



Appeal Decision

Site visit made on 19 October 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Appeal Ref: APP/C3240/X/20/3256754

1 Whitefields Farm, Charlton Junction to Wrockwardine, Charlton, Telford TF6 5EU

- 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 Tony Cox of Esland Care against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2020/0427, dated 25 May 2020, was refused by notice dated 17 July 2020.
 - 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 premises as a home for up to three children or young people with up to two full-time resident carers' working on a rota basis.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant ticked S191 on the appeal form, however, it is clear from the application form that the appellant submitted the application under S192. The Council dealt with the application on this basis and so shall I.

Main Issue

3. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

4. An application under S192(1)(a) of the Act¹ seeks to establish whether any proposed use of buildings or other land would be lawful. S192(2) sets out that if on application under this 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. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

¹ Town and Country Planning Act 1990 (as amended)

5. The appeal site comprises a four bedroom detached house set in generous grounds with a driveway parking and double car port. An existing garage which sits within the grounds was converted into a holiday let under a 2010 planning consent, reference TWC/2010/0469 which was amended in 2011. The appellant describes the current use of the property as a dwelling under C3a, which is defined as use as a dwellinghouse by (a) a single person or by people to be regarded as forming a single household. The thrust of the appellant's case is that the change from a C3 dwellinghouse to a C2 institution, in this case, would not constitute a material change of use and therefore would not constitute development.
6. The appellant has drawn my attention to Circular 05/2010. However, this publication has now been cancelled. Whether the change of use would be material is a matter of fact and degree. There is no dispute that the proposed use would not fall within C3 but would be a C2 use for the provision of residential accommodation and care to people in need of care and my attention has been drawn to case law on the matter².
7. The appellant states that there would be no internal or external alterations to the building or surrounds. In practice, as suggested by the Council, I consider it likely that some modifications are likely to be necessary to ensure that the property complies with the relevant regulations. However, no detail has been provided as to what these might comprise and I cannot be sure what the effect of any changes would be.
8. The appellant has drawn my attention to an appeal decision, reference APP/C4235/A/11/2162636, where the Inspector held that there was little evidence in the fabric of the building to differentiate it from a home in single family occupation. However, I do not have any substantive details of this case and cannot be certain that it is comparable to the appeal scheme before me.
9. Three children would live at the house, with two carers' working on a rota basis sleeping overnight. A manager would also be on site during weekdays between 9am and 5pm. There is contradictory evidence regarding the number of carers that would be on site during the day, with the statement supporting the LDC application suggesting there would be three additional carers during the day and the appeal statement suggesting there would be less.
10. There is also conflicting evidence regarding the number of care workers that would be present at the site at any one time. The appeal statement suggests that it would be very unlikely that there would be any more than 3 workers at the premises at any one time whereas the statement that accompanied the application suggests at change over periods there would be a maximum of 5 carers on the premises at any one time.
11. The evidence on visits from social workers is also contradictory, with the supporting statement suggesting these would take place at the appeal site, while the appeal statement suggests these would usually take place away from the home. Although visits by social workers may sometimes take place in neutral settings such as schools, I consider it more likely that such visits would take place at the care home setting.

² *Crawley BC v SoS for Transport and the Regions* [2004] EWCH 160 and *North Devon District Council v First Secretary of State* [2003] JPL 1191

12. As set out by the appellant, some tutoring is more likely initially as a consequence of the additional needs of the children staying at the home. Although this would limit the need for the children to travel, since they would not be attending school, it would necessitate tutors visiting the site. Since each child would have different needs it is reasonable to assume that, to start with at least, more than one tutor would be needed. Furthermore, school trips would still be required for any child/children not being tutored at the appeal site.
13. The appellant suggests that the dwelling could be used as an HMO for up to six adults, all of whom own cars. However, no evidence has been submitted to suggest that the property is currently used in this way. As set out in *Waltham Forest LBC v SSETR & Tully* [2002] EWCA Civ 330, it is necessary to compare the proposed use with an actual existing one, not a notional use. The appellant describes the use of the dwelling as a C3a use. Although a typical family would generate vehicle movements as a result of travelling to work and school, such trips are often linked. The movements generated by the proposal, by contrast, are unlikely to be, since a care worker would visit the site before leaving to take a looked after child to school or for social activities.
14. I accept that the period of stay at the property and the commercial nature of the use would not necessarily cause the dwellinghouse to lose the characteristics of a dwellinghouse, as established by case law³. However, it is necessary to consider what is happening on the land, as well as any impacts off the land when deciding whether the character of the use has changed, as set out in *Hertfordshire CC v SSCLG & Metal and Waste Recycling* [2012] EWCA Civ 1473.
15. The appellant has drawn my attention to an appeal decision, APP/E2205/X/16/3161037, where the Inspector concluded that a similar use would not result in significantly more movements. However, I do not have full details of this case and cannot be sure that the matters before the Inspector were comparable to the scheme before me.
16. I agree with the Council that the information that has been provided by the appellant in support of the appeal is vague and open to misunderstanding. Given the nature of the proposed use, it is likely that there would be at least two care workers at the premises at the site at any one time, if not more, to ensure an adequate adult to child ratio. The appellant suggests that not all movements would involve cars. However, given the rural location of the appeal site, I consider it is highly likely to be car dependant.
17. Whilst a large family could occupy the premises, I consider it likely that the movements generated by the proposed use, including tutors, care workers, the home manager and social workers, would be significantly greater than would be generated by a C3a use. Given the rural nature of the area and the fact that the appeal site is accessed via a road which is generally single track, any increase in vehicle movements is likely to have an impact on the wider area. Consequently, I consider the proposal would constitute a material change of use and therefore planning permission would be required. Thus, the appeal must fail.

³ *Blackpool BC v SSE & Keenan* [1980] JPL 527, *Moore v SSE & New Forest DC* [1998] JPL 877, *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142

18. I note that concern has been raised by both interested parties and the Council regarding the holiday let accommodation and conditions attached to the consent. The appellant states that the holiday let accommodation would not be used for the proposed use and that it would be fenced off. Whilst the appellant has provided very limited evidence in relation to the holiday let accommodation, since I have found that the proposed development would not be lawful for the reasons given above, it is not necessary for me to make a finding on this matter.

Conclusion

19. Thus, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of premises as a home for up to three children or young people with up to two full-time resident carers' working on a rota basis was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Savage

INSPECTOR