



Appeal Decision

Site visit made on 4 July 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

Appeal Ref: APP/J4525/W/23/3321362

42 Chatsworth Street, Sunderland SR4 7TR

- 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 Mr Neville Rodgers of Forevercare Limited against the decision of Sunderland City Council.
 - The application Ref 23/00216/VAR, dated 30 January 2023 was refused by notice dated 31 March 2023.
 - The application sought planning permission for a change of use from dwelling house to Class C2 residential institution without complying with a condition attached to planning appeal APP/J4525/W/18/3194526, dated 25 June 2018.
 - The condition in dispute is No. 1 which states that: the number of residents to be accommodated at 42 Chatsworth Street shall not exceed 2 at any one time.
 - The reason given for the condition is: in the interests of certainty and residential amenity.
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Decision

1. The appeal is dismissed.

Background

2. Planning permission was granted on appeal for a change of use from dwelling house to Class C2 residential institution. A condition relating to the number of residents to be accommodated at any one time was imposed in the interests of certainty and residential amenity. Condition 1 therefore states that the number of residents to be accommodated at 42 Chatsworth Street shall not exceed 2 at any one time. The proposed development seeks to vary this condition to increase the number of residents from two to three.

Main Issue

3. The main issue is the effect that varying the condition would have on the living conditions of occupiers of surrounding properties in relation to noise and disturbance.

Reasons

4. The appeal site relates to an end terraced dwelling located along a row of other similar terraced properties. The properties along this row including the appeal site all directly front onto Chatsworth Street with a yard to the rear and access out onto the rear lane. The surrounding area is characterised by residential properties.

5. I note the planning history associated with the site where it was historically in use as a House in Multiple Occupation (HMO) with an occupancy rate of up to five persons. In determining the previous appeal, the Inspector considered there to be a reasonable likelihood for the property to revert back into use as a HMO and thus afforded significant weight to this as a fall-back position. However, it is undisputed that the property is currently operating as a residential institution providing care for up to two children. Based on the evidence in front of me, the current use has been in operation for several years and thus the likelihood for the property to revert back to a previous HMO use is less likely. I therefore afford limited weight to this as a fall-back position. For the same reasons, I also afford any C3 use limited weight. My consideration of the appeal is based on present circumstances and the individual planning merits of the appeal before me.
6. As set out, the property currently provides care for up to two children and I am aware of the operations that exist at the site including personal circumstances. It is clear from the evidence before me that concerns have historically been raised regarding levels of noise and disturbance associated with the use given the site context which is wholly residential. The previous Inspector considered that the use as a residential institution accommodating two young children would not be likely to generate a greater level of noise and disturbance to that of a single-family dwelling or the previous HMO use. The genuine concerns raised by local residents as well as the existing residential character of the area were however duly recognised, and a condition was imposed relating to the maximum occupation.
7. Northumbria Police has confirmed that between November 2016 and the appeal decision in June 2018 there were 36 calls for service to the premises and 7 crimes reported. Whilst I have not been provided with the full details that would have been before the decision maker in the previous appeal, Northumbria Police has no record of supplying any information regarding the number of calls and thus, such information is unlikely to have been taken into account by the previous Inspector. Notwithstanding, Northumbria Police has also confirmed that since the granting of this appeal, they have received 29 calls for service from the address. Nearby residents have also expressed such concerns in this regard and whilst specific details of the incidents are limited, based on the evidence in front of me along with third party representations, I have no reason to question this information. I am not persuaded that this evidence is old data or in relation to funding/resourcing matters. Whilst there may have been many calls made relating specifically to one child, this does not account for all calls made as they appear to relate to varying circumstances requiring assistance.
8. I appreciate that the proposed change from two to three residents is a modest increase, and that the operation would still be small with the same levels of staffing albeit that they no longer need to sleep over. I also appreciate the comments regarding the effective and efficient use of the property and availability/use of previously developed land as well as comments made in relation to mixed use communities. However, the significant volume of calls made to Northumbria Police for services to the address coupled with residential concerns from those living nearby highlights that the premises is already having some detrimental impact on the amenity of the residential area in terms of noise and disturbance. The increase in residents at a property which is already the subject of police assistance/attendance has the potential to

exacerbate the existing situation leading to conditions that would be detrimental to residential amenity.

9. An Ofsted report has been submitted which sets out detailed information about the operation and that it has been given a rating of 'good'. I have no reason to doubt the quality of the operation and care provision and associated benefits including the progress of children and I am mindful of the challenges such organisations face and the need to be located close to family and friends. I also do not dispute the level of demand for such residential placements across various locations and I recognise that there is a level of support at local and national level for such provision/expansion. I have had regard to the various policies as set out in the appellants' statement of case including VC5 regarding the protection and delivery of community facilities and local services. I have also had regard to the comments provided in support of this application. However, such matters would be insufficient to outweigh the harm identified as despite strict levels of staff training, onsite management/monitoring and procedures that are in place including other legislation controls and risk assessments, the existing use at this premises is still one which is already causing a level of noise and disturbance which based on the level of call outs cannot be considered as 'occasional'.
10. I accept that accommodation needs to be provided for such operations and that similar issues could arise elsewhere. However, noise and disturbance associated with such high levels of police callouts is highly likely to be heard within the surrounding area and those living closer to the appeal site given the site context, which is wholly residential. The lack of an overconcentration of similar uses in this area would have little bearing on this and could actually serve to increase its overall effect as ambient noise levels would be lower. I accept that some callouts may not be blazing sirens. Nevertheless, regular police attendance by virtue of its nature would still cause disturbance/distress for nearby residents as well as some of the associated activities resulting in the police assistance.
11. For the reasons given above, I conclude that the proposal would harm the living conditions of occupiers of surrounding properties in relation to noise and disturbance. It would therefore conflict with Policy HS1 of the Sunderland City Council Core Strategy and Development Plan 2015-2033, 2020 which amongst other matters, explains that development must ensure that the cumulative impact would not result in unacceptable adverse impacts on the local community. It would also be contrary to paragraph 130 of the National Planning Policy Framework which explains that amongst other matters, planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Other Matters

12. There would be no adverse impacts on highways or transport and the proposed development would not result in any changes to boundary treatments or external alterations albeit a possible refreshment. I also note the accessible location of the site and that the proposed development would not require an Environmental Impact Assessment. I am also aware that bins can be stored in

the rear yard. However, such matters would not affect my findings on the main issue.

13. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. It is clear from the policies contained within the Council's development plan that development must ensure that the cumulative impact would not result in unacceptable adverse impacts on the local community. As such, I have no clear reason to consider the appeal proposals not in line with the development plan.
14. In considering this appeal, I have had due regard to the Public Sector Equality Duty (PSED) set out under Section 149 of the Equality Act 2010, in particular the need to eliminate discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. Following careful consideration of the personal circumstances, I am satisfied that the impact of dismissing the appeal is proportionate and necessary.

Conclusion

15. The proposed development would conflict with the development plan when considered as a whole. There are no material considerations, either individually or in combination, that outweighs the identified harm and associated plan conflict. I conclude that the appeal should therefore be dismissed.

N Teasdale

INSPECTOR