
Appeal Decision

Site visit made on 31 March 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 04 May 2021

Appeal Ref: APP/U2370/X/20/3264732

Wharf Cottage, Cabus Nook Lane, Cabus PR3 1AA

- 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 Wyre Borough Council.
 - The application Ref: 20/00617/LAWP, dated 8 July 2020, was refused by notice dated 2 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 an Ofsted registered dwelling with 5 beds for use as C3(b) dwelling to be occupied by one child and two staff at any one time.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Notwithstanding the description of the proposal on the application form, the local planning authority determined the application on the basis of an amended description as 'Proposed use as a C3(b) residence for not more than one child and two care staff at any one time'. My understanding is that this description was agreed by the applicant at the time and that is the basis on which I will determine this appeal.

Main Issue

3. 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

4. The appeal property is a detached five bedroom two storey dwellinghouse situated adjacent to Winmarleigh Bridge on the Lancaster Canal. It is situated adjacent to two holiday parks in an area of open countryside. At ground floor level the property currently has an entrance hall, living room, kitchen, dining room, study, TV/games room and a bath and WC. At first floor there are five bedrooms, all with en suite bathrooms.

5. Exceptional Care has a number of barges on the canal network and it is intended to use the appeal site for an assessment and transition service, enabling children or young people to be matched to a registered bed and have a period of time on the barges, moving through the canal network whilst being assessed for their long term placement. My understanding is that children would be supported to settle into the home and integrate into the local community, including attendance at local schools. Some beds within the property would be retained for long term children who would live there and have a barge attached for the satellite bed. The maximum number of people that would sleep at the property would be six.
6. The appellant has stated that the property would be used as a family style environment for two professional parents offering care, support and accommodation for up to four children living on site. The appellant states that the use of the property would be no different from use as a family home since the number of people staying overnight would be under six. There would be two main carers with two staff sleeping at the property whilst other staff would be available to provide on site support during the day. Further evidence provided with the original application clarifies that only one child with two adult carers would live at the property at any one time and that each of the bedrooms would be registered to a child on Exceptional Care's programme.
7. 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.
8. 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 children or young people 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.
9. The use before me does not appear to involve occupation by a single household as required under Use Class C3. The overall use could be for up to four children with one bedroom each and a barge allocated to them. Although the appellant states that at any one time there would be only one child and two staff this is only a temporary arrangement whilst assessments are being carried out. During that temporary period, time would also be spent on a barge on the adjacent canal. How the other bedrooms would be used whilst the rest of the property is occupied by one child and two professional staff is rather unclear and the information submitted by the appellant lacks clarity and consistency.
10. For example, the information submitted with the application states that only one child with two carers would reside at the property at any one time whereas

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

the appeal documentation states that there would be a maximum of four children living at the home with two staff living there overnight. Furthermore, the agreed description of the proposed use relates to an Ofsted registered dwelling with up to five children registered but not living in the property overnight and appeal documentation states that some beds would be retained for long term children who would live at the home and be active members of the local community.

11. In my planning judgement, it cannot be said that there is a single household being formed and consequently it is my opinion that it would be occupied as a C2 residential institution. 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 be a material difference a comparison between the existing and proposed uses must be carefully considered.
12. The property could quite easily accommodate a large family, but the proposed level of occupation is materially different than would be expected for a typical family dwelling. The key differences include the use as an assessment centre, the potential pattern of occupation by different children and carers, the relationship between occupation of the property and occupation of barges on the adjacent canal and the day to day support being provided by other scheduled staff on site during the day. These factors clearly distinguish the proposed use as a residential institution rather than as a C3 dwelling.
13. Under application reference 19/01279/LAWP the Council found the use of the property as a residence for not more than two children with care provided by two staff to be lawful; however, the proposed use before me is materially different to the use previously found to be lawful.

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 dwelling with 5 beds for use as C3(b) dwelling to be occupied by one child and two staff at any one time 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