

Ms. Laura Yeadon
Kirklees Council Planning Services
Civic Centre 1, High Street, Huddersfield, HD1 2NF

By email only: laura.yeadon@kirklees.gov.uk

16th July 2021

Dear Ms. Yeadon

Change of use from dwelling house (Class C3) to residential care home (Class C2)
Wall Nooks, Wall Nook Lane, Cumberworth, Huddersfield, HD8 8YB
Objection on behalf of
LPA Reference: 21/91682

represents who are the recent purchasers and now residents of 'The Nook', which is immediately adjacent to the above application site.

(our client) would wish to register the following objection in relation to application reference: 21/91682. This is broken down in no particular order, as follows.

Context of Application in respect of the Use Classes Order

First, some important context, being that the application is a change of use from C3 in the Use Classes Order, to C2.

The Town and Country Planning (Use Classes) Order 1987, as amended (the 'UCO') makes a clear distinction between premises in C2 and C3 Use and hence why planning permission for a change of use is required for such changes.

The well-known *Leelamb* case (*Leelamb Homes Ltd v SoSCLG and Anor* [2009] EWHC 1926 (Admin)) reiterated the position in relation to the separate use classes. In *Leelamb*, Robin Purchas QC sitting as a High Court Judge stated at paragraph 31: "...it is right that in the Use Classes Order if dwellings fall within class C3, by the terms of the definition, they cannot fall into class C2."

Quite simply: if a property is in C3 use class, then it cannot be C2, and vice-versa.

A use class falling within C2 is defined in the UCO as follows:

"Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre."

It is noted that there is within this definition in the UCO a clear possibility that care can be provided within a C3 household. However, the definition also provides clear examples which differentiates C2 from C3 use by people not living together as a single household but within a more institutional setting.

Article 2 of the UCO defines “care” as meaning the following for the purposes of the UCO:

““care” means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment;”

Therefore, the definition clearly includes that the provision for children is included within the definition of C2, though more generally it is clearly the provision of “care” and the format of the accommodation that differentiates C2 use from C3 use. Where accommodation of this type has shared elements, or is occupied by more than six people, especially if children are involved, it is more likely than not that it falls to be a C2 use and not C3.

It becomes abundantly clear that there are three elements of consideration in order to establish whether a use amounts to the C2 and C3 use class. These can be summarised for the purposes of this letter as: (1) the level of care which is provided to a resident; (2) the format and nature of the accommodation; and (3) the nature and makeup of the household.

What is applied for is clearly, but the nature of the application (i.e. it is an application for a change of use to C2 from C3) and the applicant’s own admission, an institutional use, which is commercial in its nature and in its funding.

Clearly, to be established as a C2 use, the level and type of care is truly relevant. The level of care which is provided must clearly be more than a *de minimis* level of care going beyond more than mere ‘looking after’ residents. Moreover, it must clearly accord with the definition in Article 2 of the UCO, as outlined above.

The Planning Statement submitted on behalf of the applicant and, in particular, the Supplementary Statement dated June 2021 (together or separately: ‘applicant statement’ or ‘statement’) are vague and circumspect in its description of the types of care provided to the intended residents, that are children. However, what can be construed from the nature of the application, is that the intention is for C2 and not C3, with a rebuttable presumption that the level of care provided must be considerably greater than and different in nature to that of a C3 residence.

For the purposes of this letter of objection and considering the basic legal premise that if it is C2, it cannot be C3, for the purposes of this letter of objection, two headline items can be drawn from this.

The first is that what is applied for is, in legal and planning terms significantly different to any care arrangements in a C3 use, which it is alleged has been going on at the application site for a number of years. The second, following this first item, is that in this case the applicant cannot lawfully or even practically rely on the alleged current (or previous) C3(b) use of the application site as amounting to a legitimate *fallback* position, which is identified further in “Material Considerations” below.

What is applied for is C2; distinct from C3 and therefore in legal and in planning terms significantly different and with different more pronounced planning effects than the allegedly present or previous C3 use. For the applicant to state and for the Council to assess and determine based on the misnomer that the operation applied for is “no different” to the existing one, is profoundly incorrect.

Notification/Publicity

Our clients knew nothing of the application during their purchase of the property. It is accepted that there may well have been a crossover in the notification of the application prior to their purchase and this may have been lost before sale/purchase formalities. Nevertheless, the person from whom our clients purchased the property confirmed that she had not received correspondence regarding the application.

It is apparent from other comments that there may have been a lack of publicity for this application.

Article 15(5) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 as amended (the 'DMPO'), requires that an application of this nature must be publicised by giving requisite notice by site display in at least one place on or near the land to which the application relates for not less than 21 days, or by serving the notice on any adjoining owner or occupier.

It is one method, or the other, or both, to be legally compliant. The Council's overwhelmingly usual method is notification and publicity by site notice (or 'lamp post') method. We are aware of no recent examples of *letter-only* method utilised by Kirklees Council in publicising planning applications.

Information is that notices have not appeared on lampposts, etc. and so it can only be deduced that the Council has elected to administer this legal requirement by postal letters.

Our client has no record of this and has spoken with the previous owner (i.e. the person that sold them their property), who informed that they had received no such correspondence and had only found out about the application later through other locals that had received letters.

It is therefore the case that lawful publicity may not have taken place, insofar as notices on lampposts or the like has not taken place here and The Nook, as the "adjoining" property to the application site, has not received a letter publicising the application.

For completeness, the term "adjoining owner or occupier" is defined in Article 10 of the DMPO as meaning any owner or occupier of any land adjoining the land to which the application relates. The term "requisite notice" means a notice in the form set out in Schedule 3 of the DMPO or in a form substantially to the same effect.

The Council is invited to clarify and provide evidence of this this position prior to determination of this application. Where publicity is deficient, then this application may not lawfully continue until such publicity formalities have been addressed by the Council.

Legitimate Expectation

Following notification and publicity requirements as described above, it is overwhelmingly the Council's practice to notify and publicise by way of 'lamp post' method, rather than rely on adjoining owner and occupier notification.

For reasons unknown, as well as failing to issue a letter to our client's property (and to be clear this would have to have been to the previous owner), which is a clear "adjoining owner or occupier" to the application site, in departing from its usual publicity requirements, the Council seems to have elected to keep the publicity of this particular application concentrated and away from the vast majority of local residents, that have subsequently and quite reasonably become concerned about the application.

It has been trite planning law for some time that a Council's Statement of Community Involvement (SCI) can give rise to a procedural legitimate expectation.

In the case of Kirklees Council and in this context, the SCI refers the reader to the Council's Development Management Charter, which outlines how applications will be notified. Table 1 lists both the site noticed and letters method (though does in a footnote reference that either could be used). In any event, Kirklees Council, unless it can provide evidence to the contrary, does not at all utilise the letter-only method of consultation as identified above.

In the case of *R (Majed) v London Borough of Camden [2009] EWCA Civ 1029*, the claimants had not been notified of a planning application, as is the case here, which resulted in the Judge, Sullivan LJ, finding for the claimant following an argument by the Council that its lack of alignment with the SCI notification did not matter, because the SCI went further than the statutory duty under the GDPO. Sullivan LJ stated that: *"legitimate expectation comes into play when there is a promise or practice to do more than that which is required by statute"*.

The Council overwhelmingly notifies by either site notice/lamp post method only, or site notice method and letter method to adjoining owners and occupiers. To the best of our knowledge, unless clear and substantial evidence can be shown to the contrary by the Council, the Council does not publicise by way of only letter method.

The fact that it has done so on this occasion is puzzling and concerning to local residents, who would have a procedural legitimate expectation to be properly notified in accordance with the Council's usual procedures.

It is submitted again that this application should not advance further and certainly should not be determined until this procedural legal defect is rectified.

Consultation

We note that there have been three professional consultee responses, which are from (i) the Police Designing Out Crime Officer; (ii) Environmental Health (specifically Pollution and Noise Control); and (iii) Highways Development Management.

We comment in more detail in the section on "Material Considerations" further below but offer the following in direct response in this section.

(i) Police Designing Out Crime Officer ('Police')

Although on balance supporting the application, the Police response is what at best could be described as lukewarm.

The response raises concern about the "type of care home" being an extra drain on resources. Paragraph 3 on page 1 states that: *"As there are a significant number of this type of care home in the Kirklees District, it is very important that new sites do not create an extra drain on police resources."*

Quite rightly, such a comment will be alarming to local residents, especially those on close proximity of the application site. However, such a comment also goes on to acknowledge that with such facilities comes a quite reasonable fear of a negative impact on local amenity and a legitimate fear of crime (which is discussed further below).

The Police Designing Out Crime Officer should be re-consulted and asked to provide details of "this type of care home" in other locations in Kirklees, with clear statistics on incidences and measurable information on the level of time, money and resources, with the reasons for which are incurred by the

Police and other agencies in servicing this type of facility in the area. Without this, the Council is not able to make an full and objective determination. The legitimate concerns in this respect fall from a lack of information, but the very real indirect admission that the Police are themselves concerned about facilities of this type.

The applicant could of course provide additional information in this respect, and we would recommend should be asked to do so.

Furthermore, the recommendations relating to the more physical solutions, which are not insignificant or low in quantity, may in themselves require separate planning permission.

By way of mere example, the addition of trellis on top of 1.8m high fencing will likely exceed the tolerance of 2m permitted under the parameters in Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Again, this represents only one such example.

In such a case, these recommendations cannot be conditioned as part of a permission. Following this, where these measures are required, then the application would need to be revised to include associated operational development as well as a change of use.

Furthermore, the Police response lists paragraphs 91 and 127 of the National Planning Policy Framework (2019), as well as Policy LP24 of the Kirklees Local Plan (2019). However, simply referencing such does not mean that they are automatically compatible, as shall be discussed further below.

The Police consultation should be respectfully challenged by the Council, with the Police asked to provide further information as described. The Council is not able to fully assess and grant approval on the basis of the present Police consultation response.

(ii) Environmental Health ('EHO')

There is nothing wrong *per se* with this consultation response. The requirement for electric vehicle charging points is obviously welcomed. However, the reference to the requirement for improved air quality goes to the heart of a key fact where this application is concerned.

This is a rural location that is largely inaccessible except by car or other mechanically propelled vehicle. The Planning Statement and Supplementary Statement have acknowledged this insofar as residents and staff are transported to and from where they need to be by car, rather than by bus, etc.

It would seem that the EHO consultation response raises the prospect that this development, which as a C2 institutional use and commercial enterprise, is essentially reliant on many more multiple vehicle movements compared with the present position. This is an admission that the proposal is not compatible with the following Kirklees Local Plan Policies:

- LP19 (Strategic Transport Infrastructure)
- LP20 (Sustainable Travel)
- LP21 (Highways and Access)
- LP22 (Parking) – it is noted that there is no assessment on parking provision, therefore also making the application deficient considering such a change of use

(iii) Highways Development Management

The response from Mr. Turner is respectfully deficient and should be returned and challenged by assessing officers.

In addition to the lack of compliance with the relevant highways policies listed above, the response passively attempts to portray the proposed development as innocuous and seemingly no different to the present situation.

In the penultimate paragraph, the officer states in their consultation response: *"...the proposals should not make any changes to servicing arrangement or increase vehicle use."*

This is profoundly wrong but is clearly founded on the mistaken basis that a C3 use is akin and no different to a C2 use. The above has established that this is incorrect.

The two uses are not and cannot be the same. This proposed C2 is an official, institutional, and more commercial use and needs to be assessed accordingly, as there will clearly be many more traffic movements.

This should be put to the relevant officer, following the submission of further coherent and clear further information on highways movements from the applicant.

Conclusion on professional consultation responses

In all cases, the above has shown that the application is not ready to be determined in respect of all professional consultee responses. The application is clearly deficient in information and the consultees are respectfully misguided and misunderstood in their present notions that a C2 is the same as a C3 use, which the above has shown is profoundly incorrect. As is clearly established above, C2 use is not and can never be C3 use, and vice versa.

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications of this type must be determined in accordance with the development plan unless material considerations indicate otherwise.

The statutory development plan for the area is the Kirklees Local Plan (adopted February 2019).

The applicant in its Planning Statement compiled by Messrs Tetra Tech Planning (April 2021) lists the following policies as being relevant to the application:

- Policy LP1 – Presumption in favour of sustainable Development
- Policy LP3 – Location of new development
- Policy LP7 – Efficient and effective use of land and buildings
- Policy LP10 – Supporting the rural economy
- Policy LP60 – The re-use and conversion of buildings

It is noted that although listed in 3.15 of the applicant's statement, the applicability of the above referenced Local Plan policies in part 4 of the applicant's statement is found wanting in the context of the actual application.

For example, the application claims to accord with LP Policies LP7 and LP60. However, this is predicated on the basis that any re-use is automatically suitable, which is not correct. This is outlined further in the

context of the Green Belt in the section on 'Material Considerations' below.

Paragraph 4.1.9 of the statement describes the proposal as being "indistinguishable" to that of a dwellinghouse. Paragraph 4.1.10 attempts to draw parallels with a traditional C3 use class adding that: *"the staff will come and go as would parents who travel to and from work within a family home"* and so will allegedly have *"little material impact when compared with the existing lawful use"*.

This is both disingenuous and misleading, whether deliberately or not. This is because as identified above, where something is C2, then it is not C3 and vice versa; a simple matter of legal fact. A C2 use is an institutional use, being a significantly different operation and requiring completely different management. Otherwise, a legitimate question is: why make the application at all?

This is in any event contradictory, because it is admitted by the applicant in 4.1.11, whereby the applicant states:

"It is only the specific nature of the care provided by the applicant that means that planning permission is required in this instance. However, there will be no more residents at the site receiving care than can already occur without planning permission."

In other words, a more intensive use and level of care compared with the alleged present use is acknowledged and admitted. To state following the above that the proposal is compatible with LP7 and LP60 is baseless.

Paragraph 4.1.14 of the applicant statement claims that: *"The existing lawful use of the property as a dwellinghouse has the potential to generate the same level of activity (if not more) as that from the proposed use. Furthermore, the site could be used as a six-bedroom care home within Class C3 without the need for planning permission. Therefore, there will be no material change in the levels of activity at the site."*

Again, simple reliance on an alleged existing C3 use without any detail of the actual proposed C2 operation, the level and type of care to be provided, management and security arrangements, means that the Council cannot allow this application to be granted.

The fact is that there is no discernible detail on the operation and the level/type of care to be provided anywhere in the application. Accordingly, the application is deficient and the Council, its professional consultees and others, do not have anywhere near the relevant information to be able to assess, comment and determine the application in its present form. Therefore, it falls that the application either must be refused on this basis alone, or the applicant made to provide all relevant information and an entire re-consultation take place where all facts are in place and the all-too-common mistake that use class C3(b) and a C2 institutional and commercial use are somehow similar or interchangeable is clearly dispensed with.

To state at 4.1.18 that the proposed change of use will not harm the amenities of adjacent occupiers is both far-fetched and completely unevicenced.

A small section on parking and transport is included in the applicant statement at 4.1.19 to 4.1.22. It is also noted that nowhere in the statement does the applicant list the clearly relevant policies as identified further above, which are clearly pertinent and which this letter has identified the application is not

compatible with, or at best there is not enough information submitted with the application to make a proper assessment:

- LP19 (Strategic Transport Infrastructure)
- LP20 (Sustainable Travel)
- LP21 (Highways and Access)
- LP22 (Parking)

The applicant statement attempts to espouse community and social benefits from the proposal. The statement promotes at 4.1.23: *“Such services provide significant social and community benefits.”* There is however no elaboration or basis for this in any part of the application and it is submitted that without such information and detail such a statement cannot be taken seriously.

Policy LP3 requires that proposals should reflect the size and function of a settlement and have regard to the need to provide for new homes and jobs. No elaboration or detail is provided and there is no application of this proposal to this assertion.

Policy LP10 relates specifically to the rural economy and any improvement by a number of measures, including support for the needs of small and medium sized enterprises, by increasing local employment opportunities. The applicant statement promotes at 4.1.24 that: *“The change of use at the site is likely to provide some limited employment opportunities for local people...”*.

There is again no detail or basis for this anywhere in the application and there is no reference to what jobs are created that would (i) benefit the rural economy; or (ii) select employees based on locality and proximity to the facility, which may in itself be in breach of the Equality Act 2010 and other employment related legislation.

Material Considerations

The “Policy” section above has shown that the proposed development does not accord with the statutory development plan for the area, both in terms of the Local Plan policies promoted by the applicant, as well as the ones they have not been referenced, but are clearly applicable (LP19, LP20, LP21 and LP22).

The application in its current state clearly cannot allow the Council to state that it accords with the Local Plan. Therefore, acknowledging the legal requirement of Section 38(6) Planning and Compulsory Purchase Act 2004, the application is reliant entirely on material considerations.

However, the following will briefly show why material considerations only serve to reinforce that the application should be refused.

(i) Children Act 2004

In the experience of the author, whilst not a legal requirement, it is conventional where such applications are concerned, particularly where potentially vulnerable children are involved, for the relevant Council’s Director of Children’s Services or similar, to be consulted about the application. This has not occurred.

Briefly, the reasoning is as follows.

Section 11(2) of the Children Act 2004 places a duty on Councils and individuals to ensure that Councils make arrangements for ensuring that:

- their functions are discharged having regard to the need to safeguard and promote the welfare of children; and
- any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.

The proposed use in the application clearly engages the wide-ranging requirements of the Children Act. As there is an overriding responsibility on the part of the Council for the safeguarding and welfare of children, it is surprising that the Council's relevant section has not been consulted or commented on the application which clearly impacts on the welfare of children.

It is submitted that this application should not progress without reference to and formal response from the Director of Children's Services, or equivalent in the Borough, to provide comment on the application, the need for this development in this location and why a grant would discharge its legal duties under the Children Act, or a refusal would not, etc. Furthermore, the welfare and needs of children not at the facility itself also obviously needs to be considered and factored into any such response, in order that determining officers or Members had the fullest extent of information and thereby confidence that the Council's vital legal duties in relation to children had been discharged, whatever the outcome.

Otherwise, a particularly important material consideration is that there cannot be sufficient certainty that the Council's duties under the Children Act 2004 are discharged. The Council, its officers and where applicable its Members, would surely agree that this is a very significant material consideration which must be given the highest of weight, which at present leads to the position that the application should be refused. Otherwise, such a deficiency in information cannot allow officers and/or Members to make a proper determination without potentially being in breach of the vital requirements of the Children Act.

(ii) Crime and Disorder Act 1998

Section 17 of the Crime and Disorder Act 1998 requires that the Council has a legal duty to exercise its functions with due regards to the likely effect of the exercise of its functions (again any functions, including as LPA) and the need to do all that it reasonably can to prevent crime and disorder in its area.

The question in relation to this application therefore becomes: **does the Council have the necessary extent of information to be able to discharge its legal duties under the Crime and Disorder Act 1998?** The answer in respect of the current application, by any reasonable standard, is certainly: 'no'.

The Police consultation response, as described further above, has already identified that such facilities are a drain on police resources elsewhere. Such an alarming statement can be reasonably construed in many ways, but one such reasonable and in our view natural conclusion here, is that such facilities take up the resources of the Police Service having to deal with crime and anti-social behaviour associated with such facilities.

In any event, it is a key material consideration in the determination of this planning application, that the Council must have sufficient information to be confident that it has considered and is comfortable that it can discharge its legal duty under Section 17 of the Crime and Disorder Act 1998. At present, given the

obvious lack of information submitted with the application, it cannot do so at this time and accordingly the application must be refused.

(iii) Fear of crime and anti-social behaviour

Following the above, residents and those even beyond, have a genuine concern regarding a fear of crime and disorder in their area.

It is trite planning law that a general and arbitrary fear of crime and anti-social behaviour and the like cannot amount to a material consideration for the purposes of determining a planning application. However, well-founded concerns, for example from behaviours in other locations or lack of information, means that a fear of crime and anti-social behaviour does amount to a material consideration.

For example, in the very well-known Court of Appeal authority of *West Midlands Probation Committee v SoSETR and another* [1998] 10 Admin L.R. 297, an Inspector took account of the fact that the police had been required to make numerous visits to a hostel facility and that local residents' apprehension of criminal and other antisocial behaviour would be reinforced by the proposal for extension of that facility.

Here, we return to the comment from the Police consultee that *"As there are a significant number of this type of care home in the Kirklees District, it is very important that new sites do not create an extra drain on police resources."*

Quite rightly, such a comment is alarming to residents and others, especially those in close proximity of the application site. However, such a comment also goes on to acknowledge that with such facilities comes a quite reasonable fear of a negative impact on local amenity and a legitimate fear of crime resulting from such facilities.

In our client's submission, the applicant should provide further detailed information and the Police consultee must now be appropriately challenged to elaborate on precisely what this statement means and why, in that case, the Police has elected to support this proposal, knowing what it does.

Accordingly, our client and from the comments received clearly a large number of local residents and others, have a genuine fear of crime and anti-social behaviour, which is in law and in reality, a significant material consideration in the determination of this application which must be given significant weight by the LPA in the determination of this application.

(iv) Further change of use within a C2 Use Class

Where the application would be granted, either now or in the future, there would be nothing to prevent the facility morphing into another form of C2 Use. Nothing is proposed within the application and the Council has not indicated that the facility would relate only to five children at any one time.

Both the Council and the applicant is invited to provide further detail to assuage residents of such concerns.

(v) National Planning Policy Framework (2019) ('NPPF')

The NPPF is of course a significant material consideration. We shall outline briefly in the following why the NPPF would in fact strongly reinforce why this application should be refused at this time.

(a) Green Belt

The application site is within the Green Belt. The applicant attempts to promote that the proposal does not amount to inappropriate development by virtue of it (in the applicant's submission) falling within the ambit of paragraph 146 of the NPPF.

Paragraph 146 of the NPPF states:

146. *Certain other forms of development are also not inappropriate in the Green Belt **provided they preserve its openness and do not conflict with the purposes of including land within it.** These are:*
- a) mineral extraction;*
 - b) engineering operations;*
 - c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;*
 - d) the re-use of buildings provided that the buildings are of permanent and substantial construction;*
 - e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and*
 - f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.*

(NB. our emphasis)

Undoubtedly, the works to the building itself appear to be internal and on current information will not amount to being classed as 'development' under Section 55 of the Town and Country Planning Act 1990.

However, where for example the works proposed by the Police consultee and others are required, then this will fall to be 'development' in some cases, themselves possible requiring separate planning application and assessment as described above already.

Nevertheless, a crucial factor is that the above highlighted part of paragraph 146 of the NPPF cannot be forgotten, but unfortunately often is. From the outset, notwithstanding the type of development proposed and how it may fall or not in the list of exceptions as to what may be classed as inappropriate development, assessment is still required as to whether the proposal would result in openness being preserved and not conflicting with the purposes of including land within it.

It is submitted that openness is not preserved in this case. Such an assessment has not taken place or been promoted by the applicant, but such an assessment must take place by the Council.

Given the nature of the proposal, which compared with C3 use is a more intense institutional C2 use, resulting in for example, more people, greater numbers of vehicle movements, deliveries, intensification, genuine fears of crime and anti-social behaviour, etc., compared with the tranquil position at present, then without significant further information, openness is not preserved in respect of this application and this application does not fall within the ambit of paragraph 146 of the NPPF.

It is understood why the applicant has concentrated purely on the perceived lack of real physical encroachment and impact at present, but it has not in any way justified or explained with reference to

the relevant parts of the NPPF why the more intensive C2 use would not impact on the openness of the Green Belt compared with the present C3 use in this tranquil and peaceful location. Full and proper deference to the required assessment of the entirety of paragraph 146 of the NPPF is lacking in this application.

Whilst in physical (operational development) terms, the proposal is limited, the proposed change of use to the more intensive institutional and official C2 use compared with the present situation, it is submitted will not, on current information, preserve the openness of the Green Belt. The Council is invited to rectify this position in its assessment and confirm that the application does in fact not preserve openness in this case.

Accordingly, it is submitted that on current information the proposed change of use here does amount to being 'inappropriate development'.

Paragraph 143 and 144 of the NPPF provide that:

143. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

144. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

As the proposal does constitute inappropriate development in this case, then the applicant must submit very special circumstances for consideration. None are submitted with the application, but this is likely because none are apparent.

Accordingly, by virtue of paragraphs 143 and 144 of the NPPF alone, the application is not in a position whereby it could be approved.

(b) Other aspects of the NPPF

Paragraph 91 of the NPPF, which is promoted by the Police consultee, requires that:

91. Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

- a) ...*
- b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas; and*
- c) ...*

Given the Police official consultation response, which creates a genuine fear of crime and antisocial behaviour, through a vague description and lack of real information, it is clear that this application is not

capable of being approved. Contrary to the Police promotion of paragraph 91 of the NPPF, the present application clearly falls foul of it.

The same is true of paragraph 127, which for the purposes of this application and as submitted by the Police consultee, states:

127. Planning policies and decisions should ensure that developments:

...

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Presently, it is undoubtedly the case that, largely because of the lack of detail in the application, but equally the vague and alarming references made in the Police consultation response, that a legitimate fear of crime and disorder exists, in this otherwise hitherto peaceful and tranquil area.

As well as the material consideration of a genuine fear of crime, disorder and anti-social behaviour, it is clear that in granting the present application, it would again be in breach of its important legal duties under the Crime and Disorder Act 1998.

Conclusion

The application is not in a position that it may be granted and it must be refused.

The above has shown that the application is first procedurally deficient, but also lacks the necessary detail. It is underpinned throughout by the misguided and mistaken basis that a C2 use is effectively the same as a C3 use. This is clearly not the case; in law and in practice, otherwise there would be no need for the application.

Furthermore, and following the above, the professional consultee responses are equally mistaken in the belief that this application proposal is no different to that which exists already. All the three consultees should be re-approached on this basis and furthermore, the Police in particular should provide much more detail and clarity on why, on the one hand, it supports the application, but on the other, clearly identifies such facilities as a problem to the Police in the area.

More specifically in legal terms, planning applications of this nature must be determined in accordance with the statutory development plan unless material considerations indicate otherwise. (Section 38(6) PCPA 2004).

The above has shown that the proposal most certainly does not accord with the development plan; both in terms of the Local Plan policies listed by the applicant in its statements, as well as other relevant policies as identified, which the applicant has not listed or even considered.

Following the lack of accordance with the Local Plan, the material considerations do not in any way assist the application. The above has shown that these in fact go to reinforce why the application should, and in several cases must, be refused.

This is clearly an unsuitable and unsustainable location for such a proposal. Proper scrutiny of the application leads to the quite reasonable conclusion that it should not and cannot be approved. In some cases, as described in the above, to do so would mean that the Council would fall into breach in relation to several legal duties outside of traditional planning law considerations, making an approval by the Council challengeable on several fronts.

It is our view that the applicant would be well advised to withdraw the present application and either: 1) take a view as to whether this is in fact a suitable facility and location for this proposal; or 2) resubmit the application with far greater detail in order that a full assessment can be made. Our client and others can then comment further, with the fullest extent of information.

In the alternative, the Council is invited to simply refuse the application in its present form. There is nowhere near the level of detail and clarity within the application or the consultation responses to sustainably approve the application. To do so would leave it open to legal challenge.

Thank you for taking into account our client's objection.

Yours sincerely