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## Appeal Decision

Site visit made on 18 February 2020

**by Jillian Rann BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 March 2020**

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**Appeal Ref: APP/J3015/W/19/3241769**

**The Gables, 169-171 Attenborough Lane, Chilwell NG9 6AB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Harding (FX Property UK Limited) against the decision of Broxtowe Borough Council.
  - The application Ref 19/00012/FUL, dated 4 January 2019, was refused by notice dated 9 September 2019.
  - The development proposed is change of use from a nursing and residential care home (use class C2) to four no. HMOs (use class C4).
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Harding (FX Property UK Limited) against Broxtowe Borough Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. Since the application was refused, the Part 2 Local Plan 2018-2028 (the Part 2 Local Plan) has been adopted, on 16 October 2019. The 'Draft Part 2 Local Plan' policies referred to in the Council's submissions and reason for refusal are therefore now adopted. The Council has confirmed that the Broxtowe Local Plan 2004 has been superseded and that the policies within it are no longer relevant. I have considered the appeal accordingly. The adoption of the Part 2 Local Plan is confirmed in the Council's statement and, as it is clear from the appellant's submissions that he was aware of its adoption, I am satisfied that he has had the opportunity to comment on the matter.
4. The address in the heading above is from the application form. Despite some apparent disagreement as to whether the site is in Chilwell or Attenborough, it is clear from the submitted details which site the appeal relates to.
5. The Council's decision was based on amended drawings and additional supporting information submitted during the course of the application. It is clear from the Council's submissions that those further documents were the subject of publicity, and that interested parties have thus had the opportunity to comment. I have therefore based my decision on those additional and

amended details, consistent with the Council's decision, and am satisfied that no party would be prejudiced by my having done so.

6. Therefore, for the avoidance of doubt, my decision is based on the proposal as shown on the following drawings: Location and Block Plan drawing no C/201 revision C; Proposed Site Plan drawing no C/200 revision G; Proposed Ground Floor Plan drawing no C/100 revision G; Proposed First Floor Plan drawing no C/101 revision G; and Proposed Elevations drawing no C/105 revision D.

### **Main Issues**

7. The Council's reason for refusal refers to the impact on neighbour amenity and to an unacceptable increase in vehicle movements due to the inadequacy of the parking layout. However, in the light of the objection from the Environment Agency (EA) on the basis of potential flood risk to the proposed development, I also consider that matter pertinent to my decision and, accordingly, have given the main parties the opportunity to provide further comment on the particular concerns raised by the EA.
8. Therefore, the main issues in this case are:
  - the effect of the proposed development on the living conditions of the occupants of nearby residential properties with regard to noise, disturbance and odour;
  - the effect of the proposed development on the safety and convenience of highway users within the site and its vicinity; and
  - whether the proposed development would be acceptable with regard to flood risk within the site and elsewhere.

### **Reasons**

#### *Background*

9. The appeal relates to a vacant care home with 22 bedrooms, communal dining and sitting areas, a kitchen, laundry, and other staff facilities, and a small external amenity area to the rear. It is proposed to convert the building into four houses in multiple occupation (HMOs), two on each floor. Each HMO would have 4 en-suite bedrooms and a communal kitchen, dining and sitting area.

#### *Living conditions*

10. As a 22 bedroom care home, the appeal property could generate a degree of activity to the front of the building and on Attenborough Lane currently, including from staff arriving and leaving and friends and family visiting, even if the residents themselves did not frequently come and go to or from the property. Its existing care home use could also involve some activity on an evening or during the night from time to time, from ambulances or other medical professionals attending in an emergency for example.
11. The site's immediate surroundings are mixed in character, with numerous commercial buildings nearby. Those include a vehicle repairs garage and jet wash and an entrance to the car park of the Blue Bell public house on Attenborough Lane opposite the site, and a petrol station and other shops slightly further away. The site is also opposite Attenborough Village Hall, an apparently well-used facility which is used by a pre-school during the day and

- by other groups at other times. Attenborough Lane also provides access to Attenborough railway station.
12. There are therefore likely to be reasonably high levels of vehicle and pedestrian activity in the vicinity of the site, and audible from nearby residential properties and their gardens during the day at present. On an evening many of those nearby premises would be closed, and traffic levels associated with the station are likely to be lower. However, the public house and petrol station remain open relatively late into the evening, and it appears from the submissions before me that the village hall is also available and used by community groups and for events on an evening and at weekends. Therefore, the occupants of nearby residential properties are also likely to experience some noise from activity associated with those uses, including from the comings and goings of vehicles and pedestrians and the shutting of car doors for example, on an evening and a weekend at present.
  13. The pattern of comings and goings of future occupants of the HMOs would be likely to differ from that associated with the existing care home use, and the parking arrangements would result in some additional vehicle movements on the site frontage. However, the parking areas would not extend any closer to the neighbouring houses at 163 and 173 Attenborough Lane overall than the hard-surfaced areas in front of the building that could be used for parking at present. Nor would the entrances to the HMOs be any closer to those neighbouring properties than existing entrances to the care home. Additionally, as much of the site frontage would be occupied by parking spaces, the capacity for future occupants to congregate in those external areas to the front of the building would be limited.
  14. Furthermore, the house at No 163 is set back some distance from the appeal site frontage, and both No 163 and No 173 have their driveways and garages immediately adjacent to the site boundary. The main habitable windows and garden areas of those neighbouring properties would therefore be separated to some degree from the proposed parking and access areas.
  15. Therefore, and in the context of the existing commercial and community uses around the site, including some which open into the evening currently, on balance I consider that the development would not result in a significant increase in the levels of noise and disturbance experienced by nearby residents, even if the HMO's were to generate more activity on the site frontage or on an evening compared with the existing use.
  16. As the rear garden would be accessible to only one of the four HMOs it would serve a very limited number of residents, and significantly fewer than it could in association with the existing care home. That external area is already screened and separated from the rear garden of No 173 by an existing outbuilding, and a taller fence proposed along the adjacent section of the rear boundary would provide additional screening between that part of the site and 25 Ireton Grove. Overall therefore, the use of the external area would not result in an increase in noise or disturbance for the occupants of neighbouring properties compared with its existing potential use.
  17. Given the degree of separation between the windows of the proposed HMOs and neighbouring houses, sound from the activities of residents within the appeal building would not be more likely to affect neighbouring residents than

the sound of such activities which may arise from other surrounding family houses and their gardens.

18. The bin storage area would be adjacent to the boundary with No 173 in an area which is hard-surfaced and which, I understand from the submissions before me, has been used for the storage of the care home's bins previously. I am not convinced that the occupants of four HMOs, each with their cooking facilities provided communally, would generate more waste or significantly more frequent visits to the bins compared with the existing care home which has more bedrooms and which, I am advised, had medical waste bins as well as those for general waste and recycling.
19. I have nothing substantive before me to indicate that the number or size of bins proposed would be inadequate for the proposed development, or that the bins would thus be likely to overflow. Nor have I reason to believe that future occupants would be more likely to leave bin lids open or fail to put bins out on collection days than the occupants of any other residential property.
20. Therefore, and subject to the provision of additional fencing between the bin store and No 173 as proposed, the bin storage arrangements would not result in a significant increase in the levels of noise, disturbance or odour experienced by neighbouring residents compared with the existing lawful use of the site.
21. Drawing those threads together, for the reasons given I conclude that the proposed development would not have an adverse effect on the living conditions of the occupants of nearby residential properties with regard to noise, disturbance or odour. The proposal would therefore not conflict with Policy 10 of the Aligned Core Strategies Part 1 Local Plan (the Aligned Core Strategies) or Policy 17 of the Part 2 Local Plan which, amongst other things, state that permission will be granted for development which ensures a satisfactory degree of amenity for occupiers of neighbouring properties.

#### *The safety and convenience of highway users*

##### Off-street parking

22. Nine off-street parking spaces are proposed within the site. The appellant's Parking Statement<sup>1</sup> indicates that 8-9 parking spaces would be required, based on car ownership data for similar types of accommodation. Whilst it appears that such accommodation may be limited locally, the conclusions in the Parking Statement are also based on consideration of car ownership data for similar types of accommodation in adjoining wards, and also across Nottinghamshire. Accordingly, I am satisfied that they are suitably robust. In any event, and whilst I also note the age of the data used, I have not been presented with compelling evidence to justify a higher parking requirement.
23. Concerns have been raised that, despite the appellant's stated intention to restrict the 16 bedrooms to single occupancy, some could accommodate more than one occupant. However, the submitted drawings show single beds in all rooms and, having regard to the size and configuration of the bedrooms as shown on those drawings, I am not convinced that their occupancy by more than one person could comfortably or easily be achieved in practice. I am therefore satisfied that the parking requirements calculated on the basis of 16 occupants are satisfactory.

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<sup>1</sup> Parking Statement – Technical Note. Document Reference: WIE415-100-1-1-3, dated 14 August 2019

24. In addition, the site is within convenient walking and cycling distance of local shops and areas of open space. It is also a short walk from bus routes on the A6005 and from Attenborough railway station, which provide regular public transport links to Nottingham, Long Eaton and Derby, amongst other places. Secure cycle storage would also be provided within the appeal building. Future occupants would therefore have access to numerous alternatives to private car use, and it is therefore reasonable to assume that some residents would use public transport or other alternative means of travel, and would not have a car.
25. Therefore, on the basis of the evidence before me, I conclude that the level of parking proposed within the site would be adequate and proportionate, having regard to the scale and nature of the development proposed, and to its accessible location. Accordingly, a requirement for a legal undertaking preventing future occupiers from owning a car, as suggested, would not be necessary or reasonable. The local highway authority has confirmed that the proposals would satisfy the specifications of parking provision, and the Council does not contend that the number of parking spaces are inadequate. Those statements add weight to my finding that there would be sufficient parking within the site to serve the proposed development.
26. It is clear from the representations of interested parties that there is a propensity for on-street parking on Attenborough Lane and nearby streets at certain times. Some on-street parking associated with the proposed development may take place from time to time, by visitors to the property for example. However, as I conclude that the level of off-street parking would be adequate, and having regard to the accessibility of the site via public transport, any increase in on-street parking which may arise would be so limited that it would not make a significant difference to that existing situation. Nor would the provision of additional parking spaces on the site frontage materially reduce the amount of on-street parking available, since much of that area is occupied by the adjacent bus stop and existing parking dropped crossings at present.
27. Furthermore, from the evidence before me, much of the existing on-street parking that takes place appears to be associated with daytime activities, including the nearby shops, the pre-school at the village hall, and commuter parking for the railway station. In contrast, parking associated with the proposed HMOs would be more likely to take place on evenings and weekends, when their residents were at home and more likely to have visitors.
28. Existing double yellow lines prevent parking around Attenborough Lane's junctions with nearby streets at present. Whilst I have been referred to instances of vehicles being parked on pavements, I have no reason to believe that future occupants or visitors of the proposed development would park other than in a safe or reasonable manner, or in areas specifically marked as being private or restricted, such as the village hall car park.
29. Therefore, I conclude that the development would not have significant implications for the safety or convenience of nearby residents, businesses, users of the village hall, or other highway users as a result of on-street parking, compared with the existing situation.

#### Parking layout and vehicle movements

30. The development would increase the number of parking spaces on the site frontage, adjacent to an area of footway which appears to be well-used by

- pedestrians, including young children and their parents or carers, at certain times. However, there are existing areas at the northern and southern ends of the site which could be used for parking at present, and I have no substantive evidence before me to indicate that vehicles reversing to or from those existing areas have led to accidents or highway or pedestrian safety issues previously.
31. The additional parking spaces would be located between those two existing areas, and therefore no closer to the bend in the road at the southern end of the site or the junction to the north than those areas. The road alignment is relatively straight along the site frontage, and their location would thus be no worse with regard to visibility than those existing spaces.
  32. Visibility for vehicles reversing from the site onto Attenborough Lane may be somewhat limited by the bend in the road to the south of the site. However, the alignment of Attenborough Lane is such that vehicles reversing from the site would have good visibility to the north, and thus into the nearside lane. The extended length of parking spaces to the front of the appeal building, and the adjacent bus stop on Attenborough Lane, would prevent vehicles parking on the street immediately in front of the site, thus helping to maintain visibility in that direction. Drivers emerging from the on-site parking spaces would be likely to do so cautiously, having regard to the possibility of pedestrians on the pavement and the limited visibility to the south. Those drivers would have adequate visibility across the pavement to see vehicles approaching from the north before deciding whether to enter the carriageway, and would likely edge out slowly, allowing them to achieve better visibility around the bend to the south before deciding whether to continue onto that far side of the road.
  33. Furthermore, the appellant's Parking Statement indicates that the number and frequency of vehicle movements onto and off the site frontage would be relatively limited in any event, and I have not been presented with compelling evidence to contradict those findings.
  34. As I consider the level of parking provision within the site to be sufficient, I consider it unlikely that the development would lead to residents vying for spaces as has been suggested. Even if one car were to arrive as another was leaving, and had to wait on Attenborough Lane for a short period, such an occurrence would not lead to significant or lengthy obstructions to the flow of traffic on Attenborough Lane.
  35. As I understand that the buses serving the stops on Attenborough Lane in front of the site are of limited frequency, the likelihood of buses obstructing access or visibility for drivers entering or leaving the site would be very limited. However, even if buses were more frequent, their presence on the site frontage would be intermittent and of short duration. Drivers waiting on the street for a bus to leave would therefore not present a significant or lengthy obstruction to the flow of traffic, and it is likely that those wishing to leave the site would either wait for the bus to depart before doing so, or would emerge cautiously, having regard to the reduced visibility arising from the bus's presence.
  36. Drawing those threads together, having regard to the existing layout of the site and the likely number of vehicle movements associated with the proposed HMOs, I conclude that the development would be unlikely to have additional implications for the safety of pedestrians or vehicles in the vicinity of the site, or for queues at the nearby signalised junction, compared to the existing situation.

### The safety and convenience of highway users - conclusion

37. For the reasons given, on the basis of the evidence before me, I conclude that the proposed development would not give rise to a significant increase in on-street parking or in hazardous vehicle movements or parking practices, and thus would not have an adverse effect on the safety or convenience of highway users within the site or its vicinity. Therefore, the proposal would not conflict with Policy 10 of the Aligned Core Strategies or Policy 17 of the Part 2 Local Plan which, amongst other things, state that new development should provide sufficient parking and safe and convenient access, and have good access to public transport. Nor would the proposal conflict with the National Planning Policy Framework (the Framework), which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

### *Flood risk*

38. The site is in Flood Zone 3a, and benefits from flood defences, specifically the Nottingham Trent Left Bank Flood Alleviation Scheme (the LBFAS). Policy 1 of the Part 2 Local Plan states that development will not be permitted in areas at risk from flooding unless, in the case of fluvial flooding, the proposal is protected by the LBFAS *and* measures are included to mitigate any residual fluvial flood risk. The Framework states that development should only be allowed in areas at risk of flooding where it can be demonstrated that the development is appropriately flood resistant and resilient, any residual risk can be safely managed, and safe access and escape routes are included where appropriate.
39. The development would be a More Vulnerable use in terms of flood risk, as the existing care home use would be, and both the existing and proposed uses have sleeping accommodation on the ground floor. However, the occupants of the eight existing ground floor bedrooms would have access to the care home's first floor, and thus to safe refuge within the building in the event of a flood. In contrast, as the four HMOs would be self-contained, the occupants of the eight bedrooms in the ground floor HMOs would not have access to any habitable areas on the first floor of the building for safe refuge in a flood event.
40. Despite some differences in the specific figures in the appellant's Flood Risk Assessment (FRA)<sup>2</sup> and those cited by the EA, those submissions indicate that, in the event that the existing flood defences were breached, flood levels would be likely to be at least 310mm above the highest finished floor level (FFL) within the building and, according to the appellant's figures, around 70mm higher than that in other parts of the building where the FFLs are lower. Modelling carried out by the EA indicates that flood levels could be up to 470mm above FFLs in parts of the building in a breach of defences scenario. However, even on the basis of the lower figure given by the appellant those likely flood levels are such that, I consider, there would be a significant risk to occupants in the event that the defences were breached.
41. A detailed flood evacuation plan for the development has not been provided, although the FRA indicates that any evacuation route would involve leaving the property through front access points and moving northwards along Attenborough Lane to higher ground, and that land outside Flood Zones 2

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<sup>2</sup> Document Reference: FRA-MER01486-18-76, revision R1, dated 29 March 2019.

- and 3 is located approximately 100m away to the north west. However, the external ground levels around the appeal building and on Attenborough Lane are lower, and therefore the flood levels in those areas would be higher, than those within the appeal building itself, and the flood hazard rating along the proposed access and egress route is identified as being a Danger to Most.
42. Consequently, and as it is not clear from the submissions before me how quickly flood water would be likely to reach the site in the event of the defences being breached, I cannot be certain that a safe escape route from the building could be provided for future occupants, or that they would have time to safely evacuate the building before flood water reached it, even were they to sign up to flood warning schemes.
  43. Care home residents may have mobility difficulties which could affect their ability to leave their bedrooms quickly in the event of a flood. However, whilst perhaps less likely, the possibility of future occupants of the proposed HMOs also having mobility difficulties could not be ruled out. In any event, even if occupants of the care home had to be assisted from their rooms by staff, they would have access to refuge on the first floor very close by. Therefore, even if the flooding was such that the evacuation of the wider area was eventually necessary, those residents would have access to an area where they could wait safely within the building, and which would include spaces where food could be prepared even if the ground floor kitchen were flooded, for a period in the meantime.
  44. In contrast, even if occupants of the HMOs were able to respond more quickly, I cannot be certain that they would have time to safely evacuate the building, or that a safe escape route would exist between the building and those identified areas of higher ground further away. In the absence of certainty in that regard, and as occupants of the ground floor HMOs would not have access to any habitable areas on the first floor of the building in which to seek safe refuge in such an event, on balance I consider that occupants of the ground floor HMOs would be more vulnerable overall than those of the existing care home, and that the development would therefore present a significant and unacceptable risk to the safety of those future occupants.
  45. The appellant's FRA proposes flood doors and other measures aimed at reducing the likelihood of the building flooding. However, in the absence of full details of those specific proposals, I cannot be certain as to the effects of such provision in that regard. Nor am I content to deal with such matters by condition, given the potentially significant implications for the safety of future occupants in this case.
  46. I have been referred to the existence of bungalows closer to the river than the appeal site with sleeping accommodation on their ground floors. However, I have no details before me as to the specific location or flood risk of those properties and, in any event, the presence of such other dwellings does not justify the creation of further accommodation whose occupants would be at significant risk in the event of the flood defences being breached.
  47. The four HMOs are unlikely to have additional implications for the capacity of existing sewers or drains compared with the existing care home. As the development would not extend the building or significantly increase impermeable areas within the site, it would be unlikely to materially change flood flow routes, reduce floodplain storage or increase flood risk elsewhere.



48. However, for the reasons given, the proposed development would not be acceptable with regard to flood risk within the site. The proposal would therefore conflict with Policy 1 of the Part 2 Local Plan insofar as it requires measures to mitigate residual fluvial flood risk, and with the requirements of the Framework with regard to flood risk, as set out above.

### **Other Matters**

49. The development would bring a vacant property into use, and contribute to the supply and mix of housing in the locality. However, the evidence before me does not indicate that this appeal proposal would be the only means of providing an alternative re-use of the site, and the modest contribution it would make to housing supply and mix does not outweigh the potentially significant risk to the safety of future occupants in the event of a flood.

50. I have had regard to other concerns raised by interested parties. However, as I find the proposal unacceptable for other reasons, I have not needed to consider those matters further in this instance.

### **Conclusion**

51. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Jillian Rann*  
INSPECTOR