



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 February 2022

Appeal Ref: APP/V4630/X/21/3282889

24 Meadow Road, Walsall WS9 0ST

- 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.
 - The appeal is made by Hazelmont Social Care Limited against the decision of Walsall Metropolitan Borough Council.
 - The application ref 20/0860, dated 17 July 2020, 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 a care home for children (Use Class C3B).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers¹.
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it 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. In any other case they shall refuse the application. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issues

5. This is whether the Council's decision to refuse to issue an LDC was well-founded. This will turn on whether the proposed use as a care home for up to three children or young people would remain within Class C3(b)² of the Town

¹ The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

² Use as a dwellinghouse (whether or not as a sole or main residence) by: (b) not more than six residents living together as a single household where care is provided for residents.

and Country Planning (Use Classes) Order 1987 as amended (UCO), "and would thus be excluded from the definition of development by virtue of section 55(2)(f) of the 1990 Act, or, if not, whether the use proposed would not in any case comprise a material change of use."

Reasons

6. There is no dispute between the parties that the current lawful use of the property is classed as C3 dwellinghouse. The appellant proposes that the home would provide an environment similar to a family home, rather than that of a care home, such that it would fall within Class C3(b)³ of the UCO.
7. The Council consider that the proposal would result in an increase in activity at the site which would go beyond a residential C3 use and would instead reflect the operation of a C2 care facility, and thus be a material change of use.
8. Use Class C2 defines this use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)); use as a hospital or nursing home; or use as a residential school, college or training centre. Care is defined in Article 2 of the UCO as meaning:

"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."
9. Established case law provided for by the *North Devon*⁴ judgement in respect of a house used to care for children is applicable to the circumstances of this appeal. This case considered whether a dwellinghouse used to provide residential care for two children fell within Class C2 or C3(b). Only the children would live permanently on the premises; the carers being resident elsewhere and providing care on a shift rota system. The circumstances considered in the case, to all intents and purposes, are similar to the appeal before me.
10. In the *North Devon* case, the property was being used as a home for two children. Two non-resident staff were at the property at all times with a shift system operated by 6 to 7 carers to maintain the requisite cover. The application was based on the premise that the children by themselves would constitute a single household with the use falling within Class C3(b).
11. Crucially, the Judge found that the children could not be regarded as constituting a household by themselves. The question also arose as to whether carers who do not live on the premises but who, between them, provide 24 hour care can be regarded as living together as part of the household. The court held that the concept of living together as a household means that a proper functioning household must exist and thus, for the use to fall within Class C3(b), the children and carers must reside in the premises. Otherwise, the use falls within Class C2.
12. From the evidence before me, the proposed use of the appeal property would clearly fall within Class C2. Nevertheless, a change from C3(a) to C2 will not always be material. It will be a matter of fact and degree, depending upon the

³ Use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household where care is provided for residents.

⁴ *North Devon District Council v First Secretary of State* [2003] EWHC 157 (Admin).

circumstances of the case in question and it is my duty to consider whether planning permission would be required for the proposal. The question for this appeal is therefore, would the proposed change of use of the property be material in planning terms?

Material change of use

13. To establish whether there would be a material difference, a comparison between the existing lawful use and the use of the property as proposed must be considered. Although there is no statutory definition of 'material change of use'⁵, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use would occur is a matter of fact and degree and this is determined on the merits of a case.
14. The appeal site comprises a semi-detached property within a residential area comprising a varied mix of bungalows and family houses, generally dating from between the 1950s and 1970s. An area for parking up to 3 cars clear of the highway is located to the front of the property, while to the rear is a private enclosed garden. On-street parking is available along Meadow Road to the front of the property.
15. According to the appellant, the property has three bedrooms. Floorplans⁶ for the ground floor show the property has a living room, kitchen/diner, utility room, a w.c. and a snug. A new extension to the rear provides an additional area of living space and the garage to the front would be converted to provide a staff office. Apart from the conversion of the garage, internally the house would remain physically unchanged. I am not provided with any further information regarding the actual use of the property as a single household at, or when last occupied, the date of the LDC application.
16. The appeal property would provide long term supervisory residential care, therapy and support for up to three young people between the ages of 6 -18 with a variety of emotional and social/behavioural difficulties. Each child would have their own personal space within their own bedroom and would cook and eat meals together, socialise and share facilities within the house and help with daily chores.
17. Care would be provided on a one-to-one basis. Three carers would be present Monday-Sunday between the hours of 07:30 and 22:30, and two carers would be present during night-time hours between 22:30 and 07:30. The overnight carers would not sleep at the property. Staff change overs would occur 7 days a week at around 07:00 and 22:00. At 07:00 the three daytime carers would arrive and the two night carers (night wake-staff) would leave, and at 22:00 the two-night carers would arrive and the three daytime carers would leave.
18. Overall, this equates to carers alternating 2 shift patterns of 15 working hours and 9 working hours, with one of the change overs being during unsociable hours and 10 carers in total coming and going over the space of 24 hours, 7 days a week. With the presence of the manager, who would visit once a day between the hours of 09.00 and 17:00, 7 people could be at the property at any one time. During term time, when the children are at school, I am

⁵ 'Development' defined within s 55(1) of the 1990 Act as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

⁶ Contained within the appellant's statement page 8

informed that there would be a reduced presence at the property. There is no explanation regarding whether the carers would remain at the property when the children are at school or whether they would also leave the property.

19. While it is not factored into the pattern of comings and goings above, each child who is being cared for may be visited by parents, social workers and clinicians. Although this would depend on the needs of the individual child and could be difficult to quantify, there is no indication as to what this could involve. Furthermore, emotional or behavioural problems on the part of a resident child may call for additional planned, ad-hoc or emergency visits, this is also not quantified.
20. Whatever the arrangements, and although it is likely that elements of a family life may exist, the type of occupation with two carers on duty all night, comings and goings more numerous than for a regular domestic property with some during unsociable hours 7 days a week, demonstrates a pattern of life and use noticeably different to that of a property being used as a single household. Furthermore, during staff changeover times, the handover period of half an hour is proposed. This would naturally generate an increased level of activity and disturbance created by carers and vehicles arriving at and leaving the property. The appeal property would be, for all intents and purposes, a place of residence and of work. This, I consider to be materially different in character and use to that which would likely occur if the property was in use as a single household.
21. In an appeal such as this, the onus of proof rests with the appellant, and the level of proof is on the balance of probability. Overall, I find that the totality of the appellant's evidence is not sufficiently precise and unambiguous to demonstrate that the proposed use of the site as a care home for three children under the age of 18 years old, with 24-hour care provided by carers on a shift basis would not be materially different to that of a single household. I consider that the use would likely result in greater levels of activity, noise and disturbance than the lawful use of this three bedroom property. The appellant's evidence therefore falls short of demonstrating that, on the balance of probabilities, the proposed use would not constitute a material change of use, and consequently the burden of proof which rests with them has not been discharged.

Conclusion

22. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant an LDC was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR