



Appeal Decision

Site visit made on 27 April 2021

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 May 2021

Appeal Ref: APP/P4605/X/20/3260143

27 Camplin Crescent, Birmingham B20 1LS

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Arihant Parekh of Orchards Care Ltd against Birmingham City Council.
 - The application (Ref. 2020/04588/PA) is dated 19 June 2020.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is the proposed change of use from residential dwelling (Use Class C3) to children's home (Use Class C2).
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Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. The description of the development in the banner heading above is taken from the appeal form as the application form does not include a specific description of the proposed development.
3. Within the evidence before me there are various spellings of the appellant's company's name. His agent has confirmed in writing that the correct spelling is that contained within the banner heading above.
4. The appeal before me relates to an application for an LDC and not an application for planning permission. The planning merits of the proposed use are cited within the evidence before me. While there is some overlap between the matters raised and those appertaining to the question of the lawfulness of the proposed use, the considerations involved in determining the LDC are not necessarily the same as those concerning the acceptability or otherwise of the use in question in this location. In other words, the question of lawfulness is distinct from the planning merits of the proposed use. Accordingly, therefore, my decision rests on the facts of the case, on relevant planning law and judicial authority. The burden of proof is with the appellant and the appropriate test of the evidence is the balance of probability.
5. On the 24 September 2020 the Council's Planning Committee resolved to refuse the LDC application even though the Planning Officer's Report recommended that it be granted. Furthermore, the wording of the reason for

refusal was to be agreed at the Council's Planning Committee Meeting of the 8 October 2020. In the meantime on the 29 September 2020 the appellant submitted an appeal against the resolution to refuse the LDC application. However, the Council had not determined the LDC application when the appeal was submitted it had only resolved that it was minded to refuse it. As such, clarification was sought from the appellant and he confirmed that the appeal was to be considered as a failure to give notice within the prescribed period of a decision on an application for an LDC. I have dealt with the appeal on this basis.

6. At the Planning Committee of the 8 October 2020 the Members confirmed that they would have refused the LDC application for the following reason: -
 - *The characteristics of the proposed development are considered to be materially different to the characteristics of the existing use of the application site, by reasons of activities associated with the care home differing materially from those of a single family dwellinghouse. As such, a Lawful Development Certificate for the proposed change of use from residential dwelling (Use Class C3) to children's home (Use Class C2) cannot be issued and the application is hereby refused.*
7. The third parties have raised a number of issues relating to the Council's determination/non-determination of the LDC application and its notification procedures and dissemination of information associated with this appeal. However, those matters are outside of my jurisdiction in dealing with this appeal.

Main Issue

8. Based on the evidence before me, I consider that the main issue in this appeal is whether the proposed change of use from residential dwelling to children's home would constitute a material change of use for the purposes of section 55 of the 1990 Act.

Reasons

9. The appeal property is a 4-bedroom detached house that is currently in residential use and the immediate vicinity is a mainly residential area. The dwelling is set back from Camplin Crescent and it has a large hardsurfaced area to the front. The proposal is to use the property as a children's home with 3 children living there and 2 carers working on a rota basis sleeping overnight and staff operating 48 hours on and 48 hours off. A manager would be on site during weekdays from 9.00 to 17.00. The appellant has stated that there would be no major modifications to the appeal property.
10. There is no dispute between the parties that based on the judgement in *North Devon District Council v First Secretary of State* [2003] EWHC 157 Admin that the proposed use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (UCO). In that judgement, the judge found that the concept of living together as a household means, in the context of Class C3(b) of the UCO, that a proper functioning household must exist and that the children and carers must reside at the premises. Of especial significance to the current appeal, it was held that carers who provide 24-hour care, but who are not resident, could not be regarded as living together in a household. As such,

I have no reason to dispute that the proposed use falls within Class C2 of the UCO.

11. The appellant contends that there would be no material change of use as the children's home would operate in a way that is similar to a normal family home and the character of the use in terms of activity and comings and goings would not be materially different to that of a typical residential household. The general manner in which the property would be occupied, as described by the appellant, would resemble what could reasonably be expected to occur at a family home in a residential area.
12. Moreover, the appellant points out that the appeal property as a 4-bedroom house, could accommodate a relatively large family or that 6 people, who are not related to each other, living as a single household could live in the dwelling. Those 6 people could also receive care. I accept that where a use falls within the same class of the UCO that planning permission is not required. As such, the appellant has highlighted notional uses that could occur at the property within Class C3 of the UCO.
13. However, I am mindful that under section 192 of the 1990 Act what has to be compared, in deciding whether a proposed change of use is a material change of use, is the previous/current use and the proposed use. In the light of the foregoing, it is not appropriate to compare the proposed use with some notional use as a dwellinghouse, for instance one with several family members in residence. The starting point for such an analysis is the actual use of the property as a dwellinghouse at, or when last occupied before, the date of the LDC application. In this case, the appellant has provided no information about the actual residential use of the appeal property and so I have no evidential basis upon which to make an accurate comparison.
14. The appellant has not indicated whether the manager would be actively concerned with the provision of care, or whether the role would be essentially administrative. In particular, the presence of a non-resident throughout the working week is not something I would normally associate with a typical dwellinghouse. Nor has it been made clear whether this would involve the provision of dedicated office space within the property. This facet of the proposal is something that could potentially alter the nature of the use to a certain extent. The lack of clarity in this respect creates an element of uncertainty insofar as assessing the significance of this is concerned.
15. Likewise, while it may be that the resident children would be able to eventually attend 'mainstream' school, as the appellant anticipates, this appears to be an aspiration as opposed to a certainty. I accept that some children do receive home schooling. Nevertheless, it is not clear if the activities and teaching cited as part of the proposal would be part of the carers or managers responsibilities or that of additional staff. Any resultant comings and goings, by those additional staff, would be another factor that could affect the character of the use.
16. The appellant has stated that it is expected that there would be between 4 and 8 separate comings and goings from the property each day. I accept that not all of these may involve a vehicle and that the level of comings and goings described may not be materially different to that of a typical household. Nonetheless, there is a lack of clarity as cited above as to whether the described level includes all the potential regular comings and goings.

17. The appellant has cited a number of appeal decisions but there is little detail provided in relation to those decisions and no copies of the decisions have been provided. As such, I cannot be certain that those cases are the same as that before me. In any case, I am required to determine the appeal on its individual merits.
18. In this appeal, the appellant's case lacks clarity to the extent that it makes it very difficult for me to properly evaluate the precise character of the proposed use and, more importantly, whether, how, or to what extent, it would be different from the current use of the appeal property as a dwellinghouse. I consider that the appellant's evidence falls short of demonstrating that the use in question would not constitute a material change of use for the purposes of section 55 of the 1990 Act. In short, I am not satisfied that the burden of proof that rests with the appellant has been discharged.

Conclusion

19. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the proposed change of use from residential dwelling (Use Class C3) to children's home (Use Class C2) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

D. Boffin

INSPECTOR