

PLANNING COMMITTEE – 13 December 2011

REPORT OF THE DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION) RE: APPEALS LODGED AND DETERMINED

1. PURPOSE OF REPORT

To inform Members of appeals lodged and determined since the last report.

2. RECOMMENDATION

That the report be noted.

3. BACKGROUND TO THE REPORT

Appeals Lodged

None

Appeals Determined

Appeal by Mr Frank Downes against the refusal of full planning permission (10/00980/FUL) for the erection of 5 dwellings at 9 Spa Lane, Hinckley

The Inspector considered there were two main issues to be considered, firstly, the impact on the living conditions of the future occupiers of the proposed dwellings and, secondly, the effect of the proposal on the character and appearance of the residential area. Importantly the Planning Inspector noted and referred to a previous planning approval on site for four dwellings (reference 11/00224/FUL) which was for one extra dwelling.

With regard to the provision of financial contributions towards open space, the Inspector noted that the appellant had submitted a completed Unilateral Undertaking under S106 of the Act, at the request of the Council. It fulfilled the test set out in CIL Reg. 122; the contribution was necessary, directly related and reasonably related in scale and kind to the proposed development. The Inspector concluded that the undertaking ensured there would be no adverse impact on the future living conditions of the proposed dwellings.

The houses on plots 1 and 5 of the proposal would be in very similar positions as those on plots 1 and 4 of the approved scheme for four dwellings. The remaining proposed houses on plots 2, 3 and 4 would however be tightly packed very close together with little green space and large areas of hard surfacing for vehicles giving a hard, urban appearance, dominated by building and land surfaces.

The Inspector considered that the closeness of the willow tree and the fir trees to the house and garden would produce a claustrophobic environment in the rear garden and there would be pressure from future owners of the property to lop or remove some of the surrounding trees, to the detriment of the appearance and character of the area.

The Inspector concluded that the development would adversely affect the character and appearance of the area. It would be contrary to the Council's design policies in the Local Plan.

In relation to the Council not having a current 5-year housing land supply, for the sake of one extra dwelling beyond those already granted permission the Inspector did not consider that this circumstance would outweigh the very serious visual harm that would be caused.

Inspector's Decision

Appeal dismissed (committee decision)

Appeal by Mr and Mrs J Hitchcock against the refusal the refusal of full planning permission (11/00228/FUL) for the erection of one dwelling, detached garage and formation of access on land between 3 and 15 Shenton Lane, Market Bosworth.

Two main issues were considered by the Inspector in this appeal. Firstly, the impact on the living conditions of future occupiers of the proposed dwelling arising from the provision of public open space; and secondly the effect of the proposal on highway safety and the free flow of traffic along Shenton Lane due to the proposed vehicular access and car parking.

With regard to the first issue, the Inspector referred to saved Local Plan policies REC3 and IMP1 which provided the standards set out for public open space and the provision of financial contributions towards it supported the adopted Supplementary Planning Document (SPD) on Play and Open Space. It was noted the proposal had triggered a requirement for an open space contribution of £1,250.80 to be in compliance with the contribution details that are set out in the adopted SPD.

The appellant had submitted a completed Unilateral Undertaking under S106 of the Act contributing the specified amount for the provision and maintenance of off-site public play and open space facilities which satisfied the Council's reason for refusal. The Planning Inspector concluded that the undertaking would ensure there would be no adverse impact on the future living conditions of the occupiers of the proposed dwelling.

The second issue related to highway safety. The Inspector noted that the proposed access would be onto Shenton Lane, a narrow road within a 30 mph limit. The Inspector then addressed the issue of visibility of the access coming out on to Shenton Lane.

It was noted the visibility from the access was less than 10 metres in each direction, which is contrary to technical advice given in the Manual for Street (MfS). The MfS indicates that within areas with a 30mph limit the visibility in each direction should be 43 metres, measured 2.4 metres back from the carriageway.

The Inspector pointed out that it might be possible to increase the visibility to the south west, it could not however be increased in the critical north east. The available visibility in this direction was so little that the Inspector considered vehicles emerging from the site would cause a danger to highway safety.

The Inspector was not convinced the proposal as designed could properly provide three parking spaces and a workable and effective turning area for a four-bedroomed dwelling such as this proposal.

The Inspector reiterated that the Highways Authority was also concerned about the parked vehicles obscuring the visibility splays. In the Inspector's view, there was no substantial or convincing evidence that the minor loss of any car parking spaces on the road as a result of this proposal would lead to an unacceptable parking situation in the town centre which in turn would lead to a danger to highway safety.

The Inspector concluded that the proposal would seriously harm highway safety and interfere with the free flow of traffic along Shenton Lane due to the inadequate visibility splay distances and the likelihood that some vehicles would reverse out of the driveway. It was considered to be contrary to saved Local Plan Policy T5. On the grounds that the scheme's failure to meet highway standards, the Inspector concluded that the appeal should be dismissed.

Inspector's Decision

Appeal dismissed (committee decision)

Appeal by Chartwell Care Limited against the refusal to issue a Certificate of Lawful Use (11/00279/CLU) for the use of a dwelling house as a children's care home at 15 Crownhill Road, Burbage

In this appeal, the issue for consideration was whether the Council's decision to refuse to grant a certificate was well-founded.

The appeal property was described by the Planning Inspector as a large modern detached dwelling house. It was proposed as a care home for children / young people with learning disabilities. Despite

evidence to suggest the dwelling house had previously been used as a children's care home, its lawful use had remained a dwelling house in Use Class C3 of the Use Classes Order.

The appellants contended that the proposed use could be argued to fall within part (b) of Class C3 and, even if the use were to fall within Use Class C2 (residential institutions), any change of use from Class C3, they argued would not be a material change of use and therefore would not amount to development.

Firstly, the Inspector made an assessment on which Use Class the use should fall into (either C2 or C3). Children need to be looked after and could not on their own be regarded in the true sense as a household without the presence of a carer. Given the carers were not resident they could not be regarded as living together in a household.

From a technical perspective the Inspector stated that the concept of living together as a household means, in the context of Class C3 (b), that a proper functioning household must exist'. The Inspector considered this not to be the case, and for this reason, the proposed use was considered to fall into Class C2 and a change of use from Class C3 had taken place.

The Inspector then assessed whether the change of use from C3 to C2 would result in a *material* change of use. The appellants explained that the model of care provided sought to replicate typical family life in an ordinary local community. The changeover of care workers and vehicle movements/potential travel arrangements were then noted.

In refusing to issue a certificate, staff numbers were cited by the Council as the sole cause for concern. However, the Inspector disagreed on the basis that the numbers involved were not materially different from what might be expected of a large family house and the typical comings and goings of a family with teenagers or young adults.

The Inspector acknowledged the Council's stance that potential existed for greater staff numbers to be at the property to deal with particular difficulties. However, this was regarded as an exception and not part of the typical day-to-day operation of the home. The Inspector then dismissed the arguments put forward by neighbouring residents who were of the view that a material change of use would occur.

The Inspector found that the proposed use would not, as a use within Class C2, amount to a material change of use from a Class C3 use as a dwelling house. On this basis, the change of use would not amount to development for which planning permission would be required.

The Inspector concluded that, on the available evidence, the Council's refusal to grant a Lawful Development Certificate in respect of the use

of a dwellinghouse as a children's home was not well-founded and that the appeal should succeed

The Inspector granted a certificate in the terms attached to the report. It certifies that the change of use from Use Class C3 dwellinghouse to Use Class C2 residential institution is considered a lawful use and shows the terms under which the certificate was granted - please see the attached certificate at the end of this report.

Cost decision for an award of costs

The appellant also made an application for costs. In considering that application, the Inspector formed the following conclusions;

- the objections appeared to relate to the planning merits of the use and not to its lawfulness or otherwise;
- members had the objections on planning merits uppermost in their mind;
- no reason was given for coming to the view that the proposed use would be a material change of use by reason of the numbers of staff

The Inspector, whilst acknowledging that clear advice was given to Members and the Council had mounted a cogent defence of the decision, found that the Council had behaved unreasonably in refusing the certificate and reasonable planning grounds had not been shown for a decision taken contrary to officers' clear and repeated advice.

He said that if the committee had exercised its powers in line with legislative provisions and officers' advice relating to LDC applications, it would have limited its considerations to questions of lawfulness.

The Inspector therefore made a full award of costs against the Council the amount of which is now being negotiated with the appellant.

Inspectors Decision

Appeal allowed (committee decision)



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 24 March 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Although a change of use from a use in Use Class C3 dwellinghouse to Use Class C2 residential institutions would occur, it does not amount to a material change of use and no development requiring planning permission would therefore take place.

Signed

C M Hoult

INSPECTOR

Date 7 November 2011

Reference: APP/K2420/X/11/2155849

First Schedule

The use of a dwellinghouse as a children's care home pursuant to the Children's Act 2000 for children who fall within the Ofsted registration for children with learning disabilities, in which:

- (1) no more than three children are receiving care at any one time;
- (2) the children in care are aged from 9 to 17 years' old with an age range of no more than three years at any one time;
- (3) the home at no time provides care for children with emotional and/or behavioural difficulties;
- (4) there are no more than (a) two staff on duty between 07.00 and 08.00 to prepare the children for school or between 14.30 and 22.30, unless

exceptionally a further member of staff is required to meet individual needs (b) no more than three staff on duty at weekends and during school holidays, and (c) normally no more than one waking staff at night to provide support to the children with a further member of staff sleeping in who would be available should further assistance be required;

- (5) no parental visits to children normally take place;
- (6) no room is used as an office and no business meetings of any kind take place;
- (7) no more than three vehicles are parked at or around the home at any one time;
- (8) no activity in relation to staff vehicle movements takes place before 07.30 or after 22.00.

Second Schedule

Land at 15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

4. FINANCIAL IMPLICATIONS [CB]

There are sufficient funds within existing planning budgets to cover the award of costs against the Council for the Chartwell Care Ltd. appeal.

5. LEGAL IMPLICATIONS [MR]

Set out in the report

6. CORPORATE PLAN IMPLICATIONS

This document contributes to Strategic Aim 3 of the Corporate Plan

- Safer and Healthier Borough.

7. CONSULTATION

None

8. RISK IMPLICATIONS

None

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

None

10. CORPORATE IMPLICATIONS

By submitting this report, the report author has taken the following into account:

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|---------------------------------|------------------------------|
| - Community Safety implications | None relating to this report |
| - Environmental implications | None relating to this report |
| - ICT implications | None relating to this report |
| - Asset Management implications | None relating to this report |
| - Human Resources implications | None relating to this report |
| - Voluntary Sector | None relating to this report |

Background papers: Appeal Decisions

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