



Appeal Decision

Hearing Held on 7 February 2023

Site visit made on 7 February 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal Ref: APP/C3810/W/20/3264847

Aldwick House Care Home, 41-45 Nyewood Lane, Bognor Regis PO21 2SJ

- 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 Jamie Copland of Gatwick Bedsits Ltd against the decision of Arun District Council.
 - The application Ref BR/86/20/PL, dated 31 March 2020, was refused by notice dated 15 June 2020.
 - The development proposed is part change of use from a 32-bed nursing home (C2 Residential Institutions) to a 38-bedsit House in Multiple Occupation (sui generis) comprising 24No single person and 14No two-person bedsits along with separate shower rooms and wcs, demolition of rear conservatory and store and erection of single storey rear extension and with minor external alterations to side elevations and insertion of 4No roof lights on rear elevation and insertion of dormer window serving Room 38 (as detailed in amended plans dated 30 April 2020).
 - This Decision supersedes that issued on 29 September 2021. That Decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and planning permission is granted for part change of use from a 32-bed nursing home (C2 Residential Institutions) to a 38-bedsit House in Multiple Occupation (sui generis) comprising 24No single person and 14No two-person bedsits along with separate shower rooms and wcs, demolition of rear conservatory and store and erection of single storey rear extension and with minor external alterations to side elevations and insertion of 4No roof lights on rear elevation and insertion of dormer window serving Room 38 (as detailed in amended plans dated 30 April 2020) at Aldwick House Care Home, 41-45 Nyewood Lane, Bognor Regis PO21 2SJ in accordance with the terms of the application, Ref BR/86/20/PL, dated 31 March 2020, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. As outlined in the banner heading above, this Decision follows quashing of a previous Decision (the quashed Decision) by the High Court. Whilst the quashed Decision must therefore be treated as being incapable of ever having had any legal effect, I acknowledge that its contents are capable of being a material consideration. Where necessary I have therefore made reference to the quashed Decision in my reasons below.
3. I have been presented with a Section 111 agreement (S111) and 3 Unilateral Undertakings (UU), all seeking to secure the payment of a financial contribution

towards habitats sites mitigation. Of these documents, the UU handed to me at the Hearing is flawed in terms of its content and lack of proper execution. Whilst neither the S111 nor earlier UU specify the correct contribution, the latter is otherwise intended to be superseded by the third and most recent UU, dated 10 February 2023 (UU3). I have based my decision on UU3.

4. The description in the banner heading and decision above is that used by the Council, and which also appears within UU3.
5. An application for costs was made by Mr Jamie Copland of Gatwick Bedsits Ltd against Arun District Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:
 - the effect of the development on the character of the area;
 - the effect of the development on the living conditions of neighbouring residents with specific regard to noise and disturbance;
 - whether the development would provide satisfactory living conditions for future occupants with regard to the provision of amenity space; and
 - the effects of the development in relation to parking.

Reasons

Character

7. Policy H SP4 of the Arun Local Plan 2018 (the Local Plan) sets out a number of required criteria relating to planning applications for Houses in Multiple Occupation (HMOs). The first relates to the character of the area, including the balance of housing. Within this context, 'family housing' is highlighted.
8. The appeal site is a disused care home formed by amalgamation of what were once 4 dwellings, and which the Council considers to be a non-designated heritage asset. This is located within a densely developed part of Bognor Regis. The surrounding streets are characterised by a wide mix of terraced, detached and semi-detached houses, together with purpose-built blocks of flats. The range of accommodation is mixed, including some existing HMOs, though the Council accepts that the number within the immediate area is not significant. Whilst interested parties claim otherwise, alleging the existence of many unauthorised HMOs, these cannot be properly taken into account.
9. The building is boarded up and the site is unkempt. At its appearance blights the locality, and as marketing has demonstrated that there is little prospect of the care home use being re-established, an alternative use is required. In visual terms, reuse and maintenance of the site would benefit the character of the area, and would help to secure the future of the non-designated heritage asset. In this regard the Council's concern is more limited in nature, specifically relating to effects arising from the increase in population that the proposed use would support; or what the Council terms 'intensification'.
10. The care home previously accommodated 32 occupants. As previous occupants of the care home received a high level of care, they were not very active.

Activity generated by the use instead principally related to the 40 members of staff employed at the care home, and visitors. As is typical of such a use, the movements of both staff and visitors would have been regular in nature. Though activity may have principally occurred during daytime hours, given the provision of 24-hour care, staff movements could well have also included 'unsociable' hours.

11. The proposed HMO would accommodate up to 52 occupants, which it is presumed would be active, particularly when taking into account the occupancy criteria outlined by the appellant. Based on analysis undertaken by the appellant, the related trip rate would not be much greater than that generated by the care home. However, the movements of occupants would not be governed by the same level of timetabled regularity, even where such a timetable was externally imposed by employment. There would also be a higher likelihood of activity during unsociable hours.
12. The above indicates that there would be an obvious contrast between the care home and HMO use in terms of patterns of activity. However, be that as it may, activity generated by the HMO would be little different to that which characterises other residential properties within the surrounding area. More so when considering that the 2 properties immediately neighbouring the site are a block of 52 flats, and an existing large HMO.
13. It is likely that deliveries would be more frequent than occurred in relation to the care home. However, it is also likely that such deliveries would be grouped with others taking place within the surrounding residential area. Again therefore, deliveries would most likely form part of an established pattern already characteristic of the prevailing residential use of the immediate locality.
14. Insofar as the Council's concerns additionally relate to the increased generation of waste, ample space exists on site to accommodate bins, and a condition can be imposed requiring the provision of a bin store. Waste management could also form part of a plan governing the broader management of the site, thus ensuring no adverse effect on the character of the area.
15. Occupancy of the HMO would give rise to a localised increase in population density, within an area whose population is already dense. This increase in density would not therefore be inconsistent with the character of the area, and nor would it be harmful in itself.
16. Given that the site is a redundant care home, the development would clearly not have any adverse effect on the existing range or availability of housing, including that suitable for families. Quite the contrary, the development would increase the amount and range of accommodation available. As such the development would be unlike HMO schemes involving established dwellings. The latter is indeed something that the Council has recently sought to restrict through the introduction of an Article 4 Direction, and is more generally a type of development identified by Policy H SP4's reference to 'family housing'. Even if the proportion of HMOs as a share of the overall housing mix would increase, together with the number of persons accommodated within them, the change would not be so significant that it would undermine the established character of the surrounding area.
17. The quashed Decision sets out the finding that more intensive use of the site as an HMO, as opposed to a care home, would result in a qualitative and

quantitative change in activity that would fundamentally and detrimentally alter the character of the area. However, whilst I too have identified differences, the quashed Decision contains no clear explanation of why they would be harmful when set within the established residential context. Nor, having considered the matter in detail above, am I able to identify such harm. I cannot therefore reach the same conclusion as the Inspector in the quashed Decision.

18. For the reasons set out above I conclude that the development would not have an unacceptable effect on the character of the area. It would therefore comply with criterion (a) of Policy H SP4 which requires that HMOs do not adversely affect the character of an area, including by eroding the balance between different types of housing.

Living conditions: neighbours

19. The Council did not specifically identify the neighbouring occupants to whom its concern relates. As outlined above however, the properties immediately neighbouring the site are a block of flats and an HMO, whilst a house subdivided as flats is located opposite.
20. The extent and nature of noise generated by the previous care house use is unknown. In this regard it is unclear whether or not individual rooms were furnished with audio visual equipment, and how often windows were opened. However, the care home did contain a large communal living space, and again, comings and goings generated noise.
21. As established above, the pattern of movements related to the proposed HMO would not be dissimilar to that of existing residential uses within the surrounding area, even if it would be different to that related to the care home use. It follows that noise generated by such movements, including deliveries, would also be consistent with the established noise environment. Similarly, there is no reason to believe that noise audible through open windows would differ from that which might be audible through windows left open at any of the adjacent residential properties. In each regard the appellant's revised noise assessment provides further evidence and confirmation of acceptability.
22. It is of note that unlike the care home, the proposed HMO would not contain any communal indoor living space. Though there would be shared laundry and bathroom facilities, each unit would serve the functions of bedroom/sitting room, and kitchen. As such, the way in which the development would be used, would also clearly differ from smaller HMOs operating on a 'shared house' model; the latter being a primary source of concern for interested parties, and again an obvious target of the Council's Article 4 Direction.
23. The site contains some outdoor/garden space. Set within a residential context the use of such space for leisure purposes by occupants would not normally be considered unacceptable. Scope for use of the space for socialising would nonetheless be limited by its small size, and by its functional requirement for circulation, including access to the bike sheds. Even if the outdoor space was to be used for a minor social gathering, it primarily bounds the large car park attached to the rear of the neighbouring block of flats, thus limiting scope for any undue disturbance of neighbours.
24. The occupants of the HMO might well receive visitors, as do the occupants of other residential properties within the area. Again, this would not be

remarkable in itself. Considered within the context of my findings above I have no reason to believe that the simple presence of visitors would give rise to any distinctly adverse effect, or that there is any inevitability of such an effect arising at an antisocial hour.

25. The appellant has submitted a draft management plan, a finalised version of which could be secured by condition. Approved management measures would remain enforceable against any subsequent operator of the approved use. It would be wholly unreasonable to seek to limit the movements of future occupants within such a context. However, the management plan would otherwise provide a framework through which scope for antisocial noise, or indeed any type of antisocial behaviour, could be limited, and subjected to a level of control entirely absent from unmanaged residential premises within the surrounding area.
26. The quashed Decision sets out the finding that the development would cause unacceptable harm to the living conditions of neighbours due to noise and disturbance. This finding largely flowed from that made in relation to character, as outlined above. So have my own findings. I have additionally placed greater weight on scope for management and enforcement through the proper imposition of conditions. The above being so I am again unable to reach the same conclusion as the Inspector in the quashed Decision.
27. For the reasons set out above I conclude that the development would not have an unacceptable effect on the living conditions of neighbouring residents in relation to noise and disturbance. It would therefore comply with Policy QE SP1 of the Local Plan, which requires that development does not have a significantly negative impact upon residential amenity, and criterion (a) of Policy H SP4 as both previously summarised, and to the extent that it is relevant.

Living conditions: future occupants

28. Criterion (c) of Policy H SP4 requires HMOs to provide adequate areas of open space. The policy does not however define the term 'adequate', and the Council has no adopted standard applicable to HMOs. As confirmed at the Hearing, the policy is applied on a subjective basis.
29. In this regard the appellant has highlighted 3 fairly recent planning permissions granted within the locality for HMOs of a similar scale to that proposed. These provided less outdoor space per occupant than the appeal scheme, as well as providing longer walking routes to public open spaces. On that basis the Council accepted at the Hearing that its reason for refusal on grounds of open space provision was both difficult to sustain, and difficult to justify. Though it stopped short of withdrawing the reason, these statements wholly undermine the Council's position. Indeed, in the absence of any adopted means by which to interpret criterion (c) of Policy H SP4, the Council's decisions in similar cases provide the key measure of acceptability.
30. As outlined above, there is a small amount of outdoor space at the site, and none of it is private. Its useability would thus be limited, and not adequate to service the full range of functions which might be expected of outdoor space within an ordinary domestic context. These expectations cannot however be realistically met in relation to a development of the scale, type and location in question. Indeed, as set out above, the Council has accepted lesser provision elsewhere in similar circumstances. The site is otherwise within very easy

walking distance of the beach and 2 large public parks. These resources offer extensive areas of pleasant public open space that would be freely available for use by future occupants, offering adequate compensation for the limited nature of space on site.

31. Though the quashed Decision upheld the Council's reason for refusal, this was clearly not informed by the above comments made by the Council in relation to its other decisions. Given both the altered circumstances, and my findings above, I am once again unable to reach the same conclusion as the Inspector in the quashed Decision.
32. For the reasons set out above I conclude that the development would not have an unacceptable effect on the living conditions of future occupants in relation to the provision of open space. It would therefore comply with criterion (c) of Policy H SP4 as set out above.

Parking

33. Criterion (b) of Policy H SP4 requires HMOs to not contribute to the generation of excessive parking demands. The Council has no specific standard relating to HMOs, but the policy clearly requires that capacity is provided for, or exists to cater for any demand likely to be generated.
34. Future occupants who owned a vehicle would need to park it on-street. Surveys undertaken by both the appellant and the Highways Authority have established that sufficient capacity exists for this on-street within 200 metres of the site. The Council has provided no evidence to the contrary, but nonetheless objects.
35. Whilst any future occupant would obviously seek to park as close as possible to the property, the 200 metre walking distance on which the surveys are based is not unrealistic. There is therefore no reason to believe that future occupants would seek to park in illegal or antisocial ways in order to cut the distance. Illegal parking would in any case be open to enforcement.
36. Given the unallocated nature of on-street parking space, vehicles are parked by residents on a first-come first-served basis. This might sometimes mean that people cannot park directly outside their houses. The proposed development would do nothing to change this.
37. The site is otherwise within walking distance of a good range of services and facilities, and a bike store would be provided. The location would as such be well suited to use of alternative modes of transport. These could be further promoted through a Travel Plan secured by condition.
38. For the reasons set out above I conclude that the development would not have any unacceptable effect in relation to parking. It would therefore comply with criterion (b) of Policy H SP4 as set out above; Policy QE SP1 of the Local Plan, as previously summarised; and Policy T SP1 of the Local Plan, to the extent that this makes reference to consideration of the impact of development upon on-street parking.

Other Matters

Additional concerns

39. Interested parties raise a number of additional concerns including the potential for rowdy drunken behaviour, shouting in the street, and drug use. Such issues

are not unique to HMOs, even if they may have been observed in relation to other HMOs. Given my findings above, it is not inevitable that they would arise in relation to the appeal scheme.

Habitats

40. The site lies near to the Pagham Harbour Special Protection Area (SPA) and Ramsar sites (together, the habitats sites). Considered in combination with other plans or projects the development would have a likely significant effect on the integrity of the habitats sites due to increase in population that it would support, and likely consequent increase in recreational pressure. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) an Appropriate Assessment (AA) is therefore required.
41. Increased recreational use of the habitats sites would cause disturbance to the internationally important population of birds that they support, as well as damaging the underlying habitat. Given that the conservation objectives of the SPA is to maintain or restore its integrity in relation to both the habitat and the population of birds which use it, the above effects would be at odds with these objectives.
42. The Council's strategic solution is to collect contributions towards delivery of a range of Strategic Access Management and Monitoring measures. These are calculated on a per dwelling basis, but the Council lacks any formal means of adapting this strategy to apply to HMOs. Though it notes that in the past it has divided the number of occupants by 3 in order to arrive at an equivalent figure, no clear rationale for this approach has been provided. The appellant instead proposes the provision of mitigation per unit, and, in the absence of a properly evidenced alternative from the Council, this represents the most precautionary approach. Natural England has furthermore confirmed that this would provide appropriate mitigation.
43. UU3 has been drafted to secure migration paid at either the level proposed by the Council or at the level proposed by the appellant, with this to be determined by my decision, and thus by the AA. For the avoidance of doubt therefore, given my findings above, the required contribution is £33,098. I am satisfied that the obligation securing this contribution passes the tests set out within Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the National Planning Policy Framework (the Framework). This allows me to conclude that the development would not adversely affect the integrity of the habitats sites.

Conditions

44. Conditions (1) and (2) are standard conditions setting out the time period for commencement of the development and identifying the approved plans for sake of certainty.
45. Condition (3) limits the hours during which implementation of the development can take place. This is in the interests of neighbour amenity. No more comprehensive measures are required when taking into account the small size of the site and scale of the development, each of which would limit scope for undue disturbance. Off-site measures would otherwise be difficult to enforce.
46. Condition (4) requires prior approval of materials in order to ensure compatibility of the extension with the rest of the building.

47. Condition (5) requires the provision of a finalised Property Management Plan in the interests of safeguarding the amenity of both future occupants and that of neighbouring residents. There is no need to specify the contents, as the plan would be based on the submitted draft.
48. Condition (6) requires the provision of a bin storage facility. As set out above, this is in the interests of avoiding any adverse effect on the character of the area which might arise from less formal storage of bins.
49. Conditions (7) and (8) are each required in order to promote sustainable modes of travel, respectively securing provision of a cycle store, and production and implementation of a finalised Travel Plan.
50. Condition (9) requires the provision of a proposed dormer window, which is necessary in order to secure acceptable living conditions.
51. Condition (10) requires prior approval of external lighting, helping to limit any adverse effects of light spill in relation to neighbours.
52. I have not imposed a requested condition requiring installation of an EV charging point, as this is a matter covered by the Building Regulations. A condition requiring obscure glazing of bathroom windows is also unnecessary as I have no reason to believe that anything else would be installed. Finally, I have not imposed a condition requiring details of a smoking area. This is because the draft management plan clearly indicates that smoking will not be permitted anywhere in the property or within its curtilage. This would tend to imply that the development would attract non-smokers.

Conclusion

53. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of 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: PL-01; PL-04 Rev. A; PL-05 Rev. A; PL-06.
- 3) Works to implement the development hereby permitted shall only take place between the hours of 08:00 – 18:00 Monday to Friday, and 08:00 – 13:00 on Saturdays. No works shall take place on Sundays and Public/Bank Holidays.
- 4) Prior to commencement of construction of the single storey rear extension hereby permitted, details of the materials to be used in its external surfaces shall be submitted to and approved in writing by the local planning authority. The single storey rear extension shall then be constructed in accordance with the approved details.
- 5) Prior to the first occupation of the development hereby permitted, a finalised Property Management Plan, which shall be based on the submitted draft

document, shall be submitted to and approved in writing by the local planning authority. The property shall thereafter be managed in accordance with the approved plan.

- 6) Prior to the first occupation of the development hereby permitted, a bin store shall be constructed and made available for the storage of bins, in a location and in accordance with design details first submitted to and approved in writing by the local planning authority. The bin store shall thereafter be retained and kept available for the storage of bins at all times.
- 7) Prior to the first occupation of the development hereby permitted, the cycle store shown on approved plan PL-01 shall be constructed and made available for the storage of cycles. It shall thereafter be retained and kept available for the storage of cycles at all times.
- 8) Prior to the first occupation of the development hereby permitted, a finalised Travel Plan which seeks to encourage occupants to travel using sustainable modes of transport, shall be submitted to and approved in writing by the local planning authority. The plan shall then be implemented as approved.
- 9) The dormer window shown serving Room 38 on approved plans PL-04 Rev. A, and PL-05 Rev. A, shall be constructed prior to the first occupation of room in question.
- 10) No external lighting shall be installed in relation to the development hereby permitted unless it is in accordance with details which have first been submitted to and approved and writing by the local planning authority.

APPEARANCES

For the Appellant

Clive Bentley	Sharps Acoustics LLP
Rebecca Clutten	Learned Counsel
Jamie Copland	Gatwick Bedsits Ltd
Bethan Hayes	Lichfields
Tim North	Tim North and Associates Ltd

For the Council

Simon J Davis	Principal Planning Officer
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Interested parties

Jim Brookes	Local Councillor
Cindy Curtis	Local resident
Sandra Daniels	Local Councillor
Laurie Isherwood	Local resident
Philip King	Local resident
Sharon Swindon	Local resident
Paula Taylor	Local resident
Chris Tuke	Local resident
Robert Waterhouse	Local Councillor

Documents presented at the Hearing

Unilateral Undertaking (undated)