



Appeal Decision

Site visit made on 19 February 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8TH March 2024

Appeal Ref: APP/W1715/W/23/3324730

Hilltop, Pinewood Park, Southampton SO19 6AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Matt Leather against the decision of Eastleigh Borough Council.
 - The application Ref is F/22/93935.
 - The development proposed was described as change of use from C3 dwelling house to C2 residential care home for 6 adults with learning disabilities and autistic spectrum disorder, with internal alterations to property.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from C3 dwelling house to C2 residential care home for 6 adults with learning disabilities and autistic spectrum disorder, with internal alterations to property at Hilltop, Pinewood Park, Southampton SO19 6AL in accordance with the terms of the application Ref F/22/93935 and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. In its reason for refusal the Council cited Policies DM1 and DM13 of the Eastleigh Borough Local Plan, April 2022 (the LP). In its appeal statement, it also referred to LP Policy DM19 to link to its 'Accommodation for Older People and Those in Need of Care' Supplementary Planning Document, May 2011 (the SPD), which refers to an equivalent previous development plan policy. LP Policy DM19 and the SPD were provided in the appeal questionnaire. The appellant has therefore had an opportunity to address them so I have taken both into account in determining the appeal.

Background and Main Issue

3. The appeal site, 'Hilltop', contains a detached house in a garden, including a detached annexe. The house is operated by Rymacare¹ to accommodate five adult residents with a learning disability living together as a single household receiving care, with one carer sleeping overnight. A lawful development certificate (the LDC)² states that this (then) proposed Class C3(b) use³ was permitted development. Accordingly, it was not assessed against relevant LP policies. The LDC was issued by the Council after the appeal planning application was submitted and it made its decision, both of which at the time

¹ Registered with and regulated by the Care Quality Commission

² Ref LDC/23/94708

³ The Town and Country Planning (Use Classes) Order 1987, as amended

also referred to a proposed change of use from a Class C3 dwellinghouse use. At some point the house was brought into Class C3(b) use, which is within Class C3.

4. The proposal is to accommodate six adult residents at the site with learning disabilities and autistic spectrum disorder, with no carer sleeping overnight. Care staff would be present in shifts over each 24 hour period. This change of use to a Class C2 residential institution is not permitted development so requires planning permission, including assessment against relevant LP policies. It would also incorporate the annexe and an additional part of the garden beyond the red line in the plan attached to the LDC.
5. The main issue in this appeal is whether the location of the site is isolated from necessary amenities for the proposed use, including public transport; and if it is, whether this is appropriate in this case having regard to effect on the quality of life for future residents.

Reasons

6. The site is part of a secluded enclave of dwellings in a long cul-de-sac⁴ set in woodland on one side of the A27 Kanes Hill, part of an extensive local road network. While the proposal would not be isolated in the sense that it is near these other dwellings, the site is not in a settlement or next to a defined urban edge. This existing development has a sporadic, scattered presence in this pocket of mainly undeveloped countryside immediately around it. The necessary amenities that I have been referred to are all beyond a most conducive 10 minute or 800m walk of the site⁵ and the Council's 400m 'easy walking distance' set out in the SPD. Some are simply too far away to reasonably walk or cycle to.
7. However, the site is not spatially remote or overly distant from surrounding settlements or built-up areas, including a large suburb of Southampton. These contain some of the necessary amenities. Many are not significantly further to walk to (14-23 minutes or 1130m-1770m) and being below a 2km walking distance have the greatest potential to replace short car trips⁶ or to cycle to. These include a supermarket, ambulance station, doctors surgery, dentist and optician. A convenience store and bus stops are also within a 13 minute walk or 965m of the site and the timetables displayed show frequent services to other destinations, including a hospital and a railway station. A large public open space is conveniently within 2 minutes or 320m of the site (Netley Common Local Nature Reserve)⁷.
8. Residents with learning disabilities and autistic spectrum disorder would spend most of their time on the site, supervised by care staff. The extra garden space would enhance the external living environment and the Council did not object to this aspect of the proposal. These residents, who may be adults of any age, would be encouraged under supervision to use public transport and walk to local amenities, but there are some unsurfaced or unlit paths and narrow pavements next to busy, relatively fast roads with no cycle lanes, some that would need to be crossed. This would undermine the safety and quality of the walking or cycling experience for these residents.

⁴ Pinewood Park and Dumbleton Close

⁵ Manual for Streets – paragraph 4.4

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⁷ All figures approximate

9. Consequently, also taking into account practicality, convenience and reason for travel (ie the type of necessary amenity) I consider that most travel to and from the site would likely be by car. These residents are unable to hold driving licences so they would be driven to the necessary amenities by care staff using their own cars, a company car or minibus or by prior arrangement with a private transport provider. Generally also for all other pre-arranged trips or events away from the site, including days out and to day centres, as frequently as necessary for health or well-being reasons.
10. There would, therefore, be less reason or requirement for these particular people in need of care, even if any were elderly or infirm, to rely on a pedestrian friendly environment beyond the site to retain independence or avoid isolation, which is an underlying principle behind the SPD 400m walking distance for older people. The SPD also sets out that accessibility for older people in conventional nursing homes or rest homes is not as important as they tend to be less mobile and consequently more site-bound. Although mainly for different reasons, this would be analogous to circumstances of the proposed use at the site for the particular intended residents; in which case, the SPD acknowledges the possibility of proposals located more than 400m from essential services and facilities. Albeit in this case most by more than 800m, some not by much more and therefore not rendered totally inaccessible by walking or cycling so still have potential for meaningful use.
11. A planning condition could limit the use of site to a Class C2 residential care home for 6 adults with learning disabilities and autistic spectrum disorder and for no other purpose, including any other purpose in Class C2. This would be justified given the particular travel, amenity and living needs of such residents. The Council would have planning enforcement powers to ensure compliance, including if a general residential care home was established at the site or used by people with other care needs, such as drug or alcohol related, and who may have different travel, amenity or living needs.
12. Taking all the above into account, I find that the location of the site would be somewhat isolated from most necessary amenities, including public transport, by most walking or cycling options. But not by all such travel options or by car, which in this case would usually be the most suitable and appropriate mode of transport. As a result, reliance on cars would not significantly detract from the quality of life of the future residents; but rather be part and parcel of their normal living conditions and expectations, so be satisfactory in this case.
13. The proposal is therefore not incompatible with LP Policies DM1(h), DM13(1) or DM19(1)(e) as amplified by the provisions of the SPD. These policies include that development should incorporate provision for people with disabilities, create accessible communities that cater for all and be sustainably located by making provision for other transport modes than the car, including public transport and cycle and pedestrian routes – ‘as appropriate’ in each case.

Other Matters

Intensification of use

14. In its appeal statement, the Council refers to an alleged ‘significant intensification’ in staffing arrangements at the site. There is no objective evidence before me about existing staffing arrangements, other than one carer sleeping overnight. In any event, the Council’s reason for refusal is concerned

with the amenity and quality of life for 'future end occupier(s)' – ie the residents with learning disabilities and autistic spectrum disorder – no other person, including neighbours in the cul-de-sac.

15. Hilltop is already lawfully in use for five residents living in the house with one carer sleeping overnight, so six adults. Albeit including the annexe and more of the garden, the proposal would not change the total number of people residing at the site. For the reasons explained in the main issue above, I do not consider that the quality of life of one additional resident by such limited intensification, or of any or all other residents as a consequence, would be harmed by the location of the site in relation to necessary amenities or the travel arrangements that would be in operation at the site.
16. Some neighbours allege noise or disturbance or loss of privacy due to overlooking, light spill or foul waste odour from the existing use of the site or object to the proposal for similar reasons, including by reason of increased use of the site, vehicle movements, parking on the street and placement of bins. But there is no evidence of permanent adverse effects in these respects or which could not be mitigated by other normal means, such as closing curtains or blinds at night time to prevent intrusive lighting or be addressed by planning conditions or relevant public authorities.
17. By the operation of national planning controls the Government has deemed Class C3(b) use of a dwellinghouse to be acceptable in a residential area, including next to other dwellings. Additionally, with the comings and goings of staff in number requisite for the nature and scale of such permitted use. As a large family house with the annexe and garden, the site could also be used for any incidental or ancillary purpose, so overall generate potentially significant or equivalent related noise and disturbance.
18. Even compared to use as a conventional dwellinghouse or the existing Class C3(b) use there is no compelling objective evidence of material increased adverse effect on the living conditions of neighbours in these regards, nor did the Council object to the proposal for any of these reasons. The Council has separate powers to control statutory nuisance or on-street parking on the public highway, including obstruction of it, and there is no evidence that the number or layout of on-site car parking spaces does not meet the Council's relevant standard for staff or visitors. Alleged restriction of a right of access would be a private matter between the relevant parties.
19. Some neighbours have drawn my attention to differences between the scope of a lawful development certificate originally sought by the appellant and as was eventually progressed by the appellant then issued by the Council. While I appreciate people were disappointed by the issue the LDC, it is nonetheless a significant legitimate material planning consideration in this case and baseline at the site. The appellant is entitled to pursue applications for lawful development, or planning permission for the proposed use, and to lodge the current appeal which I have determined on its individual planning merits.

European Sites

20. The site is within a zone of influence of habitat, including coast or water environments of the Solent, Southampton Water, River Itchen and New Forest National Park that is in Special Protection Areas, Special Areas of Conservation or Ramsar sites internationally important for flora and fauna (the European

Sites)⁸. The appellant has not addressed this matter. The Council considers that the proposed form of residential use would be occupied by the same number of people as could anyway live as a large family in the house at the site. I have no reason to find otherwise and in these respects the situation would in essence not be materially different compared to the current Class C3(b) use of the house.

21. Accordingly, there would be no likely significant individual or in-combination adverse effect on the European Sites due to increased disturbance by additional visitors for recreation purposes, or nitrogen entering water environments exacerbating eutrophication. The proposal would therefore avoid harm to this flora and fauna so not undermine the qualifying features and conservation objectives of the European Sites.

Conditions

22. The appellant has not objected to the five conditions suggested by the Council if the appeal was allowed. I have taken account of comments submitted by both main parties in respect of amended wording for the Council's suggested condition No.3 and reflected this in its final form. Where required, I have considered modified wording of the Council's other conditions in the interests of clarity or precision and had regard to the relevant tests in the Framework and Planning Practice Guidance.
23. In addition to the condition referred to above about the specific Class C2 use of the site, and the standard time limit condition for commencing development, a condition to specify the approved plans would ensure certainty about what development would take place. A condition would also be necessary to ensure that suitable provision for car and cycle parking and refuse storage was implemented at the site before the Class C2 use came into operation.

Planning Balance and Conclusion

24. Subject to conditions the proposal complies with the development plan overall. There are no other material considerations to indicate that the decision should be taken other than in accordance with the development plan⁹. Consequently, for the reasons given above the appeal succeeds.

Robin Buchanan

INSPECTOR

Schedule of Conditions (4)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans:

⁸ Conservation of Habitats and Species Regulations 2017 (as amended)

⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and Framework paragraph 12

00	000		location plan and block plan
000	P00	Rev A	proposed site plan
000	P01		proposed ground floor plan
000	P02		proposed first floor and roof plan
000	P03		proposed elevations plan
000	P04		proposed ground, first floor and roof plans – annexe
000	P05		proposed elevations – annexe
000	P06		proposed cycle storage plan
000	P07		proposed cycle store elevations plan

- 3) The site, currently known as Hilltop including house, annexe and garden and otherwise edged with a red line in the plans hereby approved, shall be used for a Class C2 residential care home for 6 adults with learning disabilities and autistic spectrum disorder and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 4) Prior to the first occupation of the development hereby approved, the car and cycle parking (with the cycle parking store finished in natural timber cladding) and refuse storage area shown in the proposed site plan hereby approved (drawing number 000 P00 Rev A) shall be implemented and thereafter retained for these purposes for the lifetime of the development.