



Appeal Decision

No site visit made

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 28 July 2017

Appeal Ref: APP/C4235/X/17/3170427

18 Hillcrest Road, Offerton, Stockport SK2 5QL

- 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 Care in Mind Residential Services Ltd against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/063829, dated 4 November 2016, was refused by notice dated 28 December 2016.
 - The application was made under section 192(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 as a residential home for up to 4 young people/children.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Main Issues

2. The main issue is whether the proposed use requires planning permission or is a material change from the lawful use as a single dwellinghouse falling within Class C3(a), taking into consideration the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and the extent of the change proposed.

Reasons

Use Classes Order

3. Section 55 of the Town and Country Planning Act notes that changes of use of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class effectively is excluded as being development and does not require planning permission.
4. Use Class C3(a) is use as a dwellinghouse (whether or not as a sole or main residence) by a single person or by people regarded as forming a single household. Use Class C3(b) is use as a dwellinghouse (whether or not as a sole or main residence) by, (b) not more than 6 residents living together as a single household where care is provided for residents.

5. The Use Classes Order in relation to definition of single household notes that For the purposes of Class C3(a) "single household shall be construed in accordance with section 258 of the Housing Act 2004. It is very specific noting Class C3(a) only and therefore I do not consider that it should be read to apply to Class C3(b). It would be illogical to do so as it would be unlikely that care would be necessary for persons in a single household and if that were the case they would most likely comply with Class C3(a).
6. DCLG Definitions of General Housing Terms document 'Definitions of general housing terms' refers to Use Class C3(b). It notes that 'one person or a group of people who have the accommodation as their only or main residence and (for groups) either share at least one meal a day or share the living accommodation, that is, a living room or sitting room, shall be considered to comprise a single household. In my view, the proposed use comes within this definition and is a single household.
7. A similar scenario to the appeal proposal was considered in the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C.R. 38* which determined that children alone generally cannot form a 'household' and that if their carers do not live permanently at the property, the use would fall within Class C2 of the UCO. This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use. Examples given are as a hospital, nursing home, residential school, college or training centre. In this case the carers would not live permanently at the property.
8. In *R(on the application of Crawley Borough Council) v FSS and Eve Helberg [2004] EWHC 160 (Admin)* considered the North Devon Case and in effect found that it should not be taken as setting down a principle, but that each case should be considered on its merits noting that if carers are not resident, there remains a perfectly sensible question whether those resident (those in receipt of care) themselves constitute a single household. This accords with the North Devon case where the conclusion was noted as 'generally', not 'always'.
9. The appeal property is a detached house with 5 bedrooms in a mainly residential area. The appellant operates several such properties in the area with the aim of bridging the gap between secure care and independent living, within a safe and managed environment. There would be a maximum of 4 residents aged between 16 and 25 receiving low level care to assist in recovery from a variety of mental health issues, but no medical procedures or personal care is involved, beyond normal first aid. Residents are no risk to the community and would normally stay about 2 years. They can take care of themselves and carers are there to provide support to help with skills useful after leaving the home.
10. All facilities are communal and carers would eat with residents. The care is provided by a team of eight staff working on a rotating 24 hours shift system. During the day there are 3 carers and 2 at night, finishing the following morning, so normally there is only one staggered shift change over per day. Occasionally a manager may attend to update records during the day. There would be a maximum of 4 cars at any time. The care provided would be of a practical nature such as help with cooking, using a washing machine and budgeting. No building operations are proposed to the house and it would not change in appearance.

11. To my mind the use by the four young people would be tantamount to them sharing a flat, sharing meals and sharing communal parts of the building, so forming a single household, and while there are carers coming in to help them, the extent of care would be low level and in my view this type of use would not normally be associated with, say, the C2 definition examples of a hospital, nursing home, residential school, college or training centre. The premises would not be registered with OFSTED, which would be required if the majority of residents were under 18. So there would be a reasonable mix of young people with a good proportion being over 18 at any time.
12. There would be some expectation that these young people could look after themselves. Guidance would be provided by the carers, but not to run their lives for them. Clearly there is an expectation that as each young person comes to the property, they would develop and progress to self sufficiency over the period of their stay. I conclude that for the low level care proposed here and the ability of the residents to look after themselves, the use should as a matter of fact and degree be considered as coming within Use Class C3(b). Therefore, planning permission is not required and I need not consider whether the change is a material change of use.
13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use as a residential home for up to 4 young people/children was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Graham Dudley

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on date of application the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Section 55 of the Town and Country Planning Act notes that changes of use of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under that section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class effectively is excluded as being development and does not require planning permission.

The proposed use would be in Use Class C3(b) use as a dwellinghouse (whether or not as a sole or main residence) by (b) not more than 6 residents living together as a single household where care is provided for residents. Therefore, the change from Use Class C3(a) use as a dwelling house (whether or not as a sole or main residence) by a single person or by people regarded as forming a single household, is not development and does not require planning permission.

Signed

Graham Dudley

Inspector

Date 28 July 2017

Reference: APP/C4235/X/17/3170427

First Schedule

Use as a residential home for up to 4 young people/children.

Second Schedule

Land at 18 Hillcrest Road, Offerton, Stockport SK2 5QL

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.