The Planning Inspectorate

Appeal Decision

Site Visit Date: 15 July 2020

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2020

Appeal Ref: APP/X3540/W/19/3241973
43A Park Road, Aldeburgh IP15 5EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs Barry and Winifred Stedman against the decision of East Suffolk Council.
- The application Ref DC/19/3279/VOC, dated 19 August 2019, was refused by notice dated 25 October 2019.
- The application sought planning permission for *use of land for the erection of one single storey dwelling for managers/owners' accommodation* without complying with a condition attached to planning permission Ref COO/0893, dated 3 December 2002.
- The condition in dispute is No 12 which states that: *The dwelling shall be used solely as accommodation for the managers/owners of the residential home*.
- The reason given for the condition is: *In the interests of amenity and the protection of the local environment.*

Decision

1. The appeal is allowed and planning permission is granted for use of land for the erection of one single storey dwelling for managers/owners accommodation at 43A Park Road, Aldeburgh IP15 5EN in accordance with the application Ref DC/19/3279/VOC dated 19 August 2019, without compliance with condition number 12 previously imposed on planning permission Ref COO/0893 dated 3 December 2002, and subject to the following conditions:

    1) The area within the site shown on submitted drawing No 6845-01E for the purposes of manoeuvring and parking of vehicles shall be retained and used for no other purpose.

    2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting the said Order) no development of any kind specified in Part 1 Classes A, C and E of the said Order shall be carried out, without prior application to the LPA. (Part 1 Classes A, C and E refers to external alterations, extensions, outbuildings etc).

    3) None of the trees or hedges shown to be retained on the approved plan No 6845-01E shall be lopped, topped, uprooted, felled, wilfully damaged or in any other way destroyed or removal without the prior written consent of the local planning authority.

4) All external joinery shall have a painted/white stained finish unless otherwise agreed by the local planning authority.

Preliminary Matters

2. On 1 April 2019 Suffolk Coastal District Council merged with Waveney District Council to become East Suffolk Council. The development plans for the merged local authority remain in place for the former area of Suffolk Coastal District Council until such a time as they are revoked or replaced. I have therefore determined this appeal with reference to the policies in the plans produced by the now dissolved Suffolk Coastal District Council.

3. The emerging Suffolk Coastal Local Plan has been subject to examination and, subject to main modifications, is said to be capable of being found sound and legally compliant. I am cognisant that the plan may still be subject to change but afford its policies limited weight in view of their stage of preparation.

4. The application seeks to remove a planning condition and vary a legal agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (S106). The Council determined the planning application to vary the condition, and it is this that is before me in this appeal. Variation or modification to the terms of a S106 are dealt with under separate processes, and will need to be sought under a separate deed of variation application. I have determined the appeal on this basis.

5. Care home residents were classified as a highly vulnerable/high risk receptor in respect of the Covid-19 outbreak, and thus should be shielded under Government guidance. To enable the appeal to progress I approached both parties with regard to undertaking a virtual site visit. Whilst the appellant was content with the approach, the Council it questioned whether this approach would be sufficient in this instance. Taking these views into account and the main issues arising in this appeal, I decided to undertake a physical site visit.

Main Issues

6. The main issues for the appeal are the effect of the development upon:

   - the use and operation of the care home;
   - the living conditions of care home residents by way of noise and disturbance from vehicular movements.

Reasons

Use and operation of care home

7. The Garrett Era Area is an enclosed community area subject to access and speed restrictions. The Garrett House Residential Care Home is a large building with its front and rear facades facing east and west respectively. There is an in-out driveway across its frontage with an operational one-way system for all traffic.

8. No 43A Park Road sits within the curtilage of, though physically independent from, the Garrett House Residential Care Home. The single storey dwelling is at the northern end of the care home grounds and is accessed via a private drive along the appeal site's northern boundary. It is a detached property with its

own dedicated garden and parking arrangements, enclosed by high brick walls and a variety of fences. No 43A is in use as a residence only and there are no other facilities, services, storage or supporting infrastructure for the care home within the dwelling. Therefore, the building itself, in being both physically and functionally independent from the care home, is not critical for the effective operation of the care home.

9. My attention is drawn to the presence of other accommodation options within the various parts of the care home itself, a matter that the Council has not disputed. In light of these alternatives for in-house accommodation, the loss of the detached dwelling for managerial staff would not significantly impact upon the ability to run the premises as a care home.

10. I therefore conclude that the removal of the condition to allow unrelated occupancy of No 43A would not have an adverse impact on the use or operation of the care home. The proposal would therefore accord with policy DM7 of the Suffolk Coastal District Local Plan Core Strategy and Development Management Policies Development Plan Document July 2013 (the Local Plan), which seeks to ensure proposed developments would make an efficient use of land.

Living conditions of care home residents

11. The existing access arrangements for No 43A would remain in the event that the disputed condition was removed. Access at present is via the in/out driveway to the care home, then via a separate spur of driveway along the site's northern boundary. I noted that bollards and a different surface finish to the drive delineate the route and clearly separate traffic for the care home away from the subject dwelling.

12. The level of vehicle movements to the appeal site, including arrangements for turning and manoeuvring, would be unlikely to significantly change or increase if the dwelling was occupied separately from the care home. Whilst there are windows at ground floor level on the north elevation serving habitable rooms, cars would be travelling at very slow speeds at their point of entry to the Garrett Era area, let alone when entering the care home grounds and using the driveway. There is space in front of the dwelling for cars to turn safely and exit in forward gear, before re-joining the one-way system of the in/out driveway. I therefore conclude that residents of the care home would not be subject to a perceptible change in noise or disturbance arising from car movements.

13. I acknowledge that managers/owners of the care home may have a greater sensitivity with regard to care home occupants and thus voluntarily limit the amount of activity at unsociable hours. This does not however change the fundamental principle of the building being a residence, nor does it preclude any normal activity associated with residential use taking place. Whilst the driveway to the property narrows when passing the northern edge of the care home, no physical changes to the site layout are proposed by way of the appeal and as such the same circumstances apply whether the dwelling is occupied separately or not.

14. I conclude that the proposal would not adversely affect the living conditions of care home occupiers by way of noise and disturbance arising from vehicular movements. The proposal would comply with policies DM7 and DM23 of the

Local Plan, which seek to ensure proposals do not cause an unacceptable loss of amenity to adjoining or future occupiers.

Other Matters

15. I acknowledge the appeal site falls within the 'Garrett Era Area' that, under emerging policy SP41, is regarded for its design, form, setting and spatial characteristics. However, there is no cited conflict with this policy at this time and any future proposals for development on the appeal site would be determined on their own merits in any case.

16. Whilst the appellants are seeking to retire and continue living in No 43A, the consequence of removing condition 12 of COO/0893 (notwithstanding the need to separately modify the S106 agreement) would be the creation of an open market dwelling for any occupant. The appellants were fully aware of the restriction having originally applied and obtained permission for the dwelling. Therefore, whilst I have taken account of the Public Sector Equality Duty and the Human Rights Act, these have limited weight in my decision. I have found the development acceptable on its planning merits in any event.

17. I have given consideration to the judgement made in Finney v Welsh Ministers & Others [2019] EWCA Civ 1868 and sought both of the main parties' views as to the implications for this appeal. In my view, removing the occupation restricting condition would not change the description of development (ie it would still be accommodation for the manager/owner of the care home) or give permission for something greater than was originally applied for. It would leave a situation where, if the dwelling were occupied by someone who was not the manager of the care home, the Council would need to decide whether it is expedient to take enforcement action (as opposed to pursuing a breach of condition) or to pursue an injunction via breach of the S106 agreement. However, removing the condition, in itself, would not give rise to any harms, as I have identified above.

Conditions

18. The Council recommends varying condition 12 of planning permission COO/0893, instead of removing it, to the effect that the occupation remains limited to managers/owners of the care home, and the appellants only by name. I do not find it reasonable or necessary to grant a personal permission in this instance having found the proposal acceptable on its own merits.

19. The Council recommends varying conditions 7 and 11 of the permission that relate to removal of permitted development rights and retention of areas for parking, turning and manoeuvring vehicles. It is necessary to ensure that the access and parking arrangements for No 43A are maintained in accordance with the original approved plans in the interests of highway safety. It is also reasonable, given the Garrett Era Area considerations and the close relationship between No 43A and the care home, to continue to restrict permitted development rights. I have imposed these conditions accordingly.

20. The pre-commencement conditions from the original permission have been discharged and therefore do not need to be re-imposed. However, conditions specific to tree retention and use of materials are considered appropriate in this instance for the area's character and appearance.

Conclusion

21. For the reasons given above, I allow the appeal.

David Wallis

INSPECTOR