



Appeal Decisions

Site visit made on 7 July 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2022

Appeal A Ref: APP/R5510/C/21/3266292

Land at 31 Frithwood Avenue, Northwood, HA6 3LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Care Assist Ltd against an enforcement notice issued by the Council for the London Borough of Hillingdon.
 - The notice, numbered HS/ENF/017814, was issued on 2 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission the use of the property as a residential care home (Use Class C2) ("the breach").
 - The requirements of the notice are to:
 - (i) Cease the use of the property as a residential care home; AND
 - (ii) Remove all but one (1) kitchen in the property, you must carry out actions but not limited to:
 - remove the kitchen style floor and wall units
 - remove cooking facilities
 - remove kitchen style worktops
 - remove the kitchen style sink and stop up the plumbing
 - remove the lift
- AND
- (iii) Reinstate the layout and appearance off the property to ensure compliance with the drawings labelled below on planning application 8032/APP/2019/2401
 - 0071/HH-03/SP - Existing ground floor plan first floor plan - received 23rd July 2019
 - 0071/HH-04/SP - Existing second floor plan - received 23rd July 2019
 - 0071/HH-05/SP - Existing Elevations received 23rd July 2019
- AND
- (iv) Remove all resultant waste and debris resulting from the compliance works listed above
- Or
- (i) Carry out remedial works to ensure full compliance with the approved planning permission Ref 8032/APP/2019/2401; AND
 - (ii) Remove all resultant waste and debris resulting from the compliance works listed above.
- The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/R5510/W/20/3262346
31 Frithwood Avenue, Northwood, HA6 3LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Care Assist Ltd against the decision of the Council for the London Borough of Hillingdon.
- The application Ref 8032/APP/2020/2810, dated 3 September 2020, was refused by notice dated 20 October 2020.
- The application sought planning permission for conversion of the existing property from a bed and breakfast (Use Class C1) to a single family dwellinghouse (Use Class C3) without complying with a condition attached to planning permission Ref 8032/APP/2019/2401, dated 11 September 2019.
- The condition in dispute is No. 2 which states that the development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: 0071/HH-06/SP, 0071/HH-07/SP and 0071/HH-08/SP and shall thereafter be retained/maintained for as long as the development remains in existence.
- The reason given for the condition is: To ensure the development complies with the provisions of the Hillingdon Local Plan: Part Two Saved UDP Policies (November 2012) and the London Plan (2016)

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by
 - the addition of the words 'material change' of to the allegation as follows:

The breach of planning control as alleged in the notice is without planning permission the material change of use of the property as a residential care home (Use Class C2) ("the breach").
 - the addition of the words (Use Class C2) to requirement (i) as follows:

Cease the use of the property as a residential care home (Use Class C2)
2. It is further directed that the enforcement notice is varied:
 - by the omission of the words 'remove the lift' from requirement (ii)
 - by the omission of step (iii), renumbering of step (iv) as step (iii), the omission of the alternative requirements following 'Or' and the removal of the words 'AND'.
3. For the avoidance of doubt the correction/variations above result in the requirements of the notice being as follows:
 - (i) Cease the use of the property as a residential care home (Use Class C2)
 - (ii) Remove all but one (1) kitchen in the property, you must carry out actions but not limited to:
 - remove the kitchen style floor and wall units

- remove cooking facilities
 - remove kitchen style worktops
 - remove the kitchen style sink and stop up the plumbing
- (iii) Remove all resultant waste and debris resulting from the compliance works listed above
4. It is further directed that the enforcement notice is varied by the deletion of 3 calendar months and the substitution of 6 calendar months as the period for compliance.
5. Subject to the correction and variations, the appeal is dismissed, and the enforcement notice is upheld.

Appeal B

6. Appeal B is allowed, and planning permission is granted for conversion of the existing property from a bed and breakfast (Use Class C1) to a single family dwellinghouse (Use Class C3) at 31 Frithwood Avenue, Northwood, HA6 3LY in accordance with the application Ref 8032/APP/2020/2810, dated 3 September 2020, without compliance with condition 2 previously imposed on planning permission Ref 8032/APP/2019/2401, dated 11 September 2019 and subject to the conditions set out in the attached schedule.

Applications for costs

7. An application for full costs has been made by the appellants against the Council in respect of Appeal B. This application will be the subject of a separate Decision.

Preliminary Matters

8. During the course of the consideration of the appeals the London Plan 2021 has been adopted and an updated version of the National Planning Policy Framework (the Framework) has been published.
9. The Council has advised that Policies D5, D7 and D11 of the London Plan 2021 are now the relevant policies for the appeals, and it has updated its paragraph references in the Framework. Similarly, the appellants have updated their policy references and references to the Framework.

Appeal A and the Enforcement Notice

10. The appellants have not indicated an intention to appeal under ground (c) in their Appeal Form. But they have referred to a potential appeal under ground (c) in their statement which they would wish to make if the Council sought to allege other breaches. The Council has not sought to expand the allegation.
11. However, the appellants argue that the use would only be unauthorised if it is materially different from the lawful use. This is itself an argument under ground (c) and is an argument which has been addressed by the Council. Consequently, no injustice would arise, and I shall consider the appeal in respect of ground (c) in addition to grounds (a), (b), (f) and (g).

12. I have a duty to ensure that the notice is in order and to use my powers of correction and variation, subject to the test of whether or not the amendments to the notice would cause injustice to the parties.
13. The breach as described in the notice refers to use of the property as a care home without planning permission. The appellants highlight that 'use' of a property is not a breach of planning control but accept that a material change of use could be. It is clear from the Council's submissions that its concerns relate to a change of use of the property to a residential care home. I can make changes to the allegation so that it properly identifies the act of development without causing injustice to the parties and I shall do so as follows:

Allegation as corrected:

'The breach of planning control as alleged in the notice is without planning permission the material change of use of the property to use as a residential care home (Use Class C2) ("the breach")'.

14. The Council says that internal alterations which have been carried out facilitate the alleged use of the property as a care home. It has been established by case law that where a notice is issued in respect of a material change of use (MCU) and works were carried out to facilitate the MCU, then the notice can require that the works be removed in order that the site is restored to its previous condition and the breach remedied. Such is the case here and there is no issue with the requirements in principle.

Appeal A – Grounds (b) and (c)

15. An appeal under ground (b) is that the matters to which the notice relates have not occurred and under ground (c) on the basis that the matters alleged in the notice do not constitute a breach of planning control. These are both legal grounds of appeal, and the onus of proof lies with the appellants. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
16. The appellants accept that the residents of No. 31 receive care provided by non-resident carers and this is established in their responses to the Planning Contravention Notice which was served by the Council. To that extent the use of No. 31 could be regarded as a care home which would amount to a failure on ground (b). However, the Council specifies the care home in the notice as falling within Class C2 of the Use Classes Order (UCO).
17. Class C2 of the UCO relates to residential institutions and includes use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwellinghouses)).
18. Class C3 of the UCO includes use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents.
19. The explanatory note in relation to Class C3 sets out that in the case of people living together as a household rather than as a family, the use will continue to be within Class C3 notwithstanding that an element of care (as defined in article 2) is provided for residents. It follows that if the use of No. 31 falls

within Class C3, then a change of use to Class C2 use has not occurred. This would result in success on ground (b).

20. It has been established by caselaw that it is not the case that those who suffer from disability and need care in the community can never constitute a household. It is necessary to focus first on those in occupation and ask whether they form a single household as a matter of fact and degree.
21. The submissions refer to two people living in the property and that they have carers in during the day and night who work in shifts to look after them. I observed that all six rooms are now occupied and at the time of my visit there were carers in attendance.
22. On the ground floor of No. 31 there were two resident's rooms, a kitchen, a utility room and a room where items were stored. On the first floor were three resident's rooms and on the second floor a resident's room, an en-suite bedroom described as a staff sleeping in room and a storage room.
23. Inside the building there was limited space where the residents could comfortably congregate. There was no separate lounge and the area in the kitchen provided seating for a maximum of four people on sofas. The room on the ground floor with views of the garden, which could have been used as a lounge was in use for storage of supplies such as toilet rolls and there was a computer showing what appeared to be a live feed from cameras in the property.
24. There was a small table in the kitchen with one chair providing insufficient space for eating in a group. The kitchen had two hobs, two cookers, three microwaves and six fridges labelled for each of the six rooms. There was a separate cupboard marked for staff use. Within the utility room there were four washing machines.
25. The photographs provided by the appellants show additional seating and a larger dining table and seven chairs in the kitchen/dining area. However, this does not reflect the current situation when all rooms are occupied and in any event the spaces are still cramped and do not lend themselves to communal activities.
26. Within the resident's room each resident had the use of an accessible bathroom. There were also varying degrees of cooking and food storage facilities which would allow at least some of the occupants of the rooms to be relatively self-contained. The photographs provided by the parties also show that all rooms in the building are labelled and that doors and cupboards have locks, which could prevent some residents from accessing the whole property.
27. No. 31 has a front and rear garden. The rear garden is contained by a high fence and accommodates a basketball hoop and picnic tables of the type which are commonly found in domestic gardens. However, in contrast to a family dwelling house, there is a fire assembly point in the front garden and rubbish collection is in the form of large scale 'Biffa' wheelie bins.
28. The appellants say that the residents share the cost of cleaning and other household activities but there is no evidence of this before me nor of any participation in communal activities such as socialising which is also referred to by the appellants.

29. Drawing all of these strands together the way in which the building has been laid out and functions is not typical of occupation by a single household. The applicants say that the residents share communal spaces. However, the spaces and furniture available to them is unsuitable for social activities such as shared meals and watching television which are typical of a single household living together. There is also no separate lounge even though there is capacity for one leading me to conclude that the use of this space is necessary for the functioning of the building as a care home. For instance, allowing for remote supervision of the residents. The layout of the kitchen and utility room is atypical of a dwelling in single household use having multiple appliances and some individual food storage areas.
30. In terms of the occupants of the rooms, the appellants accept that they have complex needs. From my experience of visiting No. 31, whilst accepting that this is only a 'snapshot in time', the needs of the occupants go beyond care and include supervision to enable them to live as a community. There is a significant difference between the way in which No. 31 is used when compared with say a family where one or two members have disabilities where care is provided both by the family and outside agencies to enable them to live as part of the household.
31. On the basis of the evidence, I conclude that the occupiers of No. 31 are not living together as a single household and that the site is currently in use as a care home falling within Class C2 of the UCO. It follows that the alleged breach of planning control has occurred, and the appeal fails under ground (b).
32. The appellants argue under ground (c) that use of the appeal site as a use within Class C2 of the UCO is only unauthorised if it is materially different from previous lawful uses.
33. The notice does not specify what the previous use of the appeal site was, which it is not necessarily required to do. However, the Council's report to the North Planning Committee dated 14 October 2020, provided by the appellants, refers to the proposal facilitating a change of use from a single dwellinghouse to a care home and states that planning permission is required for change of use from Class C3 to C2. It is therefore reasonable to conclude that the Council considers that the 2019 consent was implemented and that the lawful use of the appeal site is as a single dwelling house.
34. On the basis of my considerations of how No. 31 is laid out and functions I have concluded that it is now in use as a care home falling within Class C2 of the UCO. For the same reasons I find that the character of the use of the appeal site is such that it is not a single dwellinghouse in Class C3 of the UCO and it is materially different from any lawful use as a single dwelling.
35. No. 31 has also been in use as a bed and breakfast which is a Class C1 use. However, assuming that the 2019 consent has been implemented as the Council has done, planning permission would be required to revert to the Class C1 use. Thus, the former bed and breakfast use is not a lawful use of the site and any material differences between a Class C1 use and the care home use do not fall to be considered under ground (c).
- 36.** Even had the use of the site changed from a bed and breakfast use to a Class C2 care home, without any intervening use as a single dwelling house, there is no substantive evidence before me to demonstrate that the care home use

would have been directly comparable with the bed and breakfast use, such that the two uses would not be materially different.

Conclusion – Grounds (b) and (c)

- 37.** For the reasons set out above, it has not been shown that, on the balance of probabilities, the matters to which the notice relates have not occurred nor that those matters do not constitute a breach of planning control. Consequently, the appeal fails on grounds (b) and (c).

Appeal A – Ground (a) and the Deemed Planning Application (DPA)

- 38.** An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

- 39.** The Council has set out its reasons for serving the notice. The first reason relates to the effect of the development on amenity and reasonable enjoyment of the current and future occupiers of the neighbouring property. However, the Council has not differentiated between the particular effects of the development on the occupiers of this specific property and its concerns about the effects on the surrounding residents. On that basis the main issues are:
- The effect of the use as a care home on the living conditions of the occupants of the neighbouring property and the occupiers of properties surrounding the site with particular reference to noise and disturbance arising from increased vehicular movements
 - In the absence of a Site Management Plan, the effect of the use of the property as a care home, on the fear of crime and anti-social behaviour

Reasons

Living conditions

- 40.** No. 31 is a detached building on a corner site. In common with neighbouring buildings, it is set back from Frithwood Avenue. The character of the surrounding area is predominately residential, but it includes large houses which appear to have been converted into flats and a nursing home. There are a number of cul-de-sacs off Frithwood Avenue which provide access to single dwellinghouses at a much higher density than the remaining detached dwellings on the street frontage. One such cul-de-sac is Canterbury Close which curves alongside and behind the appeal site and serves six dwellings.
- 41.** The relationship of the appeal site to its neighbour is such that activities on the site could generate noise and disturbance. However, this has to be considered in the context of an urban setting and compared with the level of noise and disturbance which is normally experienced in such environments.
- 42.** The Council is concerned that vehicle movements associated with deliveries and staff arrivals and departures at unsociable hours and from visitors could disturb local residents. The appellants argue that a change of use to Class C2 of the UCO has not taken place but even if it had the harm identified by the Council does not arise. Neither of the parties has sought to quantify the number of vehicle movements arising from the Class C2 use.

43. There are currently two parking spaces on the site frontage. Although there is evidence that there were car parking spaces to the rear, the position of the garden fence and use of space for large wheelie bin storage makes any parking in this location very difficult.
44. There are parking controls over large stretches of Frithwood Avenue, which, combined with the fact that most properties have off-street car parking, lead to low levels of on-street parking. There is no information before me regarding where vehicles would be parked if they arrived at the site and the two parking spaces were both in use. However, the manoeuvring of vehicles in the vicinity of the site, particularly in Canterbury Close has the potential to disturb neighbours.
45. The completed Planning Contravention Notice (PCN) which was served in September 2020 refers to three carers being present on site during the day and two carers overnight. The carers work in shifts, 8am to 3pm, 3pm to 10pm and 10pm to 8am. This information was provided on the basis that there were two residents. There is no information regarding whether the number of carers or shift pattern has changed now that the care home is fully occupied.
46. The swap over of carers around 10pm every evening, particularly if this involves vehicle manoeuvring to access parking and swap parked vehicles, or vehicles waiting or moving in Canterbury Close has the potential to disturb neighbours. At this time in the evening, it would be reasonable for residents to expect limited noise close to their properties as they prepare for sleep.
47. It is anticipated that the residents of the care home will have visitors in terms of friends and family. The Council is concerned that these visits are unrestricted at present and could contribute to noise and disturbance arising from additional vehicles seeking to access the care home. Similarly, the Council is concerned about the number of deliveries to the care home, although again there is no quantitative assessment of this.
48. Given that there are only two viable parking spaces at the care home and carers constantly on site, it is likely that anyone arriving by car may find parking difficult. This would be particularly problematic for friends and family who wish to spend time with residents as opposed to people making deliveries who are generally on or close to the site for a limited time. It would not be reasonable to impose limitations on the visiting times of friends and family and in any case the low level of parking on site would still lead to noise and disturbance by visitors unable to park on site or manoeuvring in Canterbury Close.
49. The Council has granted planning permission for the use of the appeal site as a house with five en-suite bedrooms (Council Ref. 8032/APP/2019/2401) (the 2019 consent). It is reasonable to assume that such an arrangement could have given rise to the property being used by a large household which could generate significant vehicular traffic in the form of comings and goings, deliveries and visitors. Because the appellants consider that a change of use has not occurred there is no comparative data between the use as a single dwelling and the care home use.
50. The 2019 consent includes two parking spaces beyond the rear garden fence in addition to those on the site frontage. Consequently, it provided for additional parked cars on the site, which would reduce the need for vehicles manoeuvring

as a result of being unable to park. In that regard the two scenarios are not directly comparable.

51. The appellants have referred to paragraph 111 of the Framework which relates to refusal on highway grounds. However, that policy is not of relevance to this main issue as the issue is one of amenity impacts as opposed to highway safety. The appellants have also suggested that the number of residents at the property could be limited to six through the imposition of a planning condition. However, there is no information before me to persuade me that such a limitation would successfully mitigate the harm that I have found.
52. In my judgement and on the basis of the evidence before me and my observations during my site visit, it has not been shown that the care home can operate without resulting in harm to the living conditions of nearby residents as a result of noise and disturbance arising from vehicle movements. Therefore, I conclude that use as a care home would have a harmful effect on the living conditions of the occupants of the neighbouring property and the occupiers of properties surrounding the site.
53. The development is contrary to Policy DMHB 11 of the Hillingdon Local Plan: Part 2 – Development Management Policies (2020) (the Local Plan). This policy requires that development does not adversely impact on the amenity of adjacent properties.
54. Policy BE1 of the Hillingdon Local Plan: Part One Strategic Policies (2012) relates to the built environment and is not of relevance to this main issue.

Fear of crime/anti-social behaviour

55. One of the reasons for issuing the notice is based on the absence of the submission of a Site Management Plan (SMP) by the appellants to address the potential for crime and anti-social behaviour through design and security features. In the event that I allow the appeal and grant the deemed planning application, the Council has suggested a SMP could be secured by condition. However, save for reference to design and security features, there are no details of what matters the SMP would address.
56. In its statement of case the Council provides clarification of its concerns about the effect of introducing the care home into the area. Reference is made to a previous planning application which stated that occupants would be 'persons with early onset dementia and dual diagnosis impairments' which was refused due to potential impact on crime and anti-social behaviour. More recent information provided to a local resident is also referred to, which indicates that the occupants for whom support is provided are 'young adults some with physical disabilities who have communication difficulties'.
57. The courts have held that the fear of crime can be a material consideration. However, there must be some reasonable evidential basis for that fear, which in this case is very limited. Northwood Residents' Association has set out the concerns of local residents which can be summarised as relating to the potential for local school children to be exposed to drug users or drugs and for future incidents of crime. However, there is no firm evidence that the use of the care home has or could be likely to materially increase this risk.
58. In terms of anti-social behaviour, there is evidence of a complaint about noise emanating from the care home during the day and into the evening being

recorded throughout August 2020. However, there is no evidence of this issue being ongoing nor that it has not been resolved by the carers responsible for looking after the residents.

59. Drawing these points together, I am not satisfied that it has been shown that the care home use results in a greater incidence of crime or anti-social behaviour nor that a SMP is necessary to control the use to address any perception of such impacts. Consequently, in this regard, the development is in accordance with Policy DMH 8 and DMHB 11 of the Local Plan, which not specifically referencing the effects of crime and anti-social behaviour generally relate to the provision of care homes and the design of new development and Policy D11 of the London Plan 2021 which references community safety. For the same reasons the development accords with the Framework which promotes healthy and safe communities and seeks to achieve well-designed places, which are safe and inclusive.

Conclusion in respect of ground (a) and the DPA

60. Notwithstanding the lack of harm which I have found in regard to the fear of crime/anti-social behaviour, the harm which I have identified in relation to the living conditions of the neighbouring property and the occupiers of properties surrounding the site with particular reference to noise and disturbance arising from increased vehicular movements is sufficient for me to conclude that planning permission ought not be granted.
61. For the reasons given above, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

Appeal A – Ground (f)

62. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
63. The appellants accept that the requirement to cease the use of the property as a care home is appropriate in the event that the notice is upheld. However, they query whether or not the reference to 'care home' in requirement (i) relates to a Class C2 care home only. In this respect the requirements do not follow from the allegation which refers to Use Class C2. However, I can correct the notice to also refer to Use Class C2 in requirement (i) without causing injustice to either party.
64. Requirement (ii) of the notice relates to removal of fixtures so that only one kitchen remains in the property. The appellants consider this to be excessive as there are not fixtures of that kind in the resident's rooms, although they note that there are small fridges and microwaves.
65. The facilities provided in the rooms do not fully replicate those provided in the kitchen on the ground floor. However, as the site photos provided by the Council demonstrate some of the rooms are provided with kitchen sinks, full size fridges and kitchen cupboards and in my view, these can be described as kitchen facilities. On that basis the requirement to remove these fixtures, save for the fridges which are not referred to by the Council, is not excessive.

66. Requirement (ii) also seeks the removal of the lift from the premises. The appellants argue that the lift improves accessibility inside the building, and I agree that the lift would be beneficial to any resident with limited mobility. To that end the removal of the lift is not essential to the cessation of use of the property as a residential care home (Use Class C2) and as a requirement of the notice it is excessive. I shall use my powers of variation to remove the requirement to remove the lift.
67. The Council is concerned that the layout of the property facilitates the change of use to a care home. For that reason, it requires the layout to be changed so that it accords with either the existing plans submitted with the planning application which was granted for conversion of No. 31 to a single dwellinghouse in September 2019 which I have referred to as the 2019 consent above (the bed and breakfast plans) or the approved plans for that permission (the approved plans).
68. I do not find the current layout of the property to be determinative of its use as a care home in Use Class C2. Neither the layout of the property shown on the bed and breakfast plans, nor the approved plans would preclude the use of the premises as a care home, which would, in any event, be achieved by the cessation of the Class C2 use secured by requirement (i). It follows that the requirements to alter the layout are excessive and I shall use my powers of variation to remove them.
69. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Appeal A – Ground (g)

70. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that the compliance period of 3 calendar months is too short because it provides insufficient time to rehouse the residents and carry out building work. The appellants consider that at least a 9 month compliance period would be necessary.
71. The Council argues that the works which are required to comply with the notice are minor. There is no evidence before me to suggest otherwise and the appellants have not provided any information regarding access to builders who could complete the work. However, it was clear from my site visit that the residents are in need of care and support. It is reasonable to assume that their relocation to a different home, along with the support packages which they rely on, would need to be carried out with care and sensitivity. On that basis I shall extend the compliance period to 6 months to provide additional time for residents to be relocated but to take account of the continuing adverse impact on the living conditions of local residents.
72. For the reasons set out above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal B

Background and Main Issue

73. Planning permission was granted for conversion of No. 31 to a single dwellinghouse in September 2019 (Council Ref. 8032/APP/2019/2401) (the 2019 consent). Condition 2 of the decision notice required that the development be carried out in accordance with the submitted plans. This appeal follows the appellants' application to the Council to vary Condition 2 so that it relates to different plans.
74. The differences between the approved scheme and the plans which are the subject of the application are set out in the Council's officer report and are generally as follows:
- Introduction of a lift
 - Conversion of a window to a door on the side elevation
 - Changes to the internal layout through relocation of an en-suite room, introduction of a wet room, formation of a study, two self-contained care rooms and a sleep room through partitioning and amalgamation of rooms.
75. The reason given for the imposition of Condition 2 is to ensure compliance with Hillingdon Local Plan: Part Two Saved UDP Policies (November 2012) and the London Plan (2016). Since the 2019 consent was granted, the Council has adopted a new plan, which is the London Borough of Hillingdon Local Plan: Part 2 – Development Management Plan (2020) (the Local Plan). The Council has referred to policies in the Local Plan in its decision notice.
76. The Council has clarified in its reasons for refusal of the application to vary Condition 2 that its concerns relate to the impact on the living conditions of the occupier of the neighbouring property, the potential for crime and anti-social behaviour and the absence of information regarding inclusive design.
77. The Council's objections stem from its view that the amendments to the approved plans which have been made and which have been implemented facilitate a change in use of No. 31 to use as a care home. However, the application for variation of Condition 2 does not seek a change of use of No. 31 to a care home. Furthermore, it has been established by the Finney judgement¹ that an application under s73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, that is, the description of the development for which the 2019 planning permission was granted.
78. On this basis, the main issues in Appeal B are the effect which the revisions of the plans for the conversion of a bed and breakfast to a single dwellinghouse would have on the living conditions of the neighbour and the potential for crime and anti-social behaviour and whether the revisions fulfil the requirement for inclusive design.

¹ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council

Reasons

Living conditions

79. No. 31 occupies a site at the junction of Frithwood Avenue and Canterbury Close. Canterbury Close separates No. 29 Frithwood Avenue from the site but No. 31 shares a boundary with No. 33 Frithwood Avenue. No. 33 is a detached two storey house in a large plot which seems to be in use as a single dwellinghouse. That part of No. 33 which lies closest to the boundary appears to be a single storey attached garage and there are no openings in the first floor side elevation of the main house.
80. In terms of the effect of the introduction of a lift and the internal rearrangement it is reasonable to assume that these changes do not impact on the living conditions of the neighbour.
81. The conversion of a window to a door is on the side elevation of No. 31 facing No. 33 and gives access to the small yard space between the building and the boundary with No. 33. This gives rise to the potential for increased noise at the boundary. However, given the limited size of the yard, the position of the garage at No. 33 providing a degree of separation and the lack of any windows in No. 33 facing the new door, the degree of disturbance to the occupier of No. 33 would be very limited.
82. I conclude that the revisions to the plans do not have a harmful effect on the living conditions of the neighbour. The development as revised would be in accordance with Policy DMHB 11 of the Local Plan. This policy requires that development does not adversely impact on the amenity of adjacent properties. For the same reasons the revised development accords with the Framework which requires that noise from new development does not give rise to significant adverse impacts on quality of life.

Crime and anti-social behaviour

83. There is no evidence before me to suggest that the internal and external changes to No. 31 give rise to any increased criminal or anti-social behaviour. The fear of crime and public safety issues which are raised by the Council relate to the nature of the occupiers of No. 31 and reference the use of the building as a care home. Those are not matters which are before me to consider in Appeal B because it does not relate to a change of use of the building for which planning permission may be required.
84. I conclude that the revisions to the plans do not result in harm in terms of crime and/ anti-social behaviour. Therefore, the development as revised accords with Policy DMHB 11 of the Local Plan which requires that development should not adversely affect the amenity of adjacent properties and Policy D11 of the London Plan 2021 which supports policies reducing the fear of crime being set out in Development Plans.
85. For the same reasons the revised development accords with the Framework which seeks to ensure that crime and disorder and fear of crime do not undermine the quality of life or community cohesion and resilience.
86. Policy DMH 8 of the Local Plan is not relevant to this main issue because it relates to the development of sheltered housing and care homes and this use is not before me for consideration.

Inclusive Design

87. Policy DMHB 11 of the Local Plan requires that internal design and layout are adaptable to different activities. A comparison between the approved plans and the revisions which are the subject of this appeal, shows that there is an additional accessible wet room and a lift between the ground and first floor. Notwithstanding, the Council's view that these amenities facilitate use as a care home, they provide flexibility in terms of the use of the accommodation as a single dwelling house. Furthermore, there is no evidence before me to demonstrate that the internal design and layout does not remain adaptable.
88. I conclude that the revised plans fulfil the requirement for inclusive design and that the development is in accordance with Policy DMHB 11 of the Local Plan. For the same reasons the development is in accordance with Policies D5 and D7 of the London Plan 2021 which support inclusive design and accessible housing and the Framework which also references adaptable housing.
89. The Council's reference to the Accessible Hillingdon Supplementary Planning Document relates to standards for care homes and it is therefore not relevant to this main issue.

Conditions

90. The effect of a successful appeal will be to create a new planning permission. Therefore, it is necessary to have regard to the status of the conditions which were attached to the 2019 consent.
91. In addition to the condition which was the subject of the application to the Council, the 2019 consent was subject to conditions relating to a method statement for construction works and a landscaping condition (conditions 3 and 4) both of which required the submission and approval of information to the Council. There is reference to approval of details pursuant to these conditions in the Council's officer report but in the absence of further information confirming that these conditions have been discharged it is necessary to include them on any new planning permission.
92. Other conditions attached to the 2019 consent related to the retention of trees, hedges and shrubs and restricted permitted development rights (conditions 5, 6 and 7). These ongoing limitations on the development are unaffected by the revisions to the plans and should also be attached to any new planning permission.

Conclusion

93. I have not found that the revisions to the plans referred to in Condition 2 would have a harmful effect on living conditions, would lead to crime or anti-social behaviour or that the development would fail to be a form of inclusive design. Consequently, the revised plans accord with the Development Plan. There are no material considerations in this case which indicate that a decision should be made other than in accordance with the Development Plan.

Sarah Dyer

Inspector

Appeal B – Schedule of conditions

Condition 1

The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans:

0071/LD-06/SP (revision A), 0071/LD-07/SP (revision A) and 0071/LD-08/SP (revision A) and shall thereafter be retained/maintained for as long as the development remains in existence.

Condition 2

No site clearance or construction work shall take place until the details have been submitted to, and approved in writing by, the Local Planning Authority with respect to:

1. A method statement outlining the sequence of development on the site including demolition, building works and tree protection measures.
2. Detailed drawings showing the position and type of fencing to protect the entire root areas/crown spread of trees, hedges and other vegetation to be retained shall be submitted to the Local Planning Authority for approval. No site clearance works, or development shall be commenced until these drawings have been approved and the fencing has been erected in accordance with the details approved. Unless otherwise agreed in writing by the Local Planning Authority. Such fencing should be a minimum height of 1.5 metres.

Thereafter, the development shall be implemented in accordance with the approved details. The fencing shall be retained in position until development is completed.

The area within the approved protective fencing shall remain undisturbed during the course of the works and in particular in these areas:

- 2.a There shall be no changes in ground levels;
- 2.b No materials or plant shall be stored;
- 2.c No buildings or temporary buildings shall be erected or stationed.
- 2.d No materials or waste shall be burnt; and.
- 2.e No drain runs or other trenches shall be dug or otherwise created, without the prior written consent of the Local Planning Authority.
3. Where the arboricultural method statement recommends that the tree protection measures for a site will be monitored and supervised by an arboricultural consultant at key stages of the development, records of the site inspections / meetings shall be submitted to the Local Planning Authority.

Contd'

Condition 3

No development shall take place until a landscape scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include: -

1. Details of Soft Landscaping

1.a Planting plans (at not less than a scale of 1:100),

1.b Written specification of planting and cultivation works to be undertaken,

1.c Schedule of plants giving species, plant sizes, and proposed numbers/densities where appropriate

2. Details of Hard Landscaping

2.a Refuse Storage

2.b Cycle Storage

2.c Means of enclosure/boundary treatments

2.d Car Parking Layouts

2.e Hard Surfacing Materials

2.f External Lighting

2.g Other structures

3. Schedule for Implementation.

Thereafter the development shall be carried out and maintained in full accordance with the approved details.

Condition 4

Trees, hedges and shrubs shown to be retained on the approved plan(s) shall not be damaged, uprooted, felled, lopped or topped without the prior written consent of the Local Planning Authority. If any retained tree, hedge or shrub is removed or severely damaged during (or after) construction, or is found to be seriously diseased or dying, another tree, hedge or shrub shall be planted at the same place or, if planting in the same place would leave the new tree, hedge or shrub susceptible to disease, then the planting should be in a position to be first agreed in writing with the Local Planning Authority and shall be of a size and species to be agreed in writing by the Local Planning Authority and shall be planted in the first planting season following the completion of the development or the occupation of the buildings, whichever is the earlier. Where damage is less severe, a schedule of remedial works necessary to ameliorate the effect of damage by tree surgery, feeding or groundwork shall be agreed in writing with the Local Planning Authority. New planting should comply with BS 3936 (1992) 'Nursery Stock, Part 1, Specification for Trees and Shrubs'

Remedial work should be carried out to BS 3998:2010 'Tree work - Recommendations' and BS 4428 (1989) 'Code of Practice for General Landscape Operations (Excluding Hard Surfaces)'. The agreed work shall be completed in the first planting season following the completion of the development or the occupation of the buildings, whichever is the earlier

Condition 5

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no additional windows, doors or other openings shall be constructed in the walls or roof slopes of the development hereby approved.

Condition 6

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification); no garages, sheds or other outbuildings, nor extension or roof alteration to any dwellinghouse shall be erected without the grant of further specific permission from the Local Planning Authority.