



Appeal Decision

Site visit made on 4 January 2023

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2023

Appeal Ref: APP/Z2315/W/22/3305898

113 Woodgrove Road, Burnley BB11 3EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Bennison of Residential Child Care Community (North West) Ltd against the decision of Burnley Borough Council.
 - The application Ref FUL/2022/0332, dated 6 June 2022, was refused by notice dated 12 August 2022.
 - The development proposed is described as: 'change of use from C3 Dwelling to C2 children's care home'.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from C3 Dwelling to C2 children's care home at 113 Woodgrove Road, Burnley BB11 3EJ in accordance with the terms of the application, Ref FUL/2022/0332, dated 6 June 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: HAD3418 01; HAD3418 04; HAD3418 05; HAD3418 06.
 - 3) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that order with or without modification) the premises shall be used only as a children's care home for up to four children and for no other purpose (including any other use falling within Class C2 of the Order).
 - 4) The development hereby permitted shall not be first used until an electric vehicle charging point has been installed and wired to the consumer unit at 113 Woodgrove Road. The charging point shall be accessible from the approved parking area and shall thereafter be retained.

Preliminary Matters

2. The Council's reason for refusal states that the proposal would be contrary to Policy SP5 (g) of the Burnley Local Plan (2018) (the LP). I have taken that as a reference to criterion 2. g) of Policy SP5.
3. Policy SP5 seeks to ensure high standards of design, construction and sustainability in all types of development whilst meeting a number of listed requirements, including at 2. g): '*Ensure there is no unacceptable adverse*

impact on the amenity of neighbouring occupants or adjacent land users, including by reason of overlooking’.

Main Issue

4. The main issue is the effect of the proposed change of use on the living conditions of local residents with particular regard to noise and disturbance and the availability of on-street parking.

Reasons

5. 113 Woodgrove Road is a substantial end terraced dwelling located in a predominantly residential area within Burnley. The site lies adjacent to the junction with Stewart Street and is opposite the St Stephens Church of England Primary School. A back lane runs to the rear of the terrace, beyond the rear gardens, some of which include garages. Owing to its location on a corner, street access to the rear of No 113 is from Stewart Street via a gateway in the tall boundary wall with fenced topping that encloses its rear garden.
6. On the site visit I witnessed that background noise levels were reasonably low, despite road noise from traffic along nearby Todmorden Road (A671). Nevertheless, the noise levels were consistent with a residential area, although I would note that such noise levels and resulting disturbance would likely increase around school drop-off and pick-up times.
7. It is proposed to change the use of the existing five bedroomed dwelling (C3) at No 113 to a children’s care home which falls within Use Class C2¹. The proposal would provide four bedrooms for children and two bedrooms for staff. The children cared for would be aged between 7 and 17 years and would be supervised by members of staff at all times, with two of those staying overnight. In that sense, the proposed use would function very much like a typical family home with older adults caring for children of mixed ages. There would be a maximum of four members of staff present at the site during the day. However, this would be dependent upon the number of residents that are at school. Outside of the home, children would be accompanied by an adult at all times.
8. Having regard to the above, the numbers that would be present in the dwelling at any one time would not be greater than could be expected to be present in the existing five bedroomed dwelling. Nonetheless, there would inevitably be comings and goings to and from the site at shift handover times as well as occasional visits by family members and representatives of agencies and other professionals. These would generate a degree of noise and disturbance, notwithstanding that they would be spread out through the day and potentially, as argued by the appellant, limited to off-peak hours.
9. However, having regard to the scale of the proposal, the noise and disturbance associated with the above comings and goings would not be disproportionately or significantly above what could reasonably be expected to be generated by the existing five bedroom dwelling. Indeed, a family dwelling could consist of adults, children and teenagers. In occupying the property, they could generate considerable activity in the form of comings and goings for work, school, leisure and shopping at various times of the day. There is no compelling

¹ As set out in Schedules 1 and 2 to the Town and Country Planning (Use Classes) Order 1987, as amended.

evidence before me that the proposal would generate significantly greater levels of disturbance than this.

10. For the same reasons, any noise arising from within No 113 would be unlikely to significantly exceed the levels that could be generated by a typical family home with children of a variety of ages. As such, the occupants of the adjoining property would also be unlikely to experience greater levels of disturbance than would be likely to occur at present.
11. Local residents have raised concerns that the children living at the proposed facility would represent a threat to local children. Concerns have also been raised that the children housed in the accommodation would attract criminals to the area. The National Planning Policy Framework² (the Framework) seeks to ensure that development is inclusive, and the fear of crime does not undermine quality of life, community cohesion and resilience. 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.
12. In that regard, the management of the facility would be required to operate within the minimum national standards for children's homes and staff would be subject to Ofsted regulation and inspections. Moreover, the appellant's submission is clear that children at the facility would always be accompanied by a member of staff. As such and being mindful of the small scale of the proposal, it seems to me that sufficient safeguards would therefore be in place to minimise the risk of crime and to protect local children or future occupants. As such there is no substantive evidence before me which would lead me to dismiss the appeal on these grounds.
13. Unlike No 113, few properties nearby have access to off-street parking. As such, there are high numbers of vehicles parked to both sides of the road along Woodgrove Road and the adjacent side streets. Nevertheless, I saw that there was still available space to park when I visited the site in the middle of the day. However, I would note that parking is likely to be in higher demand at the beginning and end of the school day. Demand will also likely increase outside working hours when local residents are at home. Parking on the entrance markings outside the school is restricted, with no stopping between the hours of 0800 to 1800. In addition, local residents have highlighted that the area is used for parking by football supporters attending games at Turf Moor Stadium, accessed further along Todmorden Road.
14. The proposal would provide two off-street car parking spaces within the rear garden of the dwelling. This would allow for parking of carer's cars and require a dropped kerb and consent from the Highway Authority. Whilst this would involve vehicles driving across the pavement and possibly reversing into or out of Stewart Street, there are similar accesses along this short stretch of road already and vehicle speeds are low. Pedestrians and road users will be aware of these accesses and act accordingly. Vehicles accessing the proposed driveway would be little different to the use of these existing driveways. I am satisfied that the proposal would not pose a significant risk to highway safety.
15. Notwithstanding the parking area, additional carers and visitors to the site would need to park on the road as occurs at present. However, for the reasons set out above, the frequency of vehicle movements associated with the

² Framework paragraphs 92 and 130.

proposed use is unlikely to be significantly greater than that of an existing dwelling. As such, taking into account the proposed off-street parking, the proposal is unlikely to result in a significant increase in demand for on-street parking.

16. The Highway Authority raised no objections to the proposal. It stated that the proposals should have a negligible impact on highway safety and highway capacity within the immediate vicinity of the site. This reinforces my above assessment. Whilst the parking area shows a vehicle parked up against the boundary wall, there is sufficient space shown to ensure that this need not occur. The driveway would be similar in scale to that of neighbouring properties and would likely function in the same way.
17. Overall, I conclude that the proposed change of use would not cause material harm to the living conditions of local residents with particular regard to noise and disturbance and the availability of on-street parking. Accordingly, the proposal would comply with Policy SP5 of the LP, described above.

Other Matters

18. The appeal site lies within the Burnley Wood Conservation Area (CA). Whilst not forming part of the Council's reason for refusal, I have a statutory duty³ to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Given that the proposal would result in minimal external changes and would function in the manner of a family home, I am satisfied that it would preserve those interests. For the same reasons it would not be harmful to the character or appearance of the area.
19. I have been directed to another planning application at Deer Park Road⁴ which was refused on the grounds that *'the proposed use is considered to be intensive for the site by virtue of increased traffic movements and day – day operational activities associated with the use, which would lead to a detrimental impact on the character and residential amenity of the area.'* However, I have not been provided with any details of that proposal. I cannot therefore be certain that it would represent a parallel with the appeal proposal in terms of the type of dwelling involved, the character of the area, the number of prospective residents, comments of the Highway Authority or the extent of parking, for example. There may also have been differences in terms of the information available to the Council as part of the application or in terms of the history of the site. I therefore can only give this previous decision limited weight. Moreover, I would note that each application should be assessed on its own merits.
20. Local residents have raised the issue of property value. However, in general the courts have concluded that planning is concerned with land use in the public interest, rather than the protection of purely private interests. I have reached my decision based on this principle.
21. In their comments on the appeal, local residents have requested that the Council reviews its policies or introduces an SPD to provide guidance when considering applications for children's homes. Similarly, I note the comments with regard to the pros and cons of relocating children to such home. However,

³ Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

⁴ Ref COU/2020/0353.

my role is to consider the appeal proposal before me on the basis of the evidence and policies in place at the time.

22. A fire escape or disabled access does not form part of the proposal before me. As the proposal involves a small number of adults and children living together in the manner of a family, there is no convincing evidence that the proposal would generate a significantly greater fire risk than exists at present. Nonetheless, the provision of fire doors or disabled access features could easily be provided on site subject to necessary consents and in line with Ofsted requirements.
23. Concerns have been expressed that the proposal would not allow sufficient space for children to play outside, particularly after the formation of the parking area. However, this property sits on a larger plot than its neighbours with gardens to the front and side as well as the rear, which would, when taking into account the typical size of gardens in the area, provide adequate space to play outside for up to four children.
24. Given that the proposed use would be located within an existing dwelling in an existing residential area, there is no evidence before me that the proposal would adversely effect wildlife.

Conditions

25. I have had regard to the conditions suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance, making such amendments as necessary to comply with those documents.
26. Conditions relating to timeliness, compliance with approved plans and restricting the use are all necessary in the interests of certainty. I have also imposed a condition requiring the installation of an electric vehicle charging point in the interests of reducing emissions and promoting sustainable transport in accordance with paragraph 104 of the Framework.

Conclusion

27. For the reasons given above I conclude that the appeal should be allowed.

Paul Martinson