



Appeal Decision

Site visit made on 7 February 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 7th March 2023

Appeal Ref: APP/D1590/W/21/3285854

1 Cliff Avenue, Westcliff-On-Sea, SS0 7AJ

- 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 Shaul Kornbluh, against the decision of Southend-on-Sea Borough Council.
 - The application Ref 21/01286 dated 21 June 2021, was refused by notice dated 3 September 2021.
 - The development proposed is a change of use from residential (Class C3) to education establishment (Class F1) for a temporary period of 2 years (retrospective)
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The decision that is the subject of this appeal was taken when Southend-on-Sea had Borough status. Since then Southend-on-Sea has become a City, and the council's representations refer to it in that way. Since 'City' is its current status, I will use that word where appropriate in my decision below.

Main Issues

3. The main issues in this case are: whether the loss of a single family dwelling is outweighed by other factors; ii) the effect of the use in a residential setting and on the amenity of neighbouring residential occupiers.

Reasons

4. The site is located on the south side of Cliff Avenue and relates to an end-terrace, two storey, 2 bedroom dwellinghouse with a rear garden approximately 12m deep. The site does not benefit from off-street parking, and unrestricted on street parking results in most of the kerb-side being occupied by parked vehicles on both sides of Cliff Avenue. The immediate surrounding area is mainly residential in character, comprising predominantly terraced dwellinghouses of similar size, scale and design. Commercial premises are located to the east, at No.1A, and along North Road, which Cliff Avenue joins at a T-junction. The property at No.1A was formerly used for car repairs but is currently vacant, but was being marketed at the time of my visit.
5. The appeal site is used in conjunction with Nos.121-127 North Road, originally constructed as a warehouse building, but latterly became Seabrook College,

before its present use as a school by 'Seaquins (Westcliff)'. The use of the appeal site for education purposes is in conjunction with Seaquins as additional space. This organisation runs a home-schooling club for Orthodox Jewish boys from the immediate locality to the premises. There is a maximum of 13 children being educated at the premises at any one time with a maximum of 4 adult volunteers. Rooms 1 and 3 are used as clubs which are attended by up to 7 children and 2 adults per room and the age range of children is between 5 and 15 years old. The use is stated as taking place 6 days a week; Monday - Thursday 9.30am – 5.30pm and Sunday 9.30am- 5pm. The boys enter via the side access which is next to the disused car repair premises, and then enter the building. The rear garden is used by the children for break periods; 4 times a day for a total of 1³/₄ hours.

6. The starting point for considering the appeal is the development plan policies of the Core Strategy adopted in 2007 (CS) and the Development Management Document adopted in 2015 (DMD). The most relevant policies appear to be KP2 and CP4 of the CS. Policy KP2 requires that new development contributes to economic, social, physical and environmental regeneration in a sustainable way through securing improvements to the urban environment through quality design, and respecting the character and scale of the existing neighbourhood; Policy CP4 requires that new development be of appropriate design and have a satisfactory relationship with surrounding development.
7. Policy DM15 of the DMD is also quoted, which states that development will be allowed where there is, or it can be demonstrated that there will be, physical and environmental capacity to accommodate the type and amount of traffic generated in a safe and sustainable manner. However, the officer's report concludes that the development would not result in any material harm to highway safety or the free flow of traffic.

Whether the loss of a single family dwelling is outweighed by other factors

8. The loss of family housing stock is a consideration of some considerable weight. The council, in its appeal statement, makes the strategic response, drawing attention to the fact that Southend City Council cannot demonstrate a five-year supply of deliverable housing sites. It adds that, in such circumstances, paragraph 11 d) ii of the National Planning Framework (the Framework) is frequently being engaged on residential development proposals within the City, that paragraph requiring planning permission to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
9. It follows that any loss of existing dwellings, especially those suited for family occupation, as here, and within a terraced residential street, should be given careful and proportionate consideration as part of a balanced assessment. It is stated that the matter is not de minimis and the issue of pressured housing availability within the City underpins the council's case. The subject of this appeal is not the sort of matter that would normally bring paragraph 11 d) ii of the Framework into consideration. But the unfortunate position that the council is in means that sites that may not be suitable, in policy terms, for residential development are being permitted, which is unfortunate when planning decisions are meant to be plan led.

10. In this case, the loss of a dwelling would be temporary since it is only a temporary permission that is sought. The building appears to be looked after well, and I can see no reason why it should not return to a family residence at the end of a temporary permission. But the temporary loss of a family home, in circumstances such as this, I consider, is of substantial weight. Set against this, there are children that may have some interruption to their education and social life that should not occur, other than with adequate alternative plans being in place. My balancing conclusions are set out in paragraphs 15 to 21 below

The effect of the use in a residential setting and the amenity of neighbouring residential occupiers

11. The reason for refusal in respect of this issue is set out in the officer's report which states "*The change of use, on the basis of the details submitted is considered to create types and levels of activity incompatible with and harmful to the character of this residential area as well as failing to safeguard adequate family housing stock*" and "*.... the activities associated with the use would detrimentally affect the immediate surrounding neighbours through noise and disturbance to the significant detriment of their amenity. The benefits of the development noted in the submission, including those for the Orthodox Jewish Community, do not outweigh the harm that it causes...*".
12. This assessment must be seen in the context that, to the east, the appeal site is immediately next to premises that were last used for vehicle repairs, but is now vacant, and the pedestrian access is alongside this building. It is not uncommon to have schools located within residential areas, with many more pupils than in this case having to arrive within the immediate proximity of dwellings. In this case, it is said that the boys are from the immediate locality and arrive on foot. There is no evidence to suggest that this is incorrect, or that there is in fact a 'school run' by car that brings disruption or inconvenience.
13. Furthermore, there is no evidence of inconvenience or harm to residential amenity from the activity itself, let alone to the 'significant detriment of their amenity'. The only representation that has been provided to me appears to come from a neighbour on the other side of the road whose reference to noise relates to the premises on North Road.
14. That being said, the appeal dwelling has not been altered in any way, as far as I saw, that would make it suitable for the current use, in the way of sound proofing, etc, or been converted by following the proper procedure of obtaining planning permission which gives the council the opportunity, if permitting, to place adequate controls through conditions. A temporary permission as sought, does not, I consider, provide that opportunity.

Conclusions

15. The matter of providing capacity for a sufficient number of homes is something that must be a high priority for the council, and the absence of sufficient homes in the area has a social effect that is very considerable. Thus the removal of even one potential family home from the housing stock has to be given weight that goes beyond that single number. It can only be right that the council vigorously resists changes of use of family homes.

16. On the other hand, children's need for education and socialising, including within their own faith community, must also carry weight. However, the provision of the necessary accommodation must be a matter for the appropriate bodies to plan for and to explore what possibilities there are to make such accommodation available, and to do so in a way that follows the correct procedures.
17. The application was made to the council in June 2021, and refused in September of that year. The appeal was lodged in October 2021. In the appellant's final comments, referring to the council's suggested condition 2, it is said "*If the appellant wished to cease the use prior to the expiry of the temporary period and return the property to residential use a fresh application would be required, which is entirely unnecessary. Instead, the condition should be amended to refer to both F1(a) and C3*". This suggests that the appellant has been seeking to find alternative premises in advance of the a 2-year temporary permission, which is no less than could be expected, although there is no indication of what progress may have been made.
18. Indeed, it would be expected that the search for alternative accommodation would be viewed as a matter of considerable urgency, since the application for a temporary permission demonstrates the acceptance that the use cannot continue indefinitely. Since close to two years have now elapsed from the time that the council's objection to the use became apparent, I cannot see that there is any basis for the grant, at this time, of a temporary period on top of the 20 months that have elapsed.
19. The conclusion that I reach, in balancing the competing factors, is that the use of the house away from its intended purpose should not be allowed beyond the shortest reasonable period. I have therefore decided that a temporary permission, beyond the time that has elapsed already, is not justified. In reaching this conclusion, I am aware that whatever action the council may take, following my decision, it will not result in the immediate cessation of the use.
20. In coming to this conclusion I have taken account of all other matters raised, including the council's point that the adjoining use for a school in North Road is without planning permission and is not a registered school. This appeal relates only to the appeal premisses and the registration of schools is a matter that can be dealt with under s 96(2) of the Education and Skills Act 2008, if appropriate. These are not matters for me.
21. For the reasons that I have given, the appeal will be dismissed.

Terrence Kemmann-Lane

INSPECTOR