



Report Reference Number: 2018/0059/FUL

Agenda Item No: 6.3

To: Planning Committee
Date: 5 September 2018
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Lead Officer: Ruth Hardingham (Planning Development Manager)

APPLICATION NUMBER:	2018/0059/FUL	PARISH:	Wistow
APPLICANT:	Action For Care Ltd	VALID DATE: EXPIRY DATE:	09 April 2018 04 June 2018
PROPOSAL:	Erect extension to existing outbuilding (retrospective) in association with change of use from dwellinghouse C3b (6 residents) to Care Home C2 (8 residents)		
LOCATION:	The Orchard, Garman Carr Lane, Wistow, Selby, Leeds, North Yorkshire, YO8 3UW		
RECOMMENDATION:	APPROVE		

This application has been brought to the committee because it is a minor application where 10 or more letters of representation have been received which in the view of a Director raise material planning considerations and where officers would otherwise determine the application contrary to these representations.

1. INTRODUCTION AND BACKGROUND

Site and Context

- 1.1. The Orchard is a large, detached house on the southern side of Garman Carr Lane, in a predominantly residential area of Wistow. For planning purposes the property is still currently classed as a dwellinghouse, although since 2011 it has been operating as a care home within the terms of Class C3(b) of The Town and Country Planning (Use Classes) Order 1987 (as amended), in which the definition of a dwellinghouse is extended to include use *“by not more than 6 residents living together as a single household (including a household where care is provided for residents).”*

The proposal

- 1.2. The proposal is to change the use of the premises to a “*residential institution*” within Class C2 of the Use Classes Order and to increase the number of residents receiving care from six to eight. The application has also been amended to regularise works that were undertaken earlier this year to extend what was an existing outbuilding in the rear garden. The original structure housed a biomass boiler (amongst other things) and this remains within the building as extended. But it also now includes specialist accommodation proposed for one of the two additional residents. The other new resident would be accommodated in a currently unused bedroom in the main dwelling. The extended outbuilding now has a footprint of 8m by 8.47m and a height to eaves and ridge of 2.855m and 3.981m respectively. The specialist accommodation comprises a lounge, a relaxation area and an en-suite bedroom.
- 1.3. The biomass boiler is fed by a large metal hopper, which sits outside the outbuilding, close to the boundary with 5 Kingsthorpe Park. The hopper was dismantled and re-erected as part of the recent works.
- 1.4. The nature of the care provided within the property is described in the applicant’s Planning Statement as follows:

“The residents are aged between 18 - 65 and live together based on the model of a small group of individuals having their own care package in terms of support needs but living in a “family” type setting; socialising, cooking and sharing meals, domestic tasks, activities and shopping.

“The residents share all the facilities common to a normal household such as kitchen, dining room, utility room, lounges and a quiet room. They have their own bedrooms with en-suite facilities for privacy once again as any household would provide.”
- 1.5. Care is provided 24 hours a day in three shifts. The maximum number of staff per shift is six, although the number of carers on site will be greater during shift changes.

Relevant Planning History

- 1.6. There is no planning history on this site relevant to the determination of this application.

2. CONSULTATION AND PUBLICITY

- 2.1. The application has twice been publicised by site notice and direct neighbour notification, first when the application was registered and subsequently when the description of development was amended to include reference to retrospective consent for the extensions to the outbuilding. We have now received objections from 11 different respondents, raising the following concerns
 - Expanding the business as proposed will create an inappropriate commercial enterprise in an otherwise quiet lane in a small village
 - Increasing number of residents can only generate extra traffic associated with staff and service vehicles, exacerbating existing on-street parking problems. Congestion is creating difficulties for residents accessing their properties and causing problems for larger vehicles, including tractors.

- Disturbance from residents shouting and screaming will inevitably increase
- View of biomass boiler from neighbour's properties is unsightly. Its size is dictated by the need to serve a business, not a residential house.
- Development of the annex has led to localised flooding. Has the management of surface water been considered?
- Lights are on throughout the night and are a nuisance. Already a separate complaint to environmental health.
- The fencing that has been erected is unsightly resembling a prison camp and the typical build of the village is brick not whitewashed block.
- The proposal will exacerbate existing drainage problems

2.2. Wistow Parish Council

"The Parish Council totally objects to the extension and expansion of the number of residents in this care home in the village. At the present time the residents living in this area of this quiet village have been subjected to unceasing noise from residents 24 hours of the day with no consideration from the present staff in the home.

"The villagers are unable at times to walk safely along the footpath near the home due to inconsiderate parking totally blocking the path.

"Waste bins (of industrial size) are parked on the front of the drive, sometimes spilling contents onto the area!

"Cared for residents have been seen outside the property using foul language and on one occasion left screaming on the drive for a long period with no care staff in attendance.

"Outside lighting is left on for long periods at night causing light pollution to neighbours.

"The company running the business appears not to be aware of these problems or does not care for the distress it is causing to local residents despite telephone calls and letters.

"North Yorkshire County Council seem not to be aware of the failure of this company (Action for Care Ltd) to safe guard, not only the residents, but also the people living in the area who are subjected to the effects of living near this business."

2.3. Local highway authority

"There are no local highway authority objections to the proposed development"

2.4. Lead Officer Environmental Health and Housing

"I can confirm I have no objections to the proposals so far as this department's interests are concerned.

"I am aware however that a number of residents have raised concerns in relation to noise from increased traffic and the increased number of residents. Noise of this

type would not normally be considered to be a Statutory Nuisance and as such complaints regarding noise are unlikely to be dealt with by this department. The fact that the type of noise generated by this development is not likely to give rise to a Statutory Nuisance should not be taken to imply that noise from the development will not lead to a loss of amenity of the locality. I would recommend therefore that you ensure the proposals are complainant with relevant Planning Policy in relation to noise.”

2.5. Yorkshire Water

“ ... we have no record of blockages on the local sewerage system. The additional head count at the care home will not have a material impact on the sewerage network. If we do have to “jet” the sewers to remove blockages we would request local residents (including the care home) to think before they flush and to avoid putting material such as wet wipes, nappies etc down their toilets. Under the provisions of section 111 of the Water Industry Act 1991 it is unlawful to pass into any public sewer (or into any drain or private sewer communicating with the public sewer network) any items likely to cause damage to the public sewer network or interfere with the free flow of its contents or affect the treatment and disposal of its contents.”

3. SITE CONSTRAINTS AND POLICY CONTEXT

- 3.1. The site is within the development limits of Wistow.
- 3.2. The site is within Flood Zone 3 wherein land has a 1 in 100 or greater annual probability of river flooding.

National Guidance and Policy – National Planning Policy Framework (NPPF),

- 3.3. The National Planning Policy Framework (July 2018) replaces the first NPPF published in March 2012. The Framework does not change the status of an up to date development plan and where an application conflicts with such a plan, permission should not usually be granted (para 12). This application has been considered against the 2018 NPPF.

Selby District Core Strategy Local Plan

- 3.4. The relevant Core Strategy Policies are:
 - SP1: Presumption in Favour of Sustainable Development
 - SP2: Spatial Development Strategy
 - SP15: Sustainable Development and Climate Change
 - SP18: Protecting and Enhancing the Environment
 - SP19: Design Quality

Selby District Local Plan

- 3.5. Annex 1 of the National Planning Policy Framework (NPPF) outlines the implementation of the Framework. As the Local Plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004, the guidance in paragraphs 212 and 213 of the NPPF noting that the NPPF should be taken into

account in determining applications, and that existing policies should not be considered out of date simply because they were adopted prior to the publication of the NPPF and that due weight should be given to them according to their degree of consistency with the Framework, so the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

3.6. The relevant Selby District Local Plan Policies are:

- ENV1: Control of Development
- ENV2: Environmental Pollution and Contaminated Land
- ENV3: External lighting
- EMP2: New Employment Development
- T1: Development in Relation to the Highway Network
- T2: Access to Roads

Other Guidance / Policies

3.7. None

4. APPRAISAL

4.1. The main issues to be taken into account when assessing this application are:

- Principle of development
- Visual amenity
- Living conditions
- Highway safety
- Flood risk

4.2. Principle of development

4.2.1. The Orchard is located within the development limits of Wistow, a Secondary Village in the settlement hierarchy identified in paragraph 4.15 of the Core Strategy. The district's Spatial Development Strategy, set out in Core Strategy Policy SP2, identifies Secondary Villages as having scope for "*limited amounts of residential development*", but is silent on non-residential uses. However, Local Plan Policy EMP2 states that "*Encouragement will ... be given to proposals for small-scale [employment] development in villages and rural areas in support of the rural economy.*" Therefore, the principle of the expansion of the business at The Orchard is clearly consistent with the development plan.

4.2.2. Further support is offered by the NPPF. Under the heading of "*Supporting a prosperous rural economy*" paragraph 83 is clear that "*Planning policies and decisions should enable ... the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings*". The proposal is also consistent with paragraph 92 which expects planning policies and decisions to "*take into account and support the*

delivery of local strategies to improve health, social and cultural well-being for all sections of the community”.

- 4.2.3. By way of an introduction to subsequent headings in this report, it is important to acknowledge that any detrimental impacts upon residential amenity currently being experienced by neighbours result from a lawful planning use – The Orchard is presently a dwellinghouse for the purposes of The Town and Country Planning (Use Classes) Order 1987 (as amended). And whilst approving this application would move the premises into a different use class, the practical effect would be to increase the number of residents by two – a number that could be limited by condition were this application to be approved.
- 4.2.4. The applicants operate businesses of a similar scale elsewhere within the District, including one in South Milford, which was granted planning permission on appeal in 2015. A copy of that appeal decision is contained within Appendix A. The issues raised have strong parallels with the current application and, whilst every application must be considered on its merits, the inspector’s reasoning in the South Milford case provides a useful insight into how the relevant planning considerations might be judged were this application to end up at appeal.

4.3. Visual amenity

- 4.3.1. The only physical changes to the property relate to the enlargement of the outbuilding in the rear garden to provide the new annex. The extended building can only be glimpsed from public viewpoints and has no appreciable impact upon the wider character of the area. It is prominent when viewed from the rear of neighbouring properties, but, although large, its physical impact is not considered to be overbearing. It is judged consistent with the expectations of Core Strategy policy SP19 and Local plan policy ENV1.
- 4.3.2. The hopper serving the biomass boiler is, again, largely shielded from public view, but is particularly prominent when viewed from the rear of 5 Kingsthorpe Park to the south. The hopper has been in place for some while; the applicant’s agent maintains that it was installed not long after the care home started operating in 2011 and, consequently, is lawful. It was temporarily taken down as part of the recent works to extend the outbuilding and it is unclear whether it has now been re-erected in a different position. Nevertheless, even if the hopper did require consent then judged on its current position, and notwithstanding its crude, utilitarian design, it is doubtful whether its appearance from neighbouring properties alone would be sufficient grounds to sustain a refusal of planning permission.
- 4.3.3. In response to concerns raised in the representations the applicants have offered to paint the hopper, and thereafter to maintain it painted. In the circumstances, it would not be unreasonable to make that a condition of any consent.

4.4. Living conditions

Noise

- 4.4.1. There is local concern that the proposal will lead to an increase in noise. There is a general apprehension about the potential for the proposal to further commercialise a predominantly residential area in a small village, and there are particular references to noise from existing residents shouting and screaming.

- 4.4.2. The commercialisation point seems to stem, for the most part, from a concern about traffic movements – particularly those associated with deliveries and the arrival and departure of staff. The highway safety aspects of this are discussed below; this section of the report concentrates on amenity. Local Plan Policy ENV2 states that *“Proposals for development which would give rise to ... unacceptable levels of noise, [or] nuisance ... will not be permitted unless satisfactory remedial or preventative measures are incorporated as an integral element in the scheme.”*
- 4.4.3. Again it is important to stress that any existing issues relate to a lawful planning use. Therefore, in practical terms, an assessment of commercialisation needs to be judged on the likely impact of two more residents. The applicants have confirmed that the proposal involves no increase in staff, although it would not be unreasonable to conclude that two additional residents would increase the number of social and, occasionally, professional visitors, which would have some impact. The Council’s Lead Officer for Environmental Health and Housing raises no objection to the proposal, although qualifies that conclusion with the observation that the thresholds for statutory nuisance may well be higher than would be necessary to identify harm for planning purposes. Nevertheless, with that in mind, and whilst acknowledging that the area around The Orchard is predominantly residential, it seems unlikely that the noise and general disturbance associated with this level of additional activity, nor any noise from the extra residents themselves, would intensify impact on the surrounding area to an appreciable degree. It is interesting to note that the inspector determining the South Milford appeal drew similar conclusions in an area that is also predominantly residential.

Lighting

- 4.4.4. A number of the representations make reference to pollution from existing lighting, particularly the external lights positioned on the enlarged annex. The Council’s Environmental Health Service has also received complaints which have triggered a separate investigation of nuisance under the Environmental Protection Act.
- 4.4.5. Existing lighting on, or within, the main house is beyond planning control, but new lighting on the recently extended annex is subject to Local Plan Policy ENV3 which states that *“Proposals involving outdoor lighting will only be permitted where [amongst other things] lighting schemes: (1) Represent the minimum level required for security and/or operational purposes; [and] (2) Are designed to minimise glare and spillage ...”*
- 4.4.6. The annex has been fitted with three external lights which illuminate the route to and from the main house. At the moment we are told that these are LED “14W downlighters” with an output of 900 lumens each and no motion control sensors. Neighbours have complained that these lights can be on all night and cause considerable light spillage.
- 4.4.7. The applicants have agreed to replace each of these lights with a *Searchlight 30 LED Wall Light Stainless Steel with PIR [Passive Infrared Sensor]* which is a 6W LED motion sensitive unit with an output of 420 lumens. It is recommended that this broad specification (rather than the specific brand) is incorporated into a condition.

4.5. Highway safety

- 4.5.1. There is considerable local concern that the proposal will lead to further on-street parking, exacerbating existing problems with the free flow of traffic and access to other properties in Garman Carr Lane. Policy ENV1 of the Local Plan states that

proposals will be permitted where a good quality of development will be achieved taking into account various factors, including *“the relationship of the proposal to the highway network, the proposed means of access, the need for road/junction improvements in the vicinity of the site, and the arrangements to be made for car parking”*. To prevent detriment to highway safety, policies T1 and T2 of the Local Plan require adequate road capacity and no detriment to highway safety.

4.5.2. Once again, it is important to stress that any existing issues relate to a lawful planning use. Insofar as the parking issues depicted in the photos submitted by objectors relate to The Orchard, the matter is beyond planning control. And given the fallback of using the premises as a care home *“by not more than 6 residents”*, the issue raised by this application is essentially whether the needs of two additional residents would give rise to an increase in traffic that would create further problems. In the context of Local Plan Policy T1 proposals will only be supported where *“existing roads have adequate capacity and can safely serve the development”*. Paragraph 109 of the NPPF, which is a material consideration, sets the bar higher:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

4.5.3. As stated earlier, the applicants have confirmed that the proposal involves no increase in staff. That is disputed in some of the letters of objection, but there is no evidence to refute the applicant’s assertion. An additional two residents may well increase the number of social and, occasionally, professional visitors, but it is difficult to foresee that these would lead to the “severe” impacts referenced in the NPPF. The local highway authority has no objection to the application.

4.5.4. Inconsiderate or dangerous parking on the public highway would be a matter for the police.

4.6. Flood risk

4.6.1. The application site is within Flood Zone 3. The annex is “minor development” in relation to flood risk, and whilst minor developments (and changes of use) do not need to be subjected to either the Sequential or Exception Tests, paragraph 164 of the NPPF is clear that they still need to meet the requirements for site-specific flood risk assessments as set out in the Government’s *Planning Practice Guidance*. For a development of this nature that means assessing whether: (1) the development is likely to be affected by current or future flooding from any source; (2) it will increase flood risk elsewhere; and (3) the measures proposed to deal with these effects and risks are appropriate.

4.6.2. The applicant has submitted a Flood Risk Assessment (FRA) addressing these issues. It emphasises that whilst the site lies within Flood Zone 3, the area is protected by a formal flood defence system and in the unlikely event of an incident the property’s three storeys would provide a safe space for residents and on-duty staff. In terms of flood risk elsewhere, although the representations refer to an instance of surface water flooding during the course of building works to the annex, this would appear to have coincided with a temporary disconnection of the existing surface water drainage system whilst the soakaway was being upgraded. There is no evidence of any other likely issues. The footprint of the enlarged annex reduces flood storage capacity, but the applicants make the point that this is by no more than is acceptable as permitted development. Overall, the proposal is judged consistent

with Government policy expressed through the NPPF and the associated sections of the *Planning Practice Guidance*.

4.7. Other matters

- 4.7.1. The letters of representation raise a number of other matters that do not fall under planning control, including: the safety of the biomass boiler; the proximity of the new accommodation within annex to the boiler; and the standards of care being offered to residents.

5. CONCLUSION

- 5.1. The Orchard has been operating as a care home within the terms of Class C3(b) of The Town and Country Planning (Use Classes) Order 1987 (as amended) since 2011. The proposal is to change the use of the premises to a “*residential institution*” within Class C2 of the Use Classes Order and to increase the number of residents receiving care from six to eight. The application also proposes regularisation of an enlarged annex in the rear garden.
- 5.2. The proposal has attracted a considerable number of objections, raising planning concerns relating to noise, lighting, flood risk and on-street parking congestion. Many of these concerns relate to the situation as is, which stems from a lawful planning use. The proposal would take the premises into a different use class, increasing the number of residents from six to eight, but the existing use is clearly a fallback that carries considerable weight in this case. So much so that it is reasonable to consider the material impacts of the current proposal in the context of the pressures from two additional residents. That was the approach taken by the inspector in the appeal at South Milford, a copy of which is appended to the report. And, in those terms, the proposal is unlikely to have an appreciable impact.
- 5.3. Having said that, the lights that have appeared on the new “annex” are causing a nuisance. And regardless of whether that would amount to a reason for refusal of this planning application the applicants have agreed to change or modify these lights to reduce their impact, adding motion sensors at the very least. This, and the addition of further lights in the future, can be controlled by a condition. The applicants have also agreed to paint the hopper providing fuel to the biomass boiler in the annex. With an additional condition to ensure that the premises are restricted to use as care home with a maximum number of 8 residents at any one time, the proposal is considered compliant with Core Strategy policies SP1, SP15, SP18 and SP19 and Local Plan policies ENV1, ENV2, ENV3, EMP2, T1 and T2.

6. RECOMMENDATION

- 6.1. This application is recommended to be APPROVED subject to the following conditions:
1. The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:
 - Location Plan, LOC01
 - Layout Plan, 02
 - Floor Layouts, 03
 - Proposed Garden Room & Bio-Mass Enclosure, 100

Reason: To ensure that no departure is made from the details approved and that the whole of the development is carried out, in order to ensure the development accords with Selby District Local Plan Policy ENV1.

2. The use of the premises hereby approved shall be for a Residential care home only and for no other use within Class C2 of The Town and Country Planning (Use Classes) Order 1987 (as amended). Furthermore, the number of residents shall be limited to a maximum of 8 at any one time.

Reason: To ensure that the impacts of any alternative uses and/or increase in the number of residents are considered in the context of Selby District Local Plan policies ENV1 and ENV2.

3. Within one month of the date of this permission the existing hopper in the rear garden serving the biomass boiler shall be painted RAL 6003 Olive green. Thereafter the hopper shall be maintained painted that colour.

Reason: To protect residential amenity in accordance with Selby District Local Plan policies ENV1 and ENV2.

4. Within one month of the date of this permission the three existing external security lights on the "*Proposed Garden Room & Bio-Mass Enclosure*" (the building shown on approved drawing 100) shall be replaced with alternatives meeting a specification that includes a Passive Infrared Sensor, or equivalent motion sensor, and an output of 420 lumens or less. Thereafter, these lights shall be maintained to the agreed specification.

Reason: To protect residential amenity in accordance with Selby District Local Plan policies ENV1 and ENV3.

5. No further external lights shall be fitted to any building within the application site unless in accordance with a specification that shall first have been submitted to, and agreed in writing by, the local planning authority. Thereafter, any lights so fitted shall be maintained in accordance with the agreed specification.

Reason: To protect residential amenity in accordance with Selby District Local Plan policies ENV1 and ENV3.

7. Legal Issues

7.1. Planning Acts

This application has been determined in accordance with the relevant planning acts.

7.2. Human Rights Act 1998

It is considered that a decision made in accordance with this recommendation would not result in any breach of convention rights.

7.3. Equality Act 2010

This application has been determined with regard to the Council's duties and obligations under the Equality Act 2010. However it is considered that the recommendation made in this report is proportionate taking into account the conflicting matters of the public and private interest so that there is no violation of those rights.

8. Financial Issues

8.1. Financial issues are not material to the determination of this application.

9. Background Documents

9.1. Planning Application file reference and associated documents.

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