



Appeal Decision

Site visit made on 11 January 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Appeal Ref: APP/P4605/X/21/3280997

27 Camplin Crescent, Birmingham B20 1LS

- 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 Mr Arihant Parekh of Yenea Ltd against the decision of Birmingham City Council.
 - The application ref 2021/04924/PA, dated 30 May 2021, was refused by notice dated 13 August 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 people with up to two full-time resident carers working on a rota basis, sleeping overnight.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the name of the appellant from the application form. The appellant has confirmed he develops care homes through his company Yenna Ltd and then runs under the trading name of Orchards Care Ltd.

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. 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 three children or young people.

Reasons

4. 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.
5. 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.

¹ Town and Country Planning Act 1990 (as amended)

6. This is a resubmission of an application which was refused by the Council and dismissed on appeal, reference APP/P4605/X/20/3260143. The previous Inspector found that the appellant's evidence fell short of demonstrating that the use in question would not constitute a material change of use for the purposes of section 55 of the Act. The appellant has sought to address the Inspector's concerns through this application and appeal.
7. 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.
8. 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.
9. The appeal building is a four bedroomed detached house, with a moderate sized front garden, which was being used for the parking of two vehicles at the time of my site visit. Although on-street parking on Camplin Crescent is available, it is limited by a prevalence of drop kerbs and the width of the road, which means vehicles cannot safely park on both sides. The on-street parking that is available was well used at the time of my visit.
10. The building is used by the appellant as a family dwelling and is occupied by the appellant, his wife and mother, a teenage child and a four year old child. The appellant has provided details of comings and goings based upon the current occupants of the dwelling, which includes visits by a nurse twice a week.
11. The proposed use of site is for up to three children or young people, between the ages of 8 and 18 years of age, living at the site, with two carers working on a rota basis, sleeping overnight, 48 hours on and 48 hours off. A manager would also be on site weekdays between 9am and 5pm and would act as a third carer, in addition to administrative duties relating to the use of the premises.
12. Although the number of proposed movements does not appear any greater than the current use, it is not clear what the implications of any handover periods would be, or others visiting the site, such as tutors and the children's family members. During staff changeover times, a handover period is likely to be required, which could take some time, depending upon the issues raised during the previous rota period.
13. Even a short period is likely to necessitate the parking of a vehicle on the street, to enable the overnight carer/s to leave. Although it may be possible to 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.

14. The appellant states that it is expected the young people would attend a DfES registered school, state school or possibly receive home schooling. The appellant suggests that any home schooling would be carried out remotely, with no additional staff visiting the home. However, while 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.
15. Although carers may be able to provide support alongside remote learning, it is unlikely the carers employed would be qualified teachers. As such, I consider it highly likely that, outside the restrictions of the pandemic, suitably qualified tutors would be required to provide home learning. 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 three different families visiting the appeal site and is likely to generate a greater number of vehicle movements compared with a single family.
17. Although I saw that two vehicles can comfortably park on the driveway, given its limited dimensions, where multiple vehicles are parked, it is unlikely to be possible for a vehicle to be able to enter and leave in a forward gear. This is likely to necessitate reversing onto the highway, which could affect highway safety, or could encourage visitors to park on the street.
18. 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.
19. 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.
20. 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 likely increase in on-street parking or reversing onto the highway, any increase in vehicle movements is likely to have an impact on the wider area. 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

21. 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 three 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