 18/02202/FUL dated 23 October 2018 was refused by notice dated 19 December 2018.
- The development proposed is a change of use from residential dwelling (C3) to Nursing Home.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Nagra against Wychavon District Council. This application is the subject of a separate costs decision.

Procedural Matter

3. A revised National Planning Policy Framework (the Framework) was published in February 2019 after the issue of the Council's decision. However, as any policies that are material to this decision have not fundamentally changed in the Framework, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.

Main Issue

4. The main issue is the effect of the proposal upon the living conditions of the occupiers of No 46 Corbett Avenue by way of noise and disturbance.

Reasons

5. Corbett Avenue is largely made up of substantial detached houses. Although there are some business and medical related uses, it is predominantly residential in character. The appeal dwelling is a large 4 bedroomed semi-detached dwelling with a single storey rear extension and parking area to the front. No 46 is the adjoining dwelling.

6. To the other side of the appeal dwelling, Nos 42 and 44 appear to have originally formed a similar pair of semi-detached houses to Nos 46 and the appeal dwelling. However, they now comprise the Corbett Nursing Home (the Nursing Home). The Nursing Home is also owned by the appellants and

provides accommodation for 25 residents rising to 35 upon completion of a large extension to the rear of the Nursing home nearest to No 42.

7. The area to the front of the appeal dwelling is made up entirely of hardstanding for parking for the nursing home. There is a railing type fence separating No 46 from the appeal dwelling at the front. At the time of my site visit, the land to the rear of the appeal dwelling and the Nursing Home was being used for the storage of building materials following the work to the extension.

8. The proposal is described by the appellants as an extension to the Nursing Home and would provide accommodation for four residents on the first floor and kitchen, office and living rooms on the ground floor and no external alterations are proposed. Occupants may require assistance anytime of the day or night and staff are on hand to provide 24 hour a day care.

9. No technical noise assessment has been provided by the appellants that sets out background and predicted noise levels, amongst other relevant factors, in order to inform an assessment of the potential effects of noise and disturbance from the proposal.

10. Whilst there would be 4 bedrooms for the residents, there is also limited information about how the proposal would operate in the day or night. For example, it is not clear if the 4 residents would use facilities largely in the existing Nursing Home. No details are provided of whether overnight staff would stay in the appeal dwelling or perhaps be on call. It is also not clear whether as a separate unit, the proposal would be occupied by residents in need of a significant level of care or would simply be a mix of residents with different levels of care provided.

11. The nature of the care element provided to residents is also unclear. The appellants indicate that patients who suffer from dementia will remain in the Nursing Home provided that they do not cause disturbance. The nature of the care required in the proposal may therefore result in some disturbance, but it is the extent of that disturbance that is unknown.

12. Whilst the Nursing Home is separated by one semi-detached house from No 46, the proposal will bring the extended nursing home directly adjacent. Potential issues such as resident and staff noise, and medical emergencies will all be considerably closer to No 46 with the proposal. The appellants consider that the numbers of residents that would occupy the proposal is not significant, but this does not account for the proximity to No 46, in relation to noise and disturbance issues.

13. The appellants have offered to provide a noise insulation barrier between the party walls at ground and first floor level to mitigate any potential noise issue. However, without a noise assessment report, it is difficult to assess the nature of that feature. I have considered the views of the Council's Environmental Health Officer to the previous planning application that the appellants have drawn my attention, but these do not change my overall conclusion and notwithstanding that planning application is not subject of the appeal before me. Nor do powers under other legislation as noise and disturbance is a planning consideration before me to consider in deciding this appeal.

14. Both Policy SWDP31 of the South Worcestershire Development Plan (2016) (the Development Plan) and the Framework refer to significant adverse impacts

in relation to noise related matters. I do not consider that sufficient information has been provided to enable me to be satisfied that significant adverse impacts would not occur.

15. As a consequence, I conclude that the proposal would have an unacceptable effect upon the living conditions of the occupiers of No 46 by way of noise and disturbance. It is in conflict with Policy SWDP31 of the Development Plan where it states that development proposals must be designed in order to avoid any significant adverse impacts from pollution including cumulative ones on various matters including human health and wellbeing, and with the related policy guidance in the Framework.

Other Matters

16. The appellants consider that alternative C3 uses or a House in Multiple Occupation would cause more disturbance that the proposed use with issues such as the nature of occupancy. However, alternative uses are unlikely to require the level of support from professionals or the number of visitors that the proposal could potentially be subject to during night time as well as through the day.

17. Reference is made to a lack of formal complaints. However, this would not account for the proposal and interested parties have also referred to some noise and disturbance.

18. The appellants have referred to a previous planning application for the same proposal that was recommended for approval by Council Officers. However, it is the proposal before me that is for my consideration.

19. Both parties and interested parties have referred to Human Rights for different reasons including Article 1 and Article 8 of the Human Rights Act 1998. The right to peaceful enjoyment of possessions and right to a private life are qualified rather than absolute rights and the consideration of a proposal will inevitably result in a balance between competing individual rights. In reaching my decision, I have had regard to the various parties' rights.

20. Interested parties have raised a number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have, therefore, not had a significant bearing on my decision.

Conclusion

21. The evidence does not persuade me that the proposal would not have an unacceptable effect on the living conditions of the occupiers of No 46 by way of noise and disturbance. For these reasons, the proposal conflicts with the development plan when taken as a whole and there are no material considerations to outweigh this conflict.

22. For the reasons given, the appeal is dismissed.

E Griffin

INSPECTOR