



Appeal Decision

Site visit made on 5 March 2024

by Graham Dudley BA (Hons) Arch Dip Cons AA

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024

Appeal Ref: APP/G4620/C/23/3326340

902 Walsall Road, Great Barr, B42 1TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr J Nadat against an enforcement notice issued by Sandwell Metropolitan Borough Council.
 - The notice was issued on 21 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the property from use as a dwelling house to use as a residential care home.
 - The requirements of the notice are to cease the unauthorised use and to remove all materials and any other items from the property associated with the unauthorised use.
 - The period for compliance with the requirements is four months.
 - 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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the property from use as a dwelling house to use as a residential care home at 902 Walsall Road, Great Barr, B42 1TG, subject to the following conditions:
 - 1.1. The use hereby approved shall house no more than four young people aged between 11 and 18 at any one time.
 - 1.2. The noise mitigation measures detailed in the submitted noise assessment (Report No 22546-1, dated 26th June 2023) shall be implemented within 6 months of the date of this decision. If the noise mitigation measures are not implemented within 6 months of the date of this decision the use shall cease until implementation of those measures.
 - 1.3. A management scheme shall be submitted to and approved in writing by the local planning authority, identifying management of the property, including staffing, waste disposal, parking, noise control and procedures for complaints.
 - 1.4. Unless within 3 months of the date of this decision a management scheme is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the

local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

- 1.4.1. If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.
- 1.4.2. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained in use.
- 1.4.3. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in these conditions will be suspended until that legal challenge has been finally determined.

Reasons

Ground (a)

2. The main issue is the compatibility of the use with the neighbours, area and building, with particular regard to noise and disturbance.
3. The development plan includes the Site Allocations and Delivery Development Plan Document (DPD). The enforcement notice refers to conflict with DPD Policy SAD H4 – Housing for People with Specific Needs. The policy notes that The Council will encourage and negotiate the provision of housing to cater for the special needs of people, including the elderly, people with mental ill health, and those with physical and learning disabilities, particularly where a need has been identified. They will be considered in relation to, amongst other things, compatibility with adjacent users and the suitability of the site and building.
4. The National Planning Policy Framework [NPPF] has a social objective to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being. It is important that a sufficient amount and variety of land can come forward where it is needed, so that the needs of groups with specific housing requirements are addressed.
5. The appeal site had the benefit of planning permission which was for the change of use from residential dwelling into supervised residential home for 4 young people (14-18 years old). The appellant considered this covered its use of the building, but the Council pointed to a Court decision that identified the current use as a C2. They also note that the previous permission has lapsed. There have been LDC applications, but these have been refused. This ground (a) / deemed planning application relates to the allegation.
6. The appellants are experienced in caring for young people to assist them in transitioning into adulthood whilst providing them with an appropriate level of

care to suit their needs, which comprise behavioural and learning difficulties. The operation of the site is to provide residential care for up to four young people between the ages of 11 and 18 who require some form of support. The care and support provided is tailored to the individual. Staff are on-site at all times to provide support to the residents, but they do not live on-site and operate in shift patterns. The pattern of staffing is usually one resident to one member of staff.

7. The appellant is asked to provide places for people and there is a need identified in the housing need assessment. The appellant says that the need for such accommodation to support young people is evidenced in the Council's own needs assessment and that the use accords with Policy HOU2 of the Development Plan. I have taken into account the acknowledged need for such accommodation and that policies and the NPPF promote such uses in appropriate locations.
8. The appellant notes that the use alleged is already occurring, so residential care is already being provided and no further modifications, internally or externally are required by them.
9. The appeal property is semi-detached, with residential properties on either side. The proposed use, whilst falling within Use Class C2, is for a type of residential accommodation and a residential use is not incompatible in principle with the adjacent residential uses. C2 uses have been accepted elsewhere in the Sandwell area, but whether a particular use is acceptable in a particular area is a matter of considering the individual use and location.
10. In some respects, this is similar to a large family use of the property, but there is a significance difference, particularly as the residents are those with some difficulties. In addition, because of their needs there is a significant number of staff required, with associated car and parking requirements/movements. A neighbour complains of the screaming and noises that can occur any time of day or night that keep them awake and cause them significant disturbance. Neighbours also note up to 9/10 cars parked on the drive.
11. This is not simply a residential area. While there are residences by the appeal site, further along the row there are vets and a funeral director located in converted houses and further along still are blocks of flats, some with shops beneath. The property fronts onto a busy dual carriageway and opposite is a parade of more shops. Most of the nearby properties, including the residences, have most of the garden covered by hardstanding and in many there are a number of cars.
12. Complaints have been received from neighbours by the Council in relation to the current use of the site related to noise and disturbance, from residents, parking and bins. There have also been representations in relation to this appeal related to these matters. A public health officer did visit, but no action was taken, and the appellant asked to talk to the Council to understand the complaints. There is a noise assessment and a management scheme is proposed.
13. I accept that there will be a considerable number of vehicles coming to and going from the property, particularly at change-over times, that would normally not be in character with a residential area. Here, however, there is considerable noise and activity associated with the main road and other properties have large parking areas and cars in front of them. I consider that the additional activity,

noise and disturbance would be very little in relation to the general activity in the area and I do not consider that it would cause material harm or be out of character.

14. The building is very well staffed and in some respects activity could be better controlled than say in a normal family situation, with the one to one staffing. A management scheme is proposed to be put in place that would control the use and set out how to complain to the home should problems occur. I accept that there are claims of noise coming through from the home, identified as some screams that can occur at any time of the day or night. This could cause significant disturbance. With the one to one staffing this should generally be well controlled, but some noise will inevitably occur and could unacceptably disturb neighbours. For this reason, I consider that upgrading of the sound insulation of the party wall, as identified by the acoustic report, would be necessary to maintain the neighbour's living conditions.

Conditions

15. I consider that a management scheme is necessary to safeguard the living conditions of neighbours to cover issues such as staffing, parking, noise and disturbance and complaints procedures. I have considered arrangements for waste management but consider that this would be little different from a normal residence and can also be covered by the management plan. I do not consider that a specific condition is required in relation to staffing as this can be covered in the management plan. I consider it is necessary to control the number of occupiers in the interest of the living conditions of the neighbouring occupiers. I have also added the standard 'enforcement' conditions as the use is currently in operation, so there needs to be a process in place, should the conditions not be complied with.
16. Overall, I consider that this use, subject to conditions, would not cause unacceptable noise and disturbance and this would be an acceptable use in relation to the living conditions of neighbours, the building and area. It would not affect the character of the area. I conclude that it does not conflict with Policy SAD4 in that it is not incompatible with adjacent users, site or building.

Conclusion

17. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the material change of use of the property from use as a dwelling house to use as a residential care home, subject to conditions.

Graham Dudley

INSPECTOR