



Appeal Decision

Site visit made on 4 April 2022

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision Date: 18th May 2022

Appeal Ref: APP/P0240/W/21/3283440

Flaxbourne Farm, Salford Road, Aspley Guise MK17 8HZ

- 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 G Barrett against the decision by Central Bedfordshire Council.
- The application, ref. CB/21/00934/FULL, dated 2 March 2021, was approved on 3 August 2021 and planning permission was granted subject to conditions.
- The development permitted is the retrospective change of use of dwelling house to a house of multiple occupation (*sui generis*).
- The conditions in dispute are as follows:
- Condition 2: 'The parking provision of 8 spaces for the HMO, indicated on the approved block plan, parking provision of 4 spaces in front of the garage and parking provision within the garage, shall not be used for any purpose, other than as garage accommodation and parking provision pertaining to the HMO and annex unless permission has been granted by the Local Planning Authority on an application made for that purpose.'
- The reason given for Condition 2 is: 'To retain off-street parking provision and thereby minimise the potential for on-street parking and parking within the site which may obstruct the manoeuvring of vehicles and lead to vehicle and pedestrian conflict and the reversing of vehicles into the public highway which could adversely affect the convenience of road users and users of the site. (Section 9, NPPF).'
- Condition 3: 'The forecourt area fronting the HMO and garage, indicated on the approved block plan showing the 8 parking spaces, shall, apart from 2 visitor parking spaces, remain free of all obstruction to vehicular turning of service/delivery/ambulance sized vehicles unless permission has been granted by the Local Planning Authority on an application made for that purpose.'
- The reason for Condition 3 is: 'To retain on site vehicular turning within the site to alleviate obstruction of manoeuvring vehicles which could lead to vehicle and pedestrian conflict and the reversing of vehicles into the public highway which could adversely affect the convenience of road users and users of the site. (Section 9, NPPF).'
- Condition 4: 'Within 1 month of permission being issued details of a scheme for the secure and covered parking of cycles on the site (including the internal dimensions of the cycle parking area, stands/brackets to be used and access thereto), calculated at one cycle parking space per bedroom and 2 short stay spaces, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented within 1 month of the approved details and thereafter retained for this purpose (See Informatives).'
- The reason for Condition 4 is: 'To ensure the provision of adequate cycle parking to meet the needs of occupiers of the proposed development in the interests of encouraging the use of sustainable modes of transport. (Section 9, NPPF).'

- Condition 5: 'Within 1 month of permission being issued details of a refuse collection point located at the site frontage and outside of the public highway and any visibility splays shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented within 1 month of the approved details and shall be retained thereafter.'
 - The reason for Condition 5 is: 'In the interest of amenity and in order to minimise danger, obstruction and inconvenience to users of the highway and the premises. (Section 9, NPPF).'
 - Condition 6: Within one month of permission being issued details of a scheme for enclosing the private amenity area for the residents of the HMO shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the location of any enclosure and type of boundary treatment. The scheme shall be fully implemented within 1 month of the approved details and shall be retained thereafter.'
 - The reason for Condition 6 is: 'In the interest of safeguarding the amenity of future occupiers. (Section 12, NPPF)'
 - Condition 7: The number of bedrooms in the HMO shall be restricted to 8 and at no times shall the communal areas or area on the ground floor plan (dwg. no. CBC 03) marked as 'Unused Area Closed - No Entry' be used as an additional bedroom.
 - The reason for Condition 7 is: 'In the interest of safeguarding the amenity of future occupiers and in the interest of highway safety. (Section 9 and 12, NPPF)'
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Decision

1. The appeal is dismissed in relation to Condition 6.
2. The appeal is allowed and planning permission Ref CB/21/00934/FULL, for the retrospective change of use of dwelling house to a house of multiple occupation (sui generis) at Flaxbourne Farm, Salford Road, Aspley Guise MK17 8HZ granted on 3 August 2021 by Central Bedfordshire Council, is varied by the deletion of condition 7, and the varying of Conditions 2, 3, 4 and 5 as per the wording attached as an Annexe to this letter.

Application for Costs

3. An application for costs was made by G Barrett against the Central Bedfordshire Council. This application is the subject of a separate decision.

Procedural Matters

4. According to the application and appeal documents, and from what I saw on my site visit, the appeal is made retrospectively after the use had commenced. I have taken this into account as part of this letter.
5. I appreciate that the conditions I experienced on my site visit was only a snapshot of the appeal site at this particular time, however I have also considered the evidence submitted by both main parties and, in light of this, I am satisfied that what I saw represents typical conditions.
6. In assessing an appeal to vary conditions after a development scheme has been granted, the application is assessed as afresh, in other words, as if there has been no decision made. I am satisfied that the Council feels that the principle of the granted scheme is appropriate when assessed against the development plan and material considerations, subject to conditions. I therefore have no reason to dispute the principle of the approval that the building is suitable as a House of Multiple Occupation (HMO) and will therefore only focus this letter upon the conditions in dispute.

Background and Main issue

7. The appeal site is accessed off a shared access from Salford Road that leads to a detached residential dwelling which is now used as a House of Multiple Occupation (HMO). The HMO is two storeys tall and has a tarmacked area to the front of the building and gardens used by the residents to the north and surrounding. The accessway to the dwelling is shared with a number of commercial uses, which are located in large barn buildings located to the south and east of the dwelling. To the north-west and south west of the dwelling are formal grassed areas that are utilised by a wedding venue that is located to the west of the HMO.
8. The appeal seeks to delete conditions No.s 2, 6 and 7; and vary conditions 3, 4, and 5.
9. Therefore, the main issue is whether Conditions 2, 3, 4, 5, 6, and 7 are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Reasons

Condition 2

10. The applicant in their Statement of Case (SoC) seeks that this condition be deleted as it is not necessary, reasonable, enforceable or precise, in particular reference to 4 spaces to the front of the adjacent garage/annexe building. In their opinion, the applicant considers that Condition 1 which seeks the development to be in accordance with approved plans is satisfactory for controlling this aspect of the parking for the building and that it should only relate to the HMO, rather than the adjacent garage. The garage building is outside the red line boundary, however the space in front of the building is within the red line boundary. Additionally, there is no parking in front of the garage shown on the approved Block Plan¹.
11. The Council agree in their SoC that the condition could be worded better, and consider that whilst they see the condition as meeting the 6 tests, that this condition could be worded better to remove reference to the garage/annexe building.
12. Having reviewed the approved Block Plan, I agree that the reference to the four parking spaces in front of the garage/annexe building is not precise and it is also unnecessary given that the garage/annexe building is outside the scope of this application. To the front of the HMO building there are 8 rectangles with a broken line within the front tarmacked area drawn on the approved Block Plan. Unlike the 'overspill parking area' that is labelled on this plan, no such label or reference to HMO parking is given on this approved block plan. The purpose of these rectangles is not made clear by the approved plan and could equally be seen as being part of the other uses such as the garage/annexe building which also share the access of this parking area.

¹ Dwg. No. CBC-04A

13. Taking the above into account, in order to provide preciseness to what the rectangles drawn on the approved Block Plan are and what use they relate to, it is necessary and reasonable to include a condition that provides clarification as to what is shown on the approved plans. I agree that the reference to the four parking spaces be removed, and that the condition should be amended in accordance with the suggestion provided by the Council in their SoC. With the reviewed wording as shown in the Annexe to this letter, the condition continues to be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Condition 3

14. It is proposed by the applicant to vary this condition to exclude the words 'apart from 2 vehicular spaces' as this component of the condition is not required, particularly given the similar discussion as to Condition 2. The removal of these words from the condition would not remove or affect the purpose of the condition which would detail that the area of parking to the front of the HMO be retained and clear of obstructions which would prevent its proper use as a parking area.
15. Consequently, and in conclusion of this matter, the variation of the condition and removal of the wording as suggested by the applicant is of no real consequence to the condition and would also be appropriate. As written in the Annexe to this letter, Condition 3 would continue to be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Condition 4

16. Condition 4 seeks that details of cycle storage be submitted to the Council for approval within 1 month of the decision being granted and that after approval, the cycle storage would be implemented within a month. The applicant seeks that the condition is amended to allow 3 months to submit detail and then a further 11 months after the approval in order to install the cycle storage. It should be clear to the applicant that they are to provide cycle storage in principle and that the only matter in dispute is the timing of such information to be submitted and then for the cycle storage to be implemented. Given that the decision was granted in August 2021, at the time of this appeal, seven months have now passed and based on the appeal documents, it would appear that such information is still yet to be submitted.
17. Under the current circumstances, the residents have been in occupation of the HMO for a number of months without cycle storage. It is therefore quite prudent that the residents gain such a facility with upmost expediency. Given that the granting of an additional 1 month to this application as a result of this appeal would in effect have given the applicant 8 months to develop these details which they already knew they needed to supply, I do not find that under the current circumstances that to request these details to be submitted within 1 month to be unreasonable. Of a similar note, the suggestion that it would take an additional 11 months to implement such works does seem excessive given that there is a need for such facilities today, rather than in almost a year's time, as well as the time that has passed since the grant of planning permission. I have

reviewed the appeal decision² attached to the applicant's SoC and I agree that the current condition as worded does not have any repercussions for failure to comply, hence this can be resolved by different wording which seeks that the use granted is to cease upon non-compliance. The Council raise that such a condition as suggested by the applicant requiring secretary of state intervention should not be governed by a condition.

18. I agree that the current condition does not have any repercussions for failure to comply, hence this can be resolved by different wording which seeks that the use granted is to cease upon non-compliance. I do agree that one month is unreasonable to implement the cycle storage, and that 3 months to implement the cycle storage would be more appropriate and reasonable given the circumstances.
19. Having reviewed the list of standard conditions available to Planning Inspectors, the condition suggested by the applicant is typically utilised within complex cases that are not straightforward which would not be appropriate for this case. I have therefore utilised a standard condition available for more straightforward requests for the submission of details after permission has been granted.
20. In conclusion of this matter, I find that the current condition whilst reasonable, is overly restrictive and have amended it accordingly as per the Annexe of this letter. The Condition as described in the Annexe to this letter is necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Condition 5

21. Condition 5 is very similar to the considerations of Condition 4, however involves the submission of details and installation of waste storage facilities. A similar timeframe of 3 months to submit details and 11 months to implement details is suggested by the applicant. As detailed above, the principle of such facilities should already be clear to the applicant and that such facilities are required to be resolved urgently. Given the time that has passed since this approval, I do not see 1 month as unreasonable for the submission of such details. As detailed above, a total of 11 months to implement waste storage does appear excessive and that this should be able to be completed within 3 months. I agree with the applicant that the current condition does not have any repercussions for failure to comply, hence this can be resolved by different wording which seeks that the use granted is to cease upon non-compliance. The Council raise that such a condition as suggested by the applicant requiring secretary of state intervention should not be governed by a condition.
22. Having reviewed the list of standard conditions available to Planning Inspectors, the condition suggested by the applicant is typically utilised within complex cases that are no straightforward which would not be appropriate for this case. I have therefore utilised a standard condition available for more straightforward requests for details after permission has been granted.
23. In conclusion of this matter, I find that the current condition is reasonable to apply, however is overly restrictive and have amended it accordingly as per the Annexe of this letter which would be necessary, relevant to planning and to the

² Appeal Ref: APP/F5540/W/20/3246311

development to be permitted, enforceable, precise and reasonable in all other respects.

Condition 6

24. Condition 6 seeks that details are submitted to the Council in order to enclose the amenity space in order to protect the privacy of residents of the HMO from wedding guests. The applicant seeks that this condition be deleted as in their opinion the tree cover to the edge of the HMO garden space is sufficient to demarcate the boundary and was sufficient for the building when it was a dwelling. I agree that it is not the role of the HMO application to control the exposure to noise generated from the neighbouring wedding venue use, as such an installation of any noise prevention measures would not be relevant to the application at hand, which is also acknowledged by the Council. However, I note that the Council's Officer Report and SoC is not only focussed solely upon noise, but other elements of living conditions. In particular the Officer report refers to the need to enclose the curtilage of the HMO in order to prevent persons from the wedding venue accessing the HMO private garden space which would have implications to the privacy of HMO residents. This is a genuine concern and I see no evidence within the application or appeal documents as to how such events of wedding guests entering the HMO site could be prevented.
25. I acknowledge comments in the applicant's SoC that such a condition was not required when permission was given to the dwelling or when the wedding venue was consented. However at this time the dwelling was a single dwelling which requires to be reassessed with the new HMO use which provides up to eight individuals living as one household. I appreciate that the tree cover currently will provide some separation of the uses, however a suitable methodology and or/associated alterations for preventing access into the HMO grounds for non-residents is considered to be necessary and a reasonable condition.
26. In conclusion of this matter the submission of details to enclose and delineate the HMO use from the wedding is considered be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Condition 7

27. Condition 7 seeks to limit the occupancy of the HMO building to 8 persons and also seeks that the room labelled on the approved floor plan as 'unused area closed – no entry' is not used as an additional bedroom. The applicant seeks that this condition be deleted given that the condition repeats Condition 8 which restricts occupancy to 8 persons.
28. Having reviewed Condition 7, the condition does repeat Condition 8 in terms of limiting occupancy to 8 persons so this element is unnecessary. The second component of the condition which restricts the use of the 'unused area' is also unnecessary given that the approved plans clearly label this as such which is controlled by condition 2; and that the use of this space as a bedroom would not be in accordance with the plans and trigger the need for further planning permission to be obtained.
29. In conclusion on this matter, Condition 7 is not considered to be necessary and is therefore deleted.

Conclusion and Conditions

30. For the reasons given above, the appeal is allowed and condition 6 and 7 are deleted whilst Conditions 2, 3, 4, and 5 are varied in accordance to the Annexes to this letter. In order for conciseness, conditions 4 and 5 have been incorporated together into one condition.
31. In reviewing the other conditions that are not part of this appeal, these have also been considered in accordance with the Planning Practice Guidance (PPG). Condition 2 is a standard condition which notes that the scheme be undertaken in accordance with the approved plans which is necessary for the avoidance of doubt and in the interests of proper planning.
32. Condition 4 is imposed to ensure that the details of cycle storage and bin storage are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the bin and cycle storage before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
33. Condition 5 is necessary and reasonable as it seeks to protect the privacy of the HMO residents. Condition 6 seeks that the HMO use is limited to 8 persons which seeks to control the number of persons as the addition of persons would require a new assessment of whether the building and site was suitable.

J Somers

INSPECTOR

ANNEX: CONDITIONS TO BE INSERTED

1. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers CBC-01 (site location plan), CBC-02 (Elevation plans), CBC-03 (floor plans), CBC 04A (block plan rev. A).
2. The parking provision of 8 spaces for the HMO, indicated on the approved block plan (dwg. No. CBC-04A) shall not be used for any purposes, other than parking provision pertaining to the HMO unless permission has been granted by the Local Planning Authority on an application made for that purpose.
3. The forecourt area fronting the HMO and garage, indicated on the approved block plan showing the 8 parking spaces, shall, remain free of all obstruction to vehicular turning of service/delivery/ambulance sized vehicles unless permission has been granted by the Local Planning Authority on an application made for that purpose.
4. Unless within one month of the date of this decision a scheme for the following:
 - a scheme for the secure and covered parking of cycles on the site (including the internal dimensions of the cycle parking area, stands/brackets to be used and access thereto), calculated at one cycle parking space per bedroom and 2 short stay spaces; and
 - a scheme showing details of a refuse collection point located at the site frontage and outside of the public highway and any visibility splays

is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site as a HMO shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site as a HMO shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved bin storage and cycle storage specified in this condition, the approved scheme shall thereafter be retained and remain in use for this purpose.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

5. Within one month of permission being issued details of a scheme for enclosing the private amenity area for the residents of the HMO shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the location of any enclosure and type of boundary treatment. The scheme shall be fully implemented within 1 month of the approved details and shall be retained thereafter.

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6. The House in Multiple Occupancy as approved under this planning application shall be occupied by no more than 8 residents.