



Appeal Decision

Site visit made on 12 October 2022

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/P4225/X/22/3299250

Black Dad Farm, Ashworth Road, Heywood OL11 5UW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Trinity Care and Education Limited, against the decision of Rochdale Metropolitan Borough Council.
- The application ref: 21/01607/CPL, dated 27 October 2021 was refused by notice dated 25 February 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 described as, 'proposed change of use within permitted Use Class in line with GPDO - C3(a) to C3(b) - being a permanent home for child/ren in care supervised by permanent staff living on site with a maximum of three children/young persons and four adults (depending on specifics relevant to child/ren/young persons in need of accommodation at time of availability).'

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Edward Smethurst against Rochdale Metropolitan Borough Council. The application states that Edward Smethurst is the appellant. However, he is not identified as the appellant, as the appeal was made in the name of Trinity Care and Education Limited, which matches that stated in the application form.
3. The Planning Practice Guidance (the Guidance) sets out that local planning authorities, appellants and interested parties who have taken part in the process may apply for costs, or have costs awarded against them¹. An 'interested party who has taken part in the process' could reasonably be described as an individual or company/organisation that has an interest in the land and/or proposal and has submitted representations at application and/or appeal stage.
4. Edward Smethurst is stated in the application form to have a legal interest in the land and to 'support the application and proposal'². However, the submitted evidence does not identify him as having any association with the appellant company and no formal representation(s) have been submitted by him at

¹ Planning Practice Guidance: Paragraph: 029 Reference ID: 16-029-20140306.

² Part 9 of the Application Form: Stated in the bullet points as occupier, but in the text as owner.

application or appeal stage. For all of the above reasons, I find that Edward Smethurst has not taken part in the process and that the application for costs is not valid. Consequently, I have not determined it.

Procedural Matters

5. The use for which an LDC was sought, as stated in the application form dated 27 October 2021, is set out in the heading above. The application was submitted on 9 November 2021 and validated on 19 November 2021 with the description 'proposed use of Residential Dwellinghouse (Use Class C3) as Residential Care Home (Use Class C2) for up to 3 children.'
6. Following this, the appellant confirmed in an email dated 22 November 2021 that the correct description was 'proposed use of Residential Dwellinghouse (Use Class C3a) as Supported Living (Use Class C3b) for up to 6no. persons (3no. children and 3no. staff) living on site.' A revised application was prepared by the appellant at that time, but contained no additional information about the proposed use and was not accompanied by any revised supporting information. This application form has been submitted as part of the appeal, but it is not clear whether the Council accepted it.
7. On the basis of the above, the Council proceeded to determine the application using the description as stated in the decision notice, 'proposed use of dwellinghouse (Use Class C3a) as children's home for up to 3 no. children (Use Class C3b)' and the information contained within the original planning statement. During this time and following advice from the Council that the application was to be refused, the appellant confirmed in an email dated 18 January 2022 that they wished to amend the proposal to change the intended occupant to mothers and babies, young adults or adults with learning difficulties. A revised application form dated 18 January 2022 was submitted to the Council along with a revised planning statement.
8. The revised proposal was not accepted by the Council as they considered it to be materially different to that originally submitted some months previous. The Council subsequently determined the application on the basis of the original application form and accompanying information, having regard to the revised description³.
9. The appellant asserts that the Council acted unreasonably in not considering the revised proposal and presents it for determination as part of the appeal, with the proposed development described in the appeal form as 'proposed use of the property to provide permanent supported-residential accommodation for a maximum number of 6 persons in total (C3(b)).'
10. However, although the description essentially remains a proposed change of use from Use Class C3(a) to C3(b), as set out above, the revised proposal is fundamentally different to that originally applied for, and is not that which the Council assessed and decided the application on. It may be acceptable under the LDC provisions to consider any relevant fresh evidence advanced at the appeal, including where this evidence was not advanced at application stage, to

³ Decision Notice dated 25 February 2022: Description of Development- Application for a certificate of lawfulness for proposed use of dwellinghouse (Use Class C3a) as children's home for up to 3 no. children (Use Class C3b). Notes for Applicant- For the avoidance of doubt, this decision relates to the following plans and documents: Location plan – received 09/11/2021; Planning Statement by Prosperity Law LLP – received 09/11/2021; and Planning Application Form – Received 09/11/2021.

enable the making of an objective decision based on the best facts and evidence available when the decision is taken. However, it would not be acceptable to consider at appeal, a different proposal to that originally applied for and decided upon by the Council.

11. Additionally, mindful of the revised description of development confirmed in the appellant's email dated 22 November 2021 which is reflected in the description of development in the Council's decision notice, whilst it is common ground between the parties that the lawful use of the property falls under Use Class C3(a)⁴ of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO), there is disagreement as to which Use Class of the UCO the proposed use falls under.
12. The appellant contends that, as the proposed use would provide supported living for up to 6no. persons (3no. children and 3no. staff) living on site, it would fall within Use Class C3(b) and, by virtue of the provisions of section 55(2)(f) of the 1990 Act as amended, it would not amount to development.
13. Conversely, notwithstanding the description of development as applied for and stated in the decision notice, the Council conclude that having regard to the information submitted with the application and the findings of the *North Devon District Council v First Secretary of State* [2003] EWHC 157 (Admin) judgement, the proposal would not fall within Use Class C3(b), but instead would fall within Use Class C2.
14. Further to this, the appellant advances that, even if it was concluded that the proposal would constitute a change from Use Class C3 to C2, it would not require planning permission. This is because they consider the change of use would not be 'material'. This viewpoint is opposed by the Council.
15. In the context of the above and for the avoidance of doubt, I have considered the appeal on the basis of the original proposal. In doing so, I have addressed whether the use would fall within Use Class C3(b) and, if not, whether the change to the proposed use would be material in planning terms. Given that both parties have addressed these matters in their respective evidence, I am satisfied that no injustice would be caused by this approach.
16. An application made pursuant to section 192 of the 1990 Act as amended seeks to establish whether proposed development would be lawful if instituted or begun at the time of the application. It is not the equivalent, in law, of a planning permission. The onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful. The planning merits of the matters applied for are not relevant. I have determined the appeal on the facts of the case and relevant planning law.

Main Issue

17. Having regard to the above, the main issue is whether the Council's refusal to grant the LDC was well-founded. This turns on whether the proposed use of the appeal property for supported living for up to 6no. persons (3no. children and 3no. staff), would come within the terms of Use Class C3(b) of the UCO and would thus be excluded from the definition of development by virtue of section 55(2)(f) of the 1990 Act as amended, or, if not, whether the use proposed would be materially different to the existing C3(a) use.

⁴ Use Class C3(a): A dwellinghouse by a single person or by people living together as a family.

Reasons

Whether the use falls within Use Class C3(b)

18. Use Class C3(b) covers use as a dwellinghouse by not more than 6 residents living together as a single household (including a household where care is provided for residents). Use Class C2 covers use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)); use as a hospital or nursing home; and use as a residential school, college or training centre. Care is defined under Article 2 of the UCO 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'.
19. The proposal is to provide a permanent medium to long-term residential home for a maximum of 3 children with up to 3 live-in adult carers, giving a maximum number of 6 persons in total. The appellant anticipates that the staff would stay overnight and potentially work 3 days on and 3 days off, but states that shift patterns would vary to accommodate the individual care needs of the child/ren who would be housed there.
20. The appellant contends that, notwithstanding the shift patterns of the adult carers, the proposed use would form a 'household' comprising a 'more modern appreciation of a family home', and would not conform to the typical model of a care home. They declare that the application was made to acknowledge that it is possible for this type of use to be considered a change within the C3 Use Class; from C3(a) to C3(b) and in recognition of the need to demonstrate authorised use of the property for associated Ofsted registration purposes.
21. In contrast, the Council consider that the proposed use would go beyond Use Class C3(b) and would instead be more akin to a Use Class C2 care facility.
22. Pertinent to the consideration of the appeal is the North Devon judgement. This case considered whether a dwellinghouse used to provide residential care for two children fell within Use Class C2 or C3(b). Only the children would live permanently on the premises with the carers being resident elsewhere and providing care on a shift rota system.
23. In the North Devon case, the application was based on the premise that the children by themselves would constitute a single household with the use falling within Use Class C3(b). The court held that the children could not be regarded as constituting a household by themselves. The question also arose as to whether carers who do not live on the premises but who, between them, provide 24 hour care can be regarded as living together as part of the household. In this regard, the court determined that the concept of living together as a household means that a proper functioning household must exist and thus, for the use to fall within Use Class C3(b), the children and carers must reside in the premises. Otherwise, the use falls within Use Class C2.
24. From the limited information provided, I acknowledge that the child/ren would reside at the appeal property on a permanent basis; that round the clock care would be provided, with adult carers sharing communal spaces with the child/ren, eating with the child/ren and staying overnight; and that it is intended that the adult carers would be the same individuals. However, given

the stated intention that the provision would involve staff rotating on a shift system and would not permanently reside there, and mindful of the North Devon judgement, I consider that the proposal would go beyond what the appellant asserts would be the modern version of a family unit.

25. Drawing the above together I find that, on the balance of probabilities, the use of the premises would not fall within Use Class C3(b). It would provide residential accommodation and care for up to 3 children, with adult carers who would work for the provider and use the appeal property to live/sleep in when they were working. The children and adult carers would not, as a matter of fact and degree, function as a single household and the use would therefore fall within Use Class C2.

Whether the proposed change of use would be material

26. It does not follow that the character of a C2 use would necessarily be materially different to that of a C3 use and thus may still not amount to development, as defined in section 55(1) of the 1990 Act as amended⁵, that would require planning permission. The concept of a 'material change of use' is not defined in statute. Nonetheless, it is accepted that for a material change of use to occur there must be some significant difference in the character of the activities from what has gone on previously. This is determined on the merits of the case, as a matter of fact and degree.
27. From the evidence before me and my observations on site, the appeal property, which appeared to be unoccupied, is a large, detached, two-storey dwelling, incorporating 7-bedrooms, 4-reception rooms, 6-ensuite bathrooms, a dining-kitchen area; a large integral garage; and an associated parking area. It is located within substantial grounds in an open rural landscape, being sited at the end of an approximately 500m long access track off Ashworth Road. The nearest building, Dairy House Farm, lies about 220m to the east of the appeal property and is accessed by the same track. The submitted planning statement sets out that there is no operational development, or other works, proposed in order to facilitate the 'change' of use. Although, I note it also states, somewhat ambiguously, that there would be 'no external alterations to the property that would not be acceptable within a residential area.'
28. Referencing previous appeal decisions on these matters⁶, the appellant contends that even if the proposal is concluded to be a change from Use Class C3(b) to C2, the change would not be 'material', in that the proposed use of the appeal property would be unlikely to be perceptibly different to that of a normal dwellinghouse and would likely appear as any other household unit. Conversely, in considering matters of location, highways and amenity of neighbours, the Council conclude that the identified change of use would be material.
29. Any assessment as to whether, as a matter of fact and degree, the proposed use would be materially different, requires an understanding of the form and character of the present or last use of the premises, as well as an understanding of the form and character of the proposed use.

⁵ Section 55(1) 'Development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

⁶ Appeal Ref: APP/E2205/X/16/3161037 and Leeds City Council – no Appeal Ref provided.

30. Although the parties agree that the present or last use was as a single dwellinghouse, no substantive information has been submitted as to the number of occupants and the character of its use. I acknowledge that a property of this size could accommodate up to 7 (or more) adults with all the likely associated comings and goings. However, there is nothing in the evidence to suggest that this was actually the case. In the absence of such information, it is not possible to ascertain the character of the activity of the present or last use to enable a meaningful comparison with the proposed use.
31. With regard to the character of the activity that would be generated by the proposed use, I recognise the potential difficulties of setting out any specifics, in terms of child/ren and staff numbers and details of care provision, as this would be dependent on the child/ren who enter the appeal property. Nonetheless, it remains that no substantive information has been provided in this regard, which severely restricts any valid assessment.
32. The Guidance states that the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved⁷.
33. Similar to the application decision and Appeal Decision cited by the appellant⁸, I have considered this proposal on its own merits. However, I find the submitted information deficient. The omission of detail and clarity in the appellant's case gives rise to uncertainty in how the proposed use would function and thus any implications this may have for the character of the activities at the site. On this basis, it is not possible to determine whether the change of use from C3(b) to C2 would be material for the purposes of section 55(1) of the 1990 Act as amended.

Other Matters

34. I note the appellant's contention that there is 'no need to make an application of this nature to the local planning authority', as they consider it a permitted change of use. However, as set out above, on the balance of probabilities I have found that it would constitute a change of use which, having regard to the facts and merits of the case as submitted by the appellant and as a matter of fact and degree, would be material.

Conclusion

35. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use 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.

F Cullen

INSPECTOR

⁷ Planning Practice Guidance Paragraph: 006 Reference ID: 17c-006-20140306.

⁸ Swindon Borough Council reference: S/LDP/20/0864/CHHO Certificate of Lawful Development and Appeal Ref: APP/K2420/X/11/2155849, decision date 7 November 2011 – both referenced but not submitted.