



The Planning Inspectorate

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Your Ref:
94/014
Our Ref:
T/APP/G5180/A/94/238594/P5

Date: - 2 DEC 1994

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY CAPITAL HOMES PLC
APPLICATION NO: 94.0253

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the Council of the London Borough of Bromley to refuse planning permission to change the use from nursing home to children's home at Foxhill Lodge, 51 Fox Hill, London SE19. I held a local inquiry into the appeal on 18 and 19 October 1994. I visited the property and its surroundings and also observed from the highway your clients' existing children's home at No 24 Northampton Road, Croydon.

2. It was confirmed that the correct position of the rear garden boundary at Foxhill Lodge is that shown on Mr Webster's drawing No CLA1 (Doc 6.2) and not as submitted with the application. The effect of the correction is to foreshorten the rear garden. However, as the land going with the house is smaller than previously shown, I do not consider that anyone has been prejudiced by the amendment. I noticed that internal works to the property have already been carried out more or less in accordance with the submitted plans, but the use has not commenced. However, your clients stated that three children have daily lessons there on a temporary basis. The previously unused vehicular access at the northern end of the frontage has been brought into use following paving of part of the front garden area.

3. The application form indicates that the application is both for a change of use and the removal of a condition. However, the use as a nursing home and a children's home both fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 Order. The Order states that the change between uses in the same class shall not be taken to involve development of the land. Therefore, it seems to me that the application more properly falls to be considered under Section

73 of the Act as an application for planning permission to develop land without complying with a condition subject to which a previous planning permission was granted. I shall deal with the appeal on that basis.

4. The Council imposed a condition on planning permission No 84.2731 granted in 1985 for the use of Foxhill Lodge as a nursing home, restricting its use to a nursing home for elderly persons and for no other purpose. The reason was that other uses in Class XIV of the Use Classes Order 1972 would be inappropriate in this residential area, particularly having regard to the site's inclusion within a conservation area. Advice in Circular 1/85 is that there may occasionally be circumstances where a condition preventing such changes of use can be justified.

5. From what I have heard, read and seen, I consider the principal issue to be whether the discharge of the condition restricting the use of Foxhill Lodge to a nursing home would result in a harmful effect on the living conditions of surrounding residents. In examining this matter I regard the main considerations to be taken into account as being levels of traffic generation, noise, disturbance and general activity.

6. There are no policies in the statutory Unitary Development Plan for Bromley which relate specifically to children's or nursing homes. The Council agree that a children's home is a use which is normally acceptable in a residential area. However, in this instance, their prime concern, together with that of a significant number of local residents, is that a use which has been quiet hitherto, would become one which would generate greater and unacceptable levels of disturbance from both traffic movements and children who would live there. There would be inadequate garden space for the children to use. Surrounding dwellings are close to the sides and rear of Foxhill Lodge and many are occupied by elderly people.

7. Your clients explained that normally there would be up to 12 children between the ages of 8 and 18 in long term care in the home, supervised by 5 trained staff at any one time. There would be additional room for 3 more children as necessary in an emergency unit, together with an extra supervisor. The children would be referred to the home only by local authorities and not by the courts, and so there would be none who would require a secure environment or who would be especially difficult to control. They would either attend local schools or be taken to South Godstone for lessons. Activities outside school hours would be supervised at all times, many of which would be away from the home at local parks or other facilities. Your clients also said that the garden would be used infrequently and that traffic movements would be no greater and possibly less than when the nursing home was in use.

8. Dealing first with the matter of traffic generation, no details of vehicular movements were available for the period when the nursing home was in use, nor exactly how many occupants and staff there were. Counts of pedestrian and vehicular traffic movements were made on behalf of your clients during peak travel times at 4 nursing and 4 children's homes in the wider area, including your clients' Croydon home. Those selected were based solely upon their outward appearance being of a similar size to Foxhill Lodge as no occupancy details were available. I find the results difficult to compare accurately without occupancy details. However, none of the homes seemed to me to generate either pedestrian or vehicular traffic at such levels which might be considered to give rise to nuisance to neighbouring residents. Nor was any evidence submitted to the contrary.

9. Traffic flows in roads surrounding Foxhill Lodge are generally light, the busiest route being Auckland Road/Hamlet Road on the opposite side of the green. Although there are no objections from the highway authority to the use, some residents are concerned about the blind corner at the bottom of Fox Hill and consequent danger from vehicles emerging from the access to the home at that point. However, the access already exists and would be made 'in-only' now that the second vehicular access at the other end of the frontage has been opened. Sufficient off-street parking space to serve the home appears to be available to overcome the necessity of having to park on the highway. On the basis of these findings, I consider that traffic generated by the use of Foxhill Lodge as a children's home would not be significantly different from that generated by a nursing home. Therefore, on this particular matter, if the condition were to be discharged, there would not be undue disturbance to neighbours or adverse affect on highway safety.

10. The other main point of concern is the likely behaviour of children and the noise and disturbance they would create in what is generally considered to be a quiet neighbourhood. A number of residents near your clients' existing Northampton Road home complain of shouting, bad language and breaking windows at the home, trespass and throwing objects, among other incidents and disturbances. Your clients admitted that there had been problems and that the police had been called on occasion. They state that it would be surprising if children from backgrounds with difficulties did not sometimes misbehave. However, letters of commendation on the running of the home and on children's good behaviour have also been received. In my view, the frequency of bad behaviour occurring at Foxhill Lodge would be difficult to predict since much would depend upon individual children and the supervision they receive. However, I am dealing here with the use of the property, not personal matters.

11. At the front, Foxhill Lodge overlooks an open landscaped square surrounded by large Victorian villas, some having been converted into flats. This openness contrasts markedly with

the compact layout at the sides and rear of the Lodge where an elderly persons home and blocks of flats are closely situated. All 3 blocks are within about 10 metres of the home at their nearest points. The rear garden of the Lodge is only about 15 metres square, laid to lawn and with several trees and shrubs. Boundary fences of varying heights separate the properties, but there is still a degree of mutual overlooking from upper floor windows.

12. Your clients state that little use of the rear garden would be made. However, there can be no certainty that this would be so, especially out of school hours, at weekends and during holidays; or if the home changed hands at some future date. At times there could be over 20 people in the property and it is inconceivable to me that the garden would be given little use. Whereas the house itself is large enough to accommodate that number of people, I consider its small garden area would be inadequate for use by such numbers. Nor can there be any firm assurance that there would be no noise from open windows, such as playing loud music, especially in summer. Moreover, there would be comings and goings of active children, some older ones not always being under supervision, according to your clients.

13. The combination of the likely use of the garden, noise from open windows and the general comings and goings of young people, all suggest to me that noise and disturbance are likely to adversely affect neighbours' living conditions. In my view, the level of such noise and disturbance would be in excess of that generated by a nursing home, a use which by its very nature tends to be quiet. Noisiest periods are also likely to coincide with times when most neighbours would be at home. The fact that neighbours can reasonably expect to enjoy peace and quiet in this residential area, a number close by are elderly and some rooms overlook the home and its grounds, merely reinforces my concern.

14. I appreciate that existing residential areas are the most appropriate locations for children in care to be housed so they can be integrated with the local community. However, there are likely to be instances where a children's home, or other uses within Class C2, would be inappropriate because of the environmental shortcomings of a particular site. Having considered all the evidence, my view is that this is one such instance. The concentration of a significant number of children and staff in this relatively cramped location, closely surrounded by other dwellings would result in unacceptable noise and disturbance affecting the lives of neighbours.

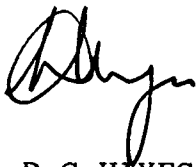
15. The property also lies within the Belvedere Road Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Whereas I am satisfied that removal of the condition to permit

the use as a children's home would preserve the appearance of the conservation area, I do not consider that it would preserve or enhance its quiet character. The likely adverse effect reinforces my conclusion that the condition was correctly applied and so should not be discharged.

16. In reaching that conclusion, I have had regard to the location of your clients' Northampton Road home, together with other similar homes approved by Bromley Council which were referred to. All differ from the Lodge in that they appear to be in less confined positions along straight road frontages. They have larger rear gardens not closely bordered by other dwellings, and house fewer children. I have taken account of all the other matters raised, but none affect the considerations which have been influential in my determination of your clients' appeal.

17. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D Hayes', written in a cursive style.

D G HAYES DipTP MRTPI
Inspector

APPEARANCES

FOR THE APPELLANT

Mr N Nardecchia

of Counsel, instructed by
APA Planning Services.

He called:

Mr T M Kelly

Representing the appellant.

Mr J S Webster BSc(Eng)
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FOR THE LOCAL PLANNING AUTHORITY

Mr T Davey

of Counsel, instructed by W
Million, Borough Secretary.

He called:

Mr C H S Evans MA DipTP
MRTPI

Development Control Manager,
(Western Area), Bromley LBC.

INTERESTED PERSONS

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Mrs P Mitchell

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Mr B Baxter

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Mrs A Piesing

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DOCUMENTS

- Document 1.1-1.2 - Lists of persons present at the Inquiry.
- Document 2 - Notification of Inquiry and circulation list.
- Document 3.1-3.67 - 67 letters of representation.
- Document 4.1-4.6 - 6 letters submitted by appellant relating to 24 Northampton Road, Croydon.
- Document 5 - Appendices to Mr Kelly's proof of evidence.
- Document 6.1-6.2 - Appendices to, and tables, diagrams and drawings from Mr Webster's proof of evidence.
- Document 7 - Appendices to Mr Lea's proof of evidence.
- Document 8 - Appendices to Mr Evans's proof of evidence.

PLANS

- Plan A.1-A.5 -Site plan and application drawings.
- Plan B -Map of Belvedere Road Conservation Area.
- Plan C -1/1250 map showing appeal premises in relation to revised Borough boundary, conservation area and listed buildings.