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## Appeal Decision

Site visit made on 3 October 0219

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 November 2019**

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**Appeal Ref: APP/X1355/W/19/3233277**

**Medulin, The Dene, West Rainton, Houghton le Spring DH4 6PR**

- 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 Mrs Michelle Tomlinson, Witherslack Group Ltd against the decision of Durham County Council.
  - The application Ref DM/19/00455/FPA, dated 8 February 2019, was refused by notice dated 7 May 2019.
  - The development proposed is described as the change of use from residential (use class C3) to a small care home (use class C2) for young people with ancillary car parking.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use from residential (use class C3) to a small care home (use class C2) for young people with ancillary car parking at Medulin, The Dene, West Rainton, Houghton le Spring DH4 6PR in accordance with the terms of the application, Ref DM/19/00455/FPA, dated 8 February 2019, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

|                                        |                 |
|----------------------------------------|-----------------|
| Site Location Plan and Site Block Plan | 18.014(9-)001   |
| Existing and Proposed Plans            | 18.042(9-)003.A |
| Existing and Proposed Elevations       | 18.042(9-)004.B |
  - 3) Prior to the first use of the development, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include details of all traffic generating activities at the site, measures to promote sustainable travel and a provision to undertake a review of its performance on an annual basis. The approved Travel Plan shall thereafter be implemented and maintained whilst the use remains in operation.
  - 4) No more than 7 people receiving care shall be living on site at any one time.

### Main Issues

2. The main issues are:

- a) Whether or not the site is a suitable location for the proposed development with regards access to services and facilities;
- b) The effect of the proposed development on the living conditions of local residents with particular regards to the fear of crime; and,
- c) The effect of the proposed development on the living conditions of local residents with particular regards to noise and disturbance.

## Reasons

- 3. The appeal site consists of a substantial detached house sited on a similarly large plot accessed off a narrow access road, The Dene, sitting alongside a number of other large properties in a predominantly residential area on the edge of West Rainton. The appeal proposes the change of use of the property to create a care home for young people with the creation of car parking for 12 cars.
- 4. Although not referred to in the Decision Notice, the Officer's report and the Durham Constabulary consultation response makes reference to the emerging County Durham Plan (the Plan) and in particular Policy 18 that relates to Children's Homes. While progress has been made on the production of the Plan, it remains unadopted and the main parties state that the policies of the emerging plan carry very little weight. Based on the evidence before me I find that the Plan carries very little weight.

### *Whether a suitable location*

- 5. The City of Durham Local Plan (the LP) Saved Policy H16 relates to Residential Instructions and Student Halls of accommodation. Part 1 of that policy states that residential institutions will be permitted within settlement boundaries provided that they are well related to shops, community and social facilities, and to public transport. The accompanying text, while not forming part of the policy, suggests that only Durham City and larger villages are likely to be suitable sites for such development. Saved Policy H3 of the LP identifies West Rainton as a larger village.
- 6. The appellant has submitted a detailed list of services and facilities and their distance from the appeal site. I note that some local residents have disputed the distances and suitability of the services and facilities. However, I observed at my site visit that there is a small range of services and facilities within walking distance of the appeal property. Furthermore, it is not at dispute between the parties that the appeal property is located within the settlement boundaries.
- 7. In reaching its decision, the Council has also referred to paragraph 103 of the National Planning Policy Framework (the Framework) that seeks to focus growth to locations that limit the need to travel and offer a genuine choice of transport modes. The Framework acknowledges that sustainable transport solutions will vary between urban and rural areas.
- 8. The site is located near to a bus stop and the bus service provides reasonably regular access to the wider area. I note that the appellant details that future residents of the appeal scheme would be transported to school, which the Council identifies as being approximately 6 miles away or one hour on the local bus service, by private motor car. On the basis of the evidence before me the

reason for this appears to relate to the needs of the children in care rather than as a result of the location of the appeal property in relation to the school. Therefore, I do not find that this undermines the suitability of the location of the appeal property.

9. To conclude on this main issue, for the purposes of Saved Policy H16, I find that the appeal property is well related to shops, community and social facilities, and to public transport. As such the appeal proposal is not contrary to Saved Policy H16 or the provisions of paragraph 103 of the Framework and I find that the appeal site is a suitable location for the development proposed.

*Effect on living conditions – fear of crime*

10. A significant number of local residents have objected to the proposed development and a number have referred to a fear of crime and related issues, such as anti-social behaviour in the local area.
11. The consultation responses from Durham Constabulary raised concerns, in particular with regards the safety and wellbeing of children placed at the home resulting from the risk of children absconding from the home and, referring to the number of objections from local residents, the hostility of the local community. Furthermore, the response identified that the regular “attendance of Police at Children's Homes can create a fear of crime amongst neighbouring residents whilst often not warranted this fear is never the less perceived as real” and I note that Police attendance at the home carries with it a financial cost to the Police.
12. The courts have held that the fear of crime can be a material consideration. Furthermore, the Framework requires that developments “are safe and accessible, so that crime and disorder and the fear of crime do not undermine the quality of life or community cohesion and resilience”. I note the appellant’s comments regarding, and indeed some local residents’ objections to, the provision of external lighting, CCTV and that the Home would be staffed 24/7.
13. No substantive evidence is before me to demonstrate that there is a reasonable evidential basis for the fear expressed by local residents. Therefore, while I acknowledge the concerns raised by Durham Constabulary and a number of local residents, in the absence of firm evidence that the appeal scheme would materially increase the risk of, or fear of, crime I do not find that the proposed development would have a detrimental impact on the living conditions of local residents with particular regards to the fear of crime.
14. As such, the appeal proposal would not be contrary to the Framework and saved Policy Q1 of the LP that, among other matters, seeks that new development should incorporate personal safety and crime prevention measures.

*Living conditions – noise and disturbance*

15. The application form details that the proposed development would be home to up to 7 children and would result in the creation of 17 full time equivalent jobs. The appellant’s planning statement details that 4 members of staff would typically be on duty per day shift with a manager and 2 staff overnight. Furthermore, the use may generate additional trips and activity associated with support services and other visitors. Consequently, the proposed use is likely to result in a greater number of vehicle movements onto and off the site and an

overall increase in general activity on the site than would be the case now or if the appeal site were to remain as a dwelling house.

16. The appellant's Transport Statement<sup>1</sup> (TS) estimates that the occupation of the existing 5-bedroomed property would generate 7 vehicle movements on a weekday between 0700-1900. The proposed development was identified as generating an additional 16 movements during the same time period. This is not a significant number of vehicle movements throughout the day.
17. The Noise Assessment<sup>2</sup> (NA) submitted in support of the application, assessed the noise impact of the increase in vehicle movements at staff shift change over times. The NA concluded that the additional vehicle movements would not adversely affect the living conditions of local residents.
18. I note that the NA did not assess the effect of noise that may result from the increased activity within the appeal site on local residents. However, the appeal property is a large detached dwelling set on a large plot creating a clear separation from adjoining neighbour's homes.
19. As such, on the basis of the evidence before me I find that the appeal scheme would not have a detrimental effect on the living conditions of local residents with regard to noise and disturbance and is not therefore contrary to saved Policy H16 and H13 of the LP.

## **Other Matters**

### *Local Need*

20. The Council, including Children's Services and a number of residents, have questioned whether or not there is a local need for the provision of a Children's Home in this location. The appellant has identified a need for a Children's Home linked to the specialist school, Ashbrooke School, and refers to children being placed outside of the Durham County Council area. In the absence of substantive evidence to the contrary, I find that appellant has demonstrated a need for the proposed care home.

### *Pre-application discussions*

21. I note the comments made by a number of parties with regards the absence of substantive pre-application discussions. While such discussions can be beneficial to all parties in the planning process, they are not compulsory. As such this matter does not weigh against the proposed development.

### *Human rights and the Equality Act*

22. A local resident in objecting to the appeal scheme has referred to the Equality Act 1990 and specifically to discrimination against local residents who may not feel safe to walk where there is an increase in traffic and would therefore deny local residents, many of which are retired people, quiet enjoyment of their home. With regards the latter concern I have referred to Article 8 of the First Protocol of the Human Rights Act 1998.
23. I have had regard to the Public Sector Equality Duty contained in the Equality Act 2010 and understand the objector's concerns with regards the proposed

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<sup>1</sup> Transport Statement – Tim Speed Consulting (20 December 2018)

<sup>2</sup> Noise Assessment - NJD Environmental Associates (December 2018)

development. Furthermore, I have considered the potential effect of the proposed dwelling on the living conditions of local residents. However, for the reasons detailed previously, the degree of interference or effect resulting from the proposed development would be insufficient to give rise to a violation of rights under Article 8 of the First Protocol.

#### *Draft policy & Locality Risk Assessment (LRA)*

24. A number of residents and the Durham Constabulary have referred to draft Policy 18 of the Plan, that relates to Children's Homes and requires the submission of a Locality Risk Assessment with relevant planning applications. As detailed previously, because the Plan is still in draft form only, the policies carry very little weight.
25. The Council's statement of case details that a LRA "helps to consider the overall impact on the amenity of residents and the fear of crime". However, because the Plan is not yet adopted and carries very little weight, the absence of a LRA does not significantly weigh against the appeal proposal. I have considered the effect of the proposed development on the living conditions of local residents, including with regards noise and disturbance and the fear of crime. I found that the effect of the proposed development is acceptable.

#### *Highway Safety*

26. West Rainton Parish Council and a significant number of local residents have referred to concerns that the access road is not suitable for the development proposed. At my site visit I noted that while the roads around and leading to the appeal site were generally quiet, The Dene is narrow with no pavement or street lights. Furthermore, I noted a number of bridleway/footpath users walking along the road.
27. The submitted TS details that the proposed development will not result in a significant number of vehicle movements on to and off the site. I note that the Council's Highways Officers have provided detailed comments on the proposed development and have not raised an objection to the proposed development. On the basis of the evidence before me I agree. Therefore, I find that the proposed development would not adversely affect highway safety.

#### **Conditions**

28. I have considered the conditions proposed by the Council in the light of guidance in Planning Practice Guidance. In addition to the standard conditions which limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
29. A condition requiring the submission of a Travel Plan is necessary to reduce reliance on the private motor car in accordance with LP Policy H16 and the Framework. I have also included a condition restricting the occupation of the care home to 7 people in care rather than the 4 suggested by the Council because that is what has been applied for and I have found to be acceptable, the condition is necessary to protect the living conditions of local residents. I have not included a condition requiring the submission of a LRA because it is not necessary.

**Conclusion**

30. For the reasons given above I conclude that the appeal should be allowed.

*Mark Brooker*

INSPECTOR