The Planning Inspectorate

Appeal Decision

Site visit made on 7 December 2020 by L Wilson BA (Hons) MA MRTPI

Decision by Chris Preston BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2021

Appeal Ref: APP/B3030/W/20/3258475
Friary Fields Residential Nursing Home, 21 Friary Road, Newark On Trent NG24 1LE

- 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 Bucksheesh Pottiwal (Athenian Property Investments Ltd) against the decision of Newark Sherwood District Council.
- The application Ref 20/00579/FUL, dated 6 April 2020, was refused by notice dated 1 July 2020.
- The development is a proposed change of use from Residential Institution (class C2) to large House in Multiple Occupation (class - Sui-Generis).

Decision

1. The appeal is allowed and planning permission is granted for the proposed change of use from Residential Institution (class C2) to large House in Multiple Occupation (class - Sui-Generis) at Friary Fields Residential Nursing Home, 21 Friary Road, Newark On Trent NG24 1LE in accordance with the terms of the application 20/00579/FUL, dated 6 April 2020, and the plans submitted with it, subject to the attached schedule of conditions.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. These are the effect of the proposal upon:

   i. Highway safety, having regard to parking provision;

   ii. The character and appearance of the area, having regard to the Newark Conservation Area (CA) and the removal of trees; and

   iii. The living conditions of the occupiers of No. 20 Friary Road (No. 20), having regard privacy and overlooking.

Reasons for the Recommendation

4. The application seeks permission for the change of use of the building from a residential institution (Use Class C2) to large house in multiple occupation (Use Class Sui-Generis) (HMO).

5. The application site relates to a former 34 bed residential nursing home. The proposal seeks to convert the existing building into 6 cluster units accommodating a total of 33 bedrooms. Each cluster would have a communal kitchen, living and dining room area as well as laundry facilities.

Highway Safety

6. Residents, the Town Council and Newark Civic Society are clearly concerned that the development would have a harmful impact upon the highway. The Council accept that the proposed development seeks to increase the number of parking spaces from 5 to 13 and would also provide secure cycle storage for 36 bicycles. The existing conservatory to the front elevation would be demolished to enable the additional vehicle parking and cycle storage.

7. A swept path analysis has been undertaken to demonstrate that vehicles can safely access the proposed parking spaces and can turn within the car park. Vehicular access to the site would continue to be provided along Friary Road and the site plan shows that the existing timber fence, adjacent to the site entrance, would be removed.

8. Paragraph 109 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

9. The appellant has submitted a Transport Statement (TS) to support the application. They have carried out an assessment of trip generation for both the previous use as a care home and for the proposed HMO use. Whilst alterations would be required for the building to operate as a nursing home, the lawful use of the building is as a residential institution (Use Class C2) of the Use Classes Order. Thus, the building could operate as a residential nursing home without planning permission.

10. The appellant has submitted information which shows that the former care home employed between 19 and 20 staff. It is unlikely that all of these employees would have been present at any one time and although the number of trips of the previous use may have been lower than that set out in the TS, the data should be seen as the average trips that could occur from the site as a result of its current lawful use.

11. Given the lack of trip comparator sites for HMOs in the TRICS Database, the trip generation for the proposed use has been based upon privately owned flat sites, which was considered to be a worst case scenario.

12. The TS found that the proposed development would not result in a material intensification in the use of the access when compared to the number of trips that could be generated by the existing C2 use, if fully operational.

13. The Highway Authority did not object to the application subject to a recommended condition. They were satisfied with the assessment undertaken using the TRICS Database and did not raise any concerns with the assessment using privately owned flat sites in assessing the difference in traffic generation between the extant and proposed use.

14. Local residents, the Town Council and Newark Civic Society consider that insufficient parking is proposed. However, the information presented is to some

extent anecdotal and less comprehensive than the TS which was considered acceptable by the Highway Authority.

15. The Newark and Sherwood District Council Amended Core Strategy (2019) (the ACS) states that the Newark Urban Area, which the appeal site is located within, is identified as a sub-regional centre. It is the largest population centre in the District and is the main location for services, jobs, retail, education and a focus for transport for most of the District. The proposals map within the Newark and Sherwood Local Development Framework: Allocations and Development Management Development Plan Document (2013) (DPD) shows that the site is located close to the defined town centre.

16. The Council do not have parking standards for HMOs. Nonetheless, Policy DM5 of the ACS states that parking provision for vehicles and cycles should be based on the scale and specific location of the development.

17. There is on-street parking within the surrounding area but because of the site's proximity to the town centre it is subject to parking restrictions and residential parking permits. Table 4.1 of the TS highlights that the site is within walking distance to a range of facilities including Newark College, supermarkets and the town centre. Within the local area are bus stops, Newark Northgate train station, Newark Castle train station and Newark bus station which are all within walking distance of the site.

18. The TS states that the car ownership levels within HMO accommodation and associated trip generations are much lower than conventional residential development. In the absence of any evidence to the contrary I have no reason to dispute that conclusion and accept that HMO developments are likely to attract residents with lower rates of car ownership and a higher likelihood that those residents will use alternative means of transport.

19. The TS also states that the parking space would be made available to the occupants on a first-come first-served basis and the flats would be marketed accordingly. Future occupiers would be aware of the proximity of the town centre and parking constraints of the site, and parking restrictions within the area, prior to choosing to live there.

20. Although the development does not provide parking provision for visitors or deliveries this would not be an unusual arrangement for the proposed use in an urban area located close to a town centre. In addition, many of the nearby residential properties also do not make such a provision and neither does the existing use. Similarly, local planning policy does not seek to provide parking for visitors and delivery parking, alternatively it seeks to promote an emphasis on non-car modes as a means of access to services and facilities. I do not consider this to be a reason to withhold planning permission.

21. At the time of my site visit I observed that Friary Road is a relatively busy highway. I do not consider that the removal of the fence would significantly improve visibility given the height of the northern boundary fence which would be retained. I also do not consider that it would make it easier for two vehicles to pass through the access because of the proposed parking spaces close to the access and location of the dropped kerb into the site. Nonetheless, as the scheme would utilise the existing access and the level of traffic generated by the proposed use would be similar to the building's lawful use this matter has a neutral consideration.

22. Thus, I consider that adequate off-street parking is proposed for the proposed use given the scale of development and the site's accessible location, having regard to the Council's policy position. There is no substantive evidence to demonstrate that the scheme would result in the displacement of vehicles in the vicinity of the site which would in turn cause highway congestion and exacerbate existing parking issues in the area.

23. The TS contains data regarding the location and severity of accidents within the local area which identifies that there has been one serious accident and one slight accident close to the site, over a five year period. No evidence has been submitted which demonstrates that those incidents related to the site. Furthermore, as the proposed use would generate a similar amount of traffic to the building's lawful use it is unlikely that there would be an increase in the risk of vehicle/ pedestrian collisions.

24. An interested party considers that the Highway Authority has been inconsistent because in a different application they required two parking spaces for a two-bedroomed property. Little information is before me with regards to that application. However, it appears that the application did not relate to a HMO and therefore cannot be directly compared to the scheme before me.

25. For the reasons above, the proposal would not have an unacceptable impact on highway safety, having regard to parking provision. Consequently, it would accord with Policies SP7 of the ACS and DM5 of the DPD as well as the Framework which seek, amongst other matters, to ensure new development does not have a detrimental impact upon the local highway network and provides appropriate parking provision.

Character and Appearance

26. The scheme seeks to remove five trees to accommodate the car parking area. The trees to be removed are beech, holly, cypress and black walnut species and are subject to a group Tree Preservation Order (TPO) which runs adjacent to the west and southern boundaries. The Council's Tree Officer did not object to the scheme subject to a recommended condition. New trees are proposed to be planted to mitigate the loss of trees and enhance the arboricultural value of the site.

27. The site lies outside but adjacent to the CA. I note that the Conservation Officer stated that the green boundary does contribute to the setting of the CA. I agree with that assessment and the trees collectively make a positive contribution to the area and provide a visual green relief from the built development. The bowling green, tennis courts and park to the south of the site also to a greater extent provide a welcome break in built development. I observed on my site visit that the number of trees within the site appeared denser than most other plots.

28. The beech tree which is proposed to be removed is a large, mature tree which is particularly prominent when viewed from Beacon Hill Road. The Aboricultural Report and Impact Assessment (ARIA) found that this tree was in poor condition and unsuitable for retention. This tree is recommended for removal due to its condition and as it forms a health and safety risk rather than because of the proposed parking area. The Tree Officer raised no objection to its removal on that basis.

29. Four trees are proposed to be removed which are located within the proposed parking area which consist of two holly and one cypress trees of low quality and one walnut tree of moderate quality. The low quality trees are relatively small compared to other trees within the site. The walnut tree makes limited contribution to the street scene because it is set within the site. It is obscured by the trees adjacent to the boundary and I consider that the removal of this tree would not be significantly reduced the general crown volume of the site.

30. A mitigation planting strategy is proposed to mitigate the loss of the trees to be removed. This includes four trees to the eastern boundary as well as additional trees along the southern and northern boundary. The proposed trees to the eastern boundary would be in close proximity to the rear elevation of the building, however such matters could be addressed by way of a planning condition to ensure that the replacement trees are suitably planted.

31. Overall, the removal of the trees would not have a significant impact upon the character and appearance of the area given the condition of the trees to be removed, the number of trees to be retained and the impact of the mitigation planting strategy. The group value of the trees would largely be retained. Although new trees would take years to mature, in this case I consider it to be acceptable because one of the trees to be removed is of poor quality, which forms a health and safety risk, due to the size of the low quality trees and the location of the moderate quality tree within the site. To ensure that the root protection areas of the existing trees are not adversely affected and that they are appropriately pruned, a condition could be attached as requested by the Tree Officer.

32. Given my findings above, I am satisfied that the proposal would have a neutral impact upon how the CA is experienced and the development will not cause harm to the character or appearance of the designated heritage asset.

33. For the reasons above, the proposal would not have a materially harmful effect upon the character and appearance of the area, having regard to the CA and the removal of trees. Accordingly, the proposal would not conflict with Core Policies 9 and 12 of the ACS as well as Policies DM5 and DM7 of the DPD and the Framework which collectively seek, amongst other matters, to conserve the natural environment and also preserve or enhance the setting of conservation areas.

Living Conditions

34. No. 21 sits very close to No. 20 which is a residential property. The proposed development seeks to enlarge three existing windows on the northern elevation, facing No. 20. On my site visit I observed that there are no windows on the side elevation of No. 20, however there are numerous roof windows varying in design to both the ground and first floor.

35. The ground floor enlarged window would serve a bedroom. It would face the side elevation of No. 20 which does not contain any windows. Given the relative height of the windows in the roof, the enlarged ground floor window would not result in overlooking.

36. The first floor enlarged window would also serve a bedroom. It appears from the drawings before me that this window previously served a bedroom. It is likely that an occupier of a HMO would spend a similar amount of time in their

bedroom as a resident of a care home. The first floor enlarged window would face towards the side dormer of No. 20 which does not contain any windows and would not directly look into any of the roof windows.

37. The second floor enlarged window would also serve a bedroom. It appears from the drawings before me that this window previously served a bathroom and the level of occupation and nature of the use has potential to cause a greater degree of overlooking. However, the enlarged window would be higher than the roof windows of No. 20 and the angle of view is such that it would not directly look into the adjacent dwelling.

38. Consequently, I am satisfied that the proposed development would not adversely effect the living conditions of the occupiers of No. 20 to a degree that would warrant planning permission being refused, particularly in an urban area such as this. There would be poor inversibility between the windows because none of the proposed windows would directly face or look into the rooflights of No. 20 due to the staggered height differences and angle of both the proposed windows and rooflights. Similarly, the existing northern elevation of No. 21 contains windows of a similar size which previously served as the main window to bedrooms and a dining room. The development would not cause an unacceptable loss of privacy or direct overlooking, including the perception of overlooking.

39. For these reasons, the proposed development would not have an unacceptable effect upon the living conditions of the occupiers of No. 20, having regard to loss of privacy and overlooking. Accordingly, it would not conflict with Core Policy 9 of the ACS nor Policy DM5 of the DPD and the Framework which collectively seek, amongst other matters, to promote good design which promotes a high standard of amenity for existing occupiers.

Other Considerations

40. The Council's Committee Report states that the building is of local heritage interest and a non-designated heritage asset, local residents have also highlighted this. In contrast, the appellant states that the building is not currently being considered for being listed as a non-designated heritage asset. Even if the building is a non-designated heritage asset, due to the extremely limited external alterations to the building and removal of the conservatory to the front elevation, I am satisfied that the scheme would have a neutral impact upon it.

41. I have had regard to the concerns raised by Newark Town Council, Newark Civic Society and residents. These concerns relate to: overdevelopment, out of keeping, negative impact, fire hazards, anti-social behaviour, noise, no electric charging points, change family character of the area, similar applications refused, drainage, water supply, disabled access, location of bike storage, overconcentration of HMO, impact housing sales, increase vandalism, other uses better suited, overflowing bins, sewerage system and risk to public health due to cramped conditions. I note that the Council did not refuse the planning application on these grounds and I see no reason to disagree with that assessment.

42. The site is located within an urban area where there are a mix of uses and in that context it would not result in overdevelopment of the site or be out of keeping nor significantly alter the character of the area or result in a

overconcentration of a HMO use. The Council highlight in the Committee Report that the management of the HMO falls outside the planning process and a HMO license will only be granted after a site inspection is undertaken to assess the property under the housing health and safety rating system and any hazards identified are required to be addressed before the building can be occupied.

43. HMO licensing and building regulations would assess whether the scheme is acceptable in terms of fire safety. Building Control would also assess technical elements of the building relating to drainage. In planning terms, the proposed units would provide future occupiers with acceptable living conditions. The COVID-19 pandemic has highlighted the importance of providing good quality accommodation and the units would comply with the Council's HMO Amenity Space Standards and DASH guidance.

44. Comments relating to anti-social behaviour and overflowing bins are anecdotal and there is nothing to indicate that those issues would arise. Details of the refuse storage could be secured by a planning condition. Environmental Health did not consider noise to be an issue and no substantive evidence has been demonstrated to suggest otherwise. The appeal site is located within an urban area where there is already background noise.

45. I do not consider that the bike storage location would encourage thefts. It would be secure and situated to the front of the site to provide optimum natural surveillance to deter theft.

46. Whilst the provision of electric charging points would be beneficial, there are no planning requirements to ensure that they are provided. I recognise that the proposed parking area also does not include disabled parking spaces. Having regard to the Highway Authority's consultation response and the building would benefit from a ramped access, I consider that these matters should not be a reason to withhold planning permission.

47. The HMO application refused at No. 13 Friary Road relates to a terraced property. The immediate surrounding area of No. 13 contains a higher concentration of residential properties than the appeal site. In contrast, surrounding the appeal site are a more diverse mix of uses, including Newark College and recreational grounds. Thus, the two applications cannot be directly compared.

48. In terms of impact on property values, it is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.

Conditions

49. Several conditions have been suggested by the Council. The appellant has not disputed any of the proposed conditions and states in their final comments that the development should be granted subject to the conditions suggested by the Council. These conditions have been assessed in light of guidance found in the Planning Practice Guidance and where necessary the wording has been amended for clarity and precision.

50. I have imposed the standard conditions relating to the commencement of development and specifying the relevant plans in order to provide certainty. In the interests of residential and visual amenity, conditions relating to the railings, the covered refuse storage and bicycle storage are necessary. I also

consider a condition relating to parking provision to be necessary in the interests of highway safety. To preserve and protect the existing trees and hedgerow, conditions relating to the retained vegetation are necessary to protect the character and appearance of the area and biodiversity. In addition, a condition relating to hard and soft landscaping, including tree planting to replace the trees that would be lost, is necessary for the same reasons.

51. I do not consider condition 3, relating to materials, suggested by the Council to be necessary to make the development acceptable given the extremely limited alterations to the building.

Conclusion and Recommendation

52. For the reasons given above, the proposed development would be in accordance with the relevant policies of the development plan. I also give weight to the fact that the development would meet a local housing need, identified in the draft 2020 Housing Needs Survey, the site is within an accessible location and the development would re-use an existing vacant building which in turn would improve its visual appearance. The proposed development would provide adequate parking for the proposed use and would not have an unacceptable highway impact. The removal of five trees would not have a significant impact upon the character and appearance of the area, and would have neutral impact upon the setting of the CA. The development would also not harm the living conditions of the occupiers of No. 20. Accordingly, it would not result in an intensification of the site to warrant the refusal of the appeal.

53. For the reasons given above I recommend that the appeal should be allowed.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

54. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be allowed subject to the conditions attached.

Chris Preston

INSPECTOR

Schedule of 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 (635/01 Rev. B), Proposed Basement Floor Plan (635/07 Rev. A), Proposed Ground Floor Plan (635/08 Rev. C), Proposed First Floor Plan (635/09 Rev. B), Proposed Second Floor Plan (635/10 Rev. A), Proposed Roof Plan (635/11), Proposed Site Plan and Landscaping (635/13 Rev. J) and Proposed Elevations (635/15 Rev. B).

3) No development above slab level shall take place until details of the metal railings, the covered refuse storage, sheltered secure bicycle storage have been submitted to and approved in writing by the local planning authority. These shall include details of the:
   i. Design; and
   ii. Materials

   The approved details shall be carried out before the building is occupied and thereafter retained.

4) The building shall not be occupied until the car parking spaces have been laid out within the site in accordance with drawing 635/13 Rev. J (Proposed Site Plan and Landscaping) and that space shall thereafter be kept available at all times for the parking of vehicles.

5) No retained tree (being those trees shown to be retained on the Tree Protection Plan attached at Appendix 7 of the Aboricultural Method Statement v1.0, dated June 2020, produced by Hellis Solutions Ltd.) shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner without the prior written approval of the local planning authority. If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority.

6) Notwithstanding the details provided within the Aboricultural Method Statement v1.0, dated June 2020, produced by Hellis Solutions Ltd., no works or development shall take place until an additional arboricultural method statement and scheme for protection of the retained trees/hedgerows has been agreed in writing with the District Planning Authority. This scheme shall include:
   i. A plan showing details and positions of the ground protection areas;
   ii. Details and position of protection barriers;
   iii. Details and position of underground service/drainage runs/soakaways and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site;
   iv. Details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g. in connection with foundations, bridging, water features, hard surfacing);
   v. Details of construction and working methods to be employed for the installation of drives and paths within the root protection areas of any retained tree/hedgerow on or adjacent to the application site;

vi. Details of working methods to be employed with the demolition of buildings, structures and surfacing within or adjacent to the root protection areas of any retained tree/hedgerow on or adjacent to the application site; and
vii. Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

All works/development shall thereafter be carried out in full accordance with the approved arboricultural method statement and tree/hedgerow protection scheme unless otherwise agreed in writing by the local planning authority.

7) The following activities must not be carried out under any circumstances:
i. No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the application site.
ii. No equipment, machinery or structure shall be attached to or supported by a retained tree.
iii. No temporary access within designated root protection areas without the prior written approval of the District Planning Authority.
iv. No mixing of cement or use of other contaminating materials or substances shall take place within 10 metres of the nearest point of the canopy of any retained tree.
v. No soak-aways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
vi. No stripping of top soils, excavations or changing of levels to occur within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
vii. No topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
viii. No alterations or variations of the approved works or protection schemes shall be carried out without the prior written approval of the District Planning Authority.

8) Prior to first occupation of the development hereby approved, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include:
i. full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards, and structural cells. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species;
ii. proposed finished ground levels or contours;
iii. car parking layouts and materials;
iv. other pedestrian access and circulation areas; and
v. hard surfacing materials.

The approved soft landscaping scheme shall be carried out within 6 months of the first occupation of the building or completion of the development, whichever is soonest, unless otherwise agreed in writing by the local planning authority. If within a period of 7 years from the date of planting any tree, shrub, hedgerow or replacement is removed, uprooted, destroyed or dies then another of the same species and size of the original shall be planted in the next planting season at the same place. Variations may only be planted on written

consent of the local planning authority. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 - 1992 Part 1-Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984-Specifications for Forestry Trees; BS4043-1989 Transplanting Root-balled Trees; BS4428-1989 Code of Practice for General Landscape Operations. The approved hard landscaping scheme shall be completed prior to first occupation or use.