
Appeal Decision

Site visit made on 7 October 2020

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2020

Appeal Ref: APP/X3025/X/20/3254627
229 Abbott Road, Mansfield NG19 6NG

- 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 Homes2Inspire against the decision of Mansfield District Council.
 - The application Ref 2020/0079/CLPD, dated 10 February 2020, was refused by notice dated 13 April 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 dwelling house for up to 4 no. residents living together as a single household where care is provided for residents (Use Class C3(b)).
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 10th November 2020.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Homes2Inspire against Mansfield District Council. This is the subject of a separate Decision.

The Appeal Property and Background

3. The appeal property is a modern 5 bedroom house in a residential area on the north-western edge of Mansfield. There is a vehicular access onto Abbott Road, A6075, on the east side of the property which serves a garage at the side of the house, together with a hard surfaced area in front of it. The stretch of Abbott Road here is subject to a 40mph speed limit and no parking restrictions are in force.
4. The parties have advised that a planning application for the change of use of the property from C3 use to C2 use has been submitted. Furthermore, aspects of this proposal are touched upon in the representations made by the main parties and by objectors. While there is some overlap between the matters raised and those appertaining to the question of the lawfulness of the proposed use, the considerations involved in determining the latter are not necessarily the same as those concerning the acceptability or otherwise of the use in question in this location. In other words, the question of lawfulness is distinct

from the planning merits of the proposed use. Accordingly, therefore, my decision will focus on the proposal that is the subject of the appeal before me. In so saying, I am mindful that in a case such as this the Courts have held that the onus on proving it lies with the appellant.

Reasons

5. I consider there are two main issues. Firstly, whether the proposed use falls within Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (UCO). And, secondly, if not, whether the proposal would amount to a material change of use.

Issue 1

6. The appellant indicates that the proposed use would provide professional care for young people in the care of the Local Authority. In this respect, it is contended that the nature and character of the use would be that of a residential household, albeit with a level of care and support. As such, it would fall within Class C3(b) of the UCO, defined as use of a dwellinghouse by, "*not more than six residents living together as a single household where care is provided for residents*".
7. What the appellant regards as the household in this instance would comprise up to two dependent children with two adult carers working in shifts on a rota basis. Having read that communal facilities, such as the bathroom, kitchen and living room, would all be shared, I accept that this arrangement would closely resemble the characteristics of a typical family home. However, there is an important distinction here in that while the children's residency would be permanent, the carers' occupancy would not, albeit their duties would involve overnight stays at the property. Indeed, it has not been made clear whether care would be ministered by carers specifically assigned to the appeal property, or whether a series of different individuals, drawn from a pool of carers, would be involved.
8. The appellant has drawn my attention to instances where other Councils, including 2 elsewhere in Nottinghamshire, have issued LDCs for what appears to be either the same use, or something very similar to it. On the face of it, these approvals appear to lend strong support to the appellant's stance. However, I am also mindful that the question of what a C3(b) use entails was examined in the judgement in *North Devon District Council v First Secretary of State [2003] EWHC 157 Admin*, cited by the Council. In particular, the judge 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. Of especial significance to the current appeal, 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.
9. As noted in one of the appeal decisions cited by the Council¹, as the definition of 'care' in Article 2 of the UCO, applicable to Class C2, refers to the personal care of children, there is an element of overlap between classes C2 and C3. Be that as it may, viewing this case in the light of the findings in *North Devon*, I am not satisfied that the use in question has been shown to fall within Use Class 3(b). In particular, as the Council point out, the attendant staff would not

¹ Appeal decision ref APP/K2420/X/11/2155849.

be residents in the sense of being permanent inhabitants of the dwelling, they would be coming to a place of work as employees of the care provider. All this leads me to conclude that, as a matter of fact and degree, the proposed use should more appropriately be characterised as a Class C2 care home for children.

10. This finding, however, is not the end of the story in this instance, as it is also clear from *North Devon* that it is necessary to consider whether there would be a *material* [my Italics] change of use. I address this below.

Issue 2

11. The appellant contends that there would be no material change of use, the character of the use would not change materially in terms of activity, or comings and goings, and the use would operate in a similar manner to the existing single family residence.
12. It is further submitted that while the LDC application form indicates that there would be 13 full-time members of staff and one part-time one, this figure includes rota staff and administration staff employed off-site. They would not all be on-site at the same time. During the daytime there would be 3 staff on site, 2 carers and a Home Manager who would be present Monday to Friday during business hours. During evenings and nights two carers would be present and there would be an hour's overlap in the afternoon when staff change shifts. The appellant anticipates that, where possible, the children would attend mainstream schools.
13. Notwithstanding my reservations regarding occupancy by a household, the general manner in which the property would be occupied, as described by the appellant, would closely resemble what could reasonably be expected to occur at a family home in a residential area. In particular, pointing out that the appeal property is a large 5 bedroom house, the appellant contends that if it was fully utilised, the same levels of activity and comings and goings could be generated as the proposed use would be likely to. Such an argument may be relevant as a fallback position where planning permission is being sought. However, I am mindful that in *SSETR and Waltham Forest LBC [2002] EWCA Civ 330* it was held that unless the old and new uses fell within the same use class, section 192 requires a comparison between the proposed use and the actual previous use, as opposed to a hypothetical range of activities which might have been included within a use of that type.
14. In the light of the foregoing, it is not appropriate to compare the proposed use with some notional use as a dwellinghouse, for instance one with several family members in residence. The correct starting point for such an analysis is the actual use of the property as a dwellinghouse at, or when last occupied before, the date of the LDC application. In this case, the appellant has provided no information about the actual use of No.229 and so I have no evidential basis upon which to make an accurate comparison between, as it was put in the Court of Appeal judgement, the 'beginning and end'².
15. The appellant has not indicated whether the Home Manager would be actively concerned with the provision of care, or whether the role would be essentially administrative. In particular, the presence of a non-resident throughout the

² Paragraph 14.

working week is not something I would normally associate with a typical dwellinghouse. Nor has it been made clear whether this would involve the provision of dedicated office space within the property, as perhaps might be expected. Indeed, I note that the proposed floor layout shows one of the ground floor rooms annotated 'study', as opposed to a dining room as 'existing', but no explanation for this has been given.

16. This facet of the proposal is something that could potentially alter the nature of the use to a certain extent. However, the lack of clarity in this respect creates an element of uncertainty insofar as assessing the significance of this is concerned. Likewise, while it may be that the resident children would be able to attend 'mainstream' schools, as the appellant anticipates, this appears to be an aspiration as opposed to a certainty. It raises the possibility that some teaching, together with the resultant comings and goings by those involved, could occur at the appeal property – something else that could affect the character of the use.
17. As regards parking and vehicular movements, besides the garage at the side of the house, the hard surfaced area in front of it provides additional space for parking within the site, albeit the presence of a tree in the midst of the latter tends to act as something of a constraint on the number of vehicles that can be accommodated here. According to the appellant, a pool car would be based at the property, but the Home Manager would be contractually obliged not to travel to the property by car.
18. I accept that the maximum 'demand' for staff car parking, when there could be 4 staff cars on-site as well as the pool car, is only likely to occur during shift changes. The appellant's Highways Note indicates that the handover period would usually be between half an hour to an hour, once or twice a day, and the appeal statement also refers to an one hour changeover being allowed for between the day and evening shifts. Notwithstanding this, noting that the appellant indicates that parking is currently provided by the garage and 'driveway', which would fit 4 cars, I have reservations as to whether the present configuration of the site's frontage would allow for 5 cars to be parked and manoeuvred within the confines of the site in a manner which would enable all of them to leave the site in forward gear. This throws up the distinct possibility that some vehicles may have to reverse out into Abbott Road, or even park there.
19. It may be that only one or 2 cars at most would be involved. Nevertheless, having read that the annual average daily traffic flow along Abbott Road is in the order of 16,500 vehicles, and having gained the impression that a large proportion of the traffic passing by the site was travelling close to, at, or even slightly above, the 40mph limit, such off-site activity and the consequent effect on the safe and free flow of traffic is something else that would bear upon the nature of the proposed use here.
20. While pronouncing on the planning merits of the proposal is not a matter before me, the planning application referred to in paragraph 4 includes an extended parking area in front of the property which would involve the removal of trees and an area of lawn. It may be that this measure, described by the appellant as 'the hard landscaping of the majority of the front garden', would help avoid the scenario referred to above, but I am unable to concur with the

appellant's view that there would be no external changes that would impact on the character and appearance of the area.

21. The loss of a good deal of greenery, which plays an important role in helping to provide a pleasant setting for the dwelling, and its replacement by an enlarged area of hard surface, is another indicator that the character of the proposed use would be perceptibly different from the property in its current form. The appellant points out that there are other driveways along the road that provide parking for multiple vehicles, but this is not a matter to which I am inclined to attach much weight in the context of assessing the lawfulness or otherwise of the use proposed. The works envisaged, which would be readily apparent to passers-by, would be a direct physical consequence of the use proposed.
22. I am also concerned that there is an element of ambiguity insofar as the likely number of vehicular movements associated with the proposed use are concerned. In particular, while the appellant notes that the only other movements, besides those linked to staff changeovers, would be the pool car as required, reference is also made to visits by other support staff such as Social Services. While it is said that this would be 'occasional', and no more than once weekly, somewhat surprisingly, given that it is indicated that the appellant operates a number of homes across the country, evidence regarding the typical number and frequency of vehicle borne visits is rather thin.
23. I accept that the appellant's Highways Note refers to a similar scheme in Mansfield, but as the figures given³ only refer to staff arrivals and departures, this offers no insight insofar as the likely overall pattern and amount of vehicular movements is concerned. It may be that the overall number of additional movements, whether it be by social workers or others involved with the children in care, would not be that great, as is indicated. However, the absence of robust empirical evidence in this respect, makes it hard to form a conclusive view on this point.
24. I acknowledge that the children and staff numbers involved in this instance are less than was the case at Willow House, Clipstone, one of the appeal decisions referred to by the Council⁴. Be that as it may, I am concerned that the appellant's case lacks clarity to the extent that it makes it very difficult for me to properly evaluate the precise character of the proposed use and, more importantly, whether, how, or to what extent, it would be different from the current use of the appeal property as a dwellinghouse. Taking this, together with my concerns about the effects of parking, and the intended alterations to the frontage of the property, I consider that the appellant's evidence falls short of demonstrating that the use in question would not constitute a material change of use. In short, I am not satisfied that the burden of proof that rests with the appellant has been discharged.

Conclusion

25. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use as a dwelling house for up to 4 no. residents living together as a single household where care is provided for residents at 229 Abbott Road, Mansfield NG19 6NG (Use Class C3(b)) was well-founded and that the appeal should fail. I will exercise

³ BWB Highways Note, Appendix B.

⁴ Appeal Decision ref APP/X3025/X/19/3233788.

accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

26. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

D H Brier

Inspector