
Appeal Decision

Site visit made on 4 May 2021

by Mr C J Tivey BSc (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2021.

Appeal Ref: APP/K3605/W/20/3264929

11 St. Marys Road, Long Ditton, Surbiton KT6 5EU

- 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 A Stevens, Kisimul Group Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1218, dated 26 May 2020, was refused by notice dated 16 October 2020.
 - The development proposed is for Change of use from C3 dwellinghouse to C2 (residential care home)(supported living)(6 residents).
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from C3 Dwellinghouse to C2 (residential care home)(supported living)(6 residents) at 11 St. Marys Road, Long Ditton, Surbiton KT6 5EU in accordance with the terms of the application Ref. 2020/1218, dated 26 May 2020, subject to the conditions set out within the Schedule attached to this decision.

Procedural Matter

2. Since I made my site visit, I have received further representations from the St Mary's Road Residents' Association and the Borough Council in respect of a recent Ofsted inspection carried out at Kisimul School, Long Ditton which is run by the appellant. They state that the school is required to close until it receives new accreditation, although no evidence of this has been provided.
3. In response to these claims, the appellant has stated that they are not correct, the school at Woodstock House continues to operate, but they have decided to voluntarily cancel the provision of care services at the property. It is not entirely clear if this could have an impact upon the appeal proposal in terms of feeding future occupants through to it, however from the representations made by Surrey County Council (SCC) in their Adult Social Care capacity there is clearly a need for further supported living facilities within the County.
4. The Council explains that they cannot currently demonstrate a 5 year housing land supply, therefore, pursuant to paragraph 11.d) ii. of the National Planning Policy Framework (the 'Framework') the presumption in favour of sustainable development applies, which for decision-taking means granting permission unless any adverse impacts of doing so would significantly and demonstrably

outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore they state that the 'tilted balance' is engaged in this case.

5. I have determined the appeal on the basis of the above.

Main Issues

6. The main issues are whether the proposed development would constitute a 'Residential Care Home' rather than 'Supported Living'; and the effect upon the living conditions of the occupants of surrounding residential properties, with specific reference to noise and disturbance from vehicle movements.

Reasons

The Nature of the Use

7. Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) covers residential institutions, which as well as the use of a site as a residential school, college or training centre and hospital or nursing home, can constitute a use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).
8. SCC advised that there is a need in the Borough for C2 accommodation, provided that it meets the supported living definition, as defined by the Care Quality Commission (CQC). Consequently, they stated that they would support the proposal on the proviso that a condition be imposed on any grant of planning permission to secure such accommodation, and to prevent the creation of a full-blown residential care home for which there is no longer an identified need, and which could put local services under increased strain and have a negative impact on the local care economy.
9. The definition of supported living is set out within the CQC document entitled 'Housing with Care' (October 2015) and is repeated within paragraph 3.3 of the Council's appeal statement. Concerns raised by the Ward Member about whether the appellant would provide 'personal care' (and therefore need to register with the CQC) are noted. However, whilst there is no specific mention of personal care being given within the appellant's documentation, I am aware that persons on the autistic spectrum can require assistance with their ablutions, as well as with domestic tasks. It is of course a very much individual situation, but I consider it is highly likely that as a supported living provider the appellant would have to register with the CQC. Therefore, whilst I note the concerns about the appropriateness of having an unregulated facility, I consider that such a risk would be slight.
10. Ultimately, and as highlighted by Officers of the Council, the manner in which the property would function on a day-to-day basis would depend upon the cohort of tenants in the property at any one time, but with the aim of ensuring that they reside within a supported living model to encourage independent living and integration into the local community.
11. I note that there are queries with regard to the 'Real Tenancy Test', but I have been given no substantive reason to doubt that the five key standards could not be met, notwithstanding some of the contradictions highlighted within the planning application submissions. With reference to the CQC document entitled

'Registering the Right Support' (June 2017); the appellant has stated that the personal care and accommodation arrangements would be provided under separate legal agreements and the supported person would have a choice about who provides their personal care.

12. I accept that if that was not the case then it would be more akin to a traditional care home business model, but that is not the target market in this case. Depending on where individuals are on the autistic spectrum it would however affect their ability to make decisions as to where they chose to live and who they chose to live with/the type of people they would live with.
13. The Council hypothesises that if the dwelling were to be used as a care home facility, for which there is no identified need, then the Borough would lose a C3 dwelling; this is notwithstanding the fact that by allowing this appeal the same would occur. Nonetheless, the final sentence of paragraph 3.10 of the Council's statement actually states that a change to a supported living unit is considered to result in a benefit which would outweigh the harm of the loss of a dwelling.
14. The provision of additional small-scale C2 supported living accommodation for adults with Autism within an area identified by SCC as having an identified need for more such accommodation configured either as individual flats or small shared accommodation, is a benefit to which I give significant weight in the planning balance (see below). Consequently the proposal would meet an identified need and would not put local services under increased strain, or have a negative impact on the local care economy.
15. The proposal complies with Policy DM10 of the Elmbridge Local Plan Development Management Plan (2015) (ELP) which stipulates that development that results in a net loss of housing units will be resisted unless it can be demonstrated that it would result in benefits that outweigh the harm. The Council have not provided any evidence to demonstrate that the type and quality of accommodation that would be lost would have a detrimental impact upon housing need within the Borough; with no11 being significantly larger than the 1-2 bedroom units and 3 bedroom family houses identified as being the type of housing most in need within the Strategic Housing Market Assessment for Kingston and North Surrey.
16. I also find that the proposal complies with ELP Policy DM9 which encourages new development for social and community facilities, provided that it meets identified local need with the Council supporting mixed-use shared, flexible and adaptable buildings and spaces that meet the needs of the community, subject to a number of provisions, whilst encouraging collaboration between service providers, the community and key partners. Further I find that the proposal complies with the general spirit of the Framework and its chapter entitled 'Promoting Healthy and Safe Communities', specifically within paragraph 92 which requires planning decisions to, amongst other things, take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community. Whilst not explicitly referred to within the Council's Appeal Statement, I find no material conflict between the proposal and Policy CS19 of the Elmbridge Core Strategy (2011) (ECS) which seeks to secure a range of housing types and sizes on

developments across the Borough in order to create inclusive and sustainable communities.

Noise and Disturbance

17. The appeal site is located within a relatively well used and wide residential street, and with the exception of St. Chad's Close opposite, comprises mainly large detached houses (some of which have been converted into flats) set within generous grounds. The appeal site's frontage has been surfaced in tarmac, providing an extensive parking area accessed via metal railed automatic gates. The remainder of the frontage boundaries are demarcated by high hedging with close boarded fencing also running along the southern side. Consequently I find that the parking area is quite well visually contained.
18. It is common ground that the proposal would generate a greater number of movements than if no11 were to continue to be occupied as an independent dwellinghouse under Class C3 of the Use Classes Order. However, I have not been made aware of any objections from the Local Highway Authority in respect of highway safety, who confirm that the scheme would meet the Council's adopted parking standards.
19. As highlighted by Officers within their report to Members, the main disturbance that would be experienced by local residents would be when there was a change of shift between the day and evening staff, and a worst case scenario during an approximate 30 minute window could mean that there would be 11no members of staff on the premises at one time. Other visits from Doctors, Psychologists, Social Workers and other professionals, in addition to family members of future residents would add to the number of movements per week.
20. Notwithstanding this I noted on my site visit that it is possible to park within the road during the many unrestricted hours of the day and night by virtue of its aforementioned width, with there remaining adequate space for vehicles driving in opposite directions to pass each other in a largely free flowing manner. The provision of a Green Travel Plan would however assist in reducing motorised trips to and from the site and encourage sustainable modes of travel such as the use of public transport, cycling and walking.
21. Noise and general disturbance emanating from the increase in activity at the appeal site would have an impact upon the living conditions of the occupants of neighbouring residential properties, especially 9 and 15 St. Mary's Road, however nothing in the submissions demonstrates to me that this would be significant. Bearing in mind that the majority of vehicular movements associated with the proposed change of use would be during shift changes, such disturbance to local residents would only likely be within a narrow time period, once in the morning and once in the evening.
22. Consequently I consider that the number of additional movements would not give rise to a material level of harm to the residential character of the area, with the proposal meeting the Council's adopted parking standards and through the adherence to a Green Travel Plan that can be secured by planning condition. The Council has not demonstrated how the proposal would conflict with the Design and Character SPD 2012 or the Framework on this issue, however, I find that the proposal complies with ECS Policy CS8 and ELP Policy DM2 which together, in respect of Long Ditton, state that the Council will

continue to support the primary role of such an area as an attractive and individually distinctive residential neighbourhood whilst seeking to protect the amenity of adjoining and potential occupiers and users.

Other Matters

23. I acknowledge the extensive third party representations that were submitted in respect of the proposal, and whilst the supported living facility would comprise a commercial enterprise, nevertheless it would provide a form of residential accommodation within a residential area, notwithstanding the need for staff to be present on site. Whilst there are some physical changes proposed to the building, the majority of those such as internal works would not constitute development; and/or would not have required the submission of a planning application to the Council. It would however be for the local planning authority to carry out any investigations if it considers that any breach of planning control has occurred.
24. I note concerns raised about the proposal being of a cramped nature, but it relates to the conversion of a large dwelling in which all rooms would meet the Government's Nationally Described Space Standards. With regard to parking congestion within the street, a significant proportion of St. Mary's Road and other streets that lead off of it are subject to a range of restrictions which mitigate such issues; quite clearly any vehicle owner associated with the appeal proposal parking within prohibited hours would be liable to a Penalty Charge Notice being served upon them.

Planning Balance

25. As highlighted above, the tilted balance towards the presumption in favour of sustainable development is engaged.
26. I have found that there would be some adverse impacts upon local residents in terms of noise and disturbance, although this would not be significant. There are also clear benefits flowing from the proposal: to provide a supportive, nurturing environment for autistic adults to live their own lives as independently as possible to which I give significant weight.
27. I have found that the proposal complies with the Development Plan as well as the Framework, and overall I consider that the benefits of the proposal would not be significantly and demonstrably outweighed by the adverse impacts; consequently I consider that the development should be approved.

Conclusion and Conditions

28. Therefore, for the reasons set out above and having regard to all other matters raised, I conclude that the appeal should succeed.
29. Other than the standard time limit condition the Council has recommended that a condition be imposed that requires the development to be carried out in accordance with the approved plans. I consider that this is necessary for the avoidance of doubt as to the scope of the planning permission. Furthermore as discussed above, in order to minimise any harmful effects upon the local care economy, I consider it is necessary to impose a condition restricting the use of the appeal site to that of supported living accommodation with an occupancy of no more than six residents.

30. I note the Council's concerns over the imposition of an occupancy condition, and clearly the level of care required would depend on the specific needs of each individual resident, both on first occupation of the premises and in the future; however the Council's Planning Enforcement Team would be able to liaise with SCC and the CQC to ascertain its continued registration with the latter as a supported living accommodation facility, rather than as a care home. Therefore such a condition would be enforceable.
31. I understand that those windows highlighted on the plans as being obscurely glazed have already had a film applied to them, however in the interests of protecting the privacy of neighbouring residents in the long term, it is necessary to secure a permanent solution. As the frontage has been resurfaced and the site is visually self-contained I consider that it is not necessary to impose a landscaping condition. However, in the interests of providing an efficient car parking layout, I consider that the Council's 10th suggested condition requiring details of marking out to be necessary, along with the provision of electric charging points and a location for the secure parking of bicycles, in the interests of promoting sustainable transport modes.
32. Furthermore, whilst I note that a Travel Plan was submitted to the Council, no specific comments were provided on it either by them or the local Highway Authority. In the interests of adhering to SCC's good practice guide I consider it appropriate to impose a condition requiring one to be submitted to the local planning authority for final approval.
33. Finally, I consider that the Council's 9th suggested condition requiring the permitted use to be carried out in strict accordance with the Design and Access Statement as vague; bearing in mind that there are no specific procedures set out therein. Nonetheless I am content that provided that the development is carried out in accordance with the appellant's submissions that it would constitute a C2 Use for supported living, any deviation from which could give rise to a breach of the occupancy condition.

C J Tivey

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in strict accordance with the following approved plans: KS911-ELE-121; KS911-ELE-122 Rev.P1; KS911-PLN-001 C7 and KS911-PLN-003 Rev.P1 all received by the Council on the 26 May 2020, KS911-PLN-GA-111 Rev C12 and KS911-PLN-GA-112 Rev C9 received by the Council on 5 June 2020.
3. The premises shall be used for Supported Living Accommodation (as defined by the Care Quality Commission or other subsequent appropriate body) for a maximum of 6no residents and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)).
4. Prior to the first occupation of the development hereby permitted the windows highlighted on the approved plans KS911-PLN-GA-111 Rev C12 and KS911- PLN-GA-112 Rev C9 shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (or equivalent) and only openable above a height of 1.7m above the internal floor level of the room which it serves. The windows shall be permanently retained in that condition thereafter.
5. The development hereby approved shall not be occupied until 8no car parking spaces have been marked out within the site's frontage in accordance with a scheme that shall have previously been submitted to and approved in writing by the Local Planning Authority. Thereafter the parking spaces shall be retained and maintained for their designated purpose.
6. The development hereby approved shall not be occupied until a fast charge Electric Vehicle socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) has been installed within the site's frontage and shall thereafter be retained.
7. The development hereby approved shall not be occupied until a secure bicycle parking facility within the site, compliant with the Council's adopted standards, has been provided, in accordance with a scheme that shall have previously been submitted to and approved in writing by the Local Planning Authority. Thereafter the bicycle parking spaces shall be retained and maintained for their designated purpose.
8. Prior to occupation of the development a Travel Plan, written in accordance with the sustainable development aims and objectives of the National Planning Policy Framework, Surrey County Council's 'Travel Plans Good Practice Guide', and in general accordance with the 'Heds Of Travel Plan' document shall be submitted to and approved in writing by the Local Planning Authority. The provision of the Travel Plan shall be adhered to at all times unless otherwise approved in writing by the Local Planning Authority.
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