



Appeal Decision

by **K Stephens BSc (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 April 2021

Appeal Ref: APP/G5750/X/20/3258566

12 Monmouth Road, East Ham, London E6 3QT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Funmilade Aloutade against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/03305/CLP, dated 26 November 2019, was refused by notice dated 6 February 2020.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is change of use of the ground floor from a dwellinghouse (Class C3) to childcare services (Class D1) for up to 10 children at any one time between the hours of 08:30 and 18:00 Monday to Friday.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to do a site visit, as I am able to proceed to a decision based on the submitted evidence from both parties.
3. I have seen letters of support. However, an LDC application is not a planning application. The case must be considered solely on the facts of the case, the relevant planning law and legal tests. Therefore the planning merits of the case do not fall to be considered. Consequently, issues surrounding the effect the business and hours of operation would have on neighbours, parking, noise and disturbance, are not taken into account, nor are any letters of support or objections.

The description of the development and the Main Issue

4. The purpose of an LDC application made under s192 of the Act is to find out whether a future use, as described in the application form, would be lawful if begun at the time of the application. I note that the appellant is unrepresented. Nonetheless, the onus is on the appellant to provide all the relevant information and evidence to support their case.
5. The Council refers to its document 'Childcare provisions – Planning Guidance' which suggests that a material change of use would likely occur if the childcare services were for more than 6 children. The appellant refers to Ofsted having advised her to apply for an LDC as the number of children being cared for would exceed six, the same number the Council also use as a guide.

6. In this case the appellant's description of the proposed development is confusing.
7. The appellant's description on the application form states "*Based on requirement for Childcare Provider by Newham Best Start in Life Family Information Service is to inform planning department the aims of carrying out Childcare services from home. Therefore, the Childcare services will only be running from my ground floor such as living room link to garden and kitchen to toilet while the rest of the rooms upstairs will be solely use for my family.*" On the application form the appellant also states that the proposed use will fall within Use Class D1¹ as a Non-residential institution.
8. The Council has described the proposed development on the decision notice as "*Certificate of lawfulness for a proposed change of use for the ground floor from a dwellinghouse (C3) to childcare services (D1).*" The Council confirms that it amended the appellant's description to align with the appellant's planning statement.
9. There is further confusion on the appeal form. The appellant has ticked to confirm the description had not changed from the application form, yet proceeds to describe the proposed development as "*For use working from home as Packup setting. It will be used during the day as child care on domestic premises from 09.00 to 18.00 hours Monday to Friday.*" This differs from both the application form and the Council's decision notice.
10. The hours of the proposed childcare services are also confusing. On the appeal form the appellant states the hours of operation would be 09:00 to 18:00 Monday to Friday. However, in her Statement she states the operating hours will start earlier from 8.30am to 3.30pm for up to 10 children from the ages of 3 months to 5 years. Then between 3.30pm and 6pm there will be an after-school club for five school-aged children, three of which are her own children plus their friends.
11. The Council considers the after-school interactions are not dissimilar to the family's children having their friends round to play as a normal function of a dwellinghouse and would not amount to a material change of use. However, the Council goes on to conclude that between 8.30am – 6pm there would be childcare services that would materially change the use of the ground floor of the property.
12. Currently the after-school club would consist of the appellant's own three children and it would be them just 'at home' with two friends to play. This may not always be the case if her children leave home and the after-school club would potentially be for any school-aged children. Whilst five children is below the Council's and Ofsted's suggested 6 children, the appellant has stated on the appeal form description that there will be child care on the premises until 6pm.
13. From the various contradictory statements, it appears to me that the appellant is actually seeking to establish that looking after more than 6 children (up to 10 children at any one time) between the hours of 8.30am and 6pm Monday to

¹ When the application was made on 26 November 2019, this was The Town and Country Planning (Use Classes) Order 1987 (as amended) and Class D1 uses are described as 'Non-residential institutions' that include a crèche or day nursery. The Use Classes Order have since been amended in September 2020 and Class D1 uses have been split up and replaced by new Classes E (e-f) and F1, but this was not in force when the application was made and therefore does not fall to be considered.

Friday would be lawful and would not amount to a material change of use of her dwelling. Although there are powers to modify the terms of an application made under section 191 of the Act, there are no similar powers under section 192. It has been necessary in this case though to clarify the description of development, which I have done and set out in the banner heading. I will therefore proceed on the basis of that development.

14. It therefore follows that the main issue is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

15. In order to establish if the proposal would change the use of the ground floor of the dwelling into a child care provision use, it is necessary to look at the definitions of development and establish if there would be a change of use. If there is a change of use, then it will be necessary to determine if the new use requires planning permission.
16. The property is a 3-bedroom terrace dwelling with a living room, kitchen and garden on the ground floor. Development is defined in section 55(1) of the Act and includes the making of any 'material change' in the use of any building. There is no statutory definition of 'material change' but there must be a significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree.
17. The appellant proposes to use the living room and the garden of the dwelling for her childcare business. Between 8.30am and 3.30pm she will look after up to 10 pre-school children (ranging in age from 3 months to 5 years). Then between 3.30pm and 6pm she will run an after-school club for five school-age children, including her own three children aged 7, 11 and 14.
18. During the hours of 8.30am – 3.30pm, almost the entire ground floor accommodation (excluding the kitchen) would be used for childcare for up to 10 children. The use of the limited ground floor space would be more intensive in the winter months or inclement weather when the garden is not in use for outside play.
19. Furthermore, between 3.30am and 6pm the appellant will run an after-school club as part of her described childcare business, even if three of the children are currently her own. Any consent would run with the land. As the appellant's own children grow up, and even leave home, there will be fewer 'friends' of the appellant's children in the after-school club.
20. I find the ground floor of the property would be in use for some kind of childcare facility between 8.30am and 6pm Monday to Friday. This would mean there is no other ground floor living space available for the property to function as a dwelling during the operating hours for normal residential uses to continue.
21. Furthermore, there would be more comings and goings throughout the day with potentially 10 people calling in the morning to drop off their children and 10 calling in the afternoon to collect them, or at various other times during the day if children do not stay the whole time. This is the case whether they arrive on foot or in a car. This would be more activity than would be normally associated with a family dwelling. There would also be more noise and general disturbance resulting from up to 10 pre-school children, including babies,

playing inside and outside in the garden. This would contribute to the change in the character of the activities of the property from being a family home. All in all the changes would be significant, having regard to the combination of the number of children being cared for, the number of days and hours the business would operate and the limited accommodation available for the business.

22. I have no reason to doubt the appellant's qualifications, abilities or good intentions to offer well-run quality childcare services. However, based on what has been submitted, I find there would be a significant change in the activities that would be carried out on the ground floor of the property than would normally be associated with a dwelling for a family. In my view the proposed childcare business would amount to a material change of use of the ground floor of the dwelling.
23. Having determined there would be material change of use, I now need to establish whether the change of use would have been lawful on the date the LDC application was made, as some changes of use do not require express planning permission.
24. Section 55(2) of the Act lists certain operations and uses that do not fall within the definition of development. Sub-section (f) provides that a use of a building for a purpose of any class specified in an Order for any other purpose of the same class is not development.
25. The Use Classes Order sets out which classes certain uses fall into. A dwellinghouse is specified as a Class C3 use and the proposed day childcare services falls under Class D1 as a Non-residential institution. Another Order, the GPDO² grants planning permission for certain uses to change to other uses. The GPDO does not allow Class C3 uses to change to Class D1 uses. The proposed change of use therefore falls within the statutory definition of 'development' and requires express planning permission.
26. Consequently, the proposed development would not have been lawful if it had begun at the time of the application.

Conclusion

27. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

K Stephens
INSPECTOR

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)