

Report to the Planning Committee

24 July 2024

Subject:	Decisions of the Planning Inspectorate
Contact Officer:	John Baker Service Manager - Development Planning and Building Consultancy John_baker@sandwell.gov.uk Alison Bishop Development Planning Manager Alison_bishop@sandwell.gov.uk







1 Recommendations

- 1.1 That Planning Committee notes the decisions of the Planning Inspectorate as detailed in the attached appendices.

2 Reasons for Recommendations

- 2.1 This report is submitted to inform the Committee of the outcomes of appeals that have been made to the Planning Inspectorate by applicants who were unhappy with the Committee's decision on their application.

3 How does this deliver objectives of the Corporate Plan?

		We now have many new homes to meet a full range of housing needs in attractive neighbourhoods and close to key transport routes.
		Our distinctive towns and neighbourhoods are successful centres of community life, leisure and entertainment where people increasingly choose to bring up their families.
		Sandwell now has a national reputation for getting things done, where all local partners are focused on what really matters in people's lives and communities.

4 Context and Key Issues

- 4.1 Applicants who disagree with the local authority's decision on their planning application may submit an appeal to the Planning Inspectorate. An appeal may also be made where the local authority has failed to determine the application within the statutory timeframe.
- 4.2 Appeals must be submitted within 3 months (householder proposals) six months (commercial developments) of the date of the local authority's decision notice.
- 4.3 Decisions on the following appeals are reported, with further detailed set out in the attached decision notice:-

Application Ref	Site Address	Inspectorate
DC/23/68570	7 Temple Meadows Road West Bromwich B71 4DE	Appeal allowed with conditions Cost application allowed

5 Alternative Options

- 5.1 There are no alternative options.

6 Implications

Resources:	There are no direct implications in terms of the Council's strategic resources. If the Planning Inspectorate overturns the Committee's decision and grants consent, the Council may be required to pay the costs of such an appeal, for which there is no designated budget.
Legal and Governance:	The Planning Committee has delegated powers to determine planning applications within current Council policy. Section 78 of the Town and Country Planning Act 1990 gives applicants a right to appeal when they disagree with the local authority's decision on their application, or where the local authority has failed to determine the application within the statutory timeframe
Risk:	There are no risks associated with this report.
Equality:	There are no equality implications associated with this report.
Health and Wellbeing:	There are no health and wellbeing implications associated with this report.
Social Value	There are no implications linked to social value with this report.
Climate Change	Sandwell Council supports the transition to a low carbon future, in a way that takes full account of the need to adapt to and mitigate climate change. Proposals that help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure, will be welcomed.

7. Appendices

APP/G4620/W/23/3334290



Appeal Decision

Site visit made on 15 May 2024

by **H Wilkinson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Appeal Ref: APP/G4620/W/23/3334290

7 Temple Meadows Road, Sandwell, West Bromwich B71 4DE

- 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 Jas Birring of Bright Life Living against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref is DC/23/68570.
 - The development proposed is the change of use from sui generis self-contained flats to Use Class C2 - children's residential care home.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use from sui generis self-contained flats to Use Class C2 - children's residential care home at 7 Temple Meadows Road, Sandwell, West Bromwich, B71 4DE in accordance with the terms of the application, Ref DC/23/68570, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The decision hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. 01 - Site Location and Block Plans, Drawing No. 03 - Proposed Plans and Drawing No. 04 - Existing and Proposed Elevations.
 - 3) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that order with or without modification) the premises shall only be used as a children's residential home for up to three children aged 8-17 and for no other purpose (including any other use falling within Class C2 of the Order, but may revert back to C3 (dwellinghouse) on cessation of the use).
 - 4) Prior to the first occupation of the development hereby permitted, the vehicular parking as shown on Drawing No. 01 - Site Location and Block Plans shall be provided and shall thereafter be retained for the purposes of parking.

Applications for costs

2. An application for costs was made by Mr Jas Birring of Bright Life Living against Sandwell Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. However, the policies of the Framework that are material to this case have not fundamentally changed. Therefore, I have proceeded to determine the appeal having regard to the revised Framework.
4. Additional information, including details of the organisational structure of Bright Life Living and relevant planning history has been submitted with the appeal. However, this information does not fundamentally change the appeal proposal. Further, given that the appeal procedure has provided an opportunity for the parties to comment on this information, I am satisfied that no party has been prejudiced.
5. Planning permission¹ has been given by the Council for the change of use of the dwelling to 2, 2-bed self-contained flats. Whilst construction works would appear to have commenced on site, the use has yet to be implemented. Thus, in considering the effects of the appeal development, I have had regard to the comings and goings associated with the use of the appeal property as a single dwelling as this better reflects the comings and goings baseline. Nevertheless, as development has begun in association with the 2021 permission, this is a strong fallback which is of significant weight.

Main Issue

6. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupants of neighbouring properties, with particular regard to traffic movements and noise disturbance.

Reasons

7. The appeal property is one half of a semi-detached unit and occupies a modest sized plot. It lies in a relatively dense, suburban residential area characterised by properties of a similar scale and form. Properties typically front the road and are set back, behind front gardens, many of which are open fronted to allow off-street parking.
8. The proposed care facility would accommodate 3 young people between the ages of 8 and 17. There would be 2 members of staff on site providing 24-hour care provision working a shift pattern. In addition, there would be a manager working Monday to Friday 0900 to 1700. Additional support staff would be available between 1000 and 1030. Monthly visits by social workers and an independent reviewing officer would be by appointment only, whilst family and contact visits would typically be arranged off site.
9. The appeal site is within reasonable walking distance of existing services and facilities including local schools and is relatively well served by public transport. The children's independence would be encouraged meaning that some day-to-day journeys would be made without reliance on private vehicles. Nevertheless, given the shift patterns and changeover of staff, it is considered likely that there would be some limited additional traffic movements over and above that associated with a single dwelling house, including arrivals/departures later in the evening.

¹ DC/20/65067

10. Notwithstanding the above, noise and disturbance resulting from vehicular movements would not be uncommon in this area owing to the position of the appeal property on a main thoroughfare. Moreover, given the inevitable variation in work patterns and social activities of neighbouring occupiers, it would not be unusual for the residents to be aware of the comings and goings of their neighbours throughout the day. Having regard to the above, and the limited staff numbers, I find that the anticipated movements would not be disproportionately large or significantly greater than those which could reasonably be expected of a family carrying out their day-to-day activities or 2 households occupying the property as self-contained flats.
11. The internal layout of the residential care home and outdoor living space would not be dissimilar to a family dwelling. Despite the Council's assertions, there is a lack of substantive evidence to demonstrate that the potential emotional and behavioural difficulties of the children residing at the property would result in any greater disturbance than a domestic family residence or that the 24-hour supervision would be untypical of such a setting. Furthermore, given that the planning permission relates to the land, the credentials of the care provider and Ofsted rating are not relevant to the consideration of the merits of the case.
12. For these reasons, I find that the proposed development would not harm the living conditions of neighbouring occupiers, with particular regard to traffic movements and noise disturbance. It would therefore accord with Policy SAD H4 of the Sandwell Allocations and Delivery Development Plan Document 2012 where it seeks to ensure that proposals for specific needs housing is compatible with adjacent uses. It would also be consistent with paragraph 135 of the Framework which promotes a high standard of amenity for existing occupiers.

Other Matters

13. The Framework seeks to ensure that development is inclusive, and the fear of crime does not undermine the quality of life, community cohesion and resilience. While the fear of anti-social behaviour is a material consideration, there must be some reasonable evidential basis for that fear. There is no compelling evidence before me to indicate that the proposal would give rise to anti-social behaviour. Similarly, there is a lack of cogent evidence to suggest that the public sewer has insufficient capacity to accommodate the additional flows.
14. Whilst I recognise that at other times of the day demand for parking could be higher, at the time of my site visit, mid-morning, I observed limited parking stress along Temple Meadows Road. Even if an additional vehicle associated with the development needed to park on the road, given the scale and likely frequency, I am satisfied that there would be sufficient capacity to park along Temple Meadows Road without adversely impacting highway safety.
15. It has been suggested that the Council's publication of the planning application was inadequate. However, the evidence before me indicates that the interested party concerned was notified of the appeal and I have had full regard to the representations made in reaching my decision.

Conditions

16. I have had regard to the planning conditions that have been suggested by the Council and I have considered them against the tests in the Framework and the

advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and for clarity and consistency.

17. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. To ensure that the intensity of the use of the site is managed in the interests of living conditions, it is necessary to restrict the use of the site and the number of children to reside at the property. I have imposed a condition requiring the provision of the off-street parking prior to first occupation of the development in the interests of highway safety.

Conclusion

18. For the reasons given above the appeal is allowed.

H Wilkinson

INSPECTOR



Costs Decision

Site visit made on 15 May 2024

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Costs application in relation to Appeal Ref: APP/G4620/W/23/3334290 7 Temple Meadows Road, Sandwell, West Bromwich, B71 4DE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jas Birring of Bright Life Living for a full award of costs against Sandwell Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for the change of use from sui generis self-contained flats to Use Class C2 - children's residential care home.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In this case, the applicant's cost application essentially relies on the fact that the Council's reason for refusal was founded on inaccurate assertions about the impact of the proposed development which were not supported by objective analysis. Therefore, in refusing planning permission, the Council delayed development which should have been permitted.
3. There is little meaningful or structured discussion within the delegated report regarding the site-specific impacts of the proposal beyond vague, generalised assertions. Having regard to the Public Health response on which I am led to believe the reason for refusal is largely based, I find there to be a lack of substantive evidence to support the claim that the emotional or behavioural difficulties of the residents and the associated care requirements would result in a greater level of noise disturbance than that which would be expected of a family with 3 children. Furthermore, despite reference to increased comings and goings within the refusal reason, there is a clear lack of analysis within the Council's reasoning in relation to how the traffic movements would compare to the use of the property as a family dwelling, or 2 self-contained flats as recently permitted.
4. In the absence of any objective analysis informed by robust evidence, it cannot be reasonably argued that the traffic movements and noise resulting from the use of the property as a care home would be materially different to that of a domestic family residence. Whilst the Council seeks to argue that proactive attempts were made to support the scheme through the use of a temporary condition, this would in my view, fail the test of necessity, particularly given

that the officer's reasoning failed to demonstrate that such a condition would be necessary to make the development acceptable.

5. I do not dispute that matters of noise and disturbance are material planning considerations. However, in this case, no credible evidence has been provided to demonstrate that the proposal would be harmful by reasons of increased traffic movements and noise disturbance. Indeed, in my accompanying decision I explain why I find no basis to the objection on these grounds. Under these circumstances, I am unable to conclude that the reason for refusal was informed by robust, objective analysis or indeed stands up to scrutiny on the planning merits of the case. Thus, I find that there was no reasonable basis for the Council to justify a refusal of the planning application.
6. Accordingly, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has been demonstrated. A full award of costs, to cover the expense incurred by the applicant in contesting the Council's reason for refusal, is therefore justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Sandwell Metropolitan Borough Council shall pay to Mr Jas Birring of Bright Life Living, the costs of the appeal proceedings described in the heading of this decision. Such costs to be assessed in the Senior Courts Office if not agreed.
8. The applicant is now invited to submit to Sandwell Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

H Wilkinson

INSPECTOR