



Appeal Decisions

Site visit made on 30 January 2025

by **Siobhan Watson BA(Hons), MCD, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Appeal A Ref: APP/C4615/C/23/3335934

70 Quarry Lane, Halesowen, B63 4PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Serenity Path Care against an enforcement notice issued by Dudley Metropolitan Borough Council.
- The notice was issued on 22 November 2023.
- The breach of planning control as alleged in the notice is the change of use of a residential dwelling to a children's care home.
- The requirements of the notice are to: Cease the use of the land as a children's care home.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.

Appeal B Ref: APP/C/4615/W/23/3330784

70 Quarry Lane, Halesowen, B63 4PD

- 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 Serenity Path Care against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P23/0492.
 - The development proposed is the change of use from a dwellinghouse (C3) to a children's residential home (C2).
-

Decisions

1. Appeal A: The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B: The appeal is dismissed.

Appeal A: The appeal on ground (d)

3. Although the appeal form indicates that ground (d) is appealed, no substantive case has been made. The appellant's case is that the notice should not have been served whilst a S.78 appeal was being considered.
4. However, the ground of appeal under s174(2)(d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This relates to whether the use has become lawful over time. The time limits are set out in s171B of the Act. The time limit for enforcement in this case is 10 years. The 10-year period must have occurred before the enforcement notice was served. The onus of proof is on the appellant.

5. The planning application form for the linked S.78 appeal, which is dated 24 May 2023, says that the existing use of the building is a C3 dwelling and the change of use has not already started. The Council says that the property was bought in March 2021 by the current owners. Both of these factors suggest that the home has been operating far less than 10 years.
6. For the above reasons, and, on the balance of probability, the evidence does not precisely and unambiguously demonstrate that the use has operated for a 10-year period. Therefore, I conclude that the ground (d) appeal fails.

Appeal A on ground (a) and Appeal B

Main Issues

7. The main issues are the effect of the change of use on (i) highway and pedestrian safety, with particular regard to car parking and (ii) the living conditions of neighbours.

Highway Safety

8. The appeal site is a three-bedroom semi-detached house which is set back from Quarry Lane behind a public right of way. This public right of way runs in front of the dwelling's double drive and turns down the side of the house. The drive to the house has 2 parking spaces and is accessed off the public right of way which is a single width track. The track also serves the adjoining semi, No 68, and the bungalow at 72 Quarry Lane.
9. The Council's Parking Standards Supplementary Planning Document indicates that a 3-bedroom house should have a minimum of 2 spaces. The Council has confirmed that there is no set parking standard for the children's home.
10. The care home is for 2 children. The appellant's evidence is that there would be no more than 2 or 3 members of staff at the home at one time although there may be short periods during staff handovers. There are also visitors and deliveries to the home. Given that there are only 2 parking spaces, I accept that at times, it is likely that visitors and even members of staff would park on the road. However, even if the property were used as a dwelling, it is quite possible that visitors would also have to park on the road if both spaces on the drive were occupied. It is also possible that potential occupants of the house could have more than two cars between them.
11. At the time of my visit, I noted that there was space available to park on the street. Whilst I note the comments from neighbours that sometimes their drives are blocked, I have no substantive evidence that this is caused by the use. I note residents' comments that the nearby primary school causes parking problems. However, the on-street parking arising as a result of a children's home for just two children cannot be compared to the parking demand of a whole primary school. Therefore, I do not accept that the children's home materially exacerbates the parking issues associated with the school.
12. The Council has expressed concerns about cars accessing and egressing the property's drive. There are only two spaces on that drive which is the same number of spaces that would be there if the property reverted back to a house. I have no substantive evidence that movements on and off the drive are any greater than they would be if the property were a family home. Furthermore, the manoeuvring to

enter and exit the drive is not changed by the use of the building. Regardless of whether the building is a house or a children's home, the public right of way would still have to be crossed to get on and off the drive.

13. I note comments from a neighbour that the public right of way has been blocked on numerous occasions. It is not clear if the blockage has been caused by a parked car in association with the children's home. In any event, I have found that the volume of parking would not be excessive in respect of that use.
14. For the above reasons, I conclude that the change of use does not harm highway or pedestrian safety. Therefore, I find no conflict with Policy S17 of the Dudley Borough Development Strategy (DBDS) which seeks to ensure that development is safe in terms of highway safety. Neither do I find conflict with Policy TRAN2 of the Black Country Core Strategy which seeks to ensure that development does not have significant transport implications.

Living Conditions

15. A significant number of objections have been received from local residents about the current use of the property. In summary, there are numerous allegations relating to the behaviour of children and staff. Allegations include disturbance to neighbours, including in the night, and that anti-social behaviour at the house, such as shouting, can be heard several doors away. The adjoining next-door neighbour has reported hearing anti-social behaviour through the walls. The same neighbour has also described noise and activity coming from the garden in the early hours of the morning. The Police also object to the care home and have confirmed that within a 5-week period they were called to the address 7 times.
16. Although the Council acknowledge that the use has been the cause of some concern and disturbance to local residents, it considers that a condition relating to the management of the premises could resolve these issues. However, there is no condition before me which would address this matter and I do not consider that a condition is an appropriate way to deal with anti-social behaviour.
17. Whilst I accept that DBDS Policy L2 supports the provision of supported accommodation for people with specific needs, this says that it must be considered in relation to local amenity.
18. For the above reasons, I consider that the development is harmful to the living conditions of neighbours. This conflicts with paragraph 135 of the National Planning Policy Framework which says that planning decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Other Matters

19. I understand that the Council has a statutory duty to accommodate looked after children. I also note the Ministerial Statement by Rachel Maclean, of the last Government, who said that local planning authorities should be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs. The National Planning Policy Framework also says in Paragraph 63 that Councils must establish the need for

housing for looked after children. The provision of specialist accommodation is a social benefit weighing in favour of the appeal. However, this benefit must be balanced against other considerations, including local amenity.

Planning Balance and Conclusions

20. I find no harm to highway safety which is a neutral consideration in the balance.
21. I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. However, the harm caused by the development, significantly and demonstrably outweighs its benefit in providing accommodation for up to two children. I therefore conclude that it is proportionate and necessary to dismiss this appeal.
22. The enforcement notice will interfere with the children's rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life and their home. This is a qualified right, whereby interference may be justified if in the public interest, but proportionality is crucial. The Council's decision to enforce was legitimate and in the public interest, given the harm caused by the development.
23. The proposal conflicts with the development plan as a whole and for the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended). I also dismiss the S.78 appeal.

Siobhan Watson

INSPECTOR