
Appeal Decision

Site visit made on 27 September 2016

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 October 2016

Appeal Ref: APP/Y2003/X/16/3142336

The Old Barn, Epworth, Doncaster, DN9 1DB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Mrs Debra Deeks o/b Absolute Children's Services Ltd against the decision of North Lincolnshire Council.
 - The application ref: PA/2014/1094, dated 24 September 2014, was refused by notice dated 29 July 2015.
 - The application was made under section 192(1)(a) of the 1990 Act as amended.
 - The use for which a LDC is sought is described as 'C3'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

The LDC application

2. The application was made under s192 in relation to a proposed use, but the use has commenced. I shall consider the application as made under s191(1)(a) – to ascertain whether an existing use is lawful – and this will assist the parties. The 1990 Act provides that the description of development may be modified where the LDC application relates to an existing, but not proposed use.
3. The description of the use quoted above is that given on the LDC application form. 'C3' means use class C3 – use as a dwellinghouse – as defined in the *Town and Country Planning (Use Classes) Order 1987* as amended (the UCO). However, the Government's *Planning Practice Guidance* states that a LDC application needs to describe precisely what is being applied for and not simply the use class.
4. The application form suggested that the use would be a home used to provide care for young people. The proposal was then described in the Council's decision notice and appeal form as 'use of a dwelling as a children's home (C3b use)'. I shall consider whether 'use of a dwelling as a children's home' would be lawful.
5. Where a LDC is sought, the onus of proof is on the appellant and the standard of proof is the balance of probabilities. The appellant submitted information about the use in emails to the Council dated 23 March and 4 and 14 July 2015. The Council determined the application on the basis of this evidence and I have done likewise.

Planning Matters

6. A planning application was previously submitted to the Council for the use of the building, but an officer suggested that the appellant could apply for a LDC. I am not bound by that advice. I understand that the planning application was

withdrawn; in any event, it is not before me and I have not seen the documents. I have had regard to representations made by local residents in respect of the LDC application and appeal, but only where relevant to the question of lawfulness. The merits or otherwise of the use as a children's home are not within my remit.

Main Issues

7. The main issues are whether the appeal children's home falls under use class C3(b) and, if not, whether there has been a material change of use of the building.

Reasons

C3(b) Dwellinghouse

8. The lawful use of the Old Barn falls under use class C3. The appellant states that the building was previously occupied by a family with four children, and it is or will be occupied by up to four children in care with their care-givers. She argues that there has been no material change; the building remains in use as a dwelling, specifically under class C3(b), where not more than six residents live together as a single household and care is provided for residents. Objectors suggest that the building is in use class C2 – use for the provision of residential accommodation and care to people in need of care (other than a use within C3).
9. In order to form a "household" for the purposes of class C3(b), the persons who live together need not be related as family members. However, Article 2 of the UCO indicates that, for the purposes of the Order, "care" means 'personal care for people in need of such care...and in class C2 also includes the personal care of children...' It was held in *North Devon DC v FSS & Southern Childcare Ltd* (QBD 30.1.03 Collins J) that Article 2 restricts the personal care of children to class C2 only. Children cannot form a household without the presence of a care-giver and a children's care home may not fall within class C3 unless a care-giver is a resident.
10. The appellant suggests that a named main carer 'resides' at the property four days per week, for two or three days at a time, as his 'main residence'. As in a foster home, the main carer is allowed respite care – and that is provided by other staff, who 'reside' at the property for two or three days per week. Two carers are present at any one time. The Council officer's report suggested that 'the fact that the [main] carer resides at the property for the majority of a weekly period results in some continuity of care. The property is the main or sole residence of the child and the main carer...[who] forms part of the household in planning terms'.
11. However, staying for most of the week does not show that the main carer lives in the building as his main residence; there is a difference between 'residing' in a property and sleeping over as part of a duty of work. The appellant suggests that the main carer and staff 'make the home function as a family home, ie two carers (parents in a home) providing care to young people', but a building is not used necessarily as a dwelling because two carers are always present, and it seems here that different carers work on rotation. It is not decisive that the main carer is registered for Council Tax at the appeal property because local government rating falls under separate legislation.
12. In a dwellinghouse, living rooms would be shared – as they are here – and bedrooms provide separate private sleeping space. I saw that all of the bedrooms in the building are single, and none included furnishings to suggest use by an adult for whom this could be their main residence. An en-suite bedroom and the largest bedroom were both occupied by children. A third party suggests that the main carer has a family home at a specified address elsewhere. The appellant has not disputed that claim, which is consistent with the look of the accommodation.

13. In a fostering situation, children are placed in the foster carer's main home – but the appellant has not shown that the building is the main residence of the main carer. She has not shown that the building is occupied by not more than six residents who live together as a single household. On the balance of probabilities, the building is not in use as a C3(b) dwelling, but is used for the provision of residential accommodation and care to children in need of care, with carers who own or work for the appellant company and sleep over but do not use the property as their main residence; it is used as a C2 institution.

Material Change of Use

14. Notwithstanding that the LDC application was made to establish whether the use falls within use class C3(b), it would be insufficient for me to dismiss the appeal on the basis of my finding on the first main issue. It was also held in *North Devon* that a C2 use would not necessarily be materially different from C3, and I shall consider whether a material change of use has occurred. The question is whether there is some significant difference in the character of activities undertaken from what has gone on previously, as a matter of fact and degree.
15. The appellant has not said how many carers overall would work at the Old Barn but I am told that an advertisement was placed in the local press for 'senior residential staff, residential staff and bank staff', required to work 'shifts that include days, nights, sleepovers, waking nights and weekends'. If two carers would be present at any one time, it is likely that several would be needed in total for the 24/7 running of this children's home.
16. I saw that the building has three living rooms including a conservatory, plus a therapy room, an activity/education room, two offices and two kitchens. While some large dwellings will include similar amenities, these are provided to support the accommodation and care of four children who are in need of care, and not for the benefit of a household with resident adults. The layout of and facilities in the building plus the advertisement for staff indicates that the home is significantly different to a C3(b) dwelling; there has been a material change to the character of the use through the professional level and quality of care to children.
17. Neighbours have described a significant increase in traffic in the area, and I saw some vehicles parked outside of the building¹. I agree with the appellant that a large dwelling would generate noticeable traffic, particularly if occupied by an adult household or a family that is supported by others. However, it does not follow that the appeal children's home has not led to an increase in activity in this area, and it is not sufficient for the appellant to state that the traffic is not 'excessive'.
18. It appears that comings and goings from the building will be determined by the shift pattern of staff; their duties to provide accommodation and care to the four children in their care; and by visitors. I would expect a residential institution of this size and standard to generate more traffic than a dwelling occupied by any single household. Whether or not there would be any planning harm, the appellant has not shown that the use has not led to increased vehicular activity; this adds weight to my finding there has been a material change to the character of the use.

Conclusion

19. Ofsted have registered the children's home and rated it as 'outstanding'; I acknowledge the significance of that to the appellant. I would also regret any further disruption to the lives of the children who are settled in the building. However, a LDC can only be issued where the facts point to lawfulness.

¹ The LDC application related only to the use of the appeal building and not any land within the curtilage.

20. The appellant has failed to demonstrate that the building is in class C3(b) use. On the balance of probabilities, I conclude that the premises is used for the provision of accommodation and care to children in need of care, and a material change of use has taken place for which planning permission is required but not granted. I have had regard to all other matters raised but none alter my decision. The Council's decision to refuse to grant a LDC was well-founded and the appeal fails.

Jean Russell

INSPECTOR