



Appeal Decision

Site visit made on 14 December 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/P2365/X/21/3277983

64 Square Lane, Burscough L40 7RQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Linzi Fryer-Sim of Exceptional Care Limited against the decision of West Lancashire Borough Council.
 - The application ref 2021/0374/LDP, dated 23 March 2021, was refused by notice dated 28 June 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 four children or young people with up to two full-time carers working on a rota basis, sleeping overnight.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded. This will turn on whether there would be a material change of use from the lawful use as a single dwellinghouse falling within Class C3 to the proposed use as a home for up to four children or young people.

Reasons

3. An application under S192(1)(a) of the Act¹ seeks to establish whether any proposed use of buildings or other land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.
4. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
5. The appeal property is a substantial detached house located off Square Lane, the A5209, which appeared to be well used by traffic at the time of my visit. To the front of the dwelling is a paved area, which is stated to provide 3 off-street car parking spaces. Four children would live at the house between the ages of 8 and 17 years of age, with two carers working on a rota basis, sleeping

¹ Town and Country Planning Act 1990 (as amended)

overnight, 48 hours on and 48 hours off². A manager would also be on site during weekdays between 8am³ and 5pm, who would act as a third carer, in addition to carrying out administrative work relating to the home.

6. The appellant accepts that the use falls within C2 and not C3b of the Town and Country Planning (Use Classes) Order 1987 (as amended). Nevertheless, whilst children cannot form a household without the presence of a resident caregiver, as held in *North Devon District Council vs FSS and Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 a change from C3(a) to C2 will not always be material. It will be a matter of fact and degree, depending upon the circumstances of the case in question.
7. The appellant has drawn my attention to *Blackpool BC v Secretary of State for the Environment* [1980], *Moore v Secretary of State for the Environment* [1998] and *Gravesham BC v SSE* [1982], which concerned buildings used for holiday lettings on a limited basis. It is not disputed that the appeal building is a dwellinghouse or that it would retain the facilities required for day-to-day private domestic existence, what is in dispute is whether there would be a material change in the use of the dwellinghouse.
8. The appellant suggests that the dwelling could be used by up to six people, who are not related as a family, but live together as a single household and which could include the provision of care. However, it is necessary to compare the proposed use with an actual existing one, not a notional use. The appellant states that the property was previously occupied by two adults and three teenage children and has provided information regarding movements on this basis. As such, it is this use against which I shall compare the proposal.
9. An application for the proposed use has previously been refused and dismissed on appeal, reference APP/P2365/X/20/3263292. The appellant suggests there was a misunderstanding about the nature of the use, which this application seeks to clarify. However, while clarity has been provided regarding the Use Class within which the proposal would fall, I find the information provided in support of this appeal remains ambiguous.
10. Although the number of proposed movements do not appear significantly greater than the previous use, it is not clear what the implications of any handover periods would be, or others visiting the site. Within the Planning Statement, for example, the appellant states only at staff changeover times would there be more than 3 members of staff present. The appellant suggests this would be for a short time each day, however, presumably the length of time taken to handover will vary, depending upon the issues raised during the previous rota period. Even a short period is likely to necessitate the parking of a vehicle on the street, to enable the overnight carer/s to leave.
11. Furthermore, the 'Statement of Purpose' document, dated 19 June 2020 suggests the option of having a one-to-one ratio for each resident in the evening. This would suggest a greater number of carers may need to be present at any one time. Even if a one-to-one ratio is not required, the 'Statement of Purpose' document also details individual team members having daily handover meetings and team meetings, as well as audits by the Manager, Service Manager and an independent inspector. Although it may be possible to

² Stated in the Planning Statement to be 2 days on, 3 days off.

³ Detailed as 9am in the Appeal Statement.

time the shifts to minimise the number of vehicles at the property at any one time, or to encourage the use of public transport, such matters cannot be controlled by a LDC.

12. The appellant suggests within the Appeal Statement that there are no regular visits which are required which will have any material impact and that visits by Ofsted and social services would be annual. However, within the Planning Statement, it is stated in terms of inspections, local social services would send an inspector to visit the property every 6 weeks and in terms of Ofsted registration, after the initial visit to approve the premises, there would be one visit by two inspectors every 6 months.
13. Given the nature of the proposed use and the likely complex needs of its occupants, I consider the detail given in the Planning Statement regarding inspections is more likely to be accurate than the Appeal Statement in this regard. Furthermore, in addition to inspections, although it may be possible for some meetings to take place off site, I would expect social workers would need to see each child in the home setting.
14. The 'Statement of Purpose' document also states that Exceptional Care can provide a full-time self-employed tutor who can deliver education at the home. Although this is likely to depend upon the needs of the specific child, it is possible that all of the children located at the appeal site could require support at any one time.
15. The appellant suggests tutoring could be done remotely. However, whilst I note that remote home schooling, via the internet, has been necessary during lockdowns imposed as a result of the Covid-19 pandemic, outside of these lockdowns, face to face learning is likely to be preferable. Tutors visiting the property may choose to access the site by car, which would generate vehicle movements and associated comings and goings which would be less likely to be generated by a typical family.
16. Furthermore, members of a young person's family may also wish to visit the home. This could result in up to four different families visiting the appeal site and is likely to generate a greater number of vehicle movements compared with a single family.
17. The appellant suggests the front garden can provide parking for up to 3 cars. However, it has not been demonstrated that there would be sufficient space for manoeuvring so that a vehicle can enter and leave the site in forwards gear while 2 other vehicles are parked.
18. Even if 3 vehicles can safely manoeuvre within the appeal site, additional visitors to the appeal site parking on the hardstanding would be likely to need to reverse onto the highway or park their vehicles on the street, which would have an impact on the free flow of traffic. Even if the increase in vehicle movements is time limited, during a handover for example, given the nature of the road, this has the potential to impact highway safety.
19. The appellant has drawn my attention to appeal decision reference APP/C4235/A/11/2162636, where the Inspector found there was little evidence in the fabric of the building to differentiate it from a home in single family occupation. I accept that the use of a room as an office within a dwelling will not always change the character of the use. However, it is not the effect on the

appearance of the dwelling which would, in my view, affect the character of the use in this case.

20. I note that the inspectors in APP/E2205/X/16/3161037 and APP/P1045/X/20/3263178 found that proposed changes to a care home would not be material. However, I do not have full details of the cases and cannot therefore be sure the circumstances of these cases are comparable to the appeal scheme before me. Furthermore, I must consider the appeal scheme in light of the facts of the case.
21. I consider it likely that the movements generated by the proposed use, including tutors, care workers, the home manager and social workers, would be significantly greater than would be generated by a C3a use. Given the effect on-street parking or reversing onto the highway would have on highway safety, any increase in vehicle movements is likely to have an impact on the wider area.
22. Consequently, I consider the proposal would constitute a material change of use and therefore planning permission would be required. Thus, the appeal must fail.

Conclusion

23. 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 site as a home for the care of up to four children or young people with up to two full-time carers working on a rota basis, sleeping overnight 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.

M Savage

INSPECTOR