



Appeal Decision

Site visit made on 9 February 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th March 2021

Appeal Ref: APP/V4250/X/20/3262349 398 Ormskirk Road, Wigan WN5 9DD

- 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 Sibghat Khan, Invigor Adolescent Care, against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/20/89855/LUCP, dated 2 September 2020, was refused by notice dated 29 October 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 a home for up to three children or young people with up to two full-time resident carers working on a rota basis, sleeping overnight.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The Council gave the proposed use a briefer description of “children’s care facility” in its decision. However, I shall adopt the wording in the header above, taken from the application form, as it is a fuller description of the proposed use.

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.

Reasons

4. 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 within Class C3 of the same Order. It is agreed that the proposed use falls within Class C2; however, it is necessary to determine, on

the facts of the case, whether this would result in a material change in the character of the use.

5. The appellant points out that the premises could be occupied as a Class C3 dwellinghouse by a large family or up to 6 unrelated people who live together as a single household, including where care is provided. However, unless the old and new uses fall within the same Use Class, section 192 of the Act requires a proposed use to be compared with the actual previous use, rather than a hypothetical range of activities which might have been included within a use of that type¹. In this case, as there is no evidence about the precise nature of the previous use as a dwelling, a reliable comparison cannot be made.
6. In its reason for refusing to issue an LDC the Council stated that the proposed use would be materially different to the functions of a residential dwellinghouse or household falling under Class C3, due to the requirement for the associated numbers of day time staff and the management arrangements. In its appeal statement it expands on this, stating that the number of children being looked after, the frequency of shift changes, and the number and frequency of associated visitors should also be taken into consideration. However, its reasoning focuses on the non-resident manager, who would work at the property in addition to the carers and, in the Council's view, would intensify its use and bring about a material change in the character of the use.
7. As described by the appellant, 3 children would live at the house with 2 carers working and sleeping overnight on a 2 days on/2 days off rota. A manager would be on site each weekday from 0900 to 1700 and there would be occasional visits by social workers or clinicians and possibly a home tutor. While there are no details before me of the previous residential use, it would not be unusual for 3 children to live in a house of this size and, as described, the live-in carers would perform a similar role to parents in many other homes.
8. Little information is provided on the manager's role, except that he or she would be at the premises between 0900 and 1700, Monday to Friday. In view of this, and the appellant's expectation that the children would attend school, there would not appear to be many opportunities for the manager to interact with them for much of the year. Accordingly, it has not been demonstrated that the manager's role would be entirely focused on 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. It would therefore appear to introduce a material change in the character of the use.
9. The track leading to the off-road parking within the site passes through gates that were closed at the time of my visit. While the live-in carers and the manager may be expected to open these gates and park inside, less frequent visitors may not. However, I saw there are opportunities for informal off-road parking close by and that there are no parking restrictions on Ormskirk Road.
10. From the evidence provided by the appellant, a total of 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. Numerically, the overall picture is not significantly different from the traffic flows to be expected

¹ Waltham Forest LBC v SSETR & Tully [2002] EWCA Civ 330; [2002] JPL 1093

of a household with 2 people travelling to work each day, taking children to school, and undertaking a typical number of personal journeys.

11. Based on the foregoing, the proposed use would not result in significantly more movements than a typical occupation of a 4-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.
12. While the appellant expects that the children would attend school, they also state 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 premises. 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.
13. Having regard to the range of activities that would be undertaken, the appellant's case lacks clarity to the extent that it is very difficult to properly evaluate the precise character of the proposed use. Critically, 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. Accordingly, the appellant's evidence does not demonstrate that the proposed use would not constitute a material change of use, and the burden of proof that rests with him has not been discharged.

Conclusion

14. 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