



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2023

Appeal Ref: APP/X1355/X/22/3309994

26 Abbey Gardens, Willington, Durham DL15 0UX

- 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 Francis Ashcroft, Hexagon Care Services Ltd against the decision of Durham County Council (the LPA).
 - The application Ref DM/22/02349/CPO, dated 11 August 2022, was refused by notice dated 11 October 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 use of a (C3a) dwelling for a children's home for a maximum of three children, with three carers, with two sleeping overnight, working on a rota basis (C2).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the LPA's decision to refuse the LDC application was well-founded.

Reasons

3. Section 191(2) of the Act states that uses are lawful at any time if: (a) no enforcement action may be taken in respect of them (whether because, inter alia, they did not involve development); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. Section 55(1) of the Act defines the term development. Development includes the making of any material change in the use of any buildings or other land.
4. In this case, the appellant's submissions are that the proposed use from a dwelling to a children's home does not amount to a change of use which is material and therefore it would not amount to development. Thus, it is argued that it would have been lawful under section 191(2) of the Act at the date the LDC application was made. The concept of what is a material change of use is not defined. The Courts have established that it is a matter of fact and degree for the decision maker to conclude upon. For a change of use to amount to a material change of use, there must be some significant difference between the character of the activities of what is proposed and what went on previously.
5. The appeal relates to a five bedroom property, in use as a dwelling and occupied by a single household. The proposed use comprises the use of the

property as a children's home. It would be home to up to three children. The children would be aged between 8 and 18. They would be cared for continuously by two carers working on a rota basis sleeping at the property overnight. It is said that six carers would operate on a shift pattern of 48 hours on, 60 hours off. In addition, a manager also with caring responsibilities would be at the property from 0900 to 1700 each day. It is said that children would engage in various activities during the day, including attending a mainstream school where appropriate. Albeit in some instances, some children may receive home schooling, though it is said this would be online.

6. The appellant indicates that, in terms of comings and goings, there would be little difference from the current use as single household dwelling. It is said there would not be frequent visits by any other care staff or clinicians. Social Services would normally send one or two officers each six months to inspect the premises, plus two inspectors from Ofsted annually.
7. However, the appellant states that the children would have a range of learning difficulties or other needs and challenges. Thus, there is nothing to say that the children would not need regular visits from clinicians, local authority staff or other agencies. Indeed, there is nothing in the evidence from the appellant to say that they would not accept children with such needs. Furthermore, the evidence is unclear but there is no suggestion that the children would have any links to each other. Thus, any visits which are required could be tripled based on the needs of the individuals residing at the property.
8. I accept that the type of comings and goings would not be dissimilar to a typical single household dwelling. Movements such as children being driven from home to school, carers arriving and leaving the property and other day to day comings and goings generated by the use would not appear to be materially different on its face.
9. However, on the limited evidence before me, it seems to me that additional comings and goings likely generated from visitors attending to the "needs and challenges" of up to 3 children would occur more frequently and on a more unfamiliar pattern than with a 5 bedroom single household dwelling.
10. Moreover, in any event, even if the type, number and pattern of comings and goings was not materially different, there would be a significant difference in the character of those comings and goings. In a typical single household dwelling, it is the same people coming and going from the property on a daily basis. There is a consistency to their character and a familiarity for both residents and neighbours. In contrast, the proposed use would result in little consistency in the people who are coming and going from the property. Caring staff are unlikely to be the same people for extended periods. Shift patterns change, people move to work in other locations or other companies. The appellant does not state that the carers would be the same people on any consistent basis. It seems to me that the comings and goings associated with the proposed use would likely be generated by a higher turnover of different people.
11. Moreover, there is nothing to say the children living at the property would do so on any consistent basis. The appellant states that the length of stay would be more than just temporary or passing but does not go further to establish exactly how long stays are likely to be. There is nothing to say children would not stay for short periods amounting to several days or even weeks at a time.

Children could be rehomed elsewhere for any number of reasons. Furthermore, there would be no consistency in numbers of children. At times it could be one child, at others three children. There is thus the potential for a greater turnover of residents, again in contrast to the character of a typical single household dwelling. This would also have subsequent impacts on the number of comings and goings. A higher turnover of children would mean a higher turnover of visitors. There is little evidence the appellant has taken that into account in their comparative calculations of comings and goings.

12. The appellant points that there would be no external alterations to the property and therefore it would appear as a single household dwelling. However, for the reasons above, I find on the evidence before me that the number, pattern and character of the comings and goings would materially contrast with the character of a single household dwelling.
13. I conclude therefore, that on the balance of probabilities, the proposed use would amount to a material change of use. As a result, at the date the LDC application was made, the proposed change of use from a dwellinghouse to a children's home would not have been lawful.
14. The appellant has drawn my attention to two appeal decisions considered to be relevant.¹ However, in those decisions the focus was on the overall number of comings and goings. Little regard was given to the pattern or character of those comings and goings. Thus, I do not consider them to be directly comparable to the circumstances before me here. In any event, I have considered this appeal on its own merits.

Conclusion

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 use of a (C3a) dwelling for a children's home for a maximum of three children, with three carers, with two sleeping overnight, working on a rota basis (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