
Appeal Decision

Site visit made on 17 December 2019

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2020

Appeal Ref: APP/X/19/3233788

Willow House, 11 Mansfield Road, Clipstone Nottinghamshire NG21 9AB

- 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 Mr Anthony Gallaher¹ on behalf of YMCA against the decision of Mansfield District Council.
 - The application Ref 2019/0264/CLPD, dated 26 April 2019, was refused by notice dated 31 May 2019.
 - 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 use of a dwelling-house (use class C3) to small scale home for children (use class C2)².
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Decision

1. The appeal is dismissed.

Inspector's Reasons

2. Is the Council's decision to refuse the LDC well-founded?
3. Willow House is a five-bedroom dwelling located on a spacious corner plot. The property has the potential to accommodate four motorised vehicles within its curtilage, but this would require use of a double-garage and tandem driveway. The property would be occupied by children and/or young persons aged between eight and 17. The average stay at the care home for the children and/or young person would be about two years. The building would accommodate a maximum of four children/young person at any one time and they would be staffed 24-hours seven-days-a-week by two and four non-resident carers.
4. The *North Devon*³ case is relevant. The Court considered the question as to whether a semi-detached 3-bedroom dwelling-house in a residential area fell within Use Class C2 or C3 to the Schedule of the Town and Country Planning (Use Classes) Order 1987 as amended [the 'UCO']. The characteristic of uses contained in Class C2 which set them apart from dwelling-houses are that the residents and staff do not form a single-household. The key element in the use of a dwelling-house for non-family purposes is the concept of a single-household.

¹ The application form cites Ms Brenda Serrant as the applicant, but I have used the name given on the appeal form for my Header.

² The application and appeal forms refer to supporting documentation to describe the proposed use. The Council's decision notice clearly describes the proposed use. I have adopted that description for my Header.

³ *North Devon v FSS and Southern Childcare Ltd* [2003] EWHC 157 (Admin).

5. Following *North Devon* Mr Gallaher accepts the character of the proposed use would fall within Class C2 to the schedule of the UCO: I have no reason to disagree with that approach which, in my assessment, is correct given the evidence about the nature of the proposed operation. Although the use in the *North Devon* case was found to fall within Class C2, the Court did not impugn the Inspector's finding that the change from Class C3 was not a material one. In practice, and on those particular facts, the use for up to two children, with round-the-clock care provided by up to two non-resident staff at those premises, and only at those premises, was in the circumstances a lawful use. *North Devon* is legal authority for the two-stage assessment process.
6. *North Devon* does not endorse the proposition that all similar type of children's care homes would, by implication, not amount to a material change in the use of any building. In the context of an LDC appeal, it is necessary to examine the factual evidence and circumstances of this proposal. A fact and degree planning judgement will need to be reached as to whether the change in the use of Willow House would be material. The planning merits of the proposed use, including visual impact, has no role in that assessment.
7. Against all that background, the simple question is this: if the use of the dwelling-house to small scale home for children (use class C2) had occurred on the application date, would it had been lawful for planning purposes? If the answer is yes, then a declaration will be issued to that effect because express planning permission would not be required. On the other hand, if the answer is no, then the proposed use will fall within the meaning of "development" as so defined by section 55(1) of the Act - the making of any *material change in the use of any buildings or other land*. It must be emphasised that the activity which constitutes the second limb of the term *development* is not merely a change of use, but a '*material*' change of use [abbreviated as 'MCU']. The concept of an MCU is not defined in any statute or statutory instrument. An MCU requires a change in the definable character of the use of the building [emphasis added].
8. Willow House and its curtilage form a single planning unit in residential use. Mr Gallaher claims that the number of children accommodated and supervised by non-resident staff would not result in the intensity of that residential use. The focus is on Class C3(b) - not more than six residents living together as a single-household where care is provided for residents. The appellant claims housing arrangements and the care provided at Willow House would afford the children with a household environment. It is contended that the use of the dwelling-house as a small-scale home for children (use class C2) would be very similar to a typical family home.
9. However, while the size of the property is not conclusive when assessing if an MCU would occur, the evidence presented⁴ is particularly instructive of the nature of the proposed use. The documents show that Willow House would be occupied by children and/or young persons with emotional and/or behavioural difficulties who are no longer able to live with their families. Care would be progressive in nature and support young people who display behavioural difficulties and who may have learning difficulties, yet the information provided is lacking in specificity as to the level of care that would be provided. In all probability, the property would be occupied by individuals who would require substantial amount of care and educational development by non-resident staff.

⁴ The grounds of appeal and YMCA Statement of Purpose.

10. The claim is that the proposed use of Willow House would be like a large family residing at the premises, but the caring element would involve a closely-managed and supervised regime because of the residents' behavioural difficulties. While the argument is that residents would be educated away from Willow House, it is reasonable to expect the engagement of external agencies as YMCA concede alternative education would be provided at the property. The provision and delivery of home-tutoring because a child/young person can't be placed at a suitable educational establishment would, potentially, increase staff numbers coming and going during the day.
11. The assertion is that a typical day-time would involve the presence of three members of staff and at night-time two non-resident staff would be on hand. However, the example rota and shift chart submitted with the bundle of evidence does not include details of other visitations. For example, visits made by those involved in teaching and the welfare of children. If these visits were included, the likelihood is that the routine would involve significant number of people arriving and departing at different times of the day.
12. The claim is the use would generate low-level of vehicle movements to and from the site – the agent says there would be three movements, and these would broadly coincide with school run periods where there would be a similar level of activity from many other properties in the area. However, occasionally vehicle movements would be markedly different especially during shift-handover where staff numbers would increase. This would occur around Mondays at 0900, Thursday between 1630 and 1700 and Sunday mornings. In my assessment, the level and frequency of movements generated by non-resident staff and other professionals would significantly increase. These movements would be linked to a change in shift-patterns and activity attributed to the proposed use of the dwelling-house as a small scale home for children with learning and behavioural difficulties.
13. Furthermore, it is reasonable to expect that the children's home would not operate in total isolation and there would be deliveries associated with the operations. Family contact may well be made away from the property and social workers would visit once per month, but there is potential for additional vehicular movements generated by these activities. I attach limited weight to the argument that vehicle movements could be reduced due to potential for non-resident staff and regular visitors to use public transportation as specific details have not been provided.
14. As I have said elsewhere, vehicle parking would be provided within the curtilage to Willow House. That said, however, there is potential for an increase in demand for on-street parking during the day, because of the number of non-resident staff and the likelihood of other professionals visiting the premises.
15. There would be no physical change to the property's external appearance, but there would be some change to the layout of the property. A room at ground floor level would be used as an office. Team meetings would not take place at the home, but a dedicated meeting room would be available. It is likely that the proposed use of the dwelling-house as a small scale home for children would result in a change in the arrangement and configuration of the site. Added to that is the potential change in the level and type of activity generated by the proposed use, which would have considerable off-site impacts on amenity and residential character requiring an assessment.

16. I find that, when the nature and scale of the operations are considered in combination with the arrangement and configuration of the site, there would be a substantial change in the character of the site's use. The introduction of the proposed small scale home for children (use class C2) would result in on and off-site effects which, to my mind, would sufficiently bring about a significant change in the definable character of Willow House as a dwelling-house.
17. Much is made of the appeal decision at *Burbage*⁵ in Hinckley and Bosworth District Council area. There is a striking difference between the appeal before me and *Burbage* in that the proposed use of Willow House would involve care of children and/or young persons with some emotional or behavioural difficulties. *Burbage* specified that the home at no time provides this type of care for children in the schedule to the issued certificate. The LDC also limited the scope of that use to no more than three children, that no room is used as an office and no business meetings of any kind take place at that property. While the agent urges consistency, the material facts between the two cases are clearly distinguishable. I am not persuaded *Burbage* is a strong precedent to take a different approach in this appeal. In any event, I should assess the proposed use of Willow House on its individual merits, and that is what I have done.
18. Drawing all the above threads together, as a matter of fact and degree, I find that the use of the dwelling-house (use class C3) as a small scale home for children (use class C2), as proposed, would constitute a *material* change in the use of the building firmly falling within the scope of s55(1). When LDC application was submitted, express planning permission would have been required [my emphasis].
19. Whilst I share some of the agent's reservations regarding the Council's assessment as to whether there would be an MCU, based on the available evidence, the particular facts and circumstances presented, understanding and application of relevant judicial authority I conclude that the authority's refusal to grant a certificate of lawful use was well-founded and that the appeal should fail.
20. For the reasons given above, and having regard to all other matters, I have exercised accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A U Ghafoor

Inspector

⁵ Reference APP/K2420/X/11/2155849 allowed on 7 November 2011.