



Appeal Decision

Site visit made on 27 June 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal Ref: APP/R2330/X/22/3309304

49 Bluebell Way, Lancashire, Huncoat BB5 6TD

- 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 Trinity Care and Education Services Ltd against the decision of Hyndburn Borough Council.
 - The application ref 11/22/0373, dated 5 August 2022, was refused by notice dated 12 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 described as 'proposed change of use within permitted Use Class in line with the GPDO C3(a) to C3(b).'
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

3. An application under S192(1)(a) of the Act¹ seeks to establish whether any proposed use of buildings or other land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law.
4. The appellant describes the proposed use on their application form as 'proposed change of use within permitted Use Class in line with the GPDO C3(a) to C3(b).' Paragraph 55(2)(f) of the Act sets out that , in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class, shall not be taken to involve development of the land.
5. While a change to a C3(b) use would not normally be a material change of use, the Planning Practice Guidance (PPG) advises that precision in terms of any

¹ Town and Country Planning Act 1990 (as amended)

certificate is vital, so that there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. It is not open to an applicant to pose a general enquiry as to what is or might be lawful.

6. In its decision notice, the Council describes the proposed use as the provision of residential accommodation for two children (age range 5 to 12 years) with care provided by staff working on a shift/rota pattern. I have been provided with an email, which is stated to have been provided on behalf of the appellant, which describes the appeal site as being registered with Ofsted for a standard children's home with a child age range from 5 to 12 years old.
7. This is broadly consistent with the appellant's supporting statement, which states that they intend to use the dwellinghouse to provide permanent residence for a maximum of 2 children with up to 4 live-in adult carers, with a maximum number of 6 persons in total. However, it is also stated that the mother of the child [sic] may also reside there permanently.
8. The appellant reaffirms in their appeal statement that the proposed use is to provide a dwelling for a household comprising of a mother and child who will have attending carers/support. Since the description used by the appellant in their supporting statement could encompass a child and a mother residing at the property, I shall use this to describe the proposal and shall consider the appeal on this basis.
9. In light of the above, I consider this appeal will turn on whether the proposed use falls within Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended)(UCO) and if it does not, whether there would be a material change of use from use as a dwellinghouse to Class C2, use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwellinghouses)).
10. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
11. The appeal property is a detached 4 bedroom house which fronts onto Bluebell Way, a generally residential area which is characterised by modest front gardens and modest parking on the frontage. The parties agree that the property is currently in C3(a) use². The front garden of the appeal property was largely laid with tarmac, providing off-road parking for a modest number of vehicles. The appellant advises that no operational development would be required to facilitate the proposed use.

Whether it would constitute a C3(b) use

12. The appellant suggests that the proposed use of the dwelling would fall within use class C3(b) which is the use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household where care is provided for residents. It is necessary for me to focus first on those in occupation and ask whether they would form a single household as a matter of fact and degree.
13. The appellant suggests there would be up to 4 live-in adult carers. While I don't doubt that the children would be constantly supervised, the appellant also

² Use as a dwellinghouse by a single person or by people to be regarded as forming a single household.

advises that there will be a change of adult carer on occasion 'to accommodate working patterns'. This suggests that the carers would not live at the property but would stay there during a shift, which may last for a number of days or more. As confirmed in *North Devon District Council vs FSS and Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 (the *North Devon judgement*), children cannot form a household without the presence of a resident caregiver.

14. Although a mother and child could be considered to form a single household, it is not clear whether the mother would, themselves, be classed as an adult. Presumably the mother would reside at the property because she is in need of care, which could include a mother who is not yet herself an adult. It is also not clear whether occupation would be limited to a mother and her child, or where the mother is an adult, whether other children would also reside at the property, unrelated to the mother and child. I would not expect a mother, who themselves requires care, to provide care to an unrelated child. In such a circumstance, I consider it unlikely the occupants would form a single household.
15. Given the above, I am not persuaded that the appeal scheme would constitute a C3(b) use.

Whether there would be a material change of use from C3(a) to C2

16. The appellant suggests there would be no material difference in the way this property will operate from its previous use. As established in the *North Devon judgement* even where there is a change from C3(a) to C2 it will not always be material, it will be a matter of fact and degree depending upon the circumstances of the case in question.
17. The Council advise that the appellant provided an email dated 9 August 2022, setting out the proposed shift pattern for staff. While I note that the appellant has raised concern regarding the use of this information to determine whether a material change of use would occur, there is limited other information regarding the way in which the site operate. I shall therefore take this information into consideration.
18. It is suggested that staff would work 3 x 24 hour shifts (including sleep in) with 4 days off or 4 x 24 hour shifts (including sleep in) with 3 days off. However, it is not clear when changeovers would be, what would happen during a change-over, whether other agencies would need to visit the site, such as social workers or tutors, or whether family members of the child/ren would visit. It is therefore not clear what vehicle movements would be generated by the proposed use.
19. Although care-workers may choose to park to the front of the property, given the limited off-road parking available at the site, I consider it highly likely that during a change-over, at least one care-worker would need to park on the road. This would generate parking requirements along Bluebell Way which would be in addition to parking requirements generated by other visitors to the site, such as social workers and tutors. Furthermore, workers arriving and leaving early in the morning or late at night could cause noise and disturbance to neighbours.

20. I acknowledge that different households may live their lives in very different ways and may include parents working irregular hours and receiving support from other family members. However, I consider the potential for visits from external agencies is likely to be much greater for the proposed use. Furthermore, a family occupying the property is far more likely to make use of linked trips compared with the proposed use.
21. While I appreciate that the appellant wishes to retain a degree of flexibility to enable them to respond to any relevant requirements, without further detail regarding the way in which the property would be used, it is not clear that the appeal scheme would not result in a material change in the character of the use.
22. The appellant has drawn my attention to a number of other cases, including appeal references APP/E22-5/X/16/3161037 and APP/K2420/X/11/2155849, an appeal which considered a decision made by Leeds City Council in 2014 and a decision of Swindon Borough Council, reference S/LDP/20/0864/CHHO. However, I have no substantive details of the cases cited and cannot therefore be sure that they are comparable to the appeal scheme before me.
23. For the reasons given above, in my view, the appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the appeal scheme would constitute a C3(b) use, or that there would not be a material change of use to a C2 use in this case.

Conclusion

24. Thus, 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 49 Bluebell Way, Lancashire, Huncoat BB5 6TD as a residence for a maximum of 2 children with up to 4 live-in adult carers, with a maximum number of 6 persons in total 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.

M Savage

INSPECTOR