



Appeal Decision

Site visit made on 12 September 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30TH OCTOBER 2023

Appeal Ref: APP/T2405/C/23/3319559

Land at Livesey Lodge, 15A Livesey Drive, Sapcote, Leicestershire LE9 4LP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs and Mr Saira Butt (Midland Living CIC) against an enforcement notice issued by Blaby District Council.
- The notice, numbered E23/0034/COU, was issued on 22 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised use of the property for the provision of short and long term residential accommodation (room lettings).
- The requirement of the notice is to: Cease the use of the property for purposes of the provision of short and long term residential accommodation.
- The period for compliance with the requirement is: 28 days.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with variations.

Matters Concerning the Enforcement Notice

1. Part 1 of the notice states that there has been a breach of planning control falling within section 171A(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act), which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land.'
2. Whilst the notice alleges an unauthorised use, it does not state that this is a material change of the use. It therefore follows that the allegation in the Enforcement Notice (Notice) would not constitute development for the purposes of section 55(1) of the 1990 Act. Section 57 of the 1990 Act states that planning permission is required for the carrying out of any development of land. As the breach of planning control as alleged in the Notice does not constitute the development of land, it follows that planning permission would not be required for it. The Notice is defective in that respect.
3. Notwithstanding this, having regard to the appellants' case, they have clearly understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction of the Notice to include reference to a material change of use would not cause injustice in this case. In Paragraph 3, the words 'material change of' will replace the word 'unauthorised' in the allegation, which is unnecessary.

Preliminary Matters

4. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have therefore determined the appeal in light of the revised Framework. The revision to the Framework has had little effect on the sections of the Framework that have been brought to my attention. I have not, therefore, sought the parties view on the implications of this revision to their case.
5. Section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control 'whether in relation to the whole or any part of those matters.' The scheme put forward for as part of the ground (a) appeal does not propose long term lettings, suggesting the use would be short term lettings, akin to guesthouse or serviced style accommodation. Whilst this would be slightly different to use alleged, which includes long term lettings, the use set out in ground (a) would relate to the whole or any parts of the matters alleged. Therefore, I shall consider the scheme under s177(1)(a), and no injustice would be caused in me doing so.
6. The Council has raised concerns that the appellant is being disingenuous over the actual intended use of this property. However, I am only considering the matters before me, and any alternative use different to that alleged or proposed as part of ground (a) is not something I can consider. Any different use that leads to further breaches of planning control would have to be investigated by the Council in line with their powers of enforcement.

The Appeal on Ground (a) and the Deemed Planning Application

7. The **main issues** of the appeal are the effect of the development on
 - living conditions of the neighbouring occupants, with regard to noise and disturbance.
 - parking and highway safety.

Reasons

Living Conditions

8. Livesey Lodge is a large detached single storey brick building with a hipped roof situated in the area of Sapcote. Livesey Lodge was previously approved as a care home¹, but at the time of my visit, the building was vacant. The building fills a good proportion of the large plot, but there are outside spaces to the north and south of the site and a parking area within the curtilage. The surrounding area is residential, consisting predominately of bungalows and two storey dwellings on Livesey Drive, Park Road and Hinckley Road.
9. The deemed planning application proposes that Livesey Lodge would facilitate short term residential accommodation in the style of a guest house or serviced style accommodation. No floor plan has been provided to indicate the location of each room and the communal areas, but from the evidence it is understood

¹ Council reference 86/1240/1/PX

that there are 24 ensuite bedrooms, all of which have a double bed, chair, cupboards, small fridge as well as a communal kitchen and living areas.

10. The site is adjoined on all boundaries by the private garden spaces of neighbouring dwellings on Livesey Drive and detached dwellings fronting Hinckley Road. The plan with the Notice indicates that the adjoining residential properties are 40 to 46 (even) Hinckley Road as well as the adjoining bungalows at 9 and 11 Livesey Drive. Hinckley Road is a busier road, but Livesey Drive is a small residential cul-de-sac. In this respect, I am mindful that Livesey Drive is a quiet residential area, which according to the representations is largely made up of bungalows occupied by elderly residents. Furthermore, despite Hinckley Road being busier with associated noise, the private gardens of these properties would provide a secluded, quiet space for their occupants.
11. I have had regard to the fact that the building is detached, and the noise from activity from within the premises is likely to be sufficiently mitigated by the separation distances. However, the proposed use would clearly give rise to an increased level of noise and disturbance associated with the running of the business and the more regular through flow of people letting rooms, staff and associated visitors. Each customer is also likely to have different schedules, make separate trips and potentially receive visitors and deliveries. This results in a marked increase in comings and goings when compared to the last known use as a care home.
12. The material change of use and the increased comings and goings would be at odds with the quieter residential character of Livesey Drive described. Furthermore, its siting adjoining several private garden spaces, coupled with the use of the external areas, is going to frequently expose neighbours to the activity associated with the increased movements and noise from the site. The volume of multiple voices, movements and activities associated with use would inevitably cause unacceptable disturbances to the occupiers of nearby residential properties. I am also conscious of the fact that movements to and from the site could occur at more unsociable times in the early morning and late into the evening. At these times, noise and disturbances from the use would exacerbate the impact on neighbour's living conditions.
13. I note that occupancy rates will have an impact on the intensity of the use over the calendar year, but there will clearly be times when the occupancy level is high over sustained periods, such as summer holidays, Christmas and New Year as well as busy weekend and bank holiday periods. At these times, the material change of use would have adverse impacts on the living conditions of neighbours for prolonged periods, which would not be mitigated by a reduced occupancy at quieter periods throughout the year.
14. I acknowledge that the appellants consider it in their interests to be good neighbours and the site would be managed 24/7. However, there is no indication of staff numbers, or any details of how the site would be managed 24/7. I have considered whether this could be conditioned, but this information would be fundamental to understanding the acceptability of the use and whether adequate management of the site could be enforced and would adequately mitigate the harm. As such, I have insufficient information to suggest the noise and disturbance impacts could be mitigated by adequate management of the site.

15. For these reasons, and having considered all matters raised, I conclude that the proposed development would cause material harm to the living conditions of the occupiers of neighbouring residential properties, with regard to increased levels of noise and disturbance. Accordingly, the development is contrary to Policy DM1 of the Blaby Local Plan (Delivery) Development Plan Document 2019 (Local Plan), which, amongst other things, requires development to provide a satisfactory relationship with nearby uses that would not be detrimental to the amenities enjoyed by the existing or new occupiers.

Parking and Highway Safety

16. Policy DM8 of the Local Plan states housing development will be required to provide an appropriate level of parking provision that: a) Complies with the most up-to-date Leicestershire Local Highway Guidance; and b) Is justified by an assessment of the site's accessibility, the type and mix of housing and the availability of and opportunities for public transport.
17. The latest Leicestershire Local Highway Guidance² (LLHG) does not specify parking provision for this use. Paragraph 3.149 states that where no parking standard is given for a particular development consideration of the provision required will be based on certain factors including: the control of on-street parking in the area; the development's exact nature and likely use; its geographical location; the standard of the surrounding road network and the traffic and parking conditions on it; and how accessible the development is using other methods of transport, including public transport, walking or cycling.
18. The Council confirm that the appeal site is in Sapcote, a village that contains a limited range of key services but has infrequent bus services and limited employment. In this respect, the Council indicate that this is not a particularly accessible location, and it is likely that visitors would need a private car to access the site and other key services. The Council has set out that 36 spaces would be needed, based on 50% of shared rooms attracting two vehicles. As the car parking provision is below 36 spaces, the Council indicate that intensified use would increase on-street parking pressure on Livesey Drive to the detriment of highway safety.
19. An Occupancy Survey (January 2022 result), by Visit England has been provided by the appellants, which indicates average occupancy levels for hotels and other accommodation businesses in the East Midlands. It is suggested that the occupancy level for the area at 55% means the parking demand for the site would be lower than suggested by the Council. At a rate of 50% to 60%, it is stated that 12 to 14 vehicles are likely to be at the site at any one time, and parking could be accommodated on site and in the neighbouring streets. Furthermore, the appellant suggests online advertising would be aimed at encouraging sustainable tourism through cycle tourists and back packers, and conditions requiring a parking layout and cycle storage could be imposed.
20. The development results in 24 rooms being let, which over and above the approved care home use, could result in a sizable increase in traffic to and from the site. The site has an existing access and a parking area to the front. Although, it is indicated by the Council that the parking provision on site amounts to 8 to 12 parking spaces, I have not been provided with evidence to confirm this to be the case. In fact, during my site visit I was only able to see 6

² Leicestershire Highway Design Guide 2022

parking spaces laid out near to the access, with space to reverse and exit the site in a forward gear.

21. The site is located in Sapcote and is in walking distance to a convenience shop and a public house (approximately 500 to 600m). However, there are limitations to its accessibility in respect of public transport and other everyday services. Due to the limitations of the public transport, coupled with the distance needed to walk or cycle to certain locations, the site would not represent a highly accessible location. As such, given the use and accessibility, it is reasonable of the Council to consider that the development is likely to result in an increase in traffic by virtue of future users having to rely upon private vehicles to access the site and other services and facilities.
22. The nearest streets of Livesey Drive and Park Road have no yellow lines or any form of restrictions to parking on the highway. Despite this, the road included dedicated off street parking areas for the bungalows and most, if not all, of the terraced dwellings had dropped kerbs and off street parking. In this context, the dropped kerbs and dedicated parking limits the on street parking available near to the site. At the time of my site visit (approximately 11.30am on a Tuesday) the on-street parking was not at capacity, but I acknowledge that this is a snapshot in time, and it is likely that overnight and at weekends, parking demand could be higher.
23. I note that occupancy rates will have an impact on the parking requirements at the site over the calendar year, but as indicated previously, there will clearly be times when the occupancy level is high over sustained periods, such as busy holiday periods. In these instances, the use would have the potential to impact on parking at the site and surrounding streets. The appellant has not submitted technical evidence, such as a transport statement, travel plan or a parking survey to show the parking demand for the use and if any parking could be accommodated within the nearby areas. In addition, there is limited evidence before me to demonstrate 8 to 12 car parking spaces or where cycle parking can be provided on site.
24. Having regard to the accessibility of the site as well as the scale and type of accommodation proposed, I am of the view that the parking demand from the use, particularly at peak times, would be high. With limited evidence on the capacity to provide parking, this leads me to conclude that the development would increase parking stress at the site and on the adjoining streets. Due to the single access and exit point, a full car park or indiscriminate parking would limit manoeuvrability and is likely to result in multi-point manoeuvres or reversing out of the site onto the cul-de-sac. This would mean vehicles would have to reverse a good distance out to the junction to turn, resulting in an unacceptable level of risk of vehicle conflicts to the detriment of highway safety.
25. Accordingly, based on the evidence before me, the development has a lack of parking provision, which would lead to an adverse impact on highway safety. This would be contrary to Policy DM8 of the Local Plan which requires an appropriate level of parking provision based on the LLHG. It would also conflict with the objectives of the Framework, particularly paragraph 111, which indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

26. The appellant states that the development results in the re-use of a vacant care home building and would result in social and economic benefits to the area. The re use of a vacant building and the contribution it could make from additional expenditure in the local economy and the creation of jobs would be a benefit. However, these benefits are modest and do not outweigh the significant harm I have identified above in respect of neighbours living conditions as well as parking and highway safety.

Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the Notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

28. It is directed that the Notice be varied by:

In paragraph 3 of the Notice, the deletion of the word 'unauthorised' and substitution with the words 'material change of'.

29. Subject to the variation, the appeal is dismissed, and the Notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M. P. Howell

INSPECTOR