



Appeal Decision

Site visit made on 13 April 2023

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Appeal Ref: APP/N3020/X/22/3303622

4 Lacewood Close, Bestwood Village, Nottingham, NG6 8ZL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Susan Zisengwe (CALL4CARE Services Ltd) against Gedling Borough Council.
 - The application ref 2021/1320 is dated 29 October 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 children's care home.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council failed to determine the application so this is an appeal against non-determination. The Council says that it would have refused the LDC.

Reasons

3. The main issue is whether a refusal to grant the LDC would have been well founded. This turns on whether the proposed use would fall within Class C3 or Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, and if it falls within Class C2, whether the change of use would be material.
4. There is no dispute that the current use of the property is Use Class C3(a) which is "use as a dwellinghouse by- (a) a single person or by people to be regarded as forming a single household". The appellant says that the change to a children's care home would represent a change to Class C3(b) which is "use as a dwellinghouse by- ... (b) not more than six residents living together as a single household where care is provided for residents."
5. The appellant says that paragraph 25 of the withdrawn Circular 05/2010 indicated that Class C3 includes a household which may comprise adults and children living together, with the children being cared for by either their parents, foster parents, a nanny, governess or au-pair. However, none of these specified carers would be the carers described in the proposal before me which are shift workers and a resident matron. Therefore, the appellant's comments in respect of this former circular, do not lend support to the proposal. In any event, the circular no longer exists as Government guidance.

6. Moreover, Article 2 of the Town and Country Planning (Use Classes) Order 1987 defines "care" as "*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.*" Care for children is therefore specified as falling within Class C2.
7. The appellant has provided Counsel advice. However, that advice was mainly in connection with another proposal at a different site. The value of that advice in relation to the appeal before me is therefore limited as the specific circumstances differ. Nevertheless, the Counsel advice contains reference to *North Devon DC v First Secretary of State [2003] EWHC 157 (Admin)*.
8. *North Devon DC* provides authority for the view that children cannot, as a matter of law, form a household. I accept that there would be a resident matron on site looking after the children, however, there would always be 1-2 other care workers on the site, which means that responsibility for looking after the children during the day and night would fall to carers in addition to the resident matron. Therefore, I do not accept that the unit would function as a household and the use of the site would fall within Class C2.
9. Nevertheless, *North Devon DC* established that the materiality of a change of use is not just established by recognising that there has been a change in the use class. The correct starting point for such an analysis is the existing use of the property compared to its proposed use.
10. I must, therefore, consider whether off-site or on-site effects of the change to a children's home, as described by the appellant, would result in a change in the definable character of the site's planning land use, i.e, whether a material change of use would occur. It is necessary to look at whether the change gives rise to planning considerations which can include the effects of the change on local amenity.
11. The premises would retain all the facilities expected of a dwelling, including a kitchen, bathrooms, living area and bedrooms. The external appearance of the property would not be altered. The premises would therefore retain the physical attributes of a dwellinghouse.
12. The proposed use is for up to 2 children or young people between the ages of 10 and 18 years to live at the property as their principal residence. The children would be unable to live with their natural parents for a variety of reasons. They would share a bathroom, kitchen and dining/sitting areas. Meals would be taken together at a dining table and these would be prepared principally by the matron and support workers. Each child or young person would have their own bedroom which would be fitted with locks to which support workers would also have a key.
13. The appellant's planning statement says that there would be a live in matron and additional support workers would work on shifts to provide round the clock cover. However, shift changes would normally take place at either 07:00, 14:00 or 22:00. In total, there would be 5 full time and 3 part time members of staff although not all staff would be present on the site at once. It is expected that there would be approximately 3 members of staff on the site during the day and 2 staff during the night.

14. In addition to the staff, there would be short and infrequent visits from social workers and other support professionals. The appellant says that there would be 2-3 cars on the site during the day and two at night. However, I consider this to be a conservative estimate. There could well be more cars, albeit for short periods, at shift changeover times. In addition, visits from other support professionals would attract more vehicles to the property.
15. The appellant points out that a family of five could live in the house and could have multiple cars. However, I have no evidence that the existing use attracts multiple cars. Most single households are unlikely to draw non-resident staff with shift changes and visiting support workers. The number and turnover of people coming and going to the house and their associated parking needs would be in excess of what would normally be expected from a three-bedroom family dwelling.
16. The appellant also says that the house could be occupied by 4 adult sharers but this would be a material change of use to a House in Multiple Occupation (Class C4). The correct comparison when considering whether there would be a material change of use is between the existing and proposed use, not any potential alternative uses.
17. The appellant says there is sufficient parking on the site. However, this has not been demonstrated to me on the plans. At my visit I could see that the house has one surface off street parking space which is on the drive, in front of the garage. Whilst the garage could potentially be used to park a car, the arrangement of the other space in front of it would lead to tandem parking which would make it inconvenient for staff to use both spaces at once. Therefore, there is only one realistically usable off-street parking space. Even if the lawn were to be used as car parking, this would have a visual effect on the site.
18. I saw at my site visit that there is a lack of proper pavements outside of the house and the road is narrow. At the time of my visit, there was a small van parked in front of the appeal property which filled the width of the carriageway, blocking access to the two houses beyond it. There were other vehicles parked nearby too which were somewhat obstructive as they were parked on the little pavement that was available. There is no way to accommodate on-street parking without causing inconvenience to other road users and pedestrians. I have no reason to believe that any of the observed parked cars were associated with the appeal property but they demonstrated quite clearly that any additional car parking over and above what would normally be expected for the house, would have an obvious impact on the site's surroundings.
19. In support of their case, the appellant has drawn my attention to appeal decisions in Malpas¹, Brecon² and Derby³.
20. In the Malpas case the subject property was a very substantial 7-bedroom detached house in a large garden. It was proposed that 4 children would live at the premises and be looked after by 2 adult carers. The Inspector found that the vehicle movements each day would be more than what might be expected as part of the normal day to day usage of an average dwellinghouse. However,

¹ APP/K0615/X/05/2004825

² APP/P9502/X/13/2205394

³ APP/F1040/X/21/3283867

they found that as it was a very large property with ample parking and considerable garaging space, it was the kind of property that could attract a family with a high level of car ownership and usage. The circumstances are therefore different to the case before me, in that, the case before me seems to have a higher staff to children ratio than in the Malpas case and the 3-bedroomed appeal property is smaller than that one and does not have large grounds. The effect of the additional activity would therefore be much more pronounced in the case before me.

21. The house in the Brecon case was a 6-bedroom detached dwelling with a large area of tarmac to the side of the house to provide off street parking and there was also a detached double garage. It was not bounded by other dwellings. Therefore, the effects of the change of use on the neighbourhood would be less pronounced than in the case before me.
22. The Derby case proposed care for up to 2 children and there would be up to 3 members of staff on site at any one time. However, it was a different house which had more rooms than in this case and it was in a different location. I must determine this appeal on the particular facts of the case, including the type of property and its surroundings.
23. The appellant has also referred to Council decisions in Fleet Marston but I do not know the full circumstances surrounding them. In any event, I am not bound to follow decisions made by a local planning authority.
24. The other cases are materially different to the one before me and each application must be considered on its own specific circumstances. In this case, the house would retain the physical characteristics of a dwelling. However, given the additional comings and goings, the need for car parking, and the care of the children by shift workers, I consider that there would be a material change in the definable character of the site's planning land use of a single dwelling house.

Conclusion

25. The proposed children's care home use of the property would not fall within Use Class C3(b). The proposed use would fall within Use Class C2. Given the circumstances of the property and its surroundings, the level and pattern of vehicular activity and general comings and goings associated with the proposal, there would be a material change of use. The material change of use of land is development, within the meaning set out in Section 55(1) of the 1990 Act, and planning permission is required, in accordance with Section 57(1) of the 1990 Act, for the development of land.
26. For the reasons given above, and having taken all other matters into account, had the Council refused to grant an LDC in respect of the proposed use as a children's care home at 4 Lacewood Close, Bestwood Village, Nottingham, NG6 8ZL it would have been well-founded so the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

Ms S Watson

INSPECTOR