
Appeal Decision

Site visit made on 16 March 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

Appeal Ref: APP/P2365/X/20/3263292

64 Square Lane, Burscough L40 7RQ

- 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 Mrs Susan Rolfe of Exceptional Care Limited against the decision of West Lancashire Borough Council.
 - The application Ref 2020/0625/LDP, dated 21 July 2020, was refused by notice dated 7 September 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 an Ofsted registered care home (4 Ofsted registered beds).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded. In this case that turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3.

Reasons

3. The appeal property is a seven bedroom detached two storey dwellinghouse situated on Square Lane in Burscough. It is situated opposite a row of terraced houses and in an area of the town which is characterised by a mix of types of mainly residential properties. The property is separated from the road by a hardstanding parking area and there is a garden area to the rear beyond which are open fields. At ground floor level the property has a lounge, kitchen, conservatory, two bedrooms (one for a staff member and the other for a young person) and a shower, at first floor there are three bedrooms (one for staff and two for young people), an en-suite bathroom and a separate bathroom and at second floor level there are two more bedrooms (one for staff and one for a young person).
4. There is some conflicting information in the evidence submitted by the appellant with respect to the number of young people who may occupy the property and the staffing numbers but I have taken from the application form that the number of young people would be four. The proposed use is as a home for four mixed gender young people aged between eight and seventeen

years old who present with a range of complex needs and functioning difficulties. The appellant's evidence is that the proposal is to use the property as a family-style environment with professional staff offering care, support and accommodation for up to four young people. There will be two main carers and only two staff sleeping at the property overnight with four staff on site during the day to provide additional support.

5. There is insufficient evidence before me in this case to clearly show that the staff would permanently reside at the property, but rather it appears to me that there would be two staff on duty at night and four during the day. Indeed, the appellant's own evidence refers to rotas and it is my understanding that although requested, no information on the proposed shift patterns of staff have been provided by the appellant.
6. I have considered case law relating to cases such as this and it is clear to me that a similar scenario to this case was considered in the case of *North Devon District Council v FSS & Southern Childcare Ltd [2003] EWHC 157 (Admin); [2003] JPL 1191* which determined that children cannot form a household and that if their carers do not live permanently at the property, the use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use.
7. Case law¹ also confirms that *North Devon* does not lay down a principle that those who may need care can never constitute a household. It is necessary to focus first on those in occupation and ask whether they form a single household as a matter of fact and degree. It would be counter to the language of Class C3 and the underlying policy to conclude that where care is needed, C3 only applies to where the carer-givers are resident. However, in this case, since the young people aged between eight and seventeen cannot themselves be said to form a household, as established by *North Devon*, the proposed use would fall within C2 (residential institutions) of the UCO. I understand that the aim of Exceptional Care is to provide homely environments that are close to traditional homes and that the model of care is based on that of a foster family, but having taken account of the evidence presented and relevant case law, that does not persuade me that the proposed use would fall within Use Class C3.
8. As previously set out in this decision, the property would be occupied by up to four young people who would live in the house under the care of two carers during the night and four during the day. It is also my understanding that a property manager would visit the property once a day. It does not appear to me that the property would be the main residence of the carers. The Council argues that there is no permitted change from C3 to C2 under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and the proposed use cannot therefore be considered to be permitted development.
9. However, a change of use to a different use class only requires planning permission if it is material in planning terms. In this case, the appellant considers that the proposed use would fall within Class C3 and that the nature of the use as detailed in the application would not be materially different than a typical household in Class C3. In order to establish whether or not there would

¹ R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin)

be a material difference a comparison between the existing and proposed uses must be carefully considered.

10. The house could quite easily accommodate a family with two adults and four children, but the proposed level of occupation of this particular property would be materially different than would be expected for a single family dwelling, with two adults and four young people being present at night and four adults and four young people present during the day.
11. There would be some vehicle movements associated with carers coming to and going from the site on a daily basis in accordance with their patterns of work and there would be additional movements associated with daily visits by the property manager. Consequently, it is not unreasonable to anticipate that at any one time there may be up to five adults at the property with the four young people. At times when staff are starting and ending shifts there is also likely to be a relatively high concentration of vehicle movements in comparison to the authorised use as a single family dwelling. Although there is on-site parking including a garage at the property, there may be times when there are conflicting vehicle movements to and from the property resulting in potentially hazardous reversing manoeuvres in or out of the site.
12. In addition, young people resident at the property would have regular off-site meetings and there would be additional vehicle movements associated with their day-to-day activities. The number of these movements is likely to be more than the number that would be undertaken by a family and enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. The appellant has stated that there would be a maximum of three cars on the site at any time and due to the proximity of the property to Burscough Junction Station (approximately ten minutes' walk), but there is no way of controlling this through the LDC process.
13. Therefore, in this particular case, based on the specific circumstances of the site and the evidence before me I conclude that as a result of the proposed level of occupancy, the operation of the Ofsted registered care home, resultant disturbance from vehicle movements and potential harm to highway safety, there would be a material difference between the existing and proposed uses. Such a material difference requires planning permission.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the property as an Ofsted registered care home (4 Ofsted registered beds) was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

A A Phillips

INSPECTOR