



Appeal Decision

Site visit made on 5 February 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2021

Appeal Ref: APP/T3725/X/20/3260765

17 Gaveston Road, New Milverton, Leamington Spa CV32 6EX

- 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 Charanjit Singh Khehra against the decision of Warwick District Council.
 - The application Ref W/20/0483, dated 25 March 2020, was refused by notice dated 20 May 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 the existing dwellinghouse as a home for up to three children aged between 8 and 17 years, to be looked after by carers working on three eight-hour shifts per day.
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Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. 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.
4. The appeal will turn on whether the proposed use falls within Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended)(UCO) and if it does not, whether there would be a material change of use from use as a dwellinghouse to Class C2, use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwellinghouses)). 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 property is a substantial 5 bedroom, brick built terraced property with traditional architectural detailing located in the Leamington Spa Conservation Area. Properties along Gaveston Road generally have modest front gardens bound by low level brick walls with planting set behind and the appeal property is no exception. Such architectural detailing, boundary treatments and planting make a positive contribution towards the character and appearance of the area.
6. The appellant wishes to use the house as a home for up to 3 young people, aged between 8 and 17 years of age, offering medium and long-term placements. The children would be supported by carers who the appellant describes would be 'living with them on a rota basis'. The appellant goes on to clarify that one of (the care-workers) would be on hand 24 hours a day, each one of the three carers staying at the premises for an eight-hour shift. It would seem, therefore, that the carers would not live with the children in the same way that a parent would, though resident staff would share a kitchen, living room and other facilities with the children and would take their meals with the children.
7. The appellant suggests that the proposed use of the dwelling would fall within use class C3(b) which is the 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. In this case, the care would be provided by the carers who would not live at the property but would occupy it on a rota basis.
8. The appellant has drawn my attention to appeal decisions, reference APP/X3025/X/15/3003794 and APP/C4235/X/17/3170427. Whilst I have had regard to the Inspectors decisions, the matters which were before the Inspectors in those cases are very different to the matters which are before me now. In relation to 3003794, the property comprised five adult residents living together who received care from up to five members of staff at any one time and 3170427 concerned young people aged between 16 and 25 living together, a good proportion of whom would have been over 18 at any time. This appeal, in contrast, concerns children.
9. As set out in the North Devon judgement², children cannot form a household without the presence of a caregiver and, although in this case a care-worker would be present on the site at all times, they would not live at the property but would occupy it on a rota basis. Whilst the North Devon judgement does not lay down a principle that those who suffer from disability and need care in the community can never constitute a household, as held in *R (oao Crawley BC) v FSS & the Evesleigh Group* [2004] EWHC 160 (Admin), the Evesleigh case did not concern children and it was therefore not necessary for the judge to consider whether the approach taken in North Devon, that children cannot form a household, was correct.
10. It is necessary for me to focus first on those in occupation and ask whether they form a single household as a matter of fact and degree. The appeal site would be occupied by up to 3 children at any one time. Carers would provide continuous 24-hour care on a rota basis. As set out in the North Devon judgement, in this circumstance, the children and the carers would not be living together as a single household, since the children could not form a

² North Devon District Council vs FSS and Southern Childcare Ltd [2003] EWHC 157 (Admin); [2003] JPL 1191

household without the presence of the caregiver. I see no reason to depart from established case law in this case and conclude that the proposed use would be a C2 use.

11. Whilst the Council limited its consideration as to whether the proposed use would fall within C3(b), it is clear from the North Devon judgement that this does not necessarily mean that a change from C3(a) to C2 will always be material, it will be a matter of fact and degree depending upon the circumstances of the case in question. The appellant contends that even if it is concluded that the use class should be C2 rather than C3, no material change of use would occur if the use gives rise to no greater level of disturbance or has no greater impact than would be generated by a C3 use.
12. The appellant suggests that the proposed use would better reflect the original intended use of the house as a single dwelling than the HMO use which was granted by planning permission W/18/0803, which was allowed on appeal. However, the appellant advises that this use has never actually been implemented. It is necessary for me to compare the proposed use with an actual existing one, not a notional use.
13. The appellant advises that 'all efforts would be made to ensure that the home would not have an institutional character', however, it is not clear what these 'efforts' would comprise and therefore what their effect would be in terms of the character and appearance of the area. The appeal site is an attractive mid-terrace Victorian property which is located in the Leamington Spa Conservation Area. It is therefore essential that the likely effects of the proposed change are understood as even seemingly small changes have the potential to have an adverse impact on the character or appearance of a Conservation Area.
14. The appellant advises that the children would be expected and actively encourage to attend mainstream school. However, whilst this may be the appellant's intention, I consider it likely that at least some of the children would require some form of home tutoring, particularly those who are not at the property on a long-term basis. Tutors visiting the property may access the site by car, which would generate vehicle movements and associated comings and goings which would be less likely to be generated by a typical family.
15. The children would have allocated social workers who, after an initial 'settling in' period, would only need to visit once a month. It is not clear what the 'settling period' would be, or what the turnover of children is likely to be. As such, it is not clear from the information provided how often social workers are likely to visit the property. Whilst a child living with its parents may receive visits from a social worker, it's likely that there would be only one social worker for the whole family, whereas each child would have a social worker in this case, who may be different and may visit at different times and at different frequencies depending on the needs of the child concerned.
16. It is not clear from the appellant's evidence what the working pattern of care-workers at the site would be, what would happen during a change-over or what vehicle movements would be generated. Although one of the care-workers may choose to park at the rear of the property, I consider it highly likely that during a change-over, at least one care-worker would need to park on the road. This would generate parking requirements along Gaveston Road which would be in addition to parking requirements generated by other visitors to the site, such as social workers and tutors.

17. During my visit I saw that on street parking demand was significant, with very few spaces available along Gaveston Road or surrounding roads. At the time of my visit the country was subject to restrictions as part of the Government's response to the Covid-19 pandemic, which is likely to increase the likelihood that occupants of properties in the surrounding area are staying at home. Nevertheless, I have no substantive evidence that this is not representative of parking demand in the area.
18. The appellant suggests that the landscaping arrangements to the front of the property will remain as existing, with two parking spaces and a rear garage with access to one car parking space. However, it is not clear from the evidence where the two parking spaces are located and whilst there may be parking to the rear, it is accessed via a generally single track access road. As such, I consider it more likely that users of the site would choose to park at the front of the property along Gaveston Road. In my view, it is likely that the movements generated by the proposed use, including tutors, care workers and social workers, would be significantly greater than would be generated by a C3a use and would lead to increased parking demand in the area.
19. I acknowledge that different households may live their lives in very different ways and may include parents working irregular hours and receiving support from other family members. Nevertheless, for the reasons given above, in my view, the appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the use of the site as a home for up to three children aged between 8 and 17 years, to be looked after by carers working on three eight-hour shifts per day would not be a material change of use in this case.

Conclusion

20. 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 aged between 8 and 17 years, to be looked after by carers working on three eight-hour shifts per day 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