



Appeal Decision

Site visit made on 30 April 2024

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2024

Appeal Ref: APP/X1355/W/24/3339936

Land South of South College, The Drive, Durham DH1 3LD

- 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 Ian Ward of Torsion Care Ltd against the decision of Durham County Council.
 - The application Ref is DM/23/02622/FPA.
 - The development proposed is the erection of a 74 bed care home facility (Class C2 Use), with associated access road, car parking, cycle storage, landscaping, boundary treatments and refuse facilities.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 74 bed care home facility (Class C2 Use), with associated access road, car parking, cycle storage, landscaping, boundary treatments and refuse facilities at Land South of South College, Durham DH1 3LD in accordance with the terms of the application, Ref DM/23/02622/FPA and subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Ian Ward of Torsion Care Ltd against Durham County Council. This application is the subject of a separate decision.

Preliminary Matters

3. A signed and dated Unilateral Undertaking (UU) has been submitted which I will consider later in my decision.

Main Issue

4. The main issue is the effect of the proposal on existing older peoples housing provision and providers, with regard to supporting economic growth, local business needs and wider opportunities for development.

Reasons

5. The appeal site falls within a mixed-use masterplan area that was granted outline permission in 2013 for amongst other things, specialist market housing for the elderly. The proposal would provide specialist housing for older people at a care home facility within use class C2. It is not disputed that it would be in accordance with the relevant provisions of Policy 15 of the County Durham Plan (2020) (CDP) and Policy C4 of the Durham City Neighbourhood Plan 2020 to 2035 (DCNP). Having visited the site and from the evidence before me I have no clear reason to come to a different conclusion.

6. However, the Council contend that the proposal would result in unacceptable economic impacts, contrary to the National Planning Policy Framework (the Framework) and it is their position that this outweighs the policy compliance and benefits of the scheme.
7. It is suggested that there is an oversupply of residential and nursing care home bedspaces, and the Council's Adult and Health Services question the need for the proposal. My attention has been drawn to a Market Sustainability Plan (MSP). While there is not any detailed statistical evidence within it the plan states that there is around 85% under occupancy in the older peoples care homes market and it is indicated that care home operators have highlighted concerns regarding a lack of placements. There are said to be no significant issues with quality or capacity in existing care homes, and two care homes have recently closed owing to under occupancy. In addition, two new care homes previously granted permission have been constructed.
8. Nonetheless, the minutes from the meeting of the planning committee suggest that one of the closures was in a different area of County Durham to the appeal site and the new care homes are similarly in different parts of the county. Moreover, I have not been presented with any details regarding the type of provision at these establishments and as such I am unable to determine whether or not they are comparable to the appeal scheme. The appellant's position is that there is a need for care home beds in the local area.
9. Notwithstanding that there is no policy requirement for an assessment of need to be undertaken to justify proposals for specialist housing for older people, even if I were to accept the Council's view that there is currently an oversupply of bedspaces there is no clear evidence that the proposal is of such a scale that it would result in a significant over provision of specialist older peoples housing, to the extent that it would be detrimental to the local business needs of existing providers.
10. In coming to this conclusion, I have taken into account that the MSP states that it is not anticipated the current under occupancy would cause significant or overall market failure. Furthermore, I share the view of the Inspector in their decision relating to a care home for older people in Cheltenham¹ that it is not the role of the planning system to manage the care home market.
11. The supporting text to Policy 15 of the CDP indicates that in considering future housing needs other forms of specialist accommodation may be more appropriate than conventional sheltered housing to rent. The MSP sets out the Council's and wider care partnership's strategic direction of travel for the provision of older people's services which is a preventative and 'home first' approach to reduce the need for care home placements, in line with national best practice. I also acknowledge the responsibilities of the Council under The Care Act (2014).
12. Nevertheless, the definition of older people for planning purposes in the Framework recognises the diverse range of needs that exist. The Planning Practice Guidance (PPG) states that the health and lifestyles of older people will differ greatly, as will their housing needs, which can range from accessible and

¹ Appeal Ref: APP/B1605/W/22/3310455, as provided by the appellant.

adaptable general needs housing to specialist housing with high levels of care and support².

13. The Council's home first approach is a county wide strategy and there will no doubt be variations in the needs of older people at the local level given the complexities of the differing health needs and lifestyles of older people. In meeting older peoples' housing needs it is therefore my view that there is a role for specialist care home facilities such as the proposal to operate alongside interventions and packages to enable a home first approach. The proposal would contribute to the choice of accommodation to suit older people's changing needs and there is no substantive evidence that in doing so it would undermine wider opportunities for development, including the Council's efforts to implement alternative models of service delivery on a strategic level or diminish the ability of businesses to invest, expand and adapt.
14. To conclude, the proposal would not have a harmful effect on existing older peoples housing provision or providers, with regard to supporting economic growth and local business needs and wider opportunities for development. The proposal therefore accords with Paragraph 85 of the Framework which states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Other Matters

Planning obligation

15. The UU would secure financial contributions towards the impacts of the development on several matters and would satisfy the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework, namely that they are all necessary to make the development acceptable, directly related and fairly and reasonably related in scale and kind. Accordingly, they are material considerations in this appeal.
16. While the Council's submissions state that a monitoring and maintenance plan in relation to biodiversity should be secured, it is indicated that this would be through a Section 39 Agreement under the Wildlife and Countryside Act 1981. While there is no Section 39 Agreement before me, there is no substantive evidence to indicate that this is necessary to make the development acceptable in planning terms. Consequently, the absence of this obligation is not a determinative factor in my decision.
17. I have carefully considered the concerns regarding the effect of an increase in older people in this location on local healthcare which I note is at full capacity in relation to space requirements to provide appropriate services to patients. A standard methodology has been used to calculate a contribution that would meet the demand the proposal could place on local healthcare services. There is no detailed evidence to indicate that the financial contribution calculated by NHS Local Healthcare Estates would not be sufficient to offset the additional healthcare demands.
18. Therefore, taking account of the planning obligations that are set out in the UU, I conclude that the proposal makes adequate provision for additional healthcare demands, biodiversity and open space. The proposal is therefore in

² Paragraph: 003 Reference ID: 63-003-20190626

accordance with Policies 25, 26, 41 and 43 of the CDP and Policy G1 of the CDP. Amongst other things these policies require that development provides mitigation where necessary to make the development acceptable taking account of the nature of the proposal and identified local needs. Development should also provide net gains for biodiversity and coherent ecological networks, including the provision for open space to meet the needs of future residents.

Proximity to students

19. Several concerns have been raised regarding the appropriateness of siting a care home opposite South College. However, given the orientation of the proposed building and internal layout, the separation distances to the buildings at South College on the opposite side of the road and the existing landscaping, there would be no adverse effect on the future occupiers living conditions at the care home and therefore no detrimental effect on the living conditions that could reasonably be expected by the existing students.

Heritage assets

20. The site is in proximity to the Grade II listed manor house known as Mount Oswald Golf Clubhouse. From the information before me, the special interest and significance of this asset primarily stems from, singularly or in combination, it's historic and architectural interests. However, pertinent to the appeal, it is also derived, to a greater or lesser extent, from its verdant setting which includes the appeal site.
21. Given the location and extent of the proposal in relation to the listed building, I consider that the setting of this designated heritage asset would be preserved and the contribution it makes to the asset's significance would not be harmed. For the same reasons the proposal would have a neutral effect on the nearby locally listed historic park, garden and designed landscape and the City Centre Conservation Area. The proposal would therefore meet the requirements of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the provisions in the Framework regarding the conservation and enhancement of the historic environment.

Conditions

22. The conditions suggested by the Council have been considered and amended as necessary to ensure compliance with the PPG and the Framework. The appellant is also in agreement with the pre-commencement condition.
23. It is necessary to impose a condition identifying the approved plans for clarity. A condition securing material details in the interests of the character and appearance of the area is imposed. For the same reason, conditions are also imposed in relation to details of means of enclosure and elevations of ancillary structures. In the interests of highway safety and sustainable transport I impose a condition in relation to the areas being used by vehicles being laid out and cycle storage being made available for use, and the implementation of the submitted travel plan. I have omitted reference to electric charging points as this is covered by building regulations.
24. The submission of existing and proposed site levels is required in the interest of the character and appearance of the area and living conditions, and before the commencement of development to ensure site levels are properly accounted for and a suitable scheme can be achieved. Conditions are necessary to secure

proper drainage and to manage the risk of flooding and for details to be submitted post occupancy in relation to energy efficiency and carbon savings. Notwithstanding the aims of local and national policy regarding carbon savings my attention has not been drawn to any policy requirement for the scheme to achieve energy performance certificate level A, as such I have removed reference to this as there is no substantive evidence that this is reasonable.

25. To protect living conditions and highway safety, I impose a condition that the development is carried out in accordance with the Construction Management Plan (CMP) and Construction Dust Management Plan. I have omitted reference to working hours as this is contained within the CMP. To protect biodiversity and retained trees at the site a condition is imposed requiring that the development is carried out in accordance with the Construction Environmental Management Plan (CEMP) and the tree impacts and protection plan within the Arboricultural Survey and Impact Assessment (AS).
26. A condition is imposed to secure the implementation of the landscape plan and landscape management plan in the interest of character and appearance. Detailed matters have been omitted as they are included either on the landscape plan or within the CEMP and AS which have been covered in a separate condition.

Conclusion

27. I have found that the principle of specialist housing for older people at the appeal site would accord with the relevant development plan policies. In addition, a range of other policy requirements other than those matters outlined above were identified and considered within the Council's officer report which concluded that the proposal was in accordance with the related policies. I have been provided with no substantive evidence which would prompt me to disagree with the Council's conclusions in these respects, subject to the imposition of planning conditions as discussed and the contributions secured through the UU.
28. For the reasons given above, the proposal accords with the development plan, read as a whole. There are no material considerations, including the Framework, that indicate that I should take a decision otherwise than in accordance with it. Therefore, I conclude that the appeal is allowed.

F Harrison

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan COM_611_0100_K; Proposed Ground Floor Plan COM_611_1000_I; Proposed First Floor Plan COM_611_1001_G; Proposed Second Floor Plan COM_611_1002_G; Proposed Lower Ground Floor Plan COM_611_1004_E; Proposed Roof Plan COM_611_1003_E; Elevations 1 COM_611_2000_E; Elevations 2 COM_611_2001_E; Proposed Site Sections COM_611_2010_B, and External Levels 23103-DCE-XX-XX-D-C-155-P03.

Pre-commencement

- 3) Notwithstanding the details shown on the approved plans, no development shall commence until drawings, including sections, showing the existing and proposed site levels, and the finished floor levels of the proposed development and those of existing neighbouring buildings (if any), have been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be undertaken in accordance with the approved details.

After commencement

- 4) The development hereby permitted shall be carried out in strict accordance with the approved Construction Management Plan Rev C and the Construction Dust Management Plan Rev B.
- 5) The development hereby permitted shall be carried out in strict accordance with the approved Construction Environmental Management Plan FE282/CEMP01, Arboricultural Survey BS5837:2012 and Impact Assessment R3-641-03-AR-01 and the Tree Impacts and Protection Plan therein. All tree work must be undertaken in line with British Standard 3998:2010. All surface work near trees must comply with British Standard 5837:2012 and in accordance with 'Cell Web' guidance within the root protection area of retained trees.
- 6) The development hereby permitted shall be carried out in accordance with the approved Drainage Strategy and Calculations 23103 CAL01-C October 2024 (Rev C) and Drainage Strategy 23103-DCE-XX-XX-D-C-100 P05.
- 7) Notwithstanding any description of materials shown on the approved plans, prior to their use, details of the make, colour and texture of all external surfaces, including ancillary and retaining structures shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details and thereafter maintained as such.

Prior to first occupation

- 8) The approved Landscape Plan R3-641-03-LA-01 shall be implemented in the first available planting season following the first occupation of the development. Landscaping works shall be managed thereafter in accordance with the approved Landscape Management Plan R3-641-03-LA-02.
- 9) Details of all means of enclosure at the site shall be submitted to and approved in writing by the local planning authority. The enclosures shall be constructed

in accordance with the approved details prior to the first occupation of the development and retained as such thereafter.

- 10) Elevational details of all ancillary structures, including the substation, cycle storage, smoking shelter, bin store and garden furniture shall be submitted to and approved in writing by the local planning authority. The structures shall be constructed in accordance with the approved details and made available for use prior to the first occupation of the development. Thereafter they shall be retained as such.
- 11) Prior to first occupation of the development, all areas to be used by vehicles shown on approved Site Plan COM_611_0100_K shall be fully laid out and made available for use, including the access junction and road and the cycle storage. The arrangements shall be retained as such thereafter.

Post occupancy monitoring and management

- 12) After the first occupation of the development the approved Framework Travel Plan 22050 dated 26.07.2023 shall be implemented and maintained as such thereafter, including the Action Plan Framework (Table 4) and the monitoring arrangements set out in Section 9.
- 13) Within 6 months of the first occupation of the development a verification report undertaken by a competent person shall be submitted to and agreed in writing by the local planning authority confirming that the solar panels and air source heat pumps shown on the approved Proposed Roof Plan COM_611_1003_E have been brought into use and confirming the energy performance of the building and the reduction in carbon dioxide emissions.

*****End of Conditions*****