



Appeal Decisions

Site visit made on 15 December 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal A Ref: APP/X3025/W/21/3281564

Elizabeth House Home for the Elderly, 2 Church Hill Avenue, Mansfield Woodhouse NG19 9JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr D Rolfe against the decision of Mansfield District Council.
 - The application Ref 2021/0022/VCON, dated 9 January 2021, was approved on 8 June 2021 and planning permission was granted subject to conditions.
 - The development permitted is the removal of Condition 1 on application 85/03323/0311/P (change of use from private residence to home for the elderly).
 - The condition in dispute is No 3 which states that: *The permission hereby approved, shall enure only for the benefit of the applicant - Mr D Rolfe/Steps Together - and the premises shall only be used as a secondary treatment facility for persons suffering from mental health issues, drug and alcohol dependency/addiction and for no other purposes including any uses within Use Class C2 as defined in the Town and Country Planning (Use Classes) Order 1987, and the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. The facility shall only be operated within the parameters defined in the planning statement that accompanied the application and the additional information received from the agent/applicant on 16 March 2021.*
 - The reason given for the condition is: *The Local Planning Authority considers that the proposal is only acceptable due to the manner of operation outlined by the applicant, in order to ensure that sufficient parking is available for the development to operate without causing any obstruction to the free-flow of traffic on the highway and to comply with Policies IN9 and IN10 of the adopted Mansfield District Local Plan 2013-2033 ; to protect the amenity enjoyed by the occupants of the surrounding residential property and to comply with Policy P7 of the adopted Mansfield District Local Plan 2013-2033, and to afford security and reduce the fear of crime for the occupants of the surrounding residential property.*
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Appeal B Ref: APP/X3025/W/21/3281566

Elizabeth House Home for the Elderly, 2 Church Hill Avenue, Mansfield Woodhouse NG19 9JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr D Rolfe against the decision of Mansfield District Council.
- The application Ref 2021/0023/VCON, dated 9 January 2021, was approved on 8 June 2021 and planning permission was granted subject to conditions.
- The development permitted is the removal of Condition 1 on application 85/03323/0464/P (extension to form 8 bedrooms for home for the elderly) – to change use to secondary care for people recovering from addiction – C2).
- The condition in dispute is No 3 which states that: *The permission hereby approved, shall enure only for the benefit of the applicant - Mr D Rolfe/Steps Together - and the premises shall only be used as a secondary treatment facility for persons suffering from mental health issues, drug and alcohol dependency/addiction and for no other purposes including any uses within Use Class C2 as defined in the Town and Country Planning*

(Use Classes) Order 1987, and the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. The facility shall only be operated within the parameters defined in the planning statement that accompanied the application and the additional information received from the agent/applicant on 16 March 2021.

- The reason given for the condition is: *The Local Planning Authority considers that the proposal is only acceptable due to the manner of operation outlined by the applicant, in order to ensure that sufficient parking is available for the development to operate without causing any obstruction to the free-flow of traffic on the highway and to comply with Policies IN9 and IN10 of the adopted Mansfield District Local Plan 2013-2033 ; to protect the amenity enjoyed by the occupants of the surrounding residential property and to comply with Policy P7 of the adopted Mansfield District Local Plan 2013-2033, and to afford security and reduce the fear of crime for the occupants of the surrounding residential property.*
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Decision

Appeal A

1. The appeal is allowed and the planning permission Ref 2021/0022/VCON for the removal of Condition 1 on application 85/03323/0311/P (change of use from private residence to home for the elderly) at Elizabeth House Home for the Elderly, 2 Church Hill Avenue, Mansfield Woodhouse NG19 9JU granted on 8 June 2021 by Mansfield District Council, is varied by deleting condition 3.

Appeal B

2. The appeal is allowed and the planning permission Ref 2021/0023/VCON for the removal of Condition 1 on application 85/03323/0464/P (extension to form 8 bedrooms for home for the elderly) – to change use to secondary care for people recovering from addiction – C2) at Elizabeth House Home for the Elderly, 2 Church Hill Avenue, Mansfield Woodhouse NG19 9JU granted on 8 June 2021 by Mansfield District Council, is varied by deleting condition 3.

Preliminary Matter

3. As set out above there are two appeals on this site. However, the condition in question is the same on both planning permissions that have been granted. I have considered each proposal on its individual merits but to avoid duplication I have dealt with the two appeals together.

Background & Main Issue

4. Planning permissions were granted in 1985¹ to change the use of the appeal property to a home for the elderly and to extend it to provide 8 bedrooms. Both permissions carried conditions which restricted the use to *a home for old people and for no other purpose (including any other purpose in Class XIV of the Schedule to the Town and Country Planning (Use Classes) Order 1972, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order).*
5. The appellant applied to the Council to remove this condition from both planning permissions and two new planning permissions were granted, which carry the conditions that are subject to this appeal. The main issue in both appeals is whether or not Condition 3 on the permissions meets with the 6

¹ 85/03323/0311/P & 85/03323/0464/P

tests set out in paragraph 56 of the National Planning Policy Framework (The Framework).

Reasons

6. The reasons for the conditions set out on the decision notices state that they are imposed in the interests of highway safety with reference to parking, to afford security and reduce the fear of crime for the occupants of surrounding residential property, and to protect the amenity enjoyed by the occupants of surrounding residential property.
7. With respect to highway safety, a plan was submitted which shows the provision of 6 on-site parking spaces. This plan is the subject of a condition (Condition 2) on both of the planning permissions granted by the Council. Furthermore, there are no parking restrictions on Church Hill Avenue, there was no objection raised by the Highway Authority on highway safety grounds and the previous use would itself have been likely to generate parking requirements. Whilst I note the concerns around parking for school drop-offs and pick-ups and that there may be a greater competition for parking during evenings, there is nothing substantive before me to suggest that the proposed use, or any use that could subsequently be permitted without the need for planning permission, would lead to harm to highway safety with regard to parking. The conditions are therefore not reasonable or necessary in this respect.
8. The Council's Statement of Case accepts that there is a paucity of evidence that new residents would lead to an increase in crime as opposed to the previous use. There was no objection raised by Nottinghamshire Police. Instead, it is advised that the conditions were imposed in light of a number of concerns and objections raised by interested parties and because there are clear differences between a residential care home for elderly people and a residential rehabilitation centre. For these reasons, the Council considered it necessary to impose a personal and bespoke condition and they are of the view that such a condition represents the exceptional circumstances advocated by the Planning Practice Guidance (PPG).
9. However, whilst I acknowledge that there is a great deal of concern in the community with respect to the proposal, there is a clear lack of substantive evidence that the proposed use, or any use that could subsequently take place, would result in harm with respect to security or crime. The Council's position is further not supported in the consultation response that was made by Nottinghamshire Police. I also acknowledge that the Council consider there to be some differences in the previous and proposed operations, and I concur that there is ambiguity in Condition 1 that was imposed on both the 1985 planning permissions and the reasons for its imposition. Fundamentally however, by granting the recent planning permissions the Council has accepted that the use proposed by the appellant is acceptable.
10. Against this baseline and having regard to the above considerations, I am not persuaded that the imposition of a restrictive condition which removes permitted development rights and so tightly defines how the use can be operated to only that set out in the appellant's submission is necessary or reasonable. Furthermore, and for the same reasons, I am also not persuaded that this is an exceptional occasion which justifies the imposition of a personal planning permission. In terms of the reference to the appellant's company in

the conditions, the PPG is clear² that *a condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company*. The inclusion of the reference to the company in the conditions is therefore not reasonable.

11. The submissions made by the Council do not directly outline any other concerns relating to the impact that may arise upon the amenity of the occupants of surrounding properties. Representations made by interested parties include reference to concerns relating to noise and disturbance, to an increase in lighting and to the impact of CCTV on privacy, however there is no substantive evidence to suggest that harm would arise in these respects. The conditions are also therefore not necessary or reasonable on the basis of amenity.
12. Other concerns relating to the relevance, precision and enforceability of the conditions have been set out by the appellant but in light of my findings above these are not determinative on the outcome of the appeal. I need not therefore address these matters in any further depth.
13. For the reasons set out above, the conditions subject to both Appeal A and Appeal B do not meet the six tests set out within The Framework, in particular in terms of being reasonable and necessary. In addition, they are not required to ensure compliance with Policies IN9, IN10 and P7 of the Mansfield Local Plan 2020 where they seek to protect highway safety and amenity, or with The Framework with respect to the promotion of healthy and safe communities. In conclusion therefore, the appeals should be allowed with Condition 3 deleted from both planning permissions.

Graham Wraight

INSPECTOR

² Paragraph: 015 Reference ID: 21a-015-20140306