



Appeal Decisions

Site visit made on 22 July 2019

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th September 2019

Appeal A Ref: APP/W3005/W/19/3226840

Bank House, Church Street, Sutton in Ashfield NG17 1EX

- 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 D Rolfe against the decision of Ashfield District Council.
 - The application Ref V/2018/0416, dated 9 July 2018, was refused by notice dated 28 January 2019.
 - The development proposed is described as decking, office, shed and erection of fencing.
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Appeal B Ref: APP/W3005/W/19/3226841

Bank House, Church Street, Sutton in Ashfield NG17 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 D Rolfe against the decision of Ashfield District Council.
 - The application Ref V/2018/0709, dated 29 October 2018, was refused by notice dated 28 January 2019.
 - The application sought planning permission for extension and alterations to form a home for the elderly without complying with a condition attached to planning permission Ref V/1986/0343, dated 31 July 1986.
 - The condition in dispute is No 2 which states that: *The premises shall be used for a residential home for the elderly and for no other purpose (including any other purpose in Class XIV of the Schedule to the Town and Country Planning (Use Classes) Order 1972).*
 - The reason given for the condition is: To ensure future control by the Local Planning Authority of the use of the site.
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Appeal C Ref: APP/W3005/W/19/3226842

Bank House, Church Street, Sutton in Ashfield NG17 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 erection of bedroom extension and conservatory without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr D Rolfe against the decision of Ashfield District Council.
- The application Ref V/2018/0710, dated 29 October 2018, was refused by notice dated 28 January 2019.
- The application sought planning permission for erection of a bedroom extension and conservatory without complying with a condition attached to planning permission Ref V/1987/0739, dated 4 February 1988.
- The condition in dispute is No 3 which states that: *The premises shall be used for a residential home for the elderly and for no other purpose (including any other purpose*

in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987).

- The reason given for the condition is : *For the avoidance of doubt.*
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Appeal A: Decision

1. The appeal is dismissed insofar as it relates to the decking, office and fencing. The appeal is allowed and planning permission is granted for a shed at Bank House, Church Street, Sutton in Ashfield NG17 1EX in accordance with the terms of the application, Ref V/2018/0416, dated 9 July 2018, subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plan: 18-006-101.

Appeal B: Decision

2. The appeal is allowed and planning permission is granted for extension and alterations to form a home for the elderly at Bank House, Church Street, Sutton in Ashfield NG17 1EX, in accordance with the application Ref V/2018/0709, made on the 29 October 2018, without complying with condition Nos 1, 2 and 3 set out in planning permission Ref V/1986/0343, granted on 31 July 1986 by Ashfield District Council.

Appeal C: Decision

3. The appeal is allowed and planning permission is granted for the erection of bedroom extension and conservatory at Bank House, Church Street, Sutton in Ashfield NG17 1EX, in accordance with the application Ref V/2018/0710, made on the 29 October 2018, without complying with condition Nos 1, 2 and 3 set out in planning permission Ref V/1987/0739, granted on 4 February 1988 by Ashfield District Council.

Preliminary Matters

4. For Appeal B and Appeal C I have used the application numbers for the original planning permissions that the Council has used on its decision notices refusing to remove the respective conditions, which differ somewhat to the numbers listed on the original decision notices that granted planning permission. There is no dispute between the parties concerning this matter.
5. As set out above there are three appeals on this site. Appeal A concerns the refusal of a retrospective planning application for the construction of timber decking, an office building and a shed, and proposed fencing; Appeal B and Appeal C concern the removal of conditions attached to separate grants of planning permission, both of which specified that the appeal premises should only be used as a residential home for the elderly. I have considered each appeal on its individual merits. However, to avoid duplication I have dealt with the three schemes together, except where otherwise indicated.
6. There was some confusion regarding the three linked appeals and the associated notifications in this case. Therefore, for Appeals B and C, an extension so as to allow the Council to provide its statement, and for the appellant to subsequently respond to it was exceptionally allowed.

Background and Main Issues

7. The appeal property is a former dwelling within the Sutton-in Ashfield Church and Market Place Conservation Area (CMPCA), that became a residential care home for elderly people in 1984. Planning permission was granted for various extensions and alterations associated with this use in 1986¹ and 1988² and again in 2002.
8. Conditions attached to the 1986 and 1988 planning permissions limited the use of the property to a residential home for elderly people, and for no other use, including those within Class XIV of the Schedule to the Town and Country Planning (Use Classes) Order 1972 and its successor, the extant Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (the Order).
9. Class C2 of the Order specifies a use *for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)); or use as a hospital or nursing home; or use as a residential school, college or training centre.*
10. Following a complaint to the Council regarding unlawful development at the property, an application for retrospective planning permission was made for the construction of timber decking, the erection of a timber shed and timber office building³. The application also sought consent for a timber fence along part of the eastern boundary which would be fixed to the upper part of the existing stone wall. This application was refused and is the subject of Appeal A.
11. At this stage the Council advised the appellant that in light of the aforementioned conditions restricting the use of the property to a residential home for elderly people, the current use as an alcohol and drug residential rehabilitation centre did not have consent. Applications⁴ to remove the two restrictive conditions were made, refused and are the subject of Appeal B and Appeal C respectively.
12. Therefore, the main issues are:

Appeal A

- whether the appeal development would preserve or enhance the character or appearance of the CMPCA.
- the effect of the appeal development on the living conditions of nearby occupiers, with particular regard to noise, disturbance and overlooking.

Appeal B and Appeal C

- whether the conditions attached to the planning permissions granted are necessary in order to make the development acceptable in planning terms, with particular regard to the living conditions of nearby occupiers and are otherwise reasonable.

¹ LPA Ref. V/1986/0343

² LPA Ref. V/1987/0739

³ LPA Ref. V/2018/0416

⁴ LPA Refs. V/2018/0709 & V/2018/0710

Reasons

13. Bank House is a large detached building which has been extended to the front and to the rear. The building contains various rooms commensurate with its use, including bedrooms, a kitchen, a staff room, and a dining room. To the east of the building is a pathway connecting the front garden area to the rear, with a traditional stone wall forming the boundary with the next door dwelling, *Brookhill*. The front entrance driveway extends along the western elevation of the building and contains various seats and a pergola-type structure. It is separated from the next door dwelling, *Kirkstede*, by a traditional stone wall and various trees and bushes.
14. Directly to the rear of the appeal site is the rear garden of 9 Church Lane, a detached dwelling. A stone wall, of a similar design to the side boundary walls, forms the rear boundary to the site; a timber panelled / rattan fence has been fixed to the southern side of this wall within the site, but does not form part of the development that is subject to this appeal. The rear garden of 7 Church Lane extends further southwards and forms part of the eastern boundary of the appeal site, north of *Brookhill*. The rear garden of No 7 contains several outbuildings, including one by the boundary with the appeal site.
15. The appeal site, whilst generally flat, slopes upwards towards the rear. The rear extensions and conservatory at Bank House are at a lower level than the rear garden area, with steps up to address this change in levels.

Appeal A - Character and Appearance

16. The appeal site lies within the CMPCA, which in this vicinity contains a mix of traditional houses set within mature, landscaped gardens, bounded by stone walls and fences of various designs. Together with the street layout these features contribute towards its significance.
17. The CMPCA is a designated heritage asset and in accordance with paragraph 193 of the National Planning Policy Framework 2019 (the Framework), great weight should be given to the conservation of designated heritage assets.
18. I note that within this residential area, a number of traditional pitched-roof brick outbuildings of various sizes and designs are to be found in the gardens of nearby properties, together with greenhouses and conservatories. However, the limited size of the rear garden at Bank House, together with the design, height and massing of the office building makes it a visually prominent and incongruous feature. The rear garden is at a higher elevation than the rear extensions of Bank House and the office building's position above the raised timber decking significantly increases these impacts. The office building would therefore adversely affect the character and appearance of the property and would detract from the character and appearance of the CMPCA.
19. The shed is significantly smaller than the office building, and its design, height massing and position relative to the ground makes it significantly less obtrusive. Such a shed, and the aforementioned timber decking, are typically found in rear gardens of dwelling houses and are not out of keeping with the character or appearance of the CMPCA.
20. The eastern boundary wall is of a traditional design and is constructed of irregularly shaped stone blocks that are fixed in place by mortar, with an

uneven soldier course on top. It is approximately 2.0 metres tall and is of a similar design to the western side and the rear boundary walls at the property. However, the existing wall shown on the submitted drawing has a regular smooth appearance, very different to the rough and irregular wall that I observed on site.

21. The appellant proposes to fix a timber panelled fence to the top of the wall (some 0.4 metres high), which would be intended to address issues of overlooking between Bank House and the next door property *Brookhill*. I will address this matter of overlooking later in my decision.
22. I note that the fencing is said to be temporary in nature so as to be easily removed if no longer required and that there are a variety of boundary walls and walls/fences in the vicinity of the appeal site. However, a temporary planning permission has not been sought and no detailed information for how the fence would be fixed to the wall has been provided.
23. In my view, the design and materials of the proposed fence would be a significant and inharmonious addition to the traditional boundary wall and would thereby cause harm to its appearance and detract from the character and appearance of the CMPCA.
24. Whilst neither the office or the proposed fence are/would be readily visible from public land, they are/would be visible from nearby properties. For the reasons given above, the office does, and the proposed fence would, cause less than substantial harm to the character and appearance of this part of the CMPCA. In accordance with paragraph 196 of the Framework I have considered this harm against the public benefits of the appeal development.
25. The appeal development is said to be needed to enable the operation of the rehabilitation centre. Treating substance addiction is of primary benefit to the addict. Furthermore, Bank House is a privately run business, and does not treat people as part of the National Health Service. Whilst there are social and economic benefits to society for treating such addictions in this way, this is not the main purpose of the facility, and I give these public benefits only limited weight. On balance, the harm caused to a designated heritage asset outweighs any of these public benefits.
26. Therefore, the office building and the proposed fence would not preserve or enhance the character or appearance of the CMPCA and would conflict with Policy EV10 (Conservation Areas)⁵ contained in the Ashfield Local Plan Review 2002 (ALPR) and with the Framework in this regard.

Appeal A - Living Conditions

27. The Appeal A development has introduced an area of raised timber decking at the eastern side of the rear garden, above the elevated rear garden level, with steps to provide access to the decking. The decking surrounds a mature tree and provides access to a single storey, flat-roofed office building in the north eastern corner of the garden. A smaller, pitched-roofed shed is located adjacent to the office building, although separate from the raised decking and at a lower level.

⁵ The CMPCA was formally designated by Ashfield District Council 9 July 2015 and is not specifically referenced in Policy EV10. Nevertheless, I am satisfied that this policy applies to the Appeal development.

28. The office use was re-located from within Bank House, with the former space now used as a group-therapy room. The office building has a central doorway with two windows on either side and is said to be used by two staff members, and only between 09.00 and 17.00, Monday – Friday, although this is disputed by the Council and third parties. The submitted drawing shows the office building contains two rooms, the easternmost one of which is stated to be a 'Lounge', the function of which is not explained.
29. As mentioned above, the rear garden, where the shed, decking and office building are located, is at an elevated level compared to the rear extensions to the main building. The rear garden is generally flat, although there is a noticeable change in levels downwards towards the rear extensions and access footpath to the south.
30. No substantive evidence has been provided to show that without the decking, the topography of the rear garden area would be 'unsafe or unusable'. From the evidence and my observations of the rear garden on site, I am not satisfied that the office building or the decking need to be positioned above the already elevated ground in the way that they are, in order to enable the rear garden to be used.
31. The timber decking is physically part of the rear garden area and from the photographic evidence provided by the appellant is intended to function as part of it. The elevated position of the office building and the decking significantly increases the opportunity for overlooking of neighbouring properties, in particular, *Brookhill*.
32. The appeal development proposes the erection of a timber fence along part of the eastern boundary, above the height of the existing stone wall, which would reduce the scope for overlooking somewhat. However, the height of the timber fence above the wall – some 0.4metres - would not eliminate it, and in any event, I have concluded that such a fence would be visually harmful and would detract from the character and appearance of the CMPCA.
33. There is no substantive evidence before me that the new office building has led to an intensification of activity at Bank House, and I note that no changes have resulted to the residential accommodation as a result. Whilst the office building and the shed reduce the available area of the rear garden to be enjoyed by residents of Bank House, any consequent intensification of activity is unlikely to be significant in terms of noise and disturbance, given the scale of the change and the remaining garden space, including the decking.
34. For these reasons, the appeal development would not adversely affect the living conditions of nearby occupiers with regard to noise and disturbance. However, the office building and decking would adversely affect the living conditions of nearby occupiers with regard to overlooking and would therefore conflict with Policy ST1(e) of the Ashfield Local Plan Review 2002 (ALPR) in this regard, which seeks to ensure new development does not conflict with adjoining or nearby uses.

Appeal B and Appeal C

35. It is not disputed that both the approved use and the current use fall within Class C2 – Residential Institutions contained within the Order. A change

- between two uses contained within the same use class does not require planning permission, unless explicitly restricted as was the case here.
36. The reasons originally given for restricting the approved use of the premises to a residential care home for elderly people were to allow the Council to control the future use of the site and for the avoidance of doubt.
37. The Framework sets out six tests for the acceptability of planning conditions⁶ and Planning Practice Guidance (PPG) has recently been updated with regard to conditions restricting permitted changes of use⁷. The original reasons for imposing the conditions do not, in my view, explain why such conditions would be necessary or reasonable.
38. The Council's contention, set out in its statement, is that notwithstanding both the current and the approved uses falling within the same use class, they are materially different to each other and that the current use adversely affects the living conditions of nearby residents with particular regard to noise and disturbance.
39. There are differences between a residential care home for elderly people and a residential rehabilitation centre for people with alcohol and drug addictions. The users of the rehabilitation centre are likely to be more physically active than the previous elderly residents, to have different patterns of activity throughout the day and week, and to be more likely to use the outdoor areas of the property. However, the Government considers these uses, and others, to be sufficiently similar so as to be grouped together within the same C2 use-class.
40. There is no substantive evidence before me regarding the previous operation of the care home for the elderly, including in terms of catchment area for residents, resident activities, visitor numbers / patterns and modes of transport used. It is not, therefore, possible for me to determine whether there are significant differences between the current use and the approved use.
41. No substantive evidence has been provided to demonstrate that the occupancy or staffing levels for the current use are greater than for the previous use of the property. The current users of the rehabilitation centre are likely to be more transient than the previous elderly residents and may not be from the local area. The number and pattern of visitors to the property is said to be different for the current use as opposed to the approved use, with visits to the rehabilitation centre limited to Sunday afternoons only. Whilst visitors to the rehabilitation centre would be likely to travel by car, there is no substantive evidence before me that this was not also the case with the approved use, or that there is insufficient on-street car parking capacity nearby to accommodate this.
42. The appellant has provided detailed evidence concerning the operation of the rehabilitation centre, including the treatment programme, which shows that residents are generally occupied throughout the day / week. Furthermore, users are required to agree to a contract for their treatment at the centre, which amongst other things governs aspects of their behaviour. From the

⁶ Paragraph 55 of the Framework

⁷ Paragraph: 017 Reference ID: 21a-017-20190723 Revision date: 23 07 2019

evidence, the appellant has endeavoured to engage with neighbours and to address concerns that have been raised.

43. Objections have been raised by nearby residents to the current use, and complaints have also been made to the Council's Community Protection service regarding noise and lighting from the appeal property. However, no substantive details of these complaints or any outcomes pursuant to them have been provided by the Council, and I note that the Council's Community Protection Service did not object to the appeal development.
44. Bank House has been operating for a relatively short time, and from the evidence, the disturbances referred to have generally been addressed once the management of Bank House has been made aware of them. I am satisfied that with effective management, the current use would not generate significantly different impacts in comparison with the approved use when it operated.
45. Consequently, the two conditions are not necessary in order to make the development acceptable in planning terms, with particular regard to the living conditions of nearby occupiers and are not otherwise reasonable. Consequently, their removal would accord with Policy ST1 e) of the ALPR and with the Framework.

Other Matters

46. With reference to Appeal A, Bank House is not a dwellinghouse and so permitted development rights⁸ afforded to such uses do not apply. I have not, therefore, considered them in determining this appeal. Reference is also made to two sheds that the appeal office and shed are said to have replaced. However, no substantive information regarding these two sheds has been provided and I have not therefore considered them in determining this appeal.

Conditions and Conclusion

47. For Appeal A, the Council has suggested conditions be attached to the grant of planning permission should the appeal be allowed. For Appeal B and Appeal C, the Council has not suggested any conditions be attached to the grant of planning permission should the appeals be allowed.
48. With reference to Government guidance on the use of conditions, for Appeal A, a condition specifying the approved plans for the development hereby permitted would be necessary for reasons of certainty. For Appeal B and Appeal C, no conditions would be needed to make the development acceptable in Planning terms.
49. Therefore, and taking into account all other matters raised, I conclude that Appeal A is dismissed insofar as it relates to the decking, office and fencing and allowed insofar as it relates to the shed; and, Appeal B and Appeal C are allowed.

Andrew Parkin

INSPECTOR

⁸ Under the Town and Country Planning (General Permitted Development) Order 2015