
Appeal Decision

Site visit made on 2 November 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 25 November 2021

Appeal Ref: APP/P0119/C/21/3279548

Land at Rowan Lodge, 41 Gloucester Road North, Filton BS7 0SN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Supported Independence Holdings Limited against an enforcement notice issued by South Gloucestershire Council.
- The enforcement notice was issued on 22 June 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the stationing of a building on the land in the approximate location marked with a green X on the attached plan.
- The requirements of the notice are Remove the building, located in the approximate position marked with a green X on the attached plan, from the land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. As the Council's statement references, appeal documentation from the appellant refers to the steps specified in the notice being excessive, which would indicate an appeal under ground (f). The appellant has though confirmed that this reference was erroneous and thus the appeal proceeds on grounds (a) and (g) only.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Main Issues

2. The main issues are (a) the effect of the appeal development on the character and appearance of the area; and (b) whether there are any material considerations which outweigh any development plan conflict or planning harm found.

Reasons

Character and appearance

3. The appeal property is located in a mixed commercial and residential area and is positioned on a relatively prominent corner plot. Rowan Lodge is a hipped roof double bayed period building with attractive detailing, with some

architectural features in common with other period properties along Gloucester Road North.

4. The structure which is the subject of the enforcement notice is by contrast of a simplistic and utilitarian design which does not sit comfortably within the surrounding environment. It is a very basic flat roofed box-type structure which is of significant size relative to the small garden area within which it sits. It is very prominent particularly in views heading in a northerly direction along Gloucester Road North. Its visually intrusive design results in material harm to the character and appearance of the surrounding area.
5. The appellant proposes that a landscaping condition could be imposed to require planting of a mature species along the corner of Broncksea Road to reduce/remove any perception of the portacabin in public views. However, in my view, the use of landscaping to conceal development which would otherwise be entirely unacceptable does not represent good design or good planning.
6. Thus I conclude on the first main issue that the appeal development has a materially harmful effect on the character and appearance of the area, which cannot be appropriately overcome by condition. It therefore results in conflict with Policy CS1 of the Council's Core Strategy (2013) and with Policy PSP1 of the Council's Policies, Sites and Places Plan (2017) which seek to ensure that new development is informed by the distinctiveness of its context.

Other material considerations

7. The appellant submits that the specific circumstances of the appeal site together with the effects of the COVID-19 pandemic on the site's operations are material considerations outweighing any planning harm.
8. The appeal property at Rowan Lodge is in use as a supported care facility. The appellant's evidence is that, since the outbreak of COVID-19, the structure which is the subject of the notice has been used as a temporary office that residents cannot enter. The purposes of the office have apparently been to: provide a 'safe space' for workers to go for a break without personal protective equipment (PPE) if there is a COVID outbreak at Rowan Lodge. This apparently minimises self-isolation time for staff; and as a space for meetings with external guests so as to minimise the number of people entering Rowan Lodge and so the risk of infection. The appellant has proposed that a temporary consent be granted for a period of 3 years.
9. The appellant has explained that due to the nature of their services, they are not in a position to close their facilities if COVID-19 issues arise and that they cannot fully enforce self-isolation of residents as many would not be capable of understanding the necessity for this. The appellant states that there is nowhere within the main building where staff can go to take breaks without wearing PPE and indicates that, even if there was such a place, this would not provide the degree of physical separation necessary to enable staff to remove their PPE.
10. However, the appellant has not provided any detailed evidence such as to indicate why such a space is necessary in any event, nor why it would need to be in a physically separate building. No reference is made to any guidance, rules, regulations and/or detailed operational requirements which might indicate that staff in this sort of workplace should have space in a separate

building in order to take breaks without having to wear PPE when a COVID outbreak occurs.

11. Little detailed information is provided as to the likely consequences if such a space were not available. The appellant refers to a possible effect on workers' morale without explaining the impact of this in real terms. The possibility of the care home having to close is referred to. However, no explanation is given as to why such a drastic step would be necessary and why alternative solutions could not prevent this.
12. Further, there is no suggestion that any alternative solutions have been considered more generally which might avoid harm to the character and appearance of the area. The Council highlights also that the appellant has a head office in Bristol where external meetings could be held which, in the absence of evidence to the contrary, would seem to obviate the need for these to be held within the temporary office at the appeal site.
13. I acknowledge the definition in the Planning Practice Guidance of a 'material planning consideration', along with the case law cited as to what can constitute such a consideration. Nonetheless, for the reasons outlined above, I do not consider that the material considerations referred to by the appellant are of sufficient weight to outweigh the harm found, even taking into account the importance of the 'human factor'.
14. I conclude then on the second main issue that, on the evidence before me, there are no material considerations which outweigh the development plan conflict and planning harm found in relation to the character and appearance of the area such as to justify even a temporary planning permission.

Conclusion on Ground (a) and the DPA

15. For the reasons given and having regard to all other matters raised, I find that the development conflicts with the Council's development plan, read as a whole and that no material considerations have been advanced such as to indicate a decision other than in accordance with the development plan. I therefore conclude that the appeal on ground (a) should fail and the DPA should be refused.

The Appeal on Ground (g)

16. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant has argued that, if the appeal on ground (a) fails, the period for compliance in the notice would be too short and requests a period of at least 12 months.
17. The basis for the appellant's request to extend the time for compliance is that new safety measures will be required, or current occupiers might need to be rehoused if the care home at Rowan Lodge needs to close once the temporary office structure is removed. The appellant explains that rehousing would not be a swift operation since capacity would need to be found in other homes that were of a suitable distance from the current accommodation in order to minimise disturbance to residents.
18. As noted above, I have no detailed evidence as to any guidance, rules, regulations and/or particular operational requirements which might recommend that staff in this sort of workplace have a separate space to take breaks

without having to wear PPE when there is a COVID-19 outbreak. Whilst the appellant refers to the possibility of having to close the care home, I have no substantive evidence to indicate why such a step would be necessary in the absence of the temporary office.

19. That said, I acknowledge that the temporary office has been in place throughout the pandemic and therefore has been available to staff for taking breaks without wearing PPE during this time. It seems probable therefore that staff might well be opposed to a change without some alternative arrangements/measures in place, particularly bearing in mind that COVID case rates remain high.
20. If residents need to be rehoused as a result of the enforcement notice being upheld as the appellant suggests might be the case, this would interfere with the residents' rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified if in the public interest, but the concept of proportionality is crucial. In enforcement cases, human rights considerations come into play under ground (g) as well as (a), since the decision maker has some discretion.
21. The Council's decision to enforce was legitimate and in the public interest, given the harm caused. I consider, however, that even if account is taken of the need to remedy the harm, the notice does not afford the appellant reasonable time to make alternative arrangements for residents if this does become necessary.
22. Accordingly, I find that a period of 9 months for compliance would strike a balance between the need to end the ongoing harm to the character and appearance of the area, and also to enable a sufficient period for the appellant to make any arrangements necessary to enable the care home to operate safely during the pandemic in the absence of the temporary office, or in the worst case scenario to rehome residents. The appeal on ground (g) succeeds to this limited extent and I shall vary the notice accordingly.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

24. It is directed that the enforcement notice is varied by deleting in paragraph 6 of the notice the wording 'Two months' and substituting 'Nine months'.
25. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V Bond
INSPECTOR