



Appeal Decision

Site visit made on 30 October 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2023

Appeal Ref: APP/P5870/W/23/3315812

Abbeyfield House, 107-109 Woodcote Road, Wallington, Sutton SM6 0QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Darren Reeve, BK3 Properties Limited, against the decision of the Council of the London Borough of Sutton.
- The application Ref DM2022/01808, dated 4 October 2022, was approved on 13 December 2022 and planning permission was granted subject to conditions.
- The development permitted is retrospective change of use from carehome (C2) to a Larger House of Multiple Occupation (HMO) (C4).
- The condition in dispute is No 1 which states that: The approved development shall be carried out in accordance with the following drawings/details:
 - 1628BA001 - Letter to LPA
 - 1628BA002 - Fire Safety Statement
 - HMO Licence 14 July 2021
 - 1628-BA-100
 - 1628-BA-101
 - 1628-BA-102
 - 1628-BA-103.
- The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has also made an appeal under the Community Infrastructure Levy Regulations 2010, and this will be subject to a separate decision¹. Therefore, the matters raised relating to CIL are not relevant to the appeal before me.
3. The main parties were invited to provide comments on whether the appeal falls within the scope of a section 78 appeal as set out in the Town and Country Planning Act 1990 (as amended) ("the Act"). I have taken their comments into account in reaching my Decision.

Background and Main Issue

4. Abbeyfield House was previously a care home. The appellant had applied for planning permission for a 'Retrospective change of use of care home to HMO (Sui Generis)'. During the application process the Council altered the description of development. The revised description was set out in the application's validation letter.

¹ APP/P5870/L/23/3316806

5. The change of use sought was for an HMO occupied by more than six unrelated individuals (Sui Generis), and the application was assessed as a larger HMO (Sui Generis). The description of development set out on the decision notice granted permission for the 'Retrospective change of use from care home (C2) to a Larger House of Multiple Occupation (HMO) (C4)'. Thus, the permission has not reflected the correct use class sought to be retained. The main parties have advised that the description of the proposal should therefore be 'Retrospective change of use from care home (C2) to a Larger House of Multiple Occupation (HMO) (Sui Generis)'.
6. The appeal form sets out that the reason for the appeal is that the LPA has granted planning permission for the development subject to conditions to which the appellant objects to. The appellant's statement sets out that the appeal is against condition 1 and the description of development.
7. The main issue is whether the appeal falls within the scope of a section 78 appeal, and if so, whether condition 1 is necessary and reasonable for the avoidance of doubt and in the interests of proper planning.

Reasons

8. Under section 78 of the Act, an applicant for planning permission is entitled to appeal to the Secretary of State if:
 - a) Their planning application was refused by the local planning authority (LPA);
 - b) Or their planning application was granted subject to conditions which the applicant objects to;
 - c) Or the LPA failed to determine the planning application within their deadline for doing so.
9. Under section 79(1) of the Act, on an appeal under section 78 the Secretary of State may:
 - a) allow or dismiss the appeal, or
 - b) reverse or vary any part of the decision of the LPA (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to him in the first instance.
10. Condition 1 does not specifically state the description of development but states that the approved development shall be carried out in accordance with the list of drawings and documents. The appellant considers that condition 1 is unenforceable and inoperable due to the incorrect description of development.
11. The fundamental issue and area of contention for the appeal is that the description of development is incorrect (which the Council accepts to be the case). The appeal has arisen from an error in the operative part of the permission. There is no right to challenge a description of development under the Act and the appeal process is not the appropriate procedure to amend a description of development. Accordingly, the appeal cannot be considered within the scope of a s78 appeal. Instead, the incorrect description of development is a matter to be resolved between the main parties rather than through the appeal process.

12. Even if I had found that the appeal falls within the scope of a s78 appeal, there is no suggestion that the drawings and documents cited in condition 1 are incorrect. Consequently, condition 1 is necessary for the avoidance of doubt and in the interests of proper planning. The enforceability issue relates to the incorrect description of development rather than the substance of the condition. The condition meets the tests set out in paragraph 56 of the National Planning Policy Framework and there is no clear reason why condition 1 should be removed or modified.

Conclusion

13. For the reasons given above, I conclude that the appeal should be dismissed.

L Wilson

INSPECTOR