



Appeal Decision

Site visit made on 18 November 2020

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 November 2020

Appeal Ref: APP/V2004/X/20/3255579

34 Salisbury Street KINGSTON UPON HULL HU5 3HA

- 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 Rite Directions against the decision of Kingston-Upon-Hull City Council.
 - The application Ref 20/00258/LAW, dated 29 February 2020, was refused by notice dated 26 June 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 as a C2 residential institution.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form indicates that the proposal is to change the use of the property to use as a C2 residential institution, and this is reflected in the Council's decision. The appeal form refers to, 'Use of premises as a home for up to four children or young people with two resident carers sleeping overnight on a rota basis.' I have had regard to this further information about the actual use proposed in determining the appeal.
3. The application form indicates that the existing use of the property falls within Use Class C3 (Dwellinghouses). However, both parties now agree that the existing use is as a House in Multiple Occupation (HMO) falling within Use Class C4.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether use of the property for the Class C2 use proposed would amount to a material change in its use.

Reasons

5. Class C2 of *The Town and Country Planning (Use Classes) Order 1987* (as amended) includes *Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))*. Class C4 relates to *Use of a dwellinghouse by not more than six residents as a*

"house in multiple occupation". There are no permitted development provisions allowing an automatic change from a Class C4 use to a Class C2 use. However, such a change of use only amounts to development requiring planning permission if it is a material change. A comparison between the existing and proposed uses needs to be made in order to determine this. The determination needs to consider the specific uses, as opposed to the generalities of the use classes.

6. The appeal property is a terraced house. I understand that it was not in use when the Council issued its decision and had been unoccupied since September 2018. The Council advises that the property has 6 bedrooms and that, when last in use, it was occupied by 6 students. This appears to be an agreed position.
7. The appellant says that, since the use could change from the current C4 use to a C3 use (Dwellinghouses) without planning permission, the proposed use must be considered against both classes of use when the question of material change is addressed. In my view, however, the only correct starting point for considering whether a proposed change of use would be material is the actual current/last use (at the time of the application), which was as an HMO occupied by 6 people. A C3 use is plainly different to a C4 use and it is agreed that it is not the current use of the property. Accordingly, it is not relevant to my decision.
8. The appellant has not provided full details of the proposed use in its appeal statement, but the Council's delegated report sets out some details, which are not disputed, taken from the appellant's planning statement at the time of the application. The report indicates that the purpose of the home is to support children with learning difficulties to build their confidence and help them in developing life skills and re-engaging them into education. It says that it is likely that 'the average range of the young people placed here will be in the 7-18 ages category'. It also advises that the running of the home 'echoes a regular family environment, e.g. wake the young people up, get breakfast ready for them, take them to school, evening and weekend activities, make sure they go to bed'.
9. The information on staffing is not clear. The report says that the home would be staffed by a manager during office hours and one staff member per young person 24 hours a day, which suggests a total of 9 (4 children, 4 regular staff and a manager). However, it also advises that there would be 'up to 2 members of staff sleeping on a rota basis to provide 24 hour care', suggesting that there would only be 6 people in the property at night. The reference to only 2 adults sleeping at the property is consistent with the proposal as described on the appeal form and appears to me to be the more likely figure. I have therefore proceeded on the basis that there would be 2 adults at the property at night and 3 during the day (allowing for the manager), plus occasional visits by various care professionals. In terms of the total numbers of occupants, this is not so very different to the 6 people who occupied the building as an HMO.
10. Nevertheless, the people who would occupy it and the way they would use it would be very different. As an HMO, the property was occupied by adults, whereas 4 of the occupants in the proposed use would be children. Moreover, the intention is that they would occupy the unit in a managed, family-type

environment. Whereas the adults occupying the property as an HMO would have come and gone as they pleased, the staff and children in the proposed C2 use would operate to a more managed routine. It might well be expected, for example, that managed accommodation for children would see relatively little activity at late hours. Indeed, the information submitted with the application specifically cites making sure the children go to bed as part of the role of the staff. An HMO occupied by 6 students or other adults, on the other hand, might well see a much greater degree of movement and activity such as socialising at late hours. Such a difference is likely to materially affect the experience of nearby residents.

11. The number of staff at the property need not, necessarily, give it a workplace character in terms of its planning impacts. Nevertheless, the distinct roles of resident children and professional carers at the property means that it would, for the reasons I have given, function and be perceived materially differently to the current HMO use. That is not to reach any view about the relative planning merits of either use, just a view that the 2 uses are materially different.
12. I have had regard to the appeal decisions cited by the appellant. However, one of these (APP/C4235/A/11/2162636) relates to an application for planning permission rather than an LDC and, as the inspector explains, she was considering whether the use of the property was acceptable, not whether planning permission was required. The other cases both arise from LDC applications, but relate to changes from C3 uses, and so are not comparable to this current appeal, where the existing use of the property is different. The cases are all highly fact-sensitive and the conclusions reached regarding such matters as movements at the properties or their use as a workplace are of little relevance to the case before me.
13. As the Council says, there would be various comings and goings associated with the proposed C4 use. However, the figures provided by the appellant do not show an unusually high or low number of movements compared to what might be expected from the previous use in my view.
14. Nevertheless, the occupation of the unit by children in a managed environment would be materially different to the use of the property as an HMO, for the reasons I have given. Consequently, change to the use proposed amounts to development requiring planning permission. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use as a C2 residential institution 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.

Peter Willows

INSPECTOR