
Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 March 2023

Appeal Ref: APP/M4320/X/22/3301638
144 Deyes Lane, Sefton, Maghull L31 6DW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Samantha Fitzsimmons, Nova1care Ltd against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2022/00969, dated 14 May 2022, was refused by notice dated 21 June 2022.
 - 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 proposed change of use from dwellinghouse (C3) to a residential children's care home (C2).
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Decision

1. The appeal is dismissed.

Main Issues

2. The consideration of the planning merits of the development is not relevant in an LDC appeal. The main issue for the appeal is solely whether the LPA's decision to refuse to issue an LDC was well-founded.

Reasons

3. Section 191(2) of the Act sets out that use are lawful at any time if: (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Section 55(1) of the Act sets out the definition of development. It includes the making of any material change in the use of any buildings or other land. The appellant's case here is predicated on the basis that the proposed change of use is not material and does not therefore constitute development. Thus, it is said the use would have been lawful under section 191(2) of the Act at the date the LDC application was made.
5. The concept of a material change of use is not defined in statute. Essentially, it is a matter of fact and degree for the decision maker to conclude upon. For a material change of use to have occurred, there must be some significant

difference in the character of the activities from what has gone on previously as a matter of fact and degree.

6. The property is currently a three bedroom dwellinghouse currently occupied by a single household. It is proposed to use the property as the primary residence of up to two children aged up to 18 years. The children would be looked after by two carers at any one time, working on a rota basis of 48 hours on, 48 hours off and sleeping at the property overnight. Shift changeovers would occur around 0800. It is indicated that a manager will also be at the property on weekdays between 0900 and 1700 carrying out care duties as well as administrative tasks.
7. The appellant indicates that there would not be frequent visits by other care staff or clinicians. However, there is nothing in the evidence which says the property would not accept resident children with such needs. Indeed, as the LPA points out, the children living in the property would be in the care of the Local Authority and may also be subject of court orders which would involve multi-agency visitors. There could also be homeless or mental health issues which would generate clinical visits. Moreover, there is no indication that the children will have any personal links to one another and thus agency visits could be doubled depending on the needs of the individuals living there.
8. As a result, comings and goings to the property, both in terms of vehicles and people, would likely occur on a more frequent and atypical pattern than that which might be generated by a single household living in a 3 bedroom property.
9. In any event, even if the actual numbers of comings and goings are the same, given the rotation of staff and the potential for other agency visitors, there is no guarantee of any consistency in the actual people who are visiting the property. The appellant does not state that it will be the same carers working at the property on any consistent basis. Indeed, that seems unlikely given the natural tendency for shifts to change, people to be ill or people to be on holiday. Furthermore, people move on to different jobs or may be asked to work at other properties.
10. It thus seems to me that, even were the comings and goings the same, those comings and comings are likely to be generated by a much greater turnover of different people. This lies in distinct contrast to a single household dwelling where generally it is the same people who come and go from the property. This would result in a degree of unfamiliarity between those living and working in the property and neighbouring residents. It also means the property would appear to the observer to have much more commercial character than residential.
11. I note the appellant's comparison with that situation to an elderly resident receiving similar levels of care visitors. However, in that scenario the elderly resident would be independently living, without 24 hour non-resident persons in the house. In this case, the greater turnover of different people could equally apply to the resident children themselves. The appellant does not state how long the children would reside at the property for. There is nothing to say the children could not be rehomed with a foster family or find quickly that a different care environment is more appropriate for their needs. Ultimately, there are many reasons why the children living there may only do so for a short period. There is thus the potential for there to be a higher turnover of

resident children, again in contrast to the consistency of residence that would typically be expected from a single household living at the property.

12. I note that there would be no physical works to the property externally, with the only necessary internal alteration being the addition of locks to bedroom doors for privacy reasons and the introduction of a fire door in the kitchen. The property would therefore appear no different to any other property in the street.
13. However, it seems to me that there would be a material difference in the character of the use of the property as proposed when compared to the existing use as a dwellinghouse. Thus, on the evidence before me, I am led to conclude that, on the balance of probabilities, the proposal would amount to a material change of use. Therefore, at the date the LDC application was made, the proposed change of use from dwellinghouse (C3) to a residential children's care home (C2) would not have been lawful.
14. The appellant cites two appeal decisions they consider to be relevant.¹ However, in those cases, the Inspectors focussed on the overall number of comings and goings, rather than the specific nature of those comings and goings and the materiality of movements to and from the property being from a wider range of people than typically expected in a single household dwelling. Thus, I do not consider them to be directly comparable to the circumstances before me here.

Conclusions

15. 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 change of use from dwellinghouse (C3) to a residential children's care home (C2) 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.

J Whitfield

INSPECTOR

¹ PINS Ref: APP/E2205/X/16/3161037 and APP/P1045/X/20/3263178