

Development Control Committee 4 October 2023

Planning Application DC/23/0229/FUL - 9 Tasman Road, Haverhill

Date registered:	17 March 2023	Expiry date:	6 October 2023
Case officer:	Savannah Cobbold	Recommendation:	Approve application
Parish:	Haverhill Town Council	Ward:	Haverhill South East
Proposal:	Planning application - change of use from residential (C3) to residential children's home (C2)		
Site:	9 Tasman Road, Haverhill		
Applicant:	Ms Joanne Binfield		

Synopsis:

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and associated matters.

Recommendation:

It is recommended that the committee determine the attached application and associated matters.

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Background:

The application was considered by the Delegation Panel on 1 August 2023 at the request of the ward councillor, where it was decided that the application should be determined by Development Control Committee.

The application was reported to the Development Control Committee on 6 September 2023. The Committee resolved that it was 'minded to refuse' the application based on the adverse impacts upon amenity arising from the modest extent of outdoor amenity space at the property, and on the basis of the impacts upon highway safety.

This report is therefore presented as a 'risk assessment' report. The report that was presented to the September Development Control Committee is included as Working Paper 1 to this report.

Proposal:

1. Please refer to Working Paper 1 for the description of the proposal.

Application supporting material:

2. Please refer to Working Paper 1 for details of the application supporting material.

Site details:

3. Please refer to Working Paper 1 for details of the site.

Planning history:

4.

Reference	Proposal	Status	Decision date
SE/08/0461	Planning Application - Erection of two storey side and rear extension	Application Granted	12 May 2008
E/75/1771/P	PROPOSED DETAILS FOR RESIDENTIAL DEVELOPMENT	Application Withdrawn	27 July 1975
E/74/2709/P	DEVELOPMENT OF HOUSES, ROADS, FOOTPATHS, DRAINAGE ETC. RESIDENTIAL	Application Withdrawn	2 July 1975

Consultations:

5. Please refer to Working Paper 1 for details of all consultation response.

Representations:

6. Please refer to Working Paper 1 for details of all representations.

Policy:

7. On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single authority, West Suffolk Council. The development plans for the previous local planning authorities were carried forward to the new Council by regulation. The development plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies Document (which had been adopted by both councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved St Edmundsbury Borough Council.

The following policies of the Joint Development Management Policies Document and the St Edmundsbury Core Strategy 2010 & Vision 2031 have been taken into account in the consideration of this application:

Policy DM1 Presumption in Favour of Sustainable Development

Policy DM2 Creating Places Development Principles and Local Distinctiveness

Policy DM23 Special Housing Needs

Policy DM46 Parking Standards

Core Strategy Policy CS1 - St Edmundsbury Spatial Strategy

Core Strategy Policy CS3 - Design and Local Distinctiveness

Policy HV1 Presumption in Favour of Sustainable Development

Other planning policy:

8. National Planning Policy Framework (NPPF)
9. The NPPF was revised in September 2023 and is a material consideration in decision making from the day of its publication. Paragraph 219 is clear however, that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework; the greater weight that may be given. The policies set out within the Joint Development Management Policies have been assessed in detail and are considered sufficiently aligned with the provision of the 2023 NPPF that full weight can be attached to them in the decision making process.

Officer comment:

10. Please refer to Working Paper 1 for the Officer assessment of the proposal.

Response to Committee's Minded to Refusal Reasons

11. The application was reported to the Development Control Committee on 6 September 2023. The Committee resolved that it was 'minded to refuse' the application based on the adverse impacts upon amenity of the intended occupants of the home arising from the modest extent of outdoor amenity space at the property, and on the basis of the impacts upon highway safety. This resolution was contrary to the officer recommendation of approval. At this point, the Decision-Making Protocol was invoked requiring the further reporting of this matter to members of the Development Control Committee in the form of a risk assessment report before a decision can be made.
12. The Decision Making Protocol states that "where Development Control Committee wishes to overturn a recommendation and the decision is considered to be significant in terms of overall impact/harm to the planning policy framework, having sought advice from the Assistant Director Planning and Regulatory Services and the Assistant Director for Legal and Democratic Services (or Officers attending Committee on their behalf)
 - A final decision on the application will be deferred to allow associated risks to be clarified and conditions/refusal reasons to be properly drafted.
 - An additional officer report will be prepared and presented to the next Development Control Committee detailing the likely policy, financial and reputational etc. risks resultant from overturning a recommendation and setting out the likely conditions (with reasons) or refusal reasons. This report should follow the Council's standard risk assessment practice and content.
 - In making a decision to overturn a recommendation, Members will clearly state the material planning reason(s) why an alternative decision is being made, and which will be minuted for clarity."
13. The purpose of this report is to provide a risk assessment for Members in accordance with the Decision Making Protocol, should planning permission be refused for the development contrary to the officer recommendation having regard to its accordance with relevant policies.
14. The resolution of the Development Control Committee was that it was minded to refuse on the basis of the adverse impacts upon amenity and highway safety.
15. The adverse effects upon amenity were understood to principally be related to the size and nature of the rear garden space at the property, and the view that it was, in both extent and surface covering, unsuitable for use by the intended occupants of the property when used as a children's home.
16. The garden area is somewhat diminished at the property by reason of the two storey side extension, albeit the conclusion at the point when that extension was approved was that it did not represent 'over development' of the plot. As a dwelling, the General Permitted Development regulations allow up to 50% of the curtilage to be built over under permitted

development rights without the need for planning permission, subject to other requirements too.

17. Whilst there may be a subjective view that the size of the garden is unsuitable, it remains commensurate, in the view of officers, with both the size of the property, and with other gardens in the immediate area, which is a late 20th century housing estate with many properties demonstrating similar garden sizes to the retained level of outdoor space at this property. The site can, of course, continue to function as a family home, or indeed as a six person House of Multiple Occupancy, without the need for any form of planning approval. The fact that the current garden contains a hard landscaped terraced element, and no grass, does not, in the view of officers, mean that the space is inadequate. The garden also contains a covered sitting area, as well as a study / summer house, adding to its interest and useability. A future occupier may also, of course, and at their discretion, choose to further landscape some or all of the garden, and there is space and scope to do so, but the view of officers remains, which is that the proposed garden space, both in terms of its quantum and its nature, is acceptable for the use of the property as a children's care home housing up to four children.
18. Turning to the matter of highway safety, and the key here is to ensure that any proposal, where planning permission is needed, either complies with the adopted parking standards or, where it does not, that it does not make a situation materially worse. In this case the Suffolk Advisory Parking Standards are not clear cut, since they do not specifically reference a use of this nature. However, in relation to Residential Institutions under Use Class C2 the standards require one space per full time equivalent employee. In this case the use includes one permanent residential manager and two additional employees on a shift basis (so two full time equivalent employees FTE's). In the case of a dwelling with more than three bedrooms, or indeed a House of Multiple Occupation with more than three bedrooms, the parking requirement is three spaces.
19. As was evidenced from the site visit, and confirmed by the submitted plans, the property retains adequate space to park three vehicles off the road. It may be possible, utilising smaller vehicles, or otherwise parked closer together, to accommodate four, but certainly there are three spaces that each meet the requirements of the parking standards in terms of their size and useability.
20. Furthermore, also key in this regard is that officers remain wholly satisfied that the use of the site for the development sought would not be materially different to either of the lawful fall back positions. The first being the longstanding and entirely lawful use of the property as a six bedroom family dwelling, with the potential for a number of adult occupants, all of whom may own a vehicle. The second being the potential use of the site as a six person House of Multiple Occupation (HMO).
21. In this regard, the site is capable of being used, under Use Class C4, as a House of Multiple Occupation for up to six residents. In such a scenario all may own a vehicle but no control would be available to prevent such a use. Of course, the possible use of the site as a HMO is entirely hypothetical, but its use as a large six bedroom family dwelling is not,

since that is its current use and the one that will prevail if permission is not granted.

22. In this regard, the view of officers, supported by the view of the Local Highway Authority, is that the number of spaces provided, when assessed against the lawful use of the property, will be adequate, and not materially worse than the current lawful use. However, and in any event, spaces exist on the road for the parking of vehicles, and there is no objection from the Local Highway Authority to any aspect of this proposal.

23. So, in this respect, officers do not consider that either of the reasons, amenity or highway safety, would bear scrutiny and there is no evidence to support refusal reasons on that basis. Of the two issues, the amenity concerns are plainly more subjective, and therefore arguable, with Officers holding strong concerns, in light of the above assessment, that the minded to reason in relation to parking and highway safety would be a wholly unreasonable position. Accordingly, if Members remain minded to refuse, notwithstanding the advice above, the following reason is suggested. The risk of proceeding for refusal is further assessed below.

1. Policy DM23 of the Joint Development Management Policies Document 2015 states that proposals for new accommodation for elderly and/or vulnerable people will be permitted on sites deemed appropriate for residential development by other policies contained within this and other adopted Local Plans, provided such schemes include appropriate amenity space for residents of an acceptable quantity and quality. In this case, it is evident that the dwelling has been subject to various extensions within the past, including a large, two storey side and rear element. This has significantly reduced the level of amenity space associated with the dwelling, therefore not providing appropriate amenity space for residents and staff of an acceptable quantity and quality associated with this use. Given this, the scheme is considered to conflict with criterion b of policy DM23.

24. It is also noted that in the debate at the September committee meeting, Members also discussed the wider regulatory regime relating to Children's Homes. Officers advised that this was not a material planning consideration, and that, if approved, it would fall to any operator to ensure compliance with all wider regulatory requirements.

25. Nonetheless, and purely for information purposes, the regime in place for such homes requires that a 'registered person' is responsible for compliance with the regulations and care standards, and that homes are inspected twice a year by Ofsted. The regulations (The Care Standards Act 2000) require the homes to be 'nurturing and supportive environments that meet the needs of their children' and that 'they will, in most cases, be homely, domestic environments. Children's homes must comply with relevant health and safety legislations (alarms, food hygiene etc.); however, in doing so, homes should seek as far as possible to maintain a domestic rather than an 'institutional' impression'.

26. Beyond these general provisions there is nothing specific relating to the size, location, extent and nature of garden areas etc.

Risk Assessment

27. The purpose of this report is to advise Members of the risks associated with the 'minded to' resolution to refuse planning permission for the development proposal, having regard to the relevant planning policies and the Officer recommendation to approve planning permission. For the reasons set out in this report it remains Officers' recommendation that permission be approved. If Members remain minded to refuse the application, they must be satisfied that any risks associated with doing so have been properly considered.
28. Officers remain of the opinion that the development proposed fully accords with policy. Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require decisions to be made in accordance with the development plan unless there are material considerations that indicate otherwise.
29. In the absence of evidence to substantiate a reason for refusal it is highly likely that an appeal would be allowed. The applicants would have the right to recover their appeal costs (in full or in part, depending upon the circumstances) from the Council should the Inspector conclude the Local Planning Authority has acted unreasonably. Advice about what can constitute unreasonable behaviour by a Local Authority at appeal is set out in the National Planning Practice Guidance. Relevant examples of unreasonable behaviour include:
- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - failure to produce evidence to substantiate each reason for refusal on appeal, and;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
30. In this case, and for the reasons set out in full in the Officer report attached as Working Paper 1, Officers consider that it would be difficult to defend the above reason for refusal. There is no technical objection on the grounds of highway safety impact from the Local Highway Authority, and the garden area at the property, whilst, subjectively, being on the smaller side, is considered readily commensurate with the size and location of the property, and could also be easily re-landscaped at will by any occupier to suit their wishes.
31. In the absence of evidence to substantiate its reasons for refusal Officers consider it would be extremely difficult to defend a potential claim for the partial or even full award of costs at appeal. An award of costs (including partial costs) against the Council could have financial and reputational implications for the Council.
32. Whilst it is important to understand these issues as part of the risk assessment process this section of the report does not form part of the planning assessment of the application. The information does not constitute a material planning consideration and should not be relied on or cited as a factor in coming to a decision.

Conclusion:

33. In conclusion, the principle and detail of the development is considered to be acceptable and in compliance with relevant development plan policies and the National Planning Policy Framework. For the reasons outlined above and set out within Working Paper 1, Officers consider that the development should be approved with the conditions contained in working paper 1. The proposal complies with the Development Plan and there are no material planning considerations that indicate that a decision should be taken otherwise than in accordance with the Development Plan. In the absence of any objection from the Local Highway Authority, and noting the level of parking provided on site, the guidance within the Parking Standards, and the material fall back uses as either a family dwelling or as a HMO, refusal of the application on the grounds of adverse impact on highway safety cannot be justified.
34. Refusal on the grounds of adverse impact upon the amenities of the occupiers is similarly difficult to justify, but remains a subjective judgement.
35. In coming to their decision Members must clearly identify whether they consider the proposal complies with the Development Plan and their reasons for reaching their decision. If it is decided that the proposal does not comply with the policies of the Development Plan members must have clear reasons and evidence to support such a decision.
36. Members should have regard to the attached Working Paper 1 in reaching their decision.

Recommendation:

37. It is recommended that planning permission be **APPROVED** subject to the following conditions:

1. Time limit

The development hereby permitted shall be commenced no later than 3 years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990.

2. Compliance with plans

The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents:

Plan type	Reference	Date received
Existing floor plans	PA201	10 February 2023
Proposed floor plans	PA202	10 February 2023
Existing block plan	PA102	10 February 2023

Location and block plan	PA101	10 February 2023
Proposed block plan	PA103 A	10 February 2023
Supporting statement		10 February 2023
Application form		17 March 2023

Reason: To define the scope and extent of this permission, in accordance with policy DM1 and DM2 of the West Suffolk Joint Development Management Policies Document 2015 and all relevant Core Strategy Policies.

3. Parking and manoeuvring

The use shall not commence until the area(s) within the site shown on Drawing No. Drawing No. PA103 for the purposes of manoeuvring and parking of vehicles has been provided and thereafter that area(s) shall be retained and used for no other purposes.

Reason: To ensure that sufficient space for the on-site parking of vehicles is provided and maintained to ensure the provision of adequate on-site space for the parking and manoeuvring of vehicles where on-street parking and manoeuvring would be detrimental to highway safety to users of the highway, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 9 of the National Planning Policy Framework and all relevant Core Strategy Policies.

4. Cycle storage

Prior to the first use of the dwelling as a children's home, details of the areas to be provided for the secure, covered and lit cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter and used for no other purpose.

Reason: To promote sustainable travel by ensuring the provision at an appropriate time and long-term maintenance of adequate on-site areas for the storage of cycles in accordance with Suffolk Guidance for Parking 2019, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 9 of the National Planning Policy Framework and all relevant Core Strategy Policies. This needs to be precommencement to ensure that effective infrastructure is in place at an early stage to encourage the update and use of bicycles.

5. EV charging

Prior to the first use of the dwelling as a children's home, details of electric vehicle charging infrastructure shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter and used for no other

purpose.

Reason: To ensure the provision of cycle storage and charging infrastructure for electric vehicles in accordance with Suffolk Guidance for Parking 2019, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 9 of the National Planning Policy Framework and all relevant Core Strategy Policies. This needs to be precommencement to ensure that effective infrastructure is in place at an early stage to encourage the update and use of electric vehicles.

6. Refuse/recycling bins

Prior to the first use of the dwelling as a children's home, details of the areas to be provided for the presentation of refuse and recycling bins shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is brought into use and shall be retained thereafter for no other purpose.

Reason: To ensure that space is provided for refuse and recycling bins to be presented for emptying and left by operatives after emptying clear of the highway and access to avoid causing obstruction and dangers for the public using the highway. This needs to be a pre-commencement condition to avoid expensive remedial action which adversely impacts on the viability of the development if, given the limitations on areas available, a suitable scheme cannot be retrospectively designed and built, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 9 of the National Planning Policy Framework and all relevant Core Strategy Policies.

7. Number of children

At no time shall more than four children be in residence at the premises.

Reason: To confine the scope of permission and prevent an inappropriate intensification of use.

8. Staff members

At no time shall more than three members of staff be present at the site.

Reason: To minimise the impact of the use on the surroundings, ensure the use of the site in accordance with the submitted details and control unchecked growth of the site that might lead to adverse impacts on parking, highway safety and amenity.

Documents:

All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online [DC/23/0229/FUL](https://www.westsuffolk.gov.uk/DC/23/0229/FUL)