



Appeal Decision

Site visit made on 7 December 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/R1010/X/21/3272149

2 Oakdale Road, Broadmeadows, Pinxton, DE55 3PA

- 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 Hazelmont Social Care Limited against the decision of Bolsover District Council.
 - The application Ref 20/00564/LAWPRO, dated 14 December 2020, was refused by notice dated 8 February 2021.
 - The application was made under section 192(1) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: *Change of Use from a Class C3 Dwelling House to a Class C3B Care Home for Children between the ages of 6 - 18 years. The house will operate as a normal family home with carers looking after the resident children on an agreed rota basis. During daytime hours carers will attend on a 1:1 basis, and each child will have their own allocated room to arrange to their own personal taste.*
 - The operations for which a certificate of lawful use or development is sought is described as: *Conversion of existing garage to form separate staff office and store to facilitate day to day running of child care home.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant's proposal is described in terms of the change that is sought. However, a certificate granted under s192 needs to specify the use rather than the change that would lead to it. Furthermore, the use proposed is described as 'C3B', which appears to be a reference to Class C3(b) of *The Town and Country Planning (Use Classes) Order 1987* (as amended) ('the Use Classes Order'). Yet whether or not the proposed use actually falls within C3(b) is the main point at issue between the parties. It appears to me that the appellant in fact seeks an LDC for use of the property as a care home for children between the ages of 6 and 18, and I have considered the appeal on that basis.
3. Additionally, the application form refers to works to be carried out to the garage to facilitate the proposed change of use, and details of these are provided in the submitted drawings. The planning statement submitted with the application also refers to these works, stating that the garage is to be split front to rear to provide a rear staff office, accessed from the present quiet lounge, and a separate front store facility accessible both externally and internally. It therefore appears to me that the appellant seeks a certificate to

cover both the use and the works to the garage and that the works relate directly to the proposed use.

4. Thus, it appears that the conversion works to the garage are part and parcel of the proposal as a whole. A procedural issue arises from this. The application is made under s192 for a proposed use/development. Applications for existing uses or development are made under s191. While it is clear that the building has not been occupied in connection with the use applied for, the Council states that works to split the garage have been carried out. The appellant has not disputed this.
5. While it appears that the works to the garage started before the LDC application was made, the extent to which works to the interior of the building were completed at that time is not clear. Photographs submitted by the appellant show the interior in an unfinished state on 2 March 2021, some time after the application was made. It is clear that the building was not in use at that time. Considered as a whole, I do not consider that the use and related works can be said to have existed at the time the application was made. Accordingly, the application is properly made under s192. But even if I had concluded otherwise, in this instance it would have made no difference to the question of lawfulness and my decision on the appeal would have been the same.

Main Issue

6. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether:
 - The use proposed falls within Use Class C3 of the Use Classes Order; and
 - If the use does not fall within Class C3, whether the change from the pre-existing Class C3 dwellinghouse use to the care home use proposed is a material change.

Reasons

Whether the use falls within Class C3

7. Class C3 of the Use Classes Order is sub-divided into 3(a), 3(b) and 3(c). Although distinct, all are part of the same use class, and so changes between them are not development.
8. It is agreed that the existing use of the property (at the time of the application) was as a dwellinghouse by a single person or by people to be regarded as forming a single household, placing it within C3(a). At the heart of this dispute is the appellant's claim that the proposed use falls within C3(b), which is for use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents. From this wording it is clear that a qualifying use must involve residents living together 'as a single household' and, additionally, care must be provided for the residents.
9. The proposed use would provide a home for up to 3 children, each of whom would be supported by a dedicated carer during the day. In addition, a general manager would also attend the property periodically as required, typically once a day for a short time. At night the three dedicated carers would be replaced with two 'night wake staff'. The aim would be for the home to operate as a

family environment so far as possible, and the appellant says that the role of the day carers would be more akin to that of a parent than a member of staff. The residents would eat together and share facilities such as the lounge, bathroom and garden and would attend school during the day.

10. Both parties refer to the case of *North Devon DC v FSS & Southern Childcare Ltd [2003] JPL 1191*. In that case the court held that the definition of 'care' in Article 2 of the Use Classes Order restricts the personal care of children to class C2 only (although Class C3 was constructed slightly differently at that time, the point remains relevant to the class in its current form). This is based on the interpretation provided at article 2 of the Use Classes Order, which states that: "*care*" means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment. The specific linking of care for children with Class C2 appears, by implication, to exclude it from the other classes, including C3.
11. Moreover, the judgement went on to decide that children cannot form a household without the presence of a carer, since they need to be looked after. To form part of a household, the carers would need to be resident. It is clear that the carers in this case would not be resident but would work on a shift pattern, with some caring for the children during the day and some sleeping at the property overnight. It is also clear from the judgement that carers operating on this basis would not form part of a household. Consequently, the proposed use does not involve residents living together as a single household and cannot, therefore, fall within C3(b).
12. Although the appellant queries the applicability of *North Devon* to this case, it appears to me that the nature of the use and the care to be provided in that case are sufficiently similar for the principles to apply. While it is clear that the intention is to create an environment that avoids an institutional feel, that does not alter my view that a household would not be formed in this instance. As with *North Devon*, the obvious conclusion arising from my finding that the use does not fall within Class C3 is that it falls within Class C2, which includes, 'Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))'.
13. The appellant has provided a list of applications for LDCs where other Councils have concluded that similar proposals constitute a C3(b) use. However, no analysis of those decisions or details of the reasons for them have been provided. The mere fact that other Councils have reached a different view does not show that the decision by this Council was wrong.

The materiality of the change of use

14. Despite my finding that the use proposed does not fall within the C3 use class, it is nevertheless necessary to consider whether, on the facts of the case, the change of use is 'material'. Whether there would be a material change of use depends upon whether there would be a change in the character of the use of the site.
15. I am told that the pre-existing use of the property is as a Class C3(a) dwellinghouse. At the time of the LDC application it was undergoing works

which resulted in an increase from 3 bedrooms to 5, together with the works to the garage and various other changes.

16. Used as proposed it would have much in common with the previous use. A 3 or 5 bedroomed house might typically accommodate 3 children and 2 or 3 adults, as would the proposed children's home at any one time. There are no obvious physical features that distinguish the property from a normal family dwelling.
17. Nevertheless, there would be notable differences in its use. There would be staff changeovers twice a day at about 7.00am and 10.30pm. Each changeover would involve up to 5 staff members – 2 night staff and 3 day staff. It seems likely to me that most staff would travel by car to this suburban location, and so up to 5 vehicles would be manoeuvred at or near to the property early in the morning and late in the evening each day. The manoeuvring of vehicles on this scale is not typical of activities at a typical C3 dwelling. In my view it would be very noticeable to neighbouring occupiers, particularly since it would take place at weekends as well as weekdays and at early and late hours, and would mark the appeal property out as something other than a dwellinghouse.
18. Additionally, there is the prospect of significant numbers of cars being parked at the property during the day. This could, at times, include cars for each of 3 day carers, plus a manager. It also seems likely to me that other professionals would need to visit from time to time, as the Council suggests. Even if all cars could be accommodated at the property (the appellant suggests that it could accommodate 6 cars, and proposes that any certificate could be caveated to ensure car parking provision along those lines), the extent of parking there means that the character of the use would be materially different from that of a C3 dwellinghouse.
19. For these reasons I find that the use proposed would be materially different to the use of the property as a C3 dwellinghouse. Accordingly, the proposal outlined in the appellant's application would amount to a material change of use for which planning permission is required. Since the building works associated with the use are part and parcel of the proposal, I have not considered them separately.

Conclusion

20. I conclude that the Council's refusal to grant a certificate of lawful use or development 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 as amended and dismiss the appeal.

Peter Willows

INSPECTOR