



Appeal Decision

Site visit made on 9 December 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2025

Appeal Ref: APP/F1040/W/24/3348462

14 Morley Walk, Church Gresley, Swadlincote, Derbyshire DE11 9DQ

- 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 Ms Senzeni Kamere of Lundi Education and Care against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2020/0743.
 - The development proposed is change of use from residential dwelling (Class C3) to single self-contained two bedroom independent living/care dwelling (Class C2) with one staff bedroom.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from residential dwelling (Class C3) to single self-contained two bedroom independent living/care dwelling (Class C2) with one staff bedroom at 14 Morley Walk, Church Gresley, Swadlincote, Derbyshire DE11 9DQ in accordance with the terms of the application, Ref DMPA/2020/0743, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Ms Senzeni Kamere of Lundi Education and Care against South Derbyshire District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Application Form and Officer Report suggest that Class C2 Use is operational at the appeal site. However, the appellant indicates that this is not the case and that the property provided support care for one 16-17 year old from June to November 2020 which did not require planning permission. Based on the evidence before me and my site observations, my decision has been made on the basis that the proposed change of use has not been implemented.
4. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024. Whilst some paragraph numbers have changed, the relevant paragraphs and parts of paragraphs identified as directly affecting this case have not been amended. Therefore, in this case it has not been necessary to consult the parties on the revised Framework.

Main Issues

5. The main issues in this appeal are the effect of the proposal on:

- the living conditions of neighbouring occupiers having regard to the intensity of the proposed use; and
- highway safety with particular regard to the provision of parking.

Reasons

Living Conditions

6. The appeal relates to a three-storey semi-detached dwellinghouse with 4 bedrooms and a rear garden. The appeal site is in a recently built housing estate where the properties are varied in size and style. The dwelling faces Morley Walk which provides pedestrian access only.
7. The proposal seeks to change the dwellinghouse (Use Class C3) to a residential home for a single child and two staff members (Use Class C2). No internal or external alterations to the property are proposed. Two of the three first floor bedrooms would be used by the child and a member of staff. The third bedroom would be used as a sensory room. The second floor master bedroom would be used as a staff room/office/ sleep in room.
8. The property would accommodate one child aged between 6-17 years old on arrival. Two members of staff would be in the home during the day and two would sleep in the home each night. A manager would also visit during the day, three times a week. The maximum number of people at the appeal property would generally be 4, although this could potentially be temporarily exceeded during shift changes or should the child have a visitor.
9. The appeal property has well-proportioned, spacious, comfortable living spaces. While the rear garden is small, it is comparable in size to other rear gardens of similarly sized properties in the vicinity.
10. As a 4 bedroom dwellinghouse, the appeal property could accommodate a family of 4 or more people. This would generate levels of noise and disturbance associated with activity undertaken by different generations of a family. For example, parents going to and from work at different times of the day and separate activities undertaken by the children, especially if the children were young adults. A typical family home would also generate activity associated with visitors and deliveries as part of its normal usage. Therefore, the activity associated with the proposal would not be significantly greater than if it were used as a family home. Consequently, the proposal would not result in a significantly more intensive use of the property than the existing use.
11. Third parties have raised concerns with regard to the potential for increased traffic movements as a result of the proposal, thereby causing noise and disturbance. The appellant confirms that the proposal would give rise to a maximum of 8 vehicle movements in total each day. This would comprise 4 arrivals and 4 departures of staff. This number of vehicle movements would not be significantly greater than that generated by the existing use of the property as a family home. This could include vehicle movements of parents going to and from work at different times of the day, and trips associated with childcare, shopping and leisure activities. Adult children in the family could also potentially own a car and generate separate trips associated with their own activities. Therefore, the proposal would not result in a significant

increase in traffic movements compared to its existing use as a large family house.

12. Paragraph 5.5 of the Council's appeal statement refers to the location of the appeal site, "as quieter in character where it would be reasonable to expect lower background noise and fewer disturbances than in the centre of the urban areas of the district." However, paragraph 1.1 of the statement acknowledges that the "the surrounding area is predominantly residential and densely populated". Notwithstanding the unclear definition of the character of the area, there is no policy before me which sets different expectations for central and peripheral areas with regard to noise and disturbance. Equally, there is no policy before me which directs proposals for Use Class C2 to 'the centre of urban areas'.
13. In any event, I have found that the proposal would be unlikely to give rise to a greater level of noise and disturbance than the existing use of the property as a 4 bedroom family home due to the small number of children that the proposal would accommodate. Furthermore, a planning condition could be imposed, should the appeal be allowed, to limit the number of children and staff that would be accommodated at the property at any one time.
14. A third party has referred to the thin walls of the appeal property. However, no substantive evidence has been submitted in support of this statement.
15. For the reasons given, I conclude that the proposal would not unduly harm the living conditions of neighbouring occupiers having regard to the intensity of the proposed use. Consequently, it would comply with Policies SD1 and BNE1(h) of the South Derbyshire Local Plan Part 1 (August 2016) (the LP) insofar as they require development to not lead to adverse impacts on the amenity of nearby existing occupiers.

Parking Provision

16. The appeal site has one dedicated surface car parking space in front of a further parking space within a single garage. These are accessed via an alleyway to the side of the property by foot or from Hope Way by road. There are also 5 visitor car parking spaces which are shared with neighbouring properties, also accessed from Hope Way.
17. While the garage is currently used for storage, it would not be impossible for the appellant to clear the garage to enable a car to be parked inside. However, given that the surface parking space is directly in front of the garage, co-ordination between the staff would be required to enable both spaces to be used at the same time. The arrangement of the parking spaces could therefore lead to the potential for increased pressure for on street parking in the area. However, this situation would be no different to the existing situation were the occupiers of the appeal dwelling to own two cars.
18. Excessive on street parking in Hope Way and other streets near Morley Walk was not apparent during my site visit. Furthermore, there was only one car parked in the visitor parking area at the time of my site visit. While I acknowledge that my observations were made at one point in time and are therefore potentially unrepresentative of the parking situation, the Officer Report and the Council's appeal statement do not raise concerns about

existing parking problems. In addition, I am mindful that the Highway Authority did not object to the proposal.

19. While the proposal could lead to the potential for increased demand for parking in the highway, the level of potential additional demand would be unlikely to harm the proper functioning of the highway, particularly in the absence of substantive evidence relating to existing on-street parking pressure. Consequently, it has not been demonstrated that the proposal would have an undue detrimental impact on highway safety. Refusal on highway grounds is not therefore warranted.
20. For the reasons given, I conclude that the proposal would not have an unacceptable impact on highway safety. Hence, it would comply with Policy INF2A(i)(a) of the LP insofar as it requires development to have no undue detrimental impact on highway safety.

Other Matters

21. There have been a considerable number of representations from local residents concerning the proposal. Some of the matters raised are not of direct relevance to the planning considerations of the appeal, including the impact on property values. It is a well-founded principle that the planning system does not exist to protect private interests such as the value of land and property. In respect of fire safety, the relevant Building Regulations make suitable provision in that regard. The experience and qualifications of the director of the registered provider is not a planning matter. Issues relating to landownership are governed by property law, not planning law. I will address the planning related matters in turn below.
22. Third parties have expressed concerns about a potential increase in anti-social behaviour and crime carried out by future occupants of the appeal scheme which would impact the safety, health and well-being of local residents. Fears have also been expressed that the proposal would house young people with learning disabilities, mental health and substance abuse, thereby endangering the safety and security of young children resident in the area. Generally, local residents consider that the appeal site is not a suitable location for a children's home. However, since the future occupants of the proposal are unknown, it would be conjecture and unreasonable to withhold planning permission on the basis of preconceptions about their propensity to commit crime. Submissions linked solely to the characteristics of future occupiers would not justify a refusal of permission. Third parties have pointed to the attendance of police officers concerning issues of parking, noise and drug use associated with the appeal property. However, there is no substantive evidence before me regarding these instances. Furthermore, the presence of police does not confirm that an offence has been committed.
23. Residents have pointed to the unlawful use of the appeal property suggesting that Class C2 Use is operational. However, the appellant confirms that this is not the case and that the property provided support care for one 16-17 year old from June to November 2020 which did not require planning permission. Based on the evidence before me and my site observations, I have no reason to disagree with the appellant.
24. The proposal does not include any external changes or enlargement of the building, so it would not have any greater impact on neighbouring properties

in respect of outlook and privacy than the existing building. Furthermore, the Council has raised no concerns in relation to outlook and privacy, and I find no reason to disagree.

25. One resident has pointed to a document which restricts the use of the property to a single private dwelling house. However, I have not been provided with this document and the Council has not brought to my attention to any planning restrictions.
26. There is no statutory requirement for the appellant to engage with community with regard to the proposal.

Conditions

27. The Council has provided a list of suggested planning conditions which I have considered against the Framework and advice contained in the Planning Practice Guidance (PPG).
28. A standard time condition for the commencement of development and compliance with the approved plans is necessary to provide certainty and clarity.
29. A condition requiring the existing parking spaces at the appeal site to be retained for the lifetime of the development is required to ensure adequate parking provision.
30. A condition restricting the use to a children's home is appropriate and necessary given the potential of other uses within Use Class C2 to give rise to other planning harms. A condition limiting the maximum number of children and carers (including the manager) accommodated at the property is necessary to adequately control the use of the site to protect the amenity of the area.
31. One of the Council's suggested conditions limits the duration of the permission to 2 years for reasons relating to highway safety and the amenity of the area. This condition would fail the test of necessity given my findings that the proposal would not adversely affect highway safety or the living conditions of neighbouring occupiers.

Conclusion

32. For the reasons given above the appeal should be allowed.

U P Han

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: Block Plan drawing received 4th March 2021; and Proposed Floor Plans drawing received 25th June 2020; unless otherwise required by condition attached to this permission or following approval of an

application made pursuant to Section 96A of the Town and Country Planning Act 1990.

- 3) The use hereby approved will accommodate a maximum of 1no. child and 3 no. carers (including 1no. manager) within the site at any one time as per the Revised Statement of Purpose (received 02/04/2024). This arrangement will be retained for the lifetime of the development.
- 4) The existing parking spaces at the site shall be retained for the lifetime of the development.
- 5) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 2015 (as amended) the premise shall be used solely for the purposes of a children's home, as defined by Class C2 of that legislation, and for no other purposes whatsoever. Proposals to use the premises for any other purpose within that class shall not take place unless a separate formal planning application has first been submitted to and approved in writing by the Local Planning Authority.