Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2019/A0149
Appeal by:	Mr Will Hollinger Beltraine Developments.
Appeal against:	The conditional grant of planning permission
Proposed Development:	20 no. single storey retirement living dwellings with associated landscaping and site works. Relocation of car park approved as part of adjacent care home permission.
Location:	Lands west of Kiltonga Estate access south of Old Belfast Road and south and east of Milecross Road Newtownards.
Planning Authority:	Ards and North Down Borough Council
Application Reference:	LA06/2018/0589/F
Procedure:	Informal Hearing on 21st February 2020.
Decision by:	Commissioner Helen Fitzsimons on 6th April 2020

Decision

1. The appeal is allowed and Condition 3 is deleted.

Claim for Costs

2. A claim for costs was made by Ards and North Down Borough Council against Mr Will Hollinger. This claim is the subject of a separate decision.

Reasons

3. The main issue in this appeal whether planning condition 3 of planning permission LA06/ 2018/ 0589/F is necessary.

4. As this is not an application for planning permission but an appeal against a condition attached to a planning permission Section 45 – (1) of the Planning Act (Northern Ireland) 2011does not apply. Although the appeal site is zoned for industrial land in the Ards and Down Area Plan 2015 planning permission has been granted for a housing development and Policy PED 7 'Retention of Zoned Land and Economic Development Uses' of Planning Policy Statement 4 'Planning and Economic Development' (PPS 7) is not material in this appeal.

5. On 20th September 2012 planning permission X/2011/0347/F was granted for the erection of a residential nursing home on lands which included the appeal site. A Certificate of Lawful Development (LDC) was granted on 14th September 2017 for 'operational works pre condition of X/2011/0347/F' in respect of the Nursing Home.

Although the nursing home has not been constructed the planning permission remains extant.

6. The planning permission, which is the subject of this appeal, stated at condition 3 'none of the approved dwellings shall be occupied until the residential nursing home, approved under X/2011/0347/F has been constructed.' The reason given for the condition was 'to ensure the dwellings permitted under Class C3 (a) of The Planning (Use Classes) Order (Northern Ireland) 2015 can benefit from relevant care services to be provided by the Nursing Home on site.

7. Class C3 (a) of The Planning (Use Classes) Order (Northern Ireland) 2015 (UCO) is 'for the provision of residential accommodation and care to people in need of care (other than a use within C1 (Dwellinghouse))'. Class C1 of the UCO 'Dwellinghouses' is defined as 'Use of a dwellinghouse (whether or not as sole or main residence) – (a) by a single person or by people living together as a family'. Because the appellant stated in the application for planning permission for the appeal proposal that ' the dwellings albeit designed to suit older persons, who could avail of the services provided by the adjacent care home should they wish to do so' the Council deemed that the proposed dwellings fell into Class C3 (a) of the UCO.

8. The definition of 'care' is defined in the Interpretation of the UCO at Article 2- (1) as ' 'care' means personal care as defined in the Registered Homes (Northern Ireland) Order 1992 (3) (RHO). The definition of personal care in the RHO 'includes the provision of appropriate assistance in counteracting or alleviating the effects of any of the matters mentioned in paragraph 1(a) to (d) and in particular includes (b) assistance with physical or social needs. Paragraph 1(a) is specific to old age and infirmity. I discern nothing within the description of the proposed housing development or any feature within the proposed layout which offers 'personal care'. In my view the proposed development offers independent living for the over 55s (as imposed by condition 2 of the permission) either as individuals or as couples, able to make a choice about making use of the services on offer by the proposed Nursing Home if necessary.

9. The proposed dwellings fall under Class C1 (a) of the UCO. The reason given for the imposition of condition 3 is based on a misconception. In any event nothing in the wording of that condition requires any of the occupiers of the proposed dwellings to use the nursing home facilities. The condition is not necessary.

COMMISSIONER HELEN FITZSIMONS

Attendances

Planning Authority: - Ms C Heron
Mr K Henry

Appellant: - Mr D Donaldson (Donaldson Planning)
Mr W Hollinger

List of Documents

Planning Authority: - C1 Written Statement and Appendices

Appellant: - A1 Written statement and Appendices