



Appeal Decision

Site visit made on 26 April 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Appeal Ref: APP/T4210/X/21/3288740

5 Shelley Road, Prestwich M25 9GH

- 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 Mr Adil Ashraf of Safe Hands Care & Support Services Ltd against the decision of Bury Metropolitan Borough Council.
 - The application Ref 67603, dated 29 September 2021, was refused by notice dated 23 November 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 as a care home for up to 4 young people and 1 support staff (Use Class C3(b)).
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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. In this case that turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3.

Reasons

3. The appeal site is a two storey three bedroom semi-detached house which is situated within a predominantly residential part of Prestwich. At ground floor there is a dining room, kitchen and living room and at first floor level there are three bedrooms (one en-suite), a main bathroom and an office. There is space for parking two cars on the hardstanding area to the front of the property and a private amenity space to the rear.
4. The application form states that the proposed use is for a care home for up to four young people and one support staff (Use Class C3(a)), but the details in the supporting statement relate to the proposed use as a C2 home for three young people and up to two support workers at any one time. The floor plan submitted shows only three bedrooms whereas the proposal on the form is for up to four young people.
5. I have considered case law relating to cases such as this and a similar scenario to this case was considered in the case of *North Devon District Council v FSS & Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 which

determined that carers who do not reside in a property, but who provide care, cannot be regarded as living together and as a consequence cannot be regarded as a single household as defined in Use Class C3 (b). Therefore, the use would fall within Class C2. This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use.

6. In order to determine whether the proposed change of use would be material in planning terms I require clear and unambiguous evidence. In this case the appellant has failed to submit a precise and unambiguous description of the proposed use or clear evidence that the proposed use is lawful. Consequently, I find that the Council's decision to refuse to grant a certificate was well-founded.

Conclusion

7. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the property as a care home for up to 4 young people and 1 support staff (Use Class C3(b)) was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

A A Phillips

INSPECTOR