



Appeal Decision

Site visit made on 28 May 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2024

Appeal Ref: APP/R2330/X/23/3332464

64 Charles Street, Clayton Le Moors, Lancashire, BB5 5PS

- 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 Birchwood Children's Services Ltd against the decision of Hyndburn Borough Council.
 - The application ref 11/23/0370, dated 14 September 2023, was refused by notice dated 30 October 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 or development is sought is use of a C3a dwelling as a children's home for a maximum of two children, with up to three carers, two of whom will sleep overnight, working on a rota basis (C2).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has drawn my attention to a Ministerial Statement issued in March 2023, which advises that planning permission will not be required in all cases of development of children's homes and that an application can be made for a lawful development certificate to confirm, whether, on the facts of the case, the specific use is or would be lawful. The Statement also states that local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area. However, this is not an application for planning permission and planning merits are not relevant to the determination of an LDC.

Main Issue

3. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded. This will turn on whether there would be a material change of use from the lawful use as a single dwellinghouse falling within Class C3 to the proposed use as a home for up to two children, with up to three carers, two of whom will sleep overnight, working on a rota basis.

Reasons

4. 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

¹ Town and Country Planning Act 1990 (as amended)

application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

5. 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. 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.
6. The appeal property is a detached house with an in-built garage, located off Charles Street. Opposite the appeal property is Mercer Park, a substantial green open space, with a children's play park. To the front of the dwelling is a modest front garden, which is stated to provide 2 off-street car parking spaces.
7. The appellant states that the Home would be registered as an Emotional and Behavioural Home and would primarily serve medium to long term placements. Up to two children would live at the house between the ages of 8 and 18 years of age. Six carers would operate on a shift pattern of 48 hours on, 60 hours off. Changeover would take place usually 9.30am², with a manager visiting the site between 9am and 5pm during weekdays. With the exception of changeover times, which are suggested to last around ten minutes, it is stated that there would be no more than three carers on the premises at any one time.
8. The appellant accepts that the use falls within C2 and not C3b of the Town and Country Planning (Use Classes) Order 1987 (as amended). Nevertheless, whilst children cannot form a household without the presence of a resident caregiver, as held in *North Devon District Council vs FSS and Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 a change from C3(a) to C2 will not always be material. It will be a matter of fact and degree, depending upon the circumstances of the case in question.
9. The appellant has drawn my attention to Circular 05/2010. However, this publication has now been cancelled. The Planning Practice Guidance (PPG) advises that there is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings.
10. The Council suggests that the change of use would impact on planning matters including housing availability, employment location and availability, patterns of movement and access to/availability of services. The extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use.
11. The need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land. However, the Council has not identified a particular planning policy which would be undermined by the proposed use and whilst I would expect policies regarding the provision of housing, the children clearly have a housing need, which the appeal scheme would meet.
12. The appellant states there would be no external changes to the property and internal works would include emergency lighting, locks on bedroom doors, lockable storage furniture, personal monitoring equipment and fire doors. The appeal building affords to those who use it the facilities required for day-to-day

² 10am is stated on the Management Plan.

private domestic existence and would not lose that characteristic as a result of the proposed use.

13. Reference has been made to an appeal in Stockport, reference 2162636³, where the Inspector noted that although the building would be fitted with an office and fire alarm, this was not uncommon in many dwellinghouses around the country and would not materially alter its basic character as a dwellinghouse. I agree, on the evidence before me, that the internal changes proposed would not impact the wider area and would not change the character of the use.
14. The appellant suggests the current use as a large family house could typically have two parents with their own cars and possibly children with their own cars. However, it is necessary to compare the proposed use with an actual existing one, not a notional use. There is limited detail regarding the current use. While the appellant has provided a breakdown of current weekly movements estimated by the current owner, which are similar to movements for the proposed use, it is not clear how many vehicles the current owners have. During my visit, I saw that a caravan and a car were parked at the site.
15. The appellant states it is company policy to encourage staff to use public transport and not to allow on street parking. However, it is not clear how this could be controlled. There is no evidence to show that public transport provision in the area is sufficient such that care workers accessing the site would be able to use it instead of relying on private car. I consider it likely that some, if not all carers would access the site via private car. Furthermore, access to a vehicle is likely to be required to take the resident children to school and for any external appointments or activities they may participate in.
16. Although there is an in-built garage, I consider this is unlikely to be used to any significant extent for the parking of vehicles since the ability to access and egress the site is likely to be required at all times in the interests of safety and for practical reasons. Were each carer to access the site by car, this would mean up to 2 cars being parked to the front of the property Monday to Friday, with 1 car needing to be parked on the street. There would also be at least 1 additional car during changeover.
17. Professionals visiting the site are also likely to access the appeal site by private car and are likely to park on the street. The appellant states that Ofsted would inspect the home each six months⁴ and that an independent observer must assess the home each six weeks⁵. It is also stated there would also be a visit by local social services each month. Although a family may also need support from social services, visits are unlikely to occur with such regularity and there is no suggestion that the existing occupants of the dwelling receive such support.
18. The appellant explains that children residing in the home could be tutored from home initially and that this is all achieved online without any tutors having to come to the house. However, while on-line tutoring became common practice during the Covid-19 pandemic, children have generally gone back to the classroom and so I consider it likely, in practice, that tutors would visit the

³ Full appeal reference number not provided.

⁴ Reference is also made to Ofsted visiting once a year in the Planning Statement.

⁵ Reference is made to the site being visited once a month by a Regulation 44 Inspector.

property where the child or children are unable to attend school. Tutors visiting the site may also need to access it by private car, which would generate a parking requirement.

19. In the Planning Statement, it is stated that visits from family would take place away from the home to avoid upsetting the other children. However, the Management Plan states that the home may also be visited by the young person's family and that this would usually be if appropriate every 6 weeks. The information in the Management Plan and the Planning Statement in this respect is conflicting, though in practice, I would expect there will be instances where it will be appropriate for a child's family to see them in their home.
20. Given the limited off-street parking available at the site, visitors to the site are likely to need to park on the street. It is stated that all other professional or clinical appointments and meetings would take place away from the home. I have no evidence to suggest otherwise. There would be visits from friends, when deemed appropriate, however, it is not clear if, or how, such movements are taken into account in the proposed weekly movements set out in Schedule 2 of the Planning Statement.
21. The appellant has drawn my attention to an appeal at Dale Road, reference 3263178⁶, where the Inspector concluded the number of movements was unlikely to be significantly more than the number that would be undertaken by a family and not enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. However, I do not have full details of the case and cannot be sure it is comparable to the appeal scheme before me. Similarly, reference is also made to the Inspector's findings in 32993519. However, full details of that case have not been provided either.
22. While the overall number of vehicle movements to and from the site may not be significantly different to the existing use (based upon the appellant's submission), the number of vehicles which are likely to be parked at the site at any one time is likely to be significantly greater than the existing use and would necessitate on-street parking, which there is no evidence to show the existing use does. The appellant's evidence has not demonstrated, on the balance of probabilities, that the use of the dwelling as a children's home for a maximum of two children, with up to three carers, two of whom will sleep overnight, working on a rota basis (C2) would not constitute a material change of use. Thus, the appeal must fail.

Conclusion

23. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the use of a C3a dwelling as a children's home for a maximum of two children, with up to three carers, two of whom will sleep overnight, working on a rota basis (C2) 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

⁶ Full appeal reference number not provided.