



Appeal Decision

Site visit made on 21 November 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2024

Appeal Ref: APP/J4525/W/23/3328422

36 Joan Avenue, Sunderland SR2 9TA

- 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 Mr Neville Rodgers HMO Northeast T/A Forevercare against the decision of Sunderland City Council.
 - The application Ref 23/01154/FUL, dated 24 May 2023, was refused by notice dated 1 August 2023.
 - The development proposed is for the change of use from a single dwelling under Use Class C3 to a Use Class C2 residential care and living unit for children (under 18 years old) with associated staff members 24/7 on site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Based on the evidence before me the change of use has already occurred. I have therefore determined the appeal on a retrospective basis.
3. Within the context of an appeal under section 78 of the Act it is not within my remit to formally determine whether the proposed development requires planning permission as claimed by the appellant. However, I shall consider the evidence as to whether permission is required so far as it is material to this appeal. If the appellant wishes to ascertain whether the development is lawful, they may make an application under section 191 or 192 of the Act.
4. 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 Issues

5. The main issues are:
 - Whether the site would be a suitable location for the proposed development, having particular regard to the characteristics of the area and the living conditions of nearby residents;
 - Whether any harm would be outweighed by other considerations, with particular regard to the effect of the proposal on the availability of residential care and support for young people.

Reasons

Suitable location

6. The appeal property is a semi-detached bungalow located in a residential area predominantly comprising single household dwellings. Joan Avenue is accessed from Irene Avenue and together largely form a loop road with a single entry point onto Ryhope Road. There is an intimate relationship between the dwellings due to the layout of the buildings. Properties are set relatively close to the narrow carriageway and the narrow gaps between dwellings all contribute to that relationship and to the character of the area.
7. Although the appellant refers to the development accommodating children under 16, there is also reference to the development accommodating children up to the age of 18. The care home would be run by an established and regulated operator that is acclaimed and monitored by Ofsted. The application form states that there would be two daytime staff members and two overnight staff members always present and two shifts per day, and no external alterations to the building.
8. The Forever Care Locality Risk Assessment 23.03.2023 (the LRA) states that the appellant aims not to advertise the fact that the property is acting as a supported living home due to the needs of the types of young people who would be living in the property. Although no substantive evidence has been provided by the appellant, Northumbria Police identify that the appellant operates in a challenge sector of the care industry, where they would expect 'a higher than normal rate of calls for service.'
9. Although the LRA does not identify any unusual level of incidences with the local community, it is evident from the comments provided by a local councillor, interested parties and consultees that several have occurred. Whilst I do not consider it appropriate to list the incidents here, it is clear that it has had a significant effect on existing residents, particularly in terms of taking place during the evening/night and therefore affecting sleep, creating anxiety and fear of crime.
10. I have no evidence that the comments from Northumbria Police are borne out of funding or resource concerns. Notwithstanding the frequency, visits within service or marked vehicles, would be different in nature to parcel couriers and would be highly noticeable due to the restricted access arrangements of the site and closeness of properties. They would clearly mark the property apart.
11. Furthermore the comments from Environmental Health suggest that the behaviours they were notified of were deemed to be unreasonable and negatively affecting the community's quality of life to the extent that a Community Protection Warning was served in March 2023 (under Section 43, Anti-Social Behaviour, Crime and Policing Act 2014). The creation of the Community Protection Warning is sufficiently compelling to suggest that, as a result of the development, the fear of crime or anti-social behaviour is also not unreasonable nor an unwarranted consideration.
12. I acknowledge that potential disturbance arising from unruly behaviour of children cannot be ruled out from time to time. The behaviour experienced could be largely attributable to individual behaviour, which the Council's Environmental Health section also recognises.

13. The relatively small number of occupiers of the development would be closely managed. This suggests, at face value, that the development should not generate levels of activity and noise that would exceed those of a family occupying the premises.
14. However, the aforementioned evidence of issues arising in practice provides a strong indication that community cohesion has actually been significantly undermined. Moreover, no substantive mitigation in terms of building arrangements or management of incidents which affect local residents been put forward from either the appellant or the Council.
15. I acknowledge that the proposed development falls within the definition of a community facility referred to within Policy VC5 of the Core Strategy and Development Plan 2020 (the Core Strategy). This policy seeks to support proposals for new community facilities, located in accessible and neighbourhood locations. The site is located within a residential area, close to facilities and access to local services, including schools. However there are requirements within Policy EN10 of the Unitary Development Plan 1998 (the UDP) and HS1 of the Core Strategy. Together these seek to ensure that development is compatible with the principal use of the neighbourhood, and not result in unacceptable adverse impact on the local community.
16. However, in my view, the experiences are likely to be attributable to the nature of the small semi-detached single storey dwelling, close knit relationship of the properties and constricted loop road access arrangements. The single residential characteristics of the appeal site and surrounding location here ultimately have the potential to afford significant opportunities for interaction and heighten awareness, exacerbate the fear of crime and undermine community cohesion where issues do arise.
17. There is support for such proposals within the Council's policies, in particular VC5 of the Core Strategy, and I do not find a direct conflict with Policy BH1 of the Core Strategy as this predominantly relates to design quality. However, I conclude that the site is not a suitable location for the development, having regard to the characteristics of the area and the living conditions of nearby residents. The proposal is therefore contrary to Policy EN10 of the UDP and Policy HS1 of the Core Strategy, whose provisions I have referred to above.

Other Considerations

18. I recognise that the proposal would advance equality of opportunity for disadvantaged young people who share a protected characteristic due to their age. With that in mind, when considering the appeal I have had appropriate regard to the aims of the Public Sector Equality Duty (PSED), as set out in s149 of the Equality Act 2010. I have furthermore been mindful of the need to avoid giving weight to any unjustified assertions of a discriminatory nature.
19. In line with Article 3(1) of the United Nations Convention on the Rights of the Child, I am mindful that the best interests of the child are a primary consideration in all actions by public decision-makers where children are concerned.
20. In this regard, I recognise that the proposal would increase the availability of residential placements for young people. The proposed development would accommodate young people in need of care and support. The site is in an

accessible neighbourhood and centre location. Setting aside the harm I have identified, I find that the surrounding living and social environment would support the underlying objectives of the proposed community facility, and that the proposal would support the rights of disadvantaged young people.

21. Although no details have been provided, the evidence suggests that dismissing the appeal would remove accommodation for an individual child currently living at the property. This could be upsetting and disruptive to ongoing education and other support arrangements. In more general terms it would remove a valuable facility, which potentially puts additional pressure on the relevant authorities who must provide care for children.
22. Having regard to all of the above, weight is clearly attributed in favour of the development, particularly having regard to the use of the site by children. However, the weight I can attribute to these benefits is tempered as it is evident the facility is not unique and there is other accommodation within the area. In addition, limited evidence has been provided to demonstrate that the appeal site is to meet the needs of a particular child or young person. 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.
23. Whilst it has been suggested that the proposed C2 use¹ would not necessarily be materially different to a C3 (b)² use and would be able to benefit from a certificate of lawful use, it was held in *North Devon DC v FSS & Southern Childcare Ltd* [2003] JPL 1191 that the definition of 'care' in Article 2 of the UCO restricts the personal care of children to class C2 only.
24. The appellant has drawn my attention to a number of appeals, including applications for planning permission, enforcement appeals and Lawful Development Certificates where children's homes have been allowed. Whilst I note some similarities with the appeal proposal, I have no substantive evidence, as was clearly the case with the associated decisions, how the C3 (b) use operated nor am I therefore able to draw any benefits from the proposal in comparison to the C3 (b) use. In any event, I have determined this case in the light of the site-specific circumstances.
25. There are no external changes proposed to accommodate the change of use. The effect of the proposed development upon the visual appearance of the area, highway safety and parking is not disputed by the Council.

Planning Balance and Conclusion

26. I have found that the development conflicts with the development plan as it would not be a suitable location for the proposed use as it has a harmful effect on the character of the area and the living conditions of nearby occupiers. This could not be addressed by conditions.
27. My findings that the development would preserve the appearance of area, provide suitable parking and would not harm highway safety does not count for or against the appeal. However, it is a positive consideration that the residential institution would provide support services for children and employ

¹ Residential Institutions: The Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the UCO).

² Dwellinghouses - b) not more than six residents living together as a single household where care is provided for residents: The UCO.

staff in an accessible location. I recognise that the government is pushing to support this type of facility, more of which is required nationwide. I attach significant weight to the benefits the development would bring in these respects.

28. I have had due regard to the PSED and the associated benefits in terms of eliminating discrimination against persons with the protected characteristics of age, advancing equality of opportunity for those persons and fostering good relations between them and others through the provision of a home environment and the provision of residential care and support for young people.
29. However, the scale of the benefits is moderated by the lack of substantive evidence that the site has any particular advantage over other locations, where such facilities could be provided without the associated harm. Dismissal of the appeal would not prevent the continued care of children by the relevant authorities, and the overall scale of the development is small, whereas the continued use of the site may continue to harm the living conditions of neighbouring residents. The collective planning harm that I have identified is of such weight that a refusal of planning permission is proportionate and necessary.
30. For the reasons given above, I conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

K Williams

INSPECTOR