



Appeal Decision

Site visit made on 18 July 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal Ref: APP/P4415/W/23/3316055

52 Lambrell Avenue, Kiveton Park, Rotherham S26 5NS

- 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 Syed Islam against the decision of Rotherham Metropolitan Borough Council.
 - The application Ref RB2022/1790, dated 28 November 2022, was refused by notice dated 20 January 2023.
 - The development proposed is the change of use from Residential dwelling (Use Class C3) to semi-independent children's home (Use Class C2).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The original description included reasons justifying the proposed development and a response to pre-application recommendations. As they are not acts of development, I have not included them in the description of development detailed in the above heading. I have however had regard to them in reaching my decision.

Main Issues

3. The main issues are:
 - the effect of the proposed development on highway safety, with particular regard to parking provision, and,
 - whether the need for the proposed development outweighs any harm identified in respect of highway safety.

Reasons

Highway Safety

4. Lambrell Avenue is located in a predominately residential area. There are no parking restrictions along Lambrell Avenue and the highway has been designed to accommodate a bus route, albeit this is not currently operational. No 52 is sited on a sharp bend, adjacent to a vehicle access serving a car park associated with nearby flats. During my site visit, I observed some on-street parking along Lambrell Avenue and surrounding streets, and a fairly regular flow of traffic. I appreciate however that the road conditions I experienced were only a snapshot of the area at that particular time.
5. I understand that there are two vehicles at No 52 at present. The proposed development, with its associated staff and visitors, would however intensify the

- use and associated demand for parking at No 52. A maximum of two members of staff would be present at any one time, over a 24 hour period, with additional visits for statutory meetings. Although these meetings are undertaken virtually, this is not enforceable. None of the residents would have access to a vehicle.
6. Although No 52 has an attached garage, the Council considers it is not of sufficient size to be considered a parking space. No evidence has been submitted to dispute this. In practical terms, therefore, No 52 benefits from one off-street parking space only. As a result of the proposed staff numbers, associated additional visits and existing off-street parking provision, the proposed development would generate additional demand for on-street parking within the area.
 7. In the absence of on-street parking restrictions and while noting staff change overs would be during quieter periods, it is likely that staff would park as close as possible to No 52. The submitted photos show a van parked partially on the pavement in front of No 52. The photos demonstrate that on-street parking in this location, on a sharp bend, would result in the restriction of visibility for cars exiting or accessing the adjacent car park and obstruction of the footpath, to the detriment of highway safety.
 8. Any vehicle parked on the highway to the front of No 52 would, due to its location on a sharp bend, restrict visibility for drivers of buses travelling in either direction along Lambrell Avenue. Furthermore, those buses travelling up Lambrell Avenue, in a broadly north westerly direction, would have to overtake any such vehicle. This would result in buses encroaching onto the other side of the carriageway, on a sharp bend, where visibility would already be restricted due to the parked vehicle. This would cause conflict with vehicles travelling in the opposite direction, to the detriment of highway safety.
 9. In the absence of detailed information, I cannot be certain that any future road markings associated with the proposed bus route, or the provision of traffic wardens, would restrict on-street parking to the front of No 52 sufficiently to overcome the harm identified. Although staff would be asked to park away from the address, car share and use public transport, these are not matters that could be enforced.
 10. The appellant has indicated that the proposal could be reduced to a two bedroomed independent home and the front of the drive could be adapted to provide more manoeuvring space. However, no further details have been provided. I therefore have to base my decision on the plans submitted.
 11. For the reasons given above, I conclude that the proposed development would have an unacceptable harmful effect on highway safety, with regard to parking provision. This is contrary to Policy SP56 of the Rotherham Local Plan Sites and Policies Adopted 2018, which seeks, among other things, to discourage the obstruction of footways by kerb parking, and parking that compromises the operation of the highway. It also conflicts with the requirements of the National Planning Policy Framework which, among other things, states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Need for the Proposed Development

12. The proposed development is to provide accommodation for children. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. Age is a relevant protected characteristic to which the PSED applies. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. Where the Article 8 rights are those of children, they must be seen in the context of Article 3 of the of the United Nations Convention on the Rights of the Child, which requires a child's best interests to be a primary consideration. These rights are engaged in reaching my decision and I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
13. The proposal would give the children direct benefits of semi-independent living, with support from staff 24 hours a day. The appellant has highlighted a current crisis of shortage of local placements, which are not always evenly distributed across the regions of England. Therefore, many children are placed away from their family and city, resulting in emotional distress. Having regard to this, the appellant considers that there is pressing local need for the form of development proposed.
14. I have been provided with limited evidence in relation to the extent of these shortages specific to this locality, the extent of the numbers of children waiting to be housed locally and the demand for the type of accommodation proposed. I am also not persuaded that this proposal is the only opportunity in the area which could help address the shortages in this locality.
15. I have afforded significant weight to the benefits of the semi-independent living and the provision of a local placement to future occupier's wellbeing as required by the PSED. Nonetheless, even with additional weight applied to this effect, there is no overriding reason to allow the change of use of No 52 to address future occupier's personal circumstances. Therefore, while the proposed development may be in the best interests of the children and help people who share protected characteristics for the purposes of the PSED, given the evidence before me this would not override the site specific unacceptable harm to highway safety that would result from the proposal. As such, this does not amount to a material consideration of sufficient magnitude to outweigh the primacy of, and conflict found with, the development plan.

Other Matters

16. The proposed development would provide employment to the local community. The business plans to operate and promote reducing CO2 emissions, including provision of a car for staff, and install interior fire doors. Having regard to the modest amount of development proposed, these benefits carry limited weight in favour of the scheme.
17. I understand that no changes are proposed to the structure of the property. This is a neutral factor.
18. The appellant refers to concerns that a C2 application could be misused or changed at a later date. If I was minded to allow the appeal, a suitably worded condition could be imposed to control the use.

Conclusion

19. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole. There are no material considerations that indicate I should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR