



Appeal Decisions

Inquiry Held on 16, 17 & 19 August 2022

Site visit made on 17 August 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Appeal A Ref: APP/C3430/C/21/3289833

Land at 2 Woodlands Drive, Coven, South Staffordshire WV9 5DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Nurtured Future Living against an enforcement notice issued by South Staffordshire Council.
 - The enforcement notice was issued on 25 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the making of a material change of use of a dwellinghouse to use as a residential care institution falling under use Class C2, of the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The requirements of the notice are: Permanently cease the use of the Land and Property as a residential care institution providing care to young persons who occupy the property under use Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The period for compliance with the requirements is 3 (three) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act, as amended.
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Appeal B Ref: APP/C3430/X/22/3292915

Land at 2 Woodlands Drive, Coven, South Staffordshire WV9 5DR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Nurtured Future Living against the decision of South Staffordshire Council.
 - The application Ref 20/00691/LUE, dated 13 August 2020, was refused by a notice dated 11 March 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: The property comprises a residential property within a residential location in the Village of Coven. The property was constructed in the early 1970's and comprises a two bedroom semi-detached bungalow. The current tenant of the property-Nurtured Future Living Ltd provides care and accommodation to children that have typically been removed from their family home and are under care orders and the responsibility for care has been passed to a relevant local authority. Whilst "unregulated" homes are sometimes acceptable as a short term emergency solution, the preference is to place such children in homes that are "Regulated" by OFSTED and can then provide a viable long term, stable care solution/environment for such a child thus avoiding the need to move the child (again) and the uncertainty and anxiety this can induce. The purpose of the application is to ascertain that Class C3 (b) is a lawful use of the property.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by:
 - deleting all the wording of the alleged breach in paragraph 3 and substitution with, "Without planning permission, the making of a material change of use of a dwelling house to use as accommodation with care (C2) for a child (under 16) or young person (16-18)."
 - Deleting the words "a residential care institution providing care to young persons" in paragraph 5 and substituting with "as accommodation with care (C2) for a child (under 16) or young person (16-18)".
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

Procedural Matters: Lawful Development Certificate and Enforcement Notice

4. The Inquiry sat for three days. Evidence was heard in person on day one and day two. On day three closing submissions were heard via video link.
5. Evidence at the Inquiry was taken under solemn affirmation.
6. S191(1)(a) of the Town and Country Planning Act, 1990 (the Act) states that if any person wishes to ascertain whether any existing use of buildings or other land is lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.
7. A pre-inquiry note asked Nurtured Future Living Ltd (NFL) (the Appellant) to consider whether the description of the use for which a certificate of lawful use (LDC) is sought, as set out in the banner heading for Appeal B above, was correct; considering their evidence that the use of the dwelling to provide care for a child and young person would fall within Use Class C2 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order, 1987, as amended (UCO). It was subsequently agreed by the main parties and confirmed at the Inquiry, that the correct description for the LDC should be: "*Use as accommodation with care (C2) for a child (under 16) or young person (16-18).*"
8. Furthermore, although acknowledging that the alleged breach of planning control in the Notice is not invalid, in the interests of consistency the main parties invited me at the Inquiry to vary the Notice to allege: "*Without planning permission, the making of a material change of use of a dwelling house to use as accommodation with care (C2) for a child (under 16) or young person (16-18).*"
9. I am satisfied that the revised description for the LDC and the alleged breach of control accurately describes the use which had been taking place on the Land

when the LDC application was made. I shall therefore correct the description of the use in the LDC application and the alleged breach of planning control in the Notice. I shall also correct the requirements of the Notice to align with the corrected breach. I am satisfied that the revised description for the LDC and corrections to the breach and requirements of the Notice would not cause any injustice to NFL or the Council. I have dealt with the appeals on that basis.

10. Appeal A was originally made on grounds (a) (b) and (c). Ground (b) was withdrawn by the appellant following early discussions with the Council and confirmed in their Statement of Case.

Appeal A on ground (c) and Appeal B

Background and Main Issues

11. In an appeal on ground (c) (Appeal A), the issue is whether the use of the Land to provide accommodation with care for a child (under 16) or young person (16-18) gives rise to a breach of planning control.
12. In Appeal B, NFL seek to establish that the use of 2 Woodlands Drive to provide accommodation with care for a child (under 16) or young person (16-18) is lawful. Section 191 (4) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal and the issue is whether the Council's decision to refuse to grant a Certificate of Lawfulness of existing use or development (LDC) was well founded.
13. Prior to NFL first occupying the property in July 2020, the appeal property (No 2) was in use as a dwellinghouse. It is understood from a neighbouring resident, who was heard at the inquiry, that the previous occupiers were an elderly couple. There is no dispute between the parties that the use of No 2 at that time was a dwellinghouse as set out in Class C3(a) of Part C of Schedule 1 to the UCO.
14. Between July 2020 and August 2021, the property provided accommodation with care for a child or young person. It is common ground that the occupation of the appeal premises by a child or young person requiring "care" (as defined by the UCO) would result in the premises falling within Use Class C2 "residential Institution"¹.
15. It is established case law² that the materiality of a change of use is not just established by recognising that there has been a change in the use class. The correct starting point for such an analysis is the actual use of the property as a dwellinghouse at, or when last occupied before the existing use or alleged breach of planning control occurred. Consideration must be given to whether off-site or on-site effects of the change indicate that there is a change in the definable character of the site's planning land use. It is therefore those considerations that form the main issue in these appeals.

¹ Statement of Common Ground (SOCG), dated 14 July 2022.

² *North Devon DC vs First Secretary of State and Southern Childcare Ltd* [2003] JPL 1191

Reasons

16. No 2 Woodlands Drive is a modest two-bedroom semi-detached bungalow which is situated within a small residential cul-de-sac comprising a mix of semi-detached two-storey dwellings and bungalows. No 2 has an attached garage and front driveway. There is also an area of lawn to the front of the property and a private rear garden.
17. At the time of the application for the LDC (August 2021) the appeal property had been providing care for either a single child or a young person. We heard at the Inquiry from the Director of Operations at NFL (HS), and it was also set out in her Proof of Evidence (PoE), that NFL was created to provide care and supported living homes for children and young people, and the model used by NFL is 'Solo Placements'. The aim is that the home, which has a support package created to meet the individual needs of each child/young person, supports the person on a range of areas, including mental health needs, trauma, education, employability and independent living skills and health and wellbeing. In the case of the solo placements at the appeal premises, care is provided at a staff ratio of 2:1 with the care workers on 0800hrs to 2000hrs and 2000hrs to 0800hrs shift patterns. In addition, the home had a house manager who attended the property Monday-Friday between 0900hrs and 1700hrs. There is a company pool car left at the property to enable the care workers to transport the cared for child or young person to education, appointments, etc.
18. From the evidence before me, including what I heard at the Inquiry and saw on my site visit, there are on-site and off-site impacts attributable to the use of the property to accommodate a child or young person with care. I consider below how those impacts have affected the character of the appeal site and its planning land use.

Staffing

19. As described above, NFL advise that the care of a child or young person requires a staff ratio of 2:1. The Inquiry was told that this arrangement also seeks to reflect a typical family dynamic, providing two parental figures. However, the carers do not reside at the property and operate on day and night shift patterns with a 15 minute handover period.
20. In addition to the care workers, the home has a house manager. The manager attends the property Monday - Friday during office hours (0900hrs – 1700hrs) to undertake administrative duties and tasks. Those duties include managing care arrangements and carers; reviewing referrals and complaints; and completing paperwork. Whilst those duties are associated with the care of the child/young person in the home, the house manager is not a care worker.
21. HS also told the Inquiry that during office hours she would visit the property at least once a fortnight, and there may also be visits from social workers, family/friends, health professionals, although some of those meetings may take place via video link. If Ofsted registered there would also be six monthly inspections by two inspectors.
22. The previous C3(a) use of the dwellinghouse would not have had a house manager, i.e. a member of staff who attends the property every weekday, at set hours, to carry out office/administrative tasks. Whilst it would not be

unusual these days for a home to have an office space within it, there is no evidence that the previous C3 (a) utilised any of its rooms as office space. Nor is there evidence that the previous use required an employee from outside of their household to attend the property with the regularity and frequency that occurs with NFL's house manager. There is thus a demonstrable need for the property to provide on-site parking for the house manager and a regular pattern of car movements associated with that member of staff which was not found with the previous C3(a) of the property and would not be found in a typical C3(a) dwelling.

23. In addition, the care workers also attend the property on a regular shift pattern and generate a parking requirement. I appreciate that an elderly person/couple might have the need of a carer to call in the morning and evening time. However, it would be unusual for two carers to be at the property all day and night. Likewise, the shift patterns of the four carers would not replicate the patterns of activity likely to be associated with the previous use of the dwelling, and whereby there are generally four cars, in addition to the pool car at the property during shift changeovers. Nor would the previous use of the property as a C3(a) dwelling have required an additional company/pool car to be parked at the property and utilised solely for transporting a cared for child/young person.
24. In this case the property is a two-bedroom bungalow, with a driveway originally laid out for the parking of two cars. I accept that there is a possibility that the occupants of a two-bedroom bungalow may have three cars and noted on my site visit that the majority of bungalows within the street have adapted their drives so that a third vehicle can be accommodated. However, from the evidence before me, including the photographic evidence provided by third parties and incorporated within the Council's and HS evidence, the staffing requirements alone generate a different pattern of traffic movements and necessitate a greater parking requirement than would usually be associated with a single household occupying a bungalow of this size, and moreover, the previous use of the property which was occupied by an elderly couple.
25. The employment of a house manager, number of carers with regular shift patterns, and the on-site requirement for a company car, mean that vehicles have been regularly parked on the road/pavement outside the home. I appreciate that on-street parking is not uncharacteristic within residential areas and often occurs for short periods when there are deliveries to properties or family friends visit. However, given the nature of Woodlands Drive, including the type and size of the properties within it, generally occupied by more elderly residents, and in the absence of any substantive evidence that on-street parking occurs with the frequency and regularity necessitated by the use of the property to accommodate with care a child/young person, the staffing requirements of the home alone has in my opinion had an impact on the wider area and had a material effect on the character of the use.

Occupants

26. The property has been in use to provide care for a single child or young person. The details of those placements are set out in the SOCG and there is no dispute between the parties that those placements have involved a child or young person with behavioural/safeguarding and/or mental health concerns.

27. Third party objections, submitted both in response to the original application for the LDC and in response to the appeals, record previous incidents and express concerns over noise/disturbance from the property, inappropriate behaviour and regular visits from emergency services, as well as concerns relating to on-street parking.
28. HS Addendum PoE sets out the background to the police attendant record for the property which has been obtained from the police and records their attendance between June 2020 – June 2022³. It shows that prior to the service of the enforcement notice there had been 20 police attendances since the first use of the appeal premises as accommodation for the care of a child/young person. The records indicate that the call outs related to a variety of issues, including violence against a person; child safety concerns; criminal damage; community nuisance; anti-social behaviour and missing person inquiries. In addition, HS also advised at the Inquiry that it was not unusual for a cared for child to have an 'incident', which NFL describe as a behavioural change that involves verbal, physical or property damaging aggression/frustration. HS advised in cross-examination that those incidents could be as many as five a week but would not normally require a police presence. They would however often involve shouting, screaming and banging.
29. Whilst recognising that generally there is a reasonable explanation for the child/young person's behaviour, and in the acknowledgement that NFL staff are specifically trained to de-escalate those incidents, there is clear evidence from the police attendance log; correspondence from Staffordshire Police⁴; correspondence from neighbouring residents, and evidence at the Inquiry from a Local Councillor, that the occupation of 2 Woodlands Drive by a child or young person has resulted in an increased police attendance at the property, as well as periods of intense noise and disturbance, albeit each incident might be short lived. There is no evidence that the police were required to attend the previous use of the property as a C3(a) dwelling and episodes of noise and disturbance from the previous occupation of the dwelling by elderly residents would have been extremely rare. The use of the property has resulted in a propensity for noise and disturbance, and an increase in police attendance to the premises within the street. Consequently, there has been a resultant material change in the character of the use.

Other Matters

30. The appellant and Council have submitted other appeal decisions which are intended to support their respective cases. It is no surprise that these generally pull in opposite directions in respect of the various issues and cases put forward. Whilst I have read them, and some of them were discussed in more detail at the Inquiry, what is clear is that the individual circumstances of each appeal case are seldom, if ever, replicated. Both parties agreed that they could not find any previous decision involving solo placements. However, that does not mean that all accommodation which provides care for a single child/young person would not result in a material change of use and is lawful. I also note that none of the examples provided by either of the main parties related to an application under s191(a) of the Act, for an existing use. However, it is clear that each case includes consideration of differing issues which are attributed differing amounts of weight as the individual

³ Appendix 1, HS Addendum Proof of Evidence.

⁴ Council's PoE Appendix 1, email correspondence from Staffordshire Police.

circumstances dictate. When considering different issues in areas with individual characteristics, it is no surprise that a spectrum of conclusions and different decisions arise. Whilst I have born in mind the general conclusions, I have determined these appeals in relation to the individual circumstances of the case and evidence before me.

Conclusions

31. For the reasons set out above I consider that the use of the property with care for a child or young person has resulted in a material change in the use of the property. There is no planning permission granted by the local planning authority for that change of use and that change of use is not permitted under any provision of the Town and Country Planning (General Permitted Development) (England) Order 1995, as amended. A breach of planning control has occurred and Appeal A on ground (c) fails.
32. In addition, I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and Appeal B should not succeed.

Appeal A on ground (a), deemed planning application.

Main Issue

33. The main issue in this case is the effect of the development on the living conditions of neighbouring residents and the character of the surrounding area.
34. The proposal is for the use of the property as accommodation with care for a child or young person. Children are a group sharing a protected characteristic and therefore the public sector equality duty (PSED) applies⁵.

Reasons

Background

35. Since September 2021 to provide a home for the care of a child or young person it is necessary for the home to be registered and Ofsted regulated. A pre-requisite of an application for Ofsted registration is a grant of planning permission for its use or an LDC. An unregistered home is only allowed to provide accommodation for young people requiring support (those aged 16-18) or for an approved emergency placement (28 days). NFL are seeking a grant of planning permission to enable them to apply and hopefully gain Ofsted registration for solo placements at the appeal property. If I was to grant planning permission for the proposed use, but NFL failed to obtain Ofsted registration for their use of the property, HS told the inquiry that NFL had made a decision that they would sell the appeal premises. However, as permission would be for the use of the Land and not solely for the benefit of NFL, the premises would be available for the permitted use by another operator. I have determined the appeal on that basis.

Parking

36. Policy EV12 of the South Staffordshire Local Plan, Core Strategy DPD, adopted 2012 (LP) sets out the Council's policy in relation to parking provision for new development. It states that the Council will require appropriate provision to be made for off street parking in development proposals in accordance with

⁵ Section 149 of the Equality Act 2010.

adopted parking standards. Those standards are set out in Appendix 5 to the LP which also includes details of how those standards should be used and their objectives. Whilst the proposed use does not fall within any of the standards specified, Appendix 5 specifies that for any use not included in the standards, the number of parking spaces will be assessed and determined based on the individual merits of the scheme. Furthermore, the objectives of the standards make it clear that it is necessary to ensure that sufficient space is provided for a development to ensure that parked vehicles do not become either a safety hazard or environmental nuisance.

37. There is no dispute that the use of the property as a care home would, at certain times of the day, i.e. shift changes, require five cars to be parked at the property. Furthermore, with the pool car and vehicles belonging to the two carers and house manager, there would be a continual requirement for four parking spaces during the daytime. In addition, there will be routine visits from NFL's Director of Operations, social workers, personal advisors, Ofsted Inspectors, and occasional visits from emergency services. As with any household there will also be other visitors and deliveries at times.
38. The driveway and parking area within the front garden of No 2 has recently been modified to make provision for three cars to be parked off the road, and HS has sought to demonstrate that with further modification space could be provided to park four cars on the forecourt⁶. However, from my inspection of the site this arrangement would be difficult to achieve in practice and would require cars to be parked in tandem. Similarly, although HS suggested at the Inquiry that staggering the carer's changeover could reduce the need for a fifth car parking space, I believe this would be difficult to achieve in practice. It would require clear communication between all carers. The draft management plan⁷ indicates that there would be 13 different care workers employed on a shift pattern at No 2. With that number of different employees, it is unlikely that communication would be perfect. Indeed, it is clear from third party representations that previously when assurances have been made by NFL that they would address residents on-street parking concerns, there was little if any improvement. On-street parking has continued to be a feature associated with the previous use of the property as a care home.
39. I appreciate that on-street parking is often found on residential streets in areas where houses do not have any off-street parking, or for short periods of time by visiting family, friends, or delivery vehicles. However, from the evidence before me, and observations on my site visits, Woodlands Drive is characterised by residential dwellings which have sufficient off-street parking to meet the needs of their occupiers and in accordance with the Council's parking standards. Any on-street parking is therefore generally short term and associated with visitors and deliveries. That would not be the case with the proposed use of No 2 Woodlands Drive where there is not sufficient off-street parking for its use as a care home, and staff would regularly have to park on the road.
40. I recognise that the Council has not raised any highway safety concerns, however it is evident from third party representations that constant on-street parking in this location is an environmental nuisance. Whilst I appreciate that NFL would require their staff to park responsibly, Woodlands Drive has a

⁶ Photograph, Appendices to HS Proof of Evidence.

⁷ Appendices to HS Proof of Evidence.

relatively narrow carriageway and thus unless cars are parked partially on the pavement, it is difficult for larger vehicles to pass. Parking on the pavement would also obstruct pedestrians, particularly those with pushchairs, wheelchairs or mobility scooters. In addition, the appeal property is situated close to the junction of Woodlands Drive with Wood Avenue. Any on-street parking close to the junction introduces greater opportunities for conflict between vehicles entering and leaving Woodlands Drive, which would not to my mind be in the best interests of highway safety.

41. I conclude that the proposed development would not provide for sufficient parking and there would be conflict with the development plan, in particular with Policy EV12 of the LP the aims of which are set out above.

Noise and disturbance

42. Woodlands Close is a short residential cul-de-sac. There is an intimate relationship between the dwellings and their occupants by reason of the small number of dwellings and their semi-detached form and layout. Their linked garages/driveways and open frontages onto a narrow carriageway all contribute to that relationship and to the character of the area. Considering that intimate relationship, any significant increase in activity or noise at any one of the properties would in my view be extremely noticeable within this residential neighbourhood.
43. The solo placements that took place between July 2020 and October 2021 at the appeal premises included 28 day emergency placements and involved children and young adults that required specialist services with multiple needs such as intensive family support, specialist child and adolescent mental health services, and services for children with disabilities (Tier 3). From the evidence before me, including that heard at the Inquiry and within correspondence from neighbouring residents, the Council, the Police, and local Councillors, including accounts of a meeting with NFL, the use of the premises during that period resulted in episodes of noise and disturbance to neighbouring residents. HS confirmed at the Inquiry that it was not unusual for a child or young person in solo care to have an 'incident'. Unless those incidents involved violence the police would not normally be involved. However, even when contained within the property an incident would be noisy and often with shouting, screaming and banging until the situation is de-escalated. Incidents where there was a requirement for police attendance (20 within a 14 month period), included records of violence and aggression towards persons, environmental/community nuisance, criminal damage, missing persons and concerns for the safety of a child⁸.
44. The previous use of the premises to provide accommodation with care to a child or young person took place in a regime which did not require the home to be regulated. Nevertheless, NFL only employ staff who are appropriately qualified and who have been trained to a high standard in the following areas: mental health awareness; positive behaviour support; preventing radicalisation, safeguarding children, suicide awareness, whistleblowing, county lines, ligature training and team teach and de-escalation⁹. NFL are now seeking to gain Ofsted registration. This would allow NFL to house a child (10-14 years) on a long-term placement and HS advised that if regulated they

⁸ Staffordshire Police attendance record June 2020 -June 2022. HS Appendices Addendum Proof.

⁹ Staff Training, HS Proof of Evidence.

would not be required to take on the emergency placements which they have taken in the past. Long term placements mean that there would not be the frequency of new residents who require settling in periods and those are often the most disruptive periods. Furthermore, they would aim to take Tier 2 cases and would have a greater control over the placement and suitability of the appeal premises for that child.

45. As I set out in paragraph 39 above, Woodlands Drive by reason of its design, layout and generally more elderly occupants is sensitive to any changes in noise characteristics. Moreover, the appeal premises is attached to No 1 Woodlands Drive with an internal party wall between their respective living areas and abutting gardens and frontages. Correspondence received from a relation of a previous elderly occupier of No 1, expressed severe concerns about the behaviour of previous occupants and the impact this was having on the living conditions and health and wellbeing of their relative, in relation to noise and disturbance.
46. I understand that if the property becomes Ofsted regulated then NFL will have greater control over the placements they offer/receive, and it is likely that if they were able to secure a long-term placement for a Tier 2 child, then 'incidents' would be less frequent. I also recognise the positive outcomes that NFL have had with previous placements¹⁰. However, HS recognised at the inquiry that when registered NFL would be the appropriate organisation to accommodate the needs of all children or young persons, and that Ofsted prefers regulated providers to be unrestricted. Thus, there is no guarantee that Tier 3 placements would not occur, or if Ofsted regulation is not forthcoming, that emergency placements or young person's requiring support would not be accommodated by another provider. Furthermore, although not exclusively the case, the nature of solo placements is that they are required for a child or young person who would not engage positively with others and those children tend to come with a lot of traumas.
47. I have had regard to the range of family circumstances that could be accommodated in a typical C3 dwellinghouse, including families with teenage children who play loud music, may have parties, or a family that has a child with complex and specialist needs. However, whilst I appreciate that there are undoubtedly situations in residential neighbourhoods where there are incidents of anti-social behaviour from a C3 dwellinghouse use, a care home use will inevitably have a greater turnover of residents who require settling in, and those residents by the nature of their circumstances and need for solo placements will have a propensity to have regular 'incidents' resulting in noise and disturbance to neighbouring residents.
48. Noise and disturbance would not be solely in relation to the behaviour of the occupants. There would be demonstrably more vehicular movements associated with the C2 use than by a typical family occupying a small two-bedroom bungalow. Even if the occupiers of the bungalow had three cars, although less likely for a property such as this, then on a typical day the routine staffing alone in the care home would result in 10 vehicular movements, as opposed to six movements with a typical C3 use. The living room windows of the adjoining property No 1, are close to the parking area at the front of the appeal property. This intimate relationship means that the

¹⁰ Email in relation to AL placement, dated July 2020 Appendices HS Proof of Evidence.

comings and goings of carers on morning and evening shifts, including at weekends, would be extremely noticeable and cause some disturbance to the adjoining occupier.

49. I accept that regulation by Ofsted would give NFL more control over future placements and that the appellant would be required to comply with a range of regulations and rules governing the operation of the accommodation and child/young person and carers. I have also considered the proposed management plan. However, from the evidence before me NFL currently adhere to government legislation and guidelines and require their staff to be appropriately qualified and undertake a high standard of comprehensive training. Sound proofing of the party wall with No 1 would provide some mitigation and reduce the amount of noise transmitted to the adjoining property's living accommodation. However, noise would still emanate from open windows and there would be disturbance from the level of activity associated with the use.
50. For the reasons set out above, I conclude that the proposed use would result in a material increase in comings and goings from the property and a propensity for noise and disturbance which in this sensitive location would result in significant harm to the living conditions of neighbouring residents and have a harmful effect on the character of the area. There would be conflict with the development plan, and in particular with Policy EQ9 of the LP which seeks to ensure that new development does not unacceptably affect the amenity of residents or occupants, with particular regard to privacy, security, noise and disturbance, pollution, odours and daylight.

Fear of Crime

51. Third party correspondence in relation to the previous C2 use of the premises includes concerns in relation to security and in particular concerns in relation to the number of times the property was attended by emergency services, including the police.
52. Policy EQ9 of the LP includes a requirement that the amenity of residents is not unacceptably affected in relation to matters of security and is supported by paragraph 130 (f) of the National Planning Policy Framework (the Framework) which seeks to ensure, amongst other things, that the fear of crime does not undermine the quality of life or community cohesion and resilience. I have also had regard to relevant caselaw¹¹.
53. I recognise that given the number of call outs from the police associated with the previous use of the property and the noise and disturbance attributable to 'incidents' at the property, it is reasonable for neighbouring residents to feel some discomfort and concern about the impact of the proposed use on local surroundings. However, whilst understanding that a fear does not have to be recognised to be justified, there does need to be a sound basis for residents to be fearful for their security for material harm to arise. In this case the home would only provide a solo placement. Although the child or young person may display behaviour which is aggressive and disturbing, there is no evidence that such behaviour has ever previously resulted in criminal activity or been aimed at neighbouring residents or their properties. Furthermore, some of the Police

¹¹ *West Midlands Probation Committee v Secretary of State for the Environment, Transport and the Regions* [1997] 11 WLUK 123

visits have been in relation to missing persons, and not all are in response to violence.

54. Increased police activity within the street and noise incidents at the property will undoubtedly be concerning for neighbouring residents. However, given that the placements only relate to one child/young person and the high level of training and 2:1 staffing ratio that would be employed within the home, from the evidence before me, I do not consider that neighbouring residents fear of crime has a sound basis.
55. For the reasons given above, I conclude that the proposed development would not have a harmful effect on the security of neighbouring residents. There would be no conflict with the development plan in this regard nor with the Framework, the aims of which are set out above.

Other Matters

56. There is no dispute between the main parties that there is a compelling national need for regulated children's homes. This need is evidenced in the Children's Commissioner's Report¹², and it was heard at the Inquiry that this unmet need can mean that children are living in unsuitable accommodation, including in some instances caravans or tents.
57. However, it is the Council's case that there is not a demonstrable need for such accommodation in Staffordshire or South Staffordshire and rely on correspondence from Staffordshire County Council who advise that there is no evidence to suggest there is such a housing need in Coven for Staffordshire¹³. In addition, the Council has provided evidence of other homes which have been granted consent in the local area¹⁴. On the other hand, the NFL provided details of a recent enquiry for an urgent placement from Staffordshire County Council's Children's Services Team¹⁵. I also note that none of the previous placements at No 2 have been for a local child and AN accepted in cross examination that there is no evidence of a 'long standing, urgent or unmet local need.'
58. The evidence before me on local need is limited and not comprehensive. However, what is clear and undisputed is a demonstrable need nationally for regulated children's homes, a subset of which is a need for solo placements. The Framework also makes it clear that it is necessary to ensure that the needs of groups with specific housing requirements are addressed. A grant of planning approval for this development would help to secure Ofsted registration and provide a home with care for a child or young person. This would be a clear benefit in the planning balance.
59. As was the case with Appeal B, the appellant and Council have submitted other appeal decisions which are intended to support their respective cases. I have had regard to these decisions, but as noted by the appellant in their closing submission, every case turns on its own facts and cases concerning uses of this type pull in different directions. Therefore, whilst I have read them, and born in mind the general conclusions, I have determined this appeal in relation to its individual merits and short-comings.

¹² Children's Commissioner's Report Unregulated, September 2020.

¹³ Appendix 5 LPA Statement of Case.

¹⁴ Appendix 2 LPA Proof of Evidence.

¹⁵ Appendix to HS Proof of Evidence.

Planning Balance

60. Section 38(b) of the Planning and Compulsory Purchase Act, 2004 states that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
61. I have found that the appeal proposal would conflict with the development plan. The proposed development would not provide sufficient on-site parking for the use, and this would result in an environmental nuisance which would be harmful to the character of the surrounding area. Furthermore, I have found that there would be substantial harm to the living conditions of neighbouring residents through noise and disturbance. This would be in conflict with the development plan and the Framework (paragraph 130 (f)) which seeks to ensure a high standard of amenity for existing and future users.
62. On the other side of the balance is the demonstrable national need for regulated Children's homes, and for those homes to be in the right place and within a sustainable community. That need is supported by the Framework (paragraph 60). In this case the proposal would provide a home for a single child or young person and taking into account that level of provision should be afforded moderate positive weight in the planning balance.
63. I have had due regard to the PSED, but the harm caused by the proposed development as set out above, significantly and demonstrably outweighs its benefit in providing a home for a single child or young person, and in terms of eliminating discrimination, advancing equality of opportunity for those persons and fostering good relations between them and others. I therefore conclude that it is proportionate and necessary to dismiss this appeal.

Conclusion

64. For the reasons given above and taking into account all other matters raised, I conclude that Appeal A on ground (a) should not succeed.

Overall Conclusions

65. For the reasons given above, I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act, 1990, as amended (Appeal A).
66. I also conclude that the Local Planning Authority's refusal to grant a certificate of lawful use or development in respect of the existing use of the appeal premises as accommodation with care (C2) for a child (under 16) or young person (16-18) was well-founded, and that Appeal B should not succeed.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Constanze Bell Of Counsel, instructed by Marie Bourke, Senior Associate,
Tyr Law.

She called

Hayley Self, Director of Operations at Nurtured Future Living

Alyn Nicholls BA (Hons) MRTPI.

FOR THE LOCAL PLANNING AUTHORITY

Piers Riley-Smith Of Counsel, instructed by Pardip Sharma, South Staffordshire
Council.

He called

Ms Laura Moon Senior Planning Officer, South Staffordshire Council.

THIRD PARTIES

Councillor Wendy Sutton Brewood and Coven Ward.

Mr Alan Giles 16 Woodlands Close, Coven.

Documents submitted at the Inquiry:

1. Schedule of Conditions.