



Appeal Decision

No Site visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1ST AUGUST 2024

Appeal Ref: APP/Z5630/X/23/3329058

105 The Crescent, Kingston Upon Thames, New Malden KT3 3LE

- 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 Arshad Khawaja (Canterbury Care & Support Ltd) against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application ref 23/01845/CPU, dated 6 July 2023, was refused by notice dated 5 September 2023.
 - 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 is sought is the use of a C3a dwelling as a children's home for a single child, with two carers sleeping overnight, working on a rota basis (C2).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use of a C3a dwelling as a children's home for a single child, with two carers sleeping overnight, working on a rota basis (C2), which is found to be lawful.

Applications for costs

2. Applications for costs have been made, which are the subject of a separate decision. Costs Application A is made by the Council of the Royal Borough of Kingston Upon Thames against Arshad Khawaja (Canterbury Care & Support Ltd). Costs Application B is made by Arshad Khawaja (Canterbury Care & Support Ltd) against the Council of the Royal Borough of Kingston Upon Thames.

Preliminary Matters

3. The Council's Decision Notice for the development has an alternative form of description to the Application Form, namely, the 'Proposed use of dwelling (Use Class C3) as a children's home (Use Class C2)'. A change to the description on section 192 LDCs can be made by a Council when formally agreed with the appellant. However, as I have not been provided with any correspondence that sets out that a change to the description was formally agreed, I have taken the description of the proposal from the Application Form.
4. Further to the above, Planning Practice Guidance (PPG) outlines that an LDC application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates¹. In this case, the Council's description sets out the use class change and describes it as a children's home.

¹ Paragraph: 005 Reference ID: 17c-005-20140306

However, this is still quite a broad description, which could include a range of children's homes of a differing scale, nature and levels of intensity. In my judgement, the Application Form description is more specific, outlining the use as well as the number of children and carers, in line with the advice and guidance set out in the PPG. The appeal will be determined on this basis.

5. The appeal submissions included the Application Form, Planning Statement, Site Location Plan, Officer Report and Decision Notice, which all referred to 105, The Crescent. However, a Management Plan document as well as the Elevation and Floor Plans, (drawing reference 01.001 PL1) referred to 103, The Crescent. I sought clarification on the appeal address and the correct plans to be considered. The appellant set out that there was an error, and the application referred to No 105. A corrected Management Plan document, as well as the Floor Plans for No 105 (drawing reference 105TC-DRA-01) were submitted. A block Plan (drawing reference 105TC Rev A) and a bin store plan (drawing reference 105TC) were also included with the response.
6. The Council have outlined concerns over the appellant's submissions of the corrected plans. The Council claims that no drawings of the dwelling were submitted with the initial LDC application. As such, the corrected plans submitted showing No 105 should be regarded as late and fresh evidence. The Council was given time to comment on the plans submitted, and raised concerns over the validity of the appeal and whether further consultation would be needed.
7. I have had regard to the Council's concerns, but the plans show no changes to the dwelling internally or externally. The Council also did not carry out any consultations to neighbours, and I have not been provided with any third party representations submitted in respect of the LDC. As such, me having regard to the plans submitted with the appeal does not introduce any changes to the proposal or any substantive reason to reconsult interested parties.
8. Further to this, the Council also outlined that the five historical appeal decisions submitted as part of the appellant's final comments should not be accepted as late evidence. I acknowledge the Council's issue with the timing of the submissions. However, the appeal decisions are responding to the Council's case by highlighting decisions where an Inspector has considered a similar LDC. In my judgement, the decisions highlighted do not introduce anything new to the appellant's case, however, given the timing of the submissions, the Council was given further opportunity to comment. Accordingly, in this instance, I do not consider that there would be any prejudice to the Council if I have regard to the highlighted decisions in the determination of this appeal.
9. Due to the nature of this case, it was determined that it was not necessary for me to conduct a site visit. I have based my decision on the evidence submitted with the appeal as part of the written representation procedure. The main parties were made aware of this fact, and no objections were made regarding the appeal being determined without a site visit.
10. In cases such as this, the onus rests with the appellant to make their case. The evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability. Matters such as planning policies and the effect of the development on the character and appearance of the area and neighbour's living conditions are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.

Main Issue

11. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

12. A Class C2 use, as indicated in The Town and Country Planning (Use Classes) Order 1987 (as amended) ('UCO') includes the provision of residential accommodation and care to people in need of care (other than a use within Class C3). Class C2 can include use as a hospital, nursing home, residential school, college or training centre, but in this instance, the LDC is seeking lawfulness in respect of a children's home for a single child by two carers working on a rotational basis. The existing use of the site is outlined as Class C3a of the UCO, which relates to a dwellinghouse used by people regarded as forming a single household.
13. The two parties do not dispute that using the property as a children's home (C2 use) is a change of use from a Class C3a residential dwelling. Also, the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) does not allow a permitted change from a C3 to a C2 use class. However, 'development' is defined in section 55(1) of the Town and Country Planning Act 1990 (1990 Act) as including 'the making of any material change in the use of any building or other land' (my emphasis). It therefore follows that if a change of use is not a 'material' change of use then it would not constitute 'development' and could be lawful due to the provisions set out in 191(2) of the 1990 Act.
14. It is the appellant's contention that the proposed change of use is not materially different to its existing use as a dwellinghouse. For this reason, the appellant seeks confirmation that the change of use is not 'development' as defined within section 55 of the 1990 Act. Consequently, the issue on which the appeal turns is whether the change of use to the children's home, as described, can be regarded as materially different to the existing use, which is based on a matter of fact and degree. For a material change of use to have occurred, there must be some definable change in the character of the use from what has gone on previously.
15. Based on the evidence before me, the details and plans do not outline any internal or external changes to the property, garden or parking provision on site. The home will focus on children with emotional and behavioural needs and look at reaching outcomes for the young people to integrate them back to live with their families or into foster care. It is claimed in the submissions that the proposed mode of care seeks to replicate that of a typical family home.
16. Two staff and one occupying child would be at the property, with persons visiting the property being largely restricted to staff members. Six carers would be operating on a shift pattern of 24 hours on, 48 hours off. Shift changes would be around 0945 and any other staff would visit between 0900 to 1700. It is outlined that the children staying at the property do not require regular visits from social workers or medical professionals. Local Social Services would normally send one or two officers every six weeks to inspect the premises, plus two inspectors from Ofsted annually. It is indicated that family visitation would be rare, but visits from friends and family would be permitted when deemed appropriate, which would be in accordance with a specific care plan for the child.

17. In terms of education, circumstances will dictate, but any child staying at the property would be home schooled or tutored, which would be achieved by online classes. This would hopefully progress into attendance at a specialist unit or a mainstream school. Children are allowed to leave the property with staff to attend activities or educational provisions. All of the young people have a bedtime curfew, again dependent on age and care plan.
18. The appellant has provided a chart for the expected vehicle movements for the proposed use as a C2 children's home. By way of comparison, a chart is also provided that indicates the number of comings and goings associated with the current owners' use of the property as a dwellinghouse. It includes movements for work, school, shopping and social purposes as well as other visitors over a week.
19. Based on the evidence before me, no structural changes are proposed to the property, and it is intended that it would retain its appearance internally and externally as a two bedroomed dwellinghouse. The appeal property is detached with a garden to the side, which mostly adjoins The Crescent as well as Mount Pleasant Road. Having regard to the position of the garden in association with neighbours as well as the small number of occupiers, levels of noise and disturbance experienced by the closest neighbouring residents is unlikely to change. Furthermore, the way in which the property and its curtilage would be used would not result in any definable change in the character of the use when compared to the existing dwellinghouse.
20. For the most part there would be one resident in occupation and two members of staff occupying the site overnight at any one time. Staff and visitors would not be moving back and forth at unsociable times and those arriving by car would be able to park on site. The visitation restrictions and general staff movements would not significantly differ in scale, and character, to movements that would typically take place at the existing two bedroom dwelling. As a matter of fact, based on the charts submitted, the numbers of vehicle movements over a week would be less than the existing use. With off-street parking being available, and based on the number of movements and visitors, the proposal is unlikely to result in an increase in parking stress and inconvenience for existing residents, which would differ in character from the existing use as a dwelling.
21. Based on the evidence before me, the proposed use would not result in a material difference in the character of the activities at the site. Consequently, the proposed Class C2 use as a children's home for a single child, with two carers sleeping overnight, working on a rota basis would not result in a material change of use from the existing Class C3a use as a dwellinghouse. Accordingly, on the balance of probability, the appellant has demonstrated that the change of use is not material and, therefore, would not constitute 'development' having regard to section 55 of the 1990 Act.

Conclusion

22. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use in respect of the proposed Class C2 use as a children's home for a single child, with two carers sleeping overnight was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M. P. Howell INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 6 July 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 (2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

In the circumstances of this case, the proposed change of use from Class C3a to Class C2 as a children's home for a single child, with two carers sleeping overnight would not constitute a material change of use. Therefore, the proposed change of use does not require planning permission as it does not amount to development by virtue of Section 55 of the Town and Country Planning Act 1990.

Signed

M. P. Howell

Inspector

Date: **1ST AUGUST 2024**

Reference: APP/Z5630/X/23/3329058

First Schedule

The proposed use of a C3a dwelling as a children's home for a single child, with two carers sleeping overnight, working on a rota basis (C2).

Second Schedule

105 The Crescent, Kingston Upon Thames, New Malden KT3 3LE

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

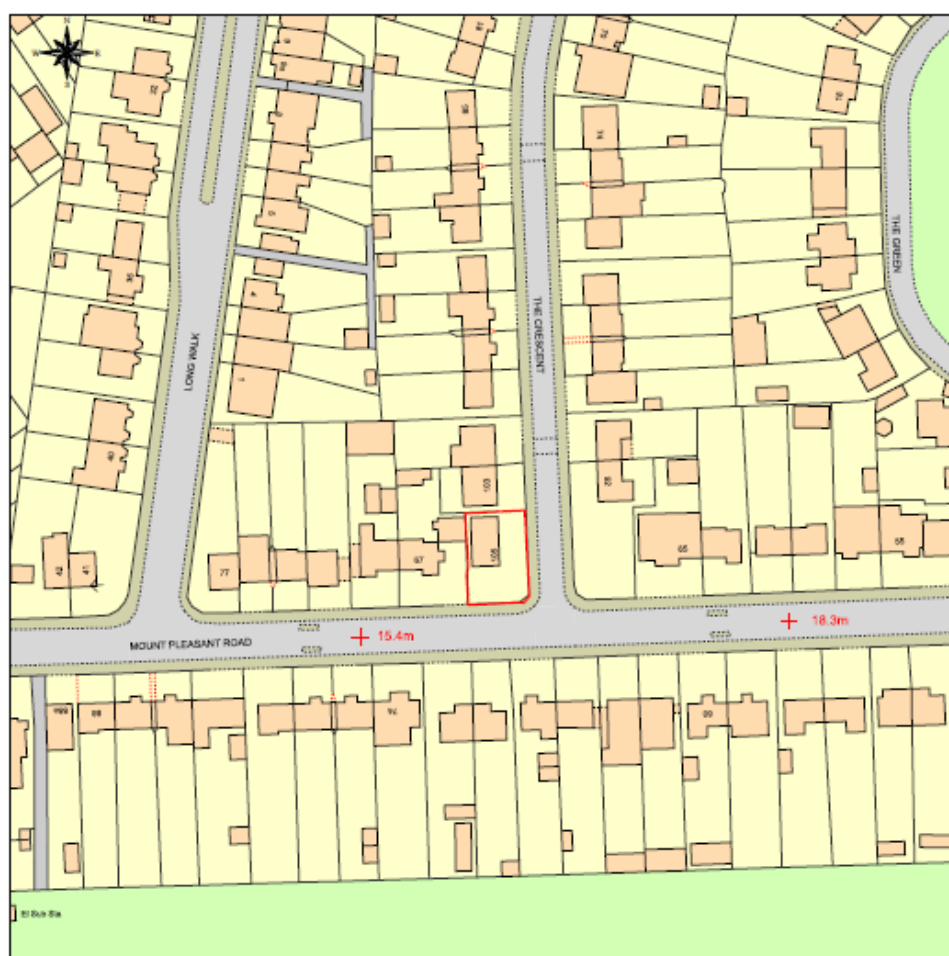
This is the plan referred to in the Lawful Development Certificate dated: 1ST AUGUST 2024

by **M. P. Howell BA (Hons) Dip TP MRTPI**

Land at: 105, The Crescent, Kingston Upon Thames, New Malden KT3 3LE

Reference: APP/Z5630/X/23/3329058

Scale: Not to Scale



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105 The Crescent