
Appeal Decision

Site visit made on 1 October 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 1st November 2019

Appeal Ref: APP/Z2315/W/19/3233179

1 The Paddock, Highfield Avenue, Burnley BB10 2PS

- 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 John Baron (AJP Chartered Surveyors) against the decision of Burnley Borough Council.
 - The application Ref APP/2019/0081, dated 11 February 2019, was refused by notice dated 30 May 2019.
 - The development proposed is change of use of former care home to student accommodation (20 bed spaces with communal living areas).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr John Baron against Burnley Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. During the course of the appeal, the appellant submitted a completed Unilateral Undertaking (UU). It contained the same provisions as an earlier draft S106 agreement which the Council had the opportunity to comment upon. I have therefore had regard to the UU in reaching my decision.

Main Issue

4. The main issue is whether or not the proposed change of use would make adequate provision for off-street car parking, with particular regard to the safety of all road users in the locality.

Reasons

5. No 1 is a large detached property, formerly a dwelling house, although used most recently as a care home for the elderly. In July 2017, planning permission was refused, and the decision was upheld on appeal¹, for a change of use from a nursing home (use class C2) to key worker accommodation (sui generis). In 2018, planning permission² was granted for use of the appeal property as a residential care home/ nursing home, providing care for up to 16 people and making provision for 8 off-street car parking spaces, a motorcycle and 5 cycle

¹ Ref APP/Z2315/W/17/3183354

² Ref APP/2018/0025

spaces. Planning permission was subsequently refused in May 2018 for use of the site as student accommodation (Sui Generis) and the decision was upheld on appeal³. In both previous appeal decisions, the grounds for dismissal related to adverse effects on highway safety.

6. The appeal proposal sought to address the reason that the previous scheme for student accommodation was dismissed. It was amended by reducing the number of beds from 22 to 20 and increasing the number of car parking spaces from 8 to 9. Although the additional space would be designated to disabled persons and therefore unavailable to non-disabled residents, there is nothing before me to indicate that one of the bedrooms would be a dedicated disabled person's room. However, the remaining 8 spaces would be available to 19 residents. In addition, parking for 12 cycles would be located to the side of the property, with access provided via the disabled parking bay.
7. The appeal site is located in an area with reasonable access to services and facilities and public transport. It is also suitably located for students studying at the Teaching Hospital, being within walking distance or otherwise accessible by public transport or the free NHS shuttle bus. The accessibility of the site was taken into account by the highway authority, the Council and the previous Inspectors when assessing the requirement for parking at this site. The previous appeal decision established a requirement of 15 spaces for 22 residents. The Council consider that 14 should be provided for 20 residents and taking all the above considerations into account I consider this to be reasonable.
8. I acknowledge that not all of the students residing at the appeal property would have access to a private vehicle. In this respect, there is evidence before me from elsewhere in the country that car driving by young people has declined since the 1990s and that not all student-only households in 2011 had a car. However, it is unclear how this data would specifically inform the requirement for parking spaces at this particular site. Consequently, there is nothing before me to demonstrate that the requirement for off-street parking should be reduced below 14.
9. Highfield Avenue is already subject to a high demand for on-street parking and there is very little additional capacity in the vicinity of the appeal site. While there was some on-street parking capacity at the time of my visit, demand is likely to be significantly greater at other times including evenings and weekends.
10. The street is narrow, resulting in cars being parked partly on the footway. This causes obstructions for pedestrians, including push chair and wheel chair users, who would likely be forced into the road and into potential conflict with other road users. While I accept that Lancashire County Council's Maps & Related Information Online (Mario) suggests that there have been no collisions on Highfield Avenue, there is no information before me in respect of when or how the information on collisions was derived. In any case, a lack of collisions historically does not demonstrate that the proposed scheme would not result in adverse effects on highway safety. Therefore, there is nothing to suggest that there has been a change in circumstance in the surrounding area since the time of the previous appeals.

³ Ref APP/Z2315/W/18/3202484

11. I will now go on to consider whether the proposed development could be rendered acceptable through the imposition of planning conditions or obligations, and specifically the Residential Management Strategy (the RMS) included in the UU. This would restrict occupation of the appeal property to full-time students at the University of Central Lancashire. Future residents would be advised that parking on the site would be strictly limited and controlled by parking permit. Any resident found to be parking on site without authorisation could have their tenancy agreement terminated. Residents would also be expressly forbidden from parking outside the appeal site on Highfield Avenue.
12. However, the RMS does not include an appropriate mechanism for monitoring parking by residents on surrounding streets and it does not include sanctions for any vehicle found to be parking outside the appeal site. Moreover, it would not address parking pressure resulting from visitors to the property. It would not therefore be capable of preventing adverse effects on the safety of road users in the surrounding area. This is also the conclusion that was reached by the Council in relation to the RMS included in the draft S106.
13. In order to be effective, a planning obligation has to control the use of the land. Case law⁴ has confirmed that prevention of parking on the highway is not a restriction on the appeal property being the "land" for the purposes of S106. The obligation is not a means of controlling the behaviour or actions of people. I am therefore not satisfied that the obligation meets the statutory tests of Regulation 122 of the Community Infrastructure Levy Regulations and the requirements of Paragraph 56 the National Planning Policy Framework. As it fails to meet these tests, I cannot take it into account in reaching my decision.
14. I accept that it might be possible to impose a condition which restricts the occupancy of the building to students. However, this alone would not be adequate to overcome the reason for refusal. There would be no guarantee that students would not use private cars and that they and their visitors would not park on nearby streets. Moreover, it would not provide an acceptable mechanism by which the behaviour of residents could be controlled.
15. Planning permission has been granted elsewhere for larger student residences with a proportionally lower car parking provision. However, a purpose-built building in a town centre providing accommodation for over 100 students is not directly comparable to a 20 bedroom scheme away from the town centre. Moreover, I am aware that in city centre locations roadside parking is frequently controlled by parking permit, which resident students are prevented from applying for through tenancy agreements. In the absence of parking regulations on Highfield Avenue, this would not be the case here.
16. My attention has also been drawn to appeal decisions relating to student accommodation elsewhere, where Inspectors considered that on-street parking could be controlled through tenancy agreements. While full details of those schemes are not before me, there are key differences including the size of the developments, their location and the relevant policy context, parking restrictions in surrounding streets and existing financial contributions to fund the introduction of a Residents Only Parking Zone. Moreover, while the relevant appeal decisions have been provided, the associated legal agreements have not. I cannot therefore be certain that those schemes are directly comparable

⁴ R (oao Khodari) v Royal Borough of Kensington and Chelsea & Cedarpark Holdings Inc [2017] EWCA Vic 333.

to the scheme before me or that the UU is comparable to legal agreements found acceptable elsewhere.

17. For the above reasons, the proposal would not make adequate provision for off-street car parking, to the detriment of the safety of road users in the locality. It would conflict with the development plan, including Policy IC3 of Burnley's Local Plan Adopted July 2018 which requires development to provide adequate car parking having regard to matters including highway safety and on-street parking problems.

Other Matters

18. My attention has been drawn to the potential fall-back position which exists at this site by virtue of the permission for a 16 bed residential care home/ nursing home with provision for 8 car parking spaces. The spaces would be available for use by staff and visitors to the residential home. Moreover, the timing, duration and intensity of parking requirements associated with a residential care home would be likely to be materially less than the requirements associated with a 20 bedroom student residence.
19. I accept that the proposal provides an adequate extent of outdoor space. However, as this is a requirement of the development plan it is not a matter which weighs in favour of the scheme.
20. I note third party concerns in respect of the use of the right of access to Nos 1-4 The Paddock. However, this is a private legal matter and is not a matter for this appeal to address.

Conclusion

21. For the above reasons, the appeal should therefore be dismissed.

Sarah Manchester

INSPECTOR