



Appeal Decision

Site visit made on 15 June 2021

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2021

Appeal Ref: APP/E2530/X/21/3268905

Greyhound Cottage, Main Street, Woolsthorpe By Belvoir NG32 1LX

- 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 Pasture View Nurturing Homes Ltd against the decision of South Kesteven District Council.
 - The application Ref S20/2176, dated 20 December 2020, was refused by notice dated 11 February 2021.
 - 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 use of premises as a home for up to three children or young persons with up to two full-time carers sleeping overnight, working on a rota basis.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse a certificate was well-founded. This turns on whether the appellant has shown, on the balance of probability, that the use proposed would not cause a material change of use of the site.

Reasons

The existing and proposed uses

3. Greyhound Cottage is a 4 bedroomed house with a garden, located on a village street. It is situated next to 'Pasture View', a building which is now in use as a children's home, run by the appellant company.
4. The appeal site is shown edged in red on the submitted location plan. In addition to Greyhound Cottage and its garden, it includes an extensive area of land which adjoins it to the rear. The application form describes the existing/last use of the site as 'C3 – Dwellinghouses'. However, in view of the size of the area to the rear I sought clarification from the parties regarding whether the whole site is, in fact, in C3¹ use. In response to my enquiry, the Council described the land to the rear of the dwelling as 'agricultural'. The appellant referred to the land as 'grazing area' and provided a plan in which the land is labelled 'field'. I have therefore determined the appeal on the basis that

¹ That is, Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended)

- the site is made up of distinct areas of land, one in C3 dwellinghouse use, and one in use as grazing land, which does not fall into any use class.
5. Class C3 is split into sub-categories, and it is agreed that Greyhound Cottage's current use falls within C3(a), which is use as a dwellinghouse by a single person or by people to be regarded as forming a single household.
 6. The proposal would see the property used as a children's care home. I understand that, under the requirements of OFSTED, such care homes must be run as closely as possible to a typical family household. Staff are employed on a rota basis to provide parental-type support to the children. Up to 3 children would live at the house, with two carers working on a rota basis sleeping overnight. Six carers would operate on a shift pattern and there would be no more than three carers in the premises at any one time. A manager would usually visit the site each day. No significant alterations would be made to the property, either internally or externally.
 7. The appellant has provided a 'Statement of Purpose' relating to the adjacent Pasture View children's home. I am told that Greyhound Cottage would be run along similar lines. Amongst other things, the Statement indicates that the property has 'a menagerie of animals'.
 8. It is agreed that the proposed use falls within Class C2, which relates to residential institutions. I sought clarification regarding any links between the proposed children's home and the existing one at the adjacent Pasture View. In response, the appellant advised that, 'It would be anticipated that some staff would be shared, the animal facilities and gardens would be used by both homes, but the other facilities within the house would be for the resident children only. In planning terms, it will be a separate planning unit'.

Whether a material change of use would occur

9. In LDC appeals the onus is on the appellant to make out their case and the standard of proof is the balance of probability.
10. There is no relevant permitted development provision affording a general right to move from C3 to C2 use. Nor is there any provision to allow agricultural grazing land to change to C2 use. The question is whether, on the facts of this case, the change in the use of the site would be material. If not, there would be no development and planning permission would not be required. For a material change of use to have occurred, there must be some significant difference in the character of the activities of the new use compared to what has gone on previously, as a matter of fact and degree.
11. In this case there would be a significant difference. In particular, much of the site is currently grazing land. That is plainly a very different use to use as a children's home. The certificate sought would not distinguish between the grazing land and the remainder of the site. Consequently, the grazing land would be no different in planning terms to, for example, the garden to Greyhound Cottage, and its appearance and local impacts might change as a result. Even if it were still used for keeping animals, there could be a change in noise arising from the children making greater use of the land, given that it would be part of the grounds of a children's home. The submitted Statement of Purpose emphasises the importance of animals to the daily life of the residents.

12. Furthermore, the relationship to the existing neighbouring children's home means that there could regularly be more children at the property than the 3 that would live there. Although the appellant says that the two would be separate planning units, the animal facilities and gardens would be used by both homes. Sharing these facilities means that the children (which are said to be up to 7 in number across the combined site) would be likely to congregate in the external areas to either of the properties in larger groups than would otherwise be expected. Even if the children were well supervised, this could result in an increase in noise levels at the appeal property, materially affecting the character of the use of the land. This further distinguishes the proposed use from the existing one.
13. I appreciate that there is no set limit on the size of family that might occupy the property if it remains in use as a C3(a) dwellinghouse. However, in practice the level of occupation of a property tends to be limited by its size and I have no reason to suppose that this property has been especially intensively occupied in the past. While the property might theoretically be occupied in other ways in accordance with Class C3, it is the way it was actually occupied which is the relevant comparison to make in this case. In any event, none of these considerations alter the fact that the proposal includes an extensive area of land that is not currently in C3 use.
14. I have had regard to the appeal cases and judicial authorities drawn to my attention. However, while the general principles are relevant, there is nothing comparable to the specifics of this case, with particular regard to the grazing land and the relationship with the existing children's home.
15. I have considered whether it would be possible to issue a certificate relating to a reduced site, excluding the grazing land. However, the submitted information includes reference to keeping animals at the property for the benefit of the children and it is consequently not clear to me that the proposal can be modified in that way without significantly changing it. I am also mindful that the proposal has been publicised on the basis of the site as proposed and it is clear that comments on the proposal have been framed with that in mind.
16. The Council considers that the use would result in an increased level of regular activity at the site. This appears to stem from a concern about trips to and from the site associated with staff changeovers and so on. However, the evidence before me does not suggest that movements to and from the property would be materially in excess of that which might occur in connection with a C3(a) dwellinghouse. Nevertheless, for the reasons I have already given, it has not been demonstrated, on the balance of probability, that the change of use proposed by the appellant would not be material.
17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the premises as a home for up to three children or young persons with up to two full-time carers sleeping overnight, working on a rota basis, was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

Peter Willows

INSPECTOR