
Appeal Decision

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2020

Appeal Ref: APP/X3025/X/20/3257262

17 Raylawn Street, Mansfield, Nottinghamshire, NG18 3LY

- 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 Ms Syreeta Davis against the decision of Mansfield District Council.
 - The application Ref: 2020/0138/CLPD, dated 9 March 2020, was refused by notice dated 29 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 C3(b).
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Decision

1. The appeal is dismissed.

Preliminary matter

2. It was agreed with the parties that, because of the nature of this case, a site visit was not necessary. The size and layout of the existing dwelling, and its proposed use, are clear from the plans and documentation submitted. Insofar as the context is relevant, it is felt that the submitted photographs, together with online satellite and street view imagery, provide adequate information.
3. My attention was drawn by the Council to a recently issued appeal decision of 10 November 2020¹ which it considered to raise similar considerations to the present case. Although beyond the normal deadline for representations, this was unavoidable and, in the circumstances, I decided to take it into account. The appellant was given the opportunity to comment on this and I have taken both the appeal decision and these comments into account.

Reasons

Use Class C3(b)

4. The appeal property is located within a predominantly residential area, at the junction of Raylawn Street with Paul Avenue. It comprises an extended 2 storey, detached house with a wide frontage to Raylawn Street, from which it has 2 separate vehicular access points and driveways.

¹ Appeal Ref: APP/X3025/20/3254627 - 229 Abbott Road, Mansfield

5. The issue before me is whether the Council's decision to refuse an LDC for use within Use Class C3(b) was well founded. The Town and Country Planning (Use Classes) Order 1987, as amended [UCO], defines Class C3(b) as use as a dwellinghouse by:- "*not more than six residents living together as a single household where care is provided for residents*".
6. The planning merits of the proposed use are not relevant to this type of appeal, in which the onus is on the appellant to demonstrate her case, on the balance of probability.
7. The ground floor living accommodation presently comprises a lounge, a dining room, a kitchen, a conservatory, a bathroom and a utility room. On the first floor are 5 bedrooms and a second bathroom. The appellant has indicated that there would be no physical changes but that 3 of the bedrooms would be allocated to children, the other 2 being staff sleep rooms. It appears that the use of the ground floor rooms would be shared by all the occupants.
8. Three young people would occupy the property, with three staff on site during the hours of 08.00 to 22.00, and two staff staying overnight i.e. a maximum of five persons sleeping overnight. There would be a registered manager, responsible for the running of the premises and supporting staff as necessary, who would attend the premises Mondays to Fridays from 09.00 to 14.00. There would also be sporadic visits from health and welfare persons, social workers and care regulators, together with family members.
9. The appellant has not clarified the terms of employment of the daytime and night time staff, including whether the same staff would be present, both day and night, for seven days a week. In the absence of any indication to the contrary, it appears that the attendant staff would not be residents in the sense of being permanent residents of the dwelling; they would be coming to work as employees.
10. The significance of this is clear from the case of *North Devon*² in which it was found that the concept of living together as a household means, in the context of Class C3(b), that a proper functioning household must exist and that the children and carers must reside at the premises. It was held that carers who provide 24 hour care, but who are not resident, could not be regarded as living together in a household.
11. This leads me to conclude that the use as described would not fall within Use Class C3(b) of the UCO. To my mind, the facts of this case indicate that the use would have the characteristics of a use 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)). The appellant appears to acknowledge this. Whilst a change from Class C3 to Class C2 would normally amount to development requiring planning permission, I shall go on to consider whether the use, as proposed here, would amount to a *material* change of use.

Whether a material change of use.

12. The appellant submits that the use of the appeal premises would, in fact, appear little different from use as a 5 bedroom family dwelling. The relevant test, set out by the courts³, is that, unless the new and the old uses fall within

² North Devon District Council v First Secretary of State [2003] EWHC 157 Admin

³ SSETR and Waltham Forest LBC [2002] EWCA Civ 330

the same use class, S.192 requires a comparison to be made between the proposed use and the actual previous use, as opposed to a hypothetical range of activities that might have been included within a use of that type.

13. The appellant has provided no information about the actual use of the appeal property, such as the number of occupants, which makes the relevant comparison problematic. There is more clarity about the proposed use, as set out in para.8 above. The presence of up to 4 non-resident staff throughout much of the day, augmented by visits by health and welfare persons, social workers and care regulators appears to me to be very uncharacteristic of a dwelling house use. Furthermore, whilst there is no indication on the plans of a dedicated office space, administrative and other staff duties must take place somewhere within the property.
14. In addition to the use of the premises, the comings and goings of the staff and residents, plus any visits by family members, appear likely to be significantly greater than might be expected to apply to a dwelling house. This is likely to give rise to a greater level of noise and disturbance to the near neighbours than might otherwise be expected with the present use.
15. The presence of 2 driveways allows for the parking of up to 5 cars on site. However, this would require careful management as cars could become blocked in. It appears likely that short-term visitors, whether professional or family, would be more likely to park on the road. Either way, the level of parking in or adjacent to the property appears likely to be greater than associated with the present use.
16. On the evidence provided and on the balance of probability, it appears to me that the character of the proposed use would be so different from that of the present C3 use that it would amount to a material change of use.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a C3(b) use to accommodate 3 children where care is provided at the appeal premises 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.

B.S.Rogers

Inspector