



Appeal Decision

Site visit made on 15 September 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/X1355/W/23/3321404

Highfield, Parliament Street, Consett, Durham DH8 5DH

- 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 Ministry of Justice against the decision of Durham County Council.
 - The application Ref. DM/22/00842/FPA, dated 14 March 2022, was refused by notice dated 4 November 2022.
 - The development proposed is Change of use of the former Probation Office to an Approved Premises, the demolition of outbuildings, erection of two storey extension and ancillary development at Highfield House, Parliament Street DH8 5DH.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Government published a revised version of the National Planning Policy Framework (the Framework) in December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issue in this case are largely unchanged. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.

Main Issue

3. The main issue is the effect of the proposal on the safeguarding of pupils referred to and attending Delta Independent School having particular regard to the fear of crime and the viability of that facility.

Reasons

4. The proposal would create an Approved Premises (AP) providing residential accommodation for up to 18 people at or nearing the end of a custodial sentence and released on licence to continue towards rehabilitation and reintegration with the community. The residents who would live in the proposed accommodation, which would have a permanent staff presence and a range of security measures in place, are described as being at high risk of causing harm to others.
5. The site previously accommodated a Probation Office (PO). The main building, which is a non-designated heritage asset, remains on the site and would be converted as part of the scheme. Although that facility closed in May 2020 it is said to have operated satisfactorily without complaint to the Police or the Ministry of Justice between 1996 and its closure. The appellant indicates that

they do not intend reopening that facility. Therefore, while no further explanation is given, notwithstanding the appellant's suggestion that reversion to that use would be a legitimate fallback position, I do not find this to be a genuinely realistic prospect.

6. Nevertheless, in considering the planning merits of the proposal, I am mindful that activities associated with that previous use would have had some similarities with the proposal before me. Accordingly, previous activity at the site may be material to the determination of the appeal. While the PO use dealt with offenders, the character of the use proposed would be significantly different in that it would include the provision of what would effectively become the home of the occupiers, albeit often for a relatively short period of time. It is suggested that the PO would have had responsibility for around 163 cases at any one time. Even so, the building operated during normal office hours with limited other evidence about the number of 'on probation' visitors to the site in any day.
7. The proposed use, including the extension, would house a significant number of people most of whom would have come to the end of their custodial sentence, but this would not be the case for all residents. The building would be occupied 24 hours a day. A curfew would apply to residents over the night-time period. It is reasonable to anticipate, based on the heightened levels of security and scrutiny over activities and movement of those resident in an AP compared to people attending a PO that those resident in an AP would present a measurably greater risk to the community.
8. Accordingly, even when well-managed, the proposal would present a credible, if limited, risk of criminal activity in the area, and in circumstances where there are other particularly vulnerable occupiers of adjacent land uses in the area fear of crime may be well-founded.
9. Delta Independent School (the school) is located almost directly opposite the appeal site. The school provides a specialist facility accommodating around 60 of the most vulnerable young people aged between 13 and 16 years who are at risk of permanent exclusion from mainstream schools. The school provides a benefit to the wider community of County Durham which is of significant value in terms of seeking to educate and nurture vulnerable young people who would otherwise be excluded from a programme of organised education, training and the associated development of life skills.
10. The proximity of vulnerable young people, particularly those who would walk past the AP regularly to get to the school, presents a particular risk. Notwithstanding the best efforts that would be made by staff and other professionals involved in the supervision and management of residents living at the AP, that risk, and perception of there being a risk to those young people, could not realistically be removed given the proximity between the appeal site and the school.
11. I accept that it would be unrealistic to expect all risks of criminal activity to be removed given the nature of the use proposed. However, it seems to me that the level of risk perceived to be likely to arise having regard to the particular circumstances of this case, including the proximity of the school to the proposed AP, sits at the heart of the concerns expressed by the school and the Council's education advisors. Having regard to their knowledge, skills and

competence in managing safeguarding expectations at such specialist schools, this is a matter to which I attribute substantial weight.

12. Whilst I acknowledge the need for additional bed spaces both nationally and locally, the introduction of the proposed AP in this specific location would bring a real and quantifiable threat to the continued viability of the school. This is because the information provided by the Council shows that mainstream schools in the County would no longer refer pupils to the school who would otherwise be excluded from mainstream schools due to the perceived safeguarding threat associated with the proposed development. From the information available to me, there is a risk that the school would close as a result of the decision of other schools to no longer refer pupils, and I have not been provided with information setting out how alternative arrangements would be put in place to address such an outcome in order to provide education for pupils that would otherwise be excluded from schools.
13. In the absence of defined alternative arrangements for the provision of education for the pupils that would be affected, many of the pupils who would be excluded from mainstream schools would no longer have the opportunities for learning and development provided at the school. This would be harmful to the growth and development of those young people and would not be in their best interests.
14. Having regard to my obligations as the decision-maker in this matter in respect of Article 3 of the United Nations Convention on the Rights of the Child, I have ensured that the best interests of the children attending the school, and those who may do so in future, have been a primary consideration in my decision on the appeal. While not determinative of the planning issues in this case, the best interests of those children have been at the forefront of my mind in examining all material considerations. Further, I have had due regard to the Public Sector Equality Duty (PSED) under the Equality Act 2010 which identifies age as a relevant protected characteristic to which the PSED applies.
15. I acknowledge that the proposal would make an important contribution towards the national strategy which identifies a critical need for additional AP bed spaces, and, from the information I have seen, it is clear that there is a need for additional bed spaces in the North-East of England. It would also assist in reducing the need for individuals to be placed into inappropriate accommodation, such as hotels, where the same level of security or opportunities for successful rehabilitation cannot be provided. The appellant argues that the structured and well-managed approach provided in APs to the rehabilitation of offenders at or coming towards the end of a custodial sentence, particularly where offenders are placed in or close to their home community, helps to support the successful reintegration of offenders into society. I would not dispute the benefits that the proposal would bring in general terms in each of these respects.
16. I have seen the evidence of good practice presented by the appellant, but this does not assist in addressing the specific concerns arising in the case before me including through conditions. However, it would seem impractical and realistically unenforceable to impose controls through planning conditions that would effectively control or prevent the possibility of interaction between AP residents and pupils which could occur at different times during the day. Further, I am not convinced in this case that good management would be

sufficient to allay the concerns associated with the fear of crime and the future viability of the school. Accordingly, in my judgement, the adverse impact on the interests of children attending the school were the proposal to be allowed and implemented would not be proportionate or justified.

17. For these reasons the proposal would have an unacceptably harmful effect on the safeguarding of pupils referred to and attending Delta Independent School having particular regard to the fear of crime and the viability of that facility. In this respect the proposal fails to accord with the requirements of Policy 31 of the County Durham Plan (2020) (the CDP) which expects development proposals to demonstrate there will be no unacceptable impact on health, living or working conditions and that proposals can be integrated effectively with existing business and community facilities. There would also be conflict with paragraphs 96 b) and 135 f) of the Framework in respect of the expectations that decisions should aim to ensure that developments achieve places that are safe, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
18. The appellant contends that the proposal accords with the expectations set out in Policy 15 of the CDP. However, this is not a matter in dispute between the main parties and even if the proposal would comply with that policy such compliance would be a neutral matter in this case.

Other Matters

19. My attention has been drawn to other appeal decisions¹ where the fear of crime has been a material consideration. I have limited details of these cases. The case in Windsor concerns the expansion of an existing AP. In that case the Inspector reached a view that modest expansion of the facility would not add significantly to existing acknowledged safety concerns. Other cases concern a hostel and Houses in Multiple Occupation, all of which have significantly different characteristics to an AP in terms of their occupiers; and the final case concerns accommodation for asylum seekers where it was clear there was no direct link between the future occupiers' status as asylum seekers and criminal activity. However, I note specifically in that case that no concerns regarding safeguarding of children were expressed. Consequently, although I have taken them into account, none of these other cases have had a significant bearing on my decision.
20. While not matters in dispute, I note that the Council is satisfied that there would be no harm to the non-designated heritage asset, and I see no reason to disagree with that conclusion. The proposal would also provide for net biodiversity gains, and increase opportunities for adapting to climate change, both matters supported through the Framework. Furthermore, the proposal would make effective and efficient use of previously developed land as advocated in Chapter 11 of the Framework. However, the modest benefits in these respects, which may in part be to comply with development plan policies, along with the benefits the proposal would bring in its own right as noted above, would not overcome the harmful effects that would arise from the proposal.

¹ APP/T0355/W/21/3288610; APP/P4605/W/20/3262969; APP/Z1775/W/16/3159492; APP/E2001/A/13/2197156; and APP/Y3425/W/23/3315258.

Conclusion

21. For the reasons given above, the proposal would conflict with the development plan and material considerations do not indicate that a decision should be taken otherwise than in accordance with it. I therefore conclude that the appeal should be dismissed.

David English

INSPECTOR