



Appeal Decision

Site visit made on 30 March 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 10th June 2022

Appeal Ref: APP/P4605/X/21/3286330

219 Chester Road, Sutton Coldfield, Birmingham B73 5BE

- 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 Danial Waheed against the decision of Birmingham City Council.
 - The application ref PP-09962153, dated 23 July 2021, was refused by notice dated 23 September 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is for the proposed change of use from dwelling house (Use Class C3) to residential care home for four children (Use Class C2)
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development in the banner heading is taken from the appeal form and relates to whether a proposed change of use to a residential care home would be lawful. Although referred to as a planning application by the appellant, the application is for an LDC and not an application for planning permission. Whilst third party comments have been made, they are only relevant to the question of lawfulness as the merits or otherwise of use as a residential care home is not within my remit. Where an LDC is sought, the onus of proof is on the appellant and the standard of proof is on the balance of probabilities.
3. A change of procedure with regard to the appeal resulted in a new timetable which provided for final comments to be made by the 24 May. The site visit was carried out on the 30 March 2022 but as neither party chose to add to their original evidence there was no need for a second visit after the 24 May deadline had passed.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded. In this case that turns on whether the proposed change of use from residential dwelling to a residential care home for four children would constitute a material change of use as defined in Section 55 of the Act.

Reasons

5. The appeal site is located on the junction of Chester Rd and Antrobus Road. The appeal property is set back from Chester Road and is an extended 2 storey detached house with a single storey rear extension, a garage and seven bedrooms. Vehicular access is to the front of the property off Chester Road to both the garage and an area of hardstanding for parking. There is also a side door on Antrobus Road. There are family dwellings both next to and behind the appeal site although there are retail units including a garden centre further along Chester Road beyond Antrobus Road.
6. The proposal is to provide care for 4 resident children between the ages of 7-18 by paid carers who would provide 24 hour care by working shift patterns. There is no dispute between the parties that the proposed use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987(UCO) rather than dwelling house (Use class C3). Class C2 is defined as use for the provision of residential accommodation and care to people in need of care (other than use within C3). However, Section 55 refers to a *material* (my emphasis) change of use constituting development and therefore a change of use to a different use class only requires planning permission if it is material in planning terms. Consequently, it is necessary to determine whether the proposed use of the property as C2 rather than C3 would constitute a material change of use.
7. Case law¹ indicates that Section 192 of the Act requires a comparison between the actual existing use and the proposal rather than a notional use. The appeal property is currently occupied by 7 adults and 5 children and is used to provide foster care. However, there is limited evidence before me as to how the current household operates in terms of day to day comings and goings and family commitments. The appellant does state that there are no home tutors for the children currently in occupation. However, the lack of details about the current use makes a comparison with the proposed use difficult.
8. With regard to the proposed use, the extent of comings and goings from the building will be determined by the shift patterns of staff, their duties to provide accommodation and care of the four children and the number of professional visitors. Reference is made to one carer per child with support by a Home's Manager. It is not clear whether the Homes Manager would be a full time position although an office would be provided. There would be a mix of early, late, long day and overnight shifts which would result in staff changeovers early in the morning, in the afternoon and late at night. Overnight care would be provided by 2 carers with changeovers in the morning and night.
9. The age range of the children would be between 7 to 18 years old who are likely to have emotional and behavioural difficulties with potential learning difficulties. The four children could be of mixed ages and may require home schooling by tutors depending upon the childrens' needs. In terms of other visitors, child psychologist would visit once a month for 3 hours and social workers once every 6 weeks to see each child for 60 minutes. Reference is also made to each child having their own individual assessment which may impact upon the level of support in terms of overnight care and visitors. There is no indication as to how many of the daily comings and goings would involve a vehicle and how what is proposed would compare with comings and goings

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arising from current occupation by existing residents. Whilst I note that that no changes are proposed to the external appearance of the appeal property, the issue before me relates to the characteristics of the proposed use of the appeal property rather than its physical appearance.

10. On the information before me, particularly with limited details about how the existing occupancy operates on a daily basis, it is not possible to make comparisons between the existing use of the appeal property and the proposed use. The appellant's evidence therefore fall short of showing that, on a balance of probabilities, the proposed use would not be a material change of use having regard to Section 55 of the Act.

Conclusion

11. For the reasons given above, I conclude that the Council's refusal to grant the certificate of lawful use or development in respect of the proposed change of use from residential dwelling (Use class C3) to residential care home (Use Class C2) was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act.

E Griffin

INSPECTOR