



Appeal Decision

Site visit made on 17 June 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

Appeal Ref: APP/C4235/X/20/3244329

72 Oakdale Drive, Heald Green, Cheadle SK8 3SW

- 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 Habib Ahmed, Cambrian Child Care Service against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/074154, dated 21 July 2019, was refused by notice dated 19 December 2019.
 - 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 described as 'use of premises as a home for up to three children or young people with up to two full-time resident carers' sleeping overnight'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Scope of the LDC application

2. The appellant confirms that the application for the proposed use was not retrospective. It was treated as an application to determine whether the use described in the application would be lawful if instituted or begun at the time of the application. I have considered the appeal in the same way as a proposed use and based on the submissions made.
3. The application form indicates that the property is a dwellinghouse Class C3(a) as defined in *The Town and Country Planning (Use Classes) Order 1987* as amended (the UCO). There is no dispute about this point.
4. The application submission is described as a home for up to three children or young people aged between 7 to 15 years with two full-time resident carers sleeping overnight and living together as a single household. The submissions indicate that one of the carers, the appellant, lives in the property as his main residence. The appellant and the other carer operate a shift pattern of work with two days on and four days off work. It is reported that there would be a carer present during the day and the children would be visited twice a week by a social worker or clinician.
5. It is indicated that all facilities within the property would be shared and the residents would live as a family. The carers would support the resident children

in all aspects of their development and act as corporate parents by supporting them with their life, social and behavioural skills and assist them in re-engaging with education.

Main issues

6. The main issues are whether the appeal children's home falls under use class C3(b) and, if not, whether there would be a material change of use of the property.

Reasons

7. There is no dispute that the lawful use of the property is a dwellinghouse under Class C3(a) of the UCO as amended. Class C3(a) is use as a dwellinghouse (whether or not as a sole or main residence) by a single person or by people to be regarded as forming a single household. Class C3(b) is use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household where care is provided for residents.
8. The appellant argues that the proposed use falls under Class C3(b) and no material change of use would occur, as a change from Class C3(a) use to a Class C3(b) use would not be development requiring planning permission under Section 55(f) of the Act as amended. The Council contend otherwise that the proposed use falls under use Class C2 'Residential institutions' – use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3).
9. The appellant asserts that as the appellant and one of the resident carer's of the resident children would live in the property as his main residence this is distinguishable from the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C.R. 38*. This case held that children living alone but provided with care by non-resident staff on duty cannot form a household without the presence of a caregiver who is resident and that the use fell within use Class C2 of the UCO.
10. Subsequent case law considered *North Devon* and found that it should not be taken as setting down a principle, but each case should be considered on its merits noting that if carers are not resident, there remains a perfectly sensible question whether those who are resident and in receipt of care, themselves constitute a single household. That question is essentially answered on the facts. The case also identifies that if the carers are resident, the question is whether they, together with the other residents', constitute a single household. In this appeal case the carer/appellant would live permanently at the property as his main place of residence.
11. The property has seven bedrooms, kitchen, dining area, sitting room, lounge and bathrooms. The Council indicates in submissions that the house would be laid out with a kitchen, lounge, utility, study, staff office and five bedrooms and bathroom. The resident children (7 to 15 years old) would be cared for by up to two full-time resident carers sleeping overnight and working on a shift pattern and during the day there would be an additional carer and visits during the week from social workers or clinician. The Council has not raised issues concerning the level of care required to assist the resident children with their daily lives and there is no suggestion that indicates personal or medical care is

needed. The resident children would be taken and brought home from school each day, they would eat together and share prepared meals or make their own meals and they would share all the facilities of the home. The adult carers would interact with the resident children as if they were their guardians living with them, and as in the case of the appellant living in the property as his main residence and working as a resident carer.

12. The Council recognise that the property is the appellant's main residence, but consider that as the appellant does not provide full-time care then a proper functioning household would not exist, and resident children, the non-residents carers and the appellant would not form a single household. In my view, the appellant cannot be expected to provide full-time care to the resident children there must be respite and for practical reasons a shift pattern of work would have to be administered for the care of the children. This in my view, does not take the use outside the meaning of a single household for the purposes of the relevant class.
13. The *North Devon* case stated, 'what is required is indeed residential care with a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household'. This is the situation in this appeal. The appellant has indicated that he would be living on the premises even when it is not his shift. The appellant being a permanent resident and the resident children would in my view form a single household, given that they all share the facilities of the house and that the appellant is guardian and responsible for the running of the household even during such times when he is not working on shift as carer.
14. Turning to the question of the non-resident carers these are compared by the appellant as having an au-pair assisting the resident guardian in the provision of care and the running of the household. The subsequent case which reviewed *North Devon* added, 'I would reject any suggestion that in a case where care is needed for those under a disability, Class C3 can apply only if the carers are in residence in the same property as those for whom they are caring. That would seem to me to run counter to the language of Class C3 itself and to the underlying policy'. It seems in this case that the level of care is not an issue between the parties. The non-resident carers come in to help and there is no indication other than to say that the extent of care would be low level and would not fall within the category of care associated with a Class C2 use.
15. The resident children who are 15 years old or younger are assisted with their daily lives and require supervision, structure and guidance to develop and progress to self-sufficiency. This level of care on the available evidence is low level. Non-resident carers assist the resident carer in his duties as the head of the household. The number of visits by the non-resident care worker would be four over a seven-day period. The number of social worker/clinician visits would be four a week. These low frequency of shift changes and other visits do not in my view alter the character balance of the use and the way its occupants interact with one and another as a single household.
16. The Council compares this case to an appeal at No. 73, The Crescent, Stockport. From my reading of that appeal case it is distinguishable from the current appeal because the carers were not resident. There is also the contention that there would be separate areas for the staff and the residents, but an office use within a dwellinghouse is not itself unusual and there is no

overall distinguishable character change to indicate a use which falls outside the meaning of a single household for the purposes of the relevant class.

17. In all, given the level of care involved in this case, the low frequency of visits by non-resident carers who stay overnight and work a shift pattern with the resident carer who guide and look after the resident children, the proposed use in my view, would constitute a single household. I conclude on the available evidence that the proposed use would fall within use class C3(b).
18. I note the other matters raised in relation to the proposed use, although these relate to whether there would be a material change of use of the property. As I have concluded that the proposed use falls within use class C3(b), it would not be development and no planning permission is required for this use, and so, I need not consider whether the change would be a material change of use.
19. For the reasons given above I conclude, on the available evidence, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Iwan Lloyd

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 21 July 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Section 55 of the Town and Country Planning Act notes that the making of any material change of use of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provision of the order, of any part of the buildings or the other land, for any other purpose of the same class shall not be taken for the purposes of the Act to involve development of the land, and does not require planning permission.

At the time the application was made, the property was in use as a dwellinghouse (whether or not as a sole or main residence) by Class C3(a) a single person or by people to be regarded as forming a single household of the Town and Country Planning (Use Classes) Order 1987 (as amended). The change from Use Class C3(a) to Class C3(b) - not more than six residents living together as a single household where care is provided for residents would not be development and would not require planning permission.

Signed

Iwan Lloyd - Inspector

Date: 07 December 2020

Reference: APP/C4235/X/20/3244329

First Schedule

Use of premises as a home for up to three children or young people with up to two full-time resident carers' sleeping overnight

Second Schedule

Land at 72 Oakdale Drive, Heald Green, Cheadle SK8 3SW

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was/were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 07 December 2020

by Iwan Lloyd BA BTP MRTPI

Land at: 72 Oakdale Drive, Heald Green, Cheadle SK8 3SW

Reference: APP/C4235/X/20/3244329

Scale: Not to scale

Location Plan of SK8 3SW



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Scale: 1:1250, paper size: A4

72 Oakdale Drive