
Appeal Decision

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2023

Appeal Ref: APP/M2840/X/23/3320121

3 Mill Road, Kettering, Northamptonshire NN16 0RY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Mrs Shade Arise against the decision of North Northamptonshire Council.
 - The application Ref NK/2023/0006, dated 4 January 2023, was refused by notice dated 2 March 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ('the Act').
 - The use for which a certificate of lawful use or development is sought is Certificate of Lawfulness for the Change of Use Class C3 (dwelling house) to a Class C3 (b) dwelling for 2 children living together as a single household where care is provided for residents by 2 carers at once, following a 24-hour shift pattern'. The last use was a Dwelling house Class C3. The proposal will be a used Class of a 'C3 (b) dwelling', i.e. "not more than six residents living together as a single household where care is provided for residents." There is no need to have a Use Class of C2 (Residential Institutions) as there is no nursing provision, formal education provision, etc. There is no material change to the property. It will not alter the character or appearance of the dwelling and will not result in a significant or substantial increase in traffic movements to and from the property, or in roadside parking.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council used an abridged version of the description of the use for which a certificate is sought in its decision notice. However, as I am not aware that this was agreed by the applicant, I have used that from the application form in my header. For the sake of brevity, I have, however, used a shortened version in my conclusion.
3. Neither party was of the opinion that I needed to visit the site before making my decision. Having assessed the evidence, I, too, found this to be the case. Thus, the decision has been reached without a site visit.

Reasons

4. Section 192(1)(a) of the Act provides for the making of an application to ascertain whether any proposed use of buildings or other land would be lawful. It is for the Appellant to make her case on the balance of probability.

5. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded.
6. The evidence shows that 3 Mill Road is a two-storey semi-detached property that is currently in use as a single dwellinghouse; that is to say falling within Class C3(a) of the Town and Country Planning (Use Classes) Order 1987 as amended ('UCO'). In essence, the Appellant seeks to use the property to house two children who would live there full-time, along with two carers. The carers would not live there full-time, but would be at the site for 24 hour shifts beginning and ending at 07.30. The drawings accompanying the application show that no significant internal alterations would be made to the property, which has a living room, dining room, kitchen and bathroom on the ground floor, with 3 no bedrooms and a further bathroom on the first floor. No external alterations are proposed. Her case is that there would be no material change of use between the existing C3(a) use and the use she wishes to put the property to, which she states in her application as being within use class C3(b).
7. Class C3 is divided into three parts, of which (a) and (b) are relevant here. The UCO describes them as '*Class C3. Dwellinghouses: Use as a dwellinghouse (whether or not as a sole or main residence) by - (a) a single person or by people to be regarded as forming a single household; and (b) not more than six residents living together as a single household where care is provided for residents*'.
8. In brief, the Council's position is that the use would fall within use class C2, which is described in the UCO in the following manner: '*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. Use as a residential school, college or training centre.*'
9. Article 2 of the UCO provides an interpretation of some of the terms used within it. Amongst these is that for the word "care", which '*means 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; "day centre" means premises which are visited during the day for social or recreational purposes or for the purposes of rehabilitation or occupational training, at which care is also provided*'.
10. Thus, Use Class C3 does not allow for the use of a property for the care of children. This falls within use class C2. This was a position that was established by the judgement in *North Devon District Council v The First Secretary of State* [2003] EWHC 157 Admin, referred to by the Council.
11. However, as stated in that judgement, although the use might fall within Class C2, rather than Class C3, this does not mean that the change of use would be material. Materiality has to be assessed on a fact and degree basis and the individual circumstances of a case will be determinative.
12. In the absence of a statutory definition of a material change of use, it is accepted that there would have to be some significant difference in the character of the activities proposed, when compared to the current use.
13. The proposed use would see the property used by two children and two adults for the majority of the time. The exception to this would be likely to be a very

short period around the changeover between one shift ending and another beginning, when information on any events in the property would be exchanged. There would also be visits from a manager. In addition, one would expect the usual deliveries of parcels, post and the like, as well as visitors to the children, to take place.

14. Two adults and two children would not be an unusual state of affairs in a three-bedroom semi-detached house. Although the adults would change on a daily basis, so occupants of neighbouring properties would not get to know them in the way that they might with a single family household, this would not result in a readily discernible difference in terms of the character of the property. I find likewise in terms of the traffic movements; up to two cars arriving and up to a further two departing around 07.30 would not be a significant change from that were adults in a single family household going to work in the morning.
15. The Council has raised the prospect of visits by social workers and other health professionals. This is a matter that is not specifically referred to by the Appellant. I note from the description of the certificate sought that there would be "no nursing provision, formal education provision, etc", but this does not adequately address the type of visits that the Council refers to. The "etc" is vague and lacks the precision required in an application for a certificate.
16. Should it be that the children provided with accommodation had complex issues, even if these did not require nursing, this could nonetheless lead to a significant number of visits from other professionals. In these circumstances, further traffic movements would be generated. These might well be during the night, when visits to a Class C3 dwellinghouse would probably be less likely. In these circumstances, I find that the character of the property would be materially different from its use as a Class C3 dwellinghouse. Without further information on the children to be housed, the claim that "visits of the manager or other professionals would not be substantially different" is not substantiated.
17. In its statement of case, the Council concludes that the property does not fall within Class C3(b) and, therefore, "does not benefit from permitted development rights". It does not clarify this comment, and I give very little weight to it.
18. Without more information on the issues that the children to be accommodated would have, and the nature and number of visits that would consequently arise, I find that I am unable to conclude that there would be no material change of use of 3 Mill Road. As a matter of fact and degree, I find that the Appellant has not demonstrated on the balance of probability that the use she proposes would be lawful.

Conclusion

19. 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 3 Mill Road for purposes within Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 as amended 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.

Roy Curnow
Inspector