



Appeal Decision

by **S Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/M4320/X/19/3233476

37 Warwick Street, Southport, Sefton PR8 5ES

- 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 Mrs Jane Quinn against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2019/01113, dated 12 June 2019, was refused by notice dated 9 July 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is described as "I am currently in the process of Registering with Ofsted to be able to support Adults or Young people who require supported living in the named property. There will be staff employed to be present in the property 24 hours a day supporting the individual/s. The staff will support the individual in the same way you would support your own family in a normal residential property".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In light of the Covid-19 coronavirus pandemic, the consequent travel limitations, and following consideration of the basis of the appeal and the submitted evidence, I consider that this appeal can be determined without the need for a site visit. This is because I am able to reach a decision based on the information already available. Both parties were invited to comment on this matter and agreed to the appeal proceeding on this basis.
3. Section 192(2) of the Town and Country Planning Act 1990 as amended (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
4. For the avoidance of doubt, in an appeal under s195 of the Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The standard for the evidence is one of balance of probabilities.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

6. The key point in this case is whether the proposed use would fall within Class C2 or Class C3 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO). If the proposed use was considered to be within Class C2, there is second question, whether there would be a material change of use.
7. In refusing the application for the LDC, the Council states that insufficient information had been submitted to satisfy it that the proposed use would be lawful and that the proposal would not amount to a material change of use of the dwelling.
8. 37 Warwick Street is an end of terrace, two-storey three-bedroom dwelling and falls within Use Class C3 as established by the UCO. It would appear from the evidence that the Appellant maintains that there would be no change of use of the property.
9. Use Class C3 of the UCO is sub-divided into 3 parts: C3(a) use by a single person or by people to be regarded as forming a single household; C3(b) use as a dwelling house where care is provided for residents; and C3(c) use by not more than six residents living together as a single household where no care is provided to residents.
10. The Council refers to the High Court Judgement¹ (HCJ) which considered whether a semi-detached house used to provide residential care for two children fell within Class C2 or Class C3(b) of the UCO. In that case only the children would live permanently on the premises; the carers being resident elsewhere and providing care on a shift rota system. The circumstances considered in the High Court case are, to all intents and purposes, similar to the appeal before me.
11. In summary of the HCJ, the Council appealed against the ruling of a planning Inspector granting a LDC to a care operator, which provided care for children in registered children's homes. The operator had begun to use the three-bedroom property as a home for two children aged between 10 and 17. Two non-resident staff were on duty at all times and a shift system was operated by six to seven adult carers in order to maintain the requisite cover.
12. The application was based on the premise that the children by themselves would constitute a single household with the use falling within Class C3(b) of the UCO. The Inspector concluded that the household comprised of children and their non-resident carers and further concluded that there had not been any material change of use.
13. It was held that the Inspector had taken the right approach in concluding that a household was required to consist of more than just children but had erred in the conclusion that non-resident staff could constitute part of any household. Crucially, the Judge found that the two children could not be regarded as constituting a household by themselves. The question also arose as to whether

¹ North Devon District Council v First Secretary of State [2003] EWHC 157

carers who do not live on the premises but who, between them, provide 24 hour care can be regarded as living together as part of the household. The court held that the concept of living together as a household means that a proper functioning household must exist and thus, for the use to fall within Use Class C3(b), the children and carer(s) must reside in the premises. Otherwise the use clearly falls within Class C2 'use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)'.

14. Therefore, a key consideration with this appeal is whether the residents in need of care and those providing care for those residents would be living together as a single household.
15. The appellant's evidence provides that her services offer support to young people aged 0-18 years and that the home (37 Warwick Street) is intended to provide supported living "to enable young people with autism and other mental health conditions, to be given the skills to become as independent as possible, in what effectively will be their own home". There would be a maximum of two young people being supported at any one time, "until they reach adulthood or no longer require support".
16. The care would consist of support from non-residential staff² covering 24 hours a day on a rota described by the appellant as "Early shift: 0800-1500, Late shift: 1500-2200 and Night shift: 2200-0800". Handovers in the evening are described as "never performed at unsociable hours (always before 21.30)" and during the night there is "either a waking night staff, who perform checks on the residents to ensure their safety during the night, or a sleep in staff, who go to bed and sleep during the night".
17. The appellant's evidence provides that the staffing levels would be dependent upon individual needs but would be restricted to a maximum of two staff per resident, due to the capacity of the home. This would equate to 6 people in the property if 2:1 support is required. The appellant guarantees that there would never be more than 8 people on the property (during shift swap and staff handover, meetings etc). However, by my calculation, there could be 10 people in the property at any one time if the supported individuals each required 2 staff.
18. The evidence provided by the appellant, indicates that the occupants would not function and live as a single household. Consequently, it has not been shown, on the balance of probability, that the proposed use of the property would fall within Class C3 of the UCO.
19. Following on from this conclusion, it is necessary to consider whether a material change in planning terms would occur, which would noticeably alter the character of the property or its impact on neighbours.
20. The appellant further maintains that there would be no structural change to the property, and that the proposed use would not amount to a material change of use as the use would be of "no detriment to the existing property or neighbouring properties". The property would "remain in use for daily living purposes, for residents carefully placed in accordance to the property type, capacity and area". There would be no disruption for the neighbours, it would

² One of the bedrooms would be set aside as an office for staff with a bed, if sleep-in staff are required.

be the same as a normal family living there caring for their own child or family within the property.

21. Although there is no statutory definition of 'material change of use'³, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this is determined on the merits of a case.
22. I acknowledge that the on-site effects might be limited, but I must also consider the potential nature of the use of the building and the effect of the proposed use. I understand that the use would be restricted by the size of the property. However, the shift pattern for the professional carers and the additional visits by other professionals, which although may not be daily, would be likely to result in a higher level and different pattern of activity associated with the use than that as a single household. This would be further dependent on what is required for the carers and visiting professionals to perform their duties caring for two young people who may have different needs.
23. Based on the evidence before me. I consider that there is likely to be an increased level of activity that would occur daily associated with the proposed use. The 3 rota shifts would each day, 7-days a week would generate pedestrian and vehicular 'comings and goings' to the property in a manner that would likely be more intensive and constant than that which might reasonably be expected to be generated by a dwelling of this size. As such, the overall character of the use of the property would differ to that of a single dwellinghouse. The appellant has not shown that, on the balance of probabilities, the proposal would not amount to a material change of use of the property.
24. Overall, the totality of the evidence presented in support of the appellant's claim does not show that the proposed use of the property as accommodation for two young people requiring supported living would be lawful if it had been established on the date of the application.

Conclusion

25. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of change of use from a dwellinghouse to a registered residential home to provide supported living for up to two young people was well-founded and that the appeal should fail.
26. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S Hanson

INSPECTOR

³ 'Development' defined within s 55(1) of the 1990 Act as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.