The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2021

Appeal Ref: APP/H4315/X/20/3262649
171 Vulcan Park Way, Newton-le-Willows WA12 8TB

- 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 Atti Iqbal, Knightsbridge Property Group, against the decision of St. Helens Metropolitan Borough Council.
- The application Ref P/2020/0652/CLP, dated 9 September 2020, was refused by notice dated 5 November 2020.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
- The use for which a certificate of lawful use or development is sought is a children's home for up to 2 young people and up to 2 live-in carers.

Decision

1. The appeal is dismissed.

Preliminary matter

2. The above description of the proposed use is taken from the application form, with an additional reference to the number of live-in carers based on the alternative descriptions in the decision notice and the appeal form.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. If, on an application under section 192 of the Act, the local planning authority is provided with information satisfying it that the use described in the application would be lawful if instituted at the time of the application, it shall issue a certificate to that effect; and in any other case shall refuse the application.

4. While parking issues and disturbance arising from the behaviour of a resident child and carers have been mentioned, the representation in question also refers to 2 nearby properties. It is therefore not clear whether or how these matters relate to the appeal site. In any event, the use the subject of this appeal has not begun, and the planning merits of the proposal are not relevant when determining lawfulness.

Reasons

5. The Council granted an LDC for use of the premises as a children's home for one young person and 2 overnight carers[1] on the basis that this did not constitute a material change of use from the previously permitted use as a dwellinghouse. However, in this appeal, it considers, with specific reference to the levels of comings and goings, that a children's home for up to 2 young people and up to 2 live-in carers would result in a material change of use.

6. Where care is provided in a dwelling that is not the main residence of the carers, the use falls within Class C2 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 as amended and is not a dwellinghouse use within Class C3 of the same Order. While it is agreed that is so, it is necessary to determine, on the facts of the case, whether there would be a material change in the character of the use.

7. As described by the appellant, the 2 children would live at the house with 2 carers working and sleeping overnight on a 2 days on/2 days off rota. The likely comings and goings are the daily arrival and departure of carers at the beginning or end of their shifts and the arrival and departure of a manager at 0900 and 1700 on weekdays, though not necessarily every day. There would be occasional visits by social workers or clinicians and a third carer.

8. The details that were before the Council when it granted the previous LDC have not been provided. However, it is indicated that it concerned a use involving 2 live-in carers and weekday visits by a manager, as above. From that starting point, an additional child could lead to more visits by a carer or by social workers and clinicians, although this would depend on the needs of the child and is therefore difficult to quantify. Nevertheless, the appellant considers that, for 2 children, the use would generate 4 vehicle movements per week. Accordingly, and from the appellant's evidence, up to 46 vehicle movements may be expected in a typical week, normally 6 per day but rising to 8 on days when an additional carer, social worker or clinician visit. While emotional or behavioural problems on the part of a resident child may call for additional planned, ad-hoc or emergency visits, this is not quantified.

9. Numerically, the overall picture is not significantly different from the traffic flows to be expected of a household with 2 people travelling to work each day, taking children to school, and undertaking a typical number of personal journeys. I have considered the Rochdale appeal decision[2], but the proposed use in that case was for up to 4 children, with separate rooms for education and therapy to be provided by other visiting professionals. As such, I find significant differences between the cases, so it does not form a clear precedent for assessing the likely movements in this appeal.

10. Accordingly, I find that the proposed use would not result in significantly more movements than a typical occupation of a 3-bedroom dwelling or a pattern of comings and goings that would be more intensive and constant than might reasonably be expected to be generated by even a large dwellinghouse.

11. The operational statement submitted with the application indicates that the manager would oversee 2 homes, assisted by a deputy manager based in "the larger property", although it is not clear where that is. However, as this is

[1] P/2018/0879/CLP, granted 28 January 2019
[2] APP/P4225/X/16/3145074

described as "the standard daily operational details for Knightsbridge Property Group Ltd children's accommodation", it may not be specific to the appeal premises.

12. Nevertheless, it is also stated that the manager would have overarching responsibility for the children's care plans, the home's compliance, and staff development. This range of duties appears to go beyond the direct provision of care to the resident children by including some administration of the appellant's business. Furthermore, it would be unrealistic to expect a manager with responsibility for 2 homes to constrain his or her activities to matters solely relating to the one they happen to be in at a given time.

13. The manager's role would therefore involve activities that do not relate directly to the provision of care to children living at the appeal premises. Furthermore, the presence of a non-resident throughout the working week is not something normally associated with a typical dwellinghouse. Accordingly, it would appear to introduce a material change in the character of the use.

14. While it is not factored into the pattern of comings and goings above, the appellant confirms that young people coming into care are often tutored from home at first, after which they *may* (my emphasis) progress to schooling off-site. While the extent of any home tutoring would depend upon the needs of the child, this raises the possibility that some teaching, possibly a significant proportion, could occur at the appeal property. This, with the associated comings and goings of those involved, would differ from home schooling provided by a household member and is something that could alter the character of the use.

15. Having regard to the range of activities that would be undertaken, the appellant's case lacks clarity to the extent that it makes it very difficult to properly evaluate the precise character of the proposed use. More importantly, and notwithstanding the views I have expressed above, this makes it difficult to determine with certainty whether, how, or to what extent, it would be different from the use of the premises as a dwellinghouse. The appellant's evidence therefore falls short of demonstrating that the proposed use would not constitute a material change of use, and consequently the burden of proof that rests with him has not been discharged.

16. I recognise that my findings differ from those of the Council in refusing to issue the LDC the subject of this appeal. However, as the High Court determined in the *Cottrell* case[3], if the evidence taken as a whole suggests that the matter in question is not lawful, it would be wrong to grant an LDC on appeal, even if the local planning authority had different reasons for reaching the same conclusion.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC was well-founded. The appeal fails accordingly.

Mark Harbottle

INSPECTOR

[3] Cottrell v SSE & Tonbridge and Malling BC [1982] JPL 443