



Appeal Decision

Site visit made on 8 October 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th November 2019

Appeal Ref: APP/N1920/W/19/3233387

51 Bushey Hall Road, Bushey, WD23 2EE

- 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 Lance Adams (Yovita Ltd) against the decision of Hertsmere Borough Council.
 - The application Ref 17/0360/VOC, dated 21 February 2017, was refused by notice dated 17 June 2019.
 - The application sought planning permission for the development described as 'the extensions (the property) shall be used as accommodation as a care home to care for people in need of care and for no other purpose within Use Class C2, residential institutions, of the Town and Country (Use Classes) Order 1987 (as amended)' without complying with a condition attached to planning permission Ref TP/12/0627, dated 18 May 2012.
 - The conditions in dispute is No 3 which states that: *The extensions (the property) shall be used as accommodation as a care home to care for people in need of care and for no other purpose within Use Class C2, residential institutions, of the Town and Country (Use Classes) Order 1987 (as amended).*
 - The reason given for the condition is: Any other use would likely generate a level of activity, traffic and off-street parking requirements which would detracts from the areas residential character and lead to on-street parking to the detriment of highway safety. In accordance with the National Planning Policy Framework (2012), Hertsmere Local Plan adopted 2003 policies M12 and M13. Policy CS24 of the Revised Core Strategy (for submission to the Secretary of State) November 2011.
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Decision

1. The appeal is allowed and planning permission is granted for development described as 'the extensions (the property) shall be used as accommodation as a care home to care for people in need of care and for no other purpose within Use Class C2, residential institutions, of the Town and Country (Use Classes) Order 1987 (as amended)' at 51 Bushey Hall Road, Bushey, WD23 2EE in accordance with application Ref 17/0360/VOC without compliance with condition number 3 previously imposed on planning permission Ref TP/12/0627, dated 18 May 2012.

Application for Costs

2. An application for costs was made by Yovita Ltd against the decision of Hertsmere Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the condition is necessary having particular regard for its stated purpose and in particular highway safety.

Reasons

4. The appeal site has a long planning history. In summary, and of particular relevance to my decision, an unconditional planning permission was originally granted in 1968 for the use of the property that existed on the appeal site at that time, to be used 'to house elderly people and the provision of a fire escape'¹. A further planning permission followed for side and rear extensions to the property², which was the subject of several planning conditions, including that the extension (the original extension) should be used 'as additional accommodation to the existing old persons home' and for no other purpose.
5. I am told by the appellant that the appeal property was used as an older people's home until 2007. Owing to a change in circumstances, it was then used as a home for adults with learning difficulties, and an alteration to the wording of the condition imposed on the original extension was permitted. Therefore, the 2012 planning permission³ includes condition no. 3 (the condition) which states '*the extensions (the property) shall be used as accommodation as a care home for care for people in need of care and for no other purpose within Use Class C2, residential institutions, of the Town and Country Planning (Use Classes) Order 1987*'. It is this condition which this appeal seeks the removal of.
6. The appeal is predicated on the appellant's intention to use the entire appeal building for residential accommodation and to provide care to a range of vulnerable people, including the provision of psychiatric support to young people with learning difficulties. According to the appellant, the condition would unnecessarily curtail the scope of C2 uses⁴ within the part of the appeal building which includes the original extensions, which would prevent the adequate provision of care for vulnerable people, leading to uncertainty for the regulator, the Care Quality Commission (CQC), over the planning status of the appeal building. Furthermore, they state that the care provided to occupants within the appeal building, and associated vehicular movements and parking requirements, would be the same as provided in a residential care home or nursing home, as permitted by the condition, apart from regular visits by medical experts which means that, in the CQC's eyes, the use of the building would not comprise a traditional 'care home'.
7. In addition to the aforementioned extensions and planning permissions, the appeal building has also been subjected to additional two-storey and single-storey rear extensions, granted on appeal⁵, which did not include any planning conditions restricting the nature of their C2 use. In short, therefore, the part of the appeal property which contains the original extensions includes the condition restricting the permitted scope of C2 uses, but no such restrictive condition exists in relation to the original property or more recent extensions.

¹ Hertsmere Borough Council planning permission reference – TP/68/0503

² Hertsmere Borough Council planning permission reference – TP/84/0343

³ Hertsmere Borough Council planning permission reference – TP/12/0627

⁴ See The Town and Country Planning (Use Classes) Order 1987 (as amended)

⁵ Planning appeal reference – APP/N1920/C/18/3193027

8. I saw on my site visit that the appeal property had been recently refurbished. According to the submitted plans, the rooms and corridors within it are partly within the original extension and partly within the wider appeal building, but the boundary of each was largely indistinguishable when walking through the building on my site visit. On a practical note, this would mean that enforcement of the condition would be inherently difficult, given the unrestricted C2 use relating to the remainder of the appeal building, and the lack of physical distinction between it and the floorspace associated with the original extension to which the condition applies.
9. The Council considers that the condition was necessary in 1984 when the original extension was permitted, and further consider that it is necessary as parking congestion has increased since then. However, no evidence has been submitted to me to support that view in terms of current levels of parking stress, or specific highway safety concerns. Consequently, whilst I do not know the extent of parking stress in the area when the decision was made to allow the original extension, there is nothing in the evidence before me to demonstrate that the removal of the condition, having regard to the unrestricted nature of C2 uses that could prevail within a large part of the appeal building, would lead to an increase in parking stress. Furthermore, there is nothing provided to me which would indicate that even if there was a resultant increase in parking requirements, it would lead to unacceptable highway safety impacts. I also find it significant that no objections were raised by the Highway Authority to the proposal.
10. Notwithstanding that, at my site visit I took the opportunity to look at the parking situation in the area. I observed that on-street parking in places along Bushey Hall Road was restricted by a traffic regulation order and that there were no vehicles obstructing footpaths, and several parking spaces were available on side streets. Whilst my visit was only a snapshot in time, the evidence before me indicates that the removal of the condition would not increase vehicular movements and lead to an increase in on-street parking over and above the existing situation.
11. I note that third parties have raised concerns regarding the uncertainty over the specific nature of the use proposed by the appellant. I am aware that my decision to remove the condition would allow the original extension to be used for a range of different residential institutions within the C2 use classes order, including uses which could lead to additional vehicular movements over and above the number anticipated by the appellant in association with the intended use of the appeal building. Be that as it may, there are no restrictions on the types of C2 uses that could be undertaken in the remainder of the appeal building and, given that the original extension is effectively subsumed within the wider appeal property, and I find there would be no unacceptable highway safety impacts, for the reasons given the condition in the current circumstances is unenforceable, unreasonable, and unnecessary, thus it does not meet the '6 tests' set out in paragraph 55 of the National Planning Policy Framework (the Framework).
12. Having regard to the foregoing, I find that the condition is not necessary and the removal of it would not result in an unacceptable impact on highway safety. The removal of the condition would not lead to conflict with Policy SADM40 of the Hertsmere Local Plan Site Allocations and Development Management Policies Plan 2016 which requires that development does not harm the safety of

any users of the highway, or cause or add significantly to road congestion, or unduly harm the flow of vehicles. Furthermore, there would not be an unacceptable highway safety impact and the proposal would accord with the transportation aims of the Framework.

Other matters

13. I am aware that the appeal site has been the subject of unauthorised works in the past, which appear to have been regularised in a recent enforcement appeal. In any event, I have assessed this section 78 appeal on its planning merits and without regard to the track record of the appellant, or any previous breaches of planning control, which in this case are immaterial to my decision. If the activities within the appeal building were to stray outside those permitted by C2 of the use classes order, then that would be a matter for the Council to investigate, with the possibility that enforcement action could ensue. However, I am unable to attach weight to scenarios based on conjecture.
14. I do not doubt that the planning condition may well have had the consequential effect of limiting the scope of C2 uses undertaken within the whole appeal building in the past. However, even though I have had regard to the numerous comments received by local residents relating to concerns over the future use of the property, I have assessed this appeal on its planning merits. As obscure as it may seem, I find that the scope of the condition was limited to the original extension, and not to the use of the original appeal property granted in 1968, or to more recent extensions, and this appeal has been determined on that basis.
15. Whilst not specifically stated as a reason for refusal by the Council, reference has been made to the impact on 'character' in the Council's officer report. However, given the permitted use of the appeal property as a residential institution, the proposal would not significantly alter the character of the area, thus it does not detract from my findings on the main issue.

Conditions

16. I have considered the conditions suggested by the Council as well as those on the previous decision notice. Several conditions which specifically relate to the fabric of the extensions which have already been built are therefore no longer necessary. Given that the building works have already been carried out, an 'approved plans' condition is not necessary either.
17. Whilst a condition is suggested relating to the retention of the car parking accommodation to the front of the premises, I find that this would be unenforceable and unreasonable, as it would only relate to a portion of the overall appeal building.
18. Finally, in respect of the trees on the western boundary, I consider that such a condition is not necessary in the context of development before me and the wider character and appearance of the area.
19. Consequently, no planning conditions are necessary in this case.

Conclusion

20. For the reasons set out above I conclude that the appeal is allowed.

Matthew Woodward

INSPECTOR