

Appeal Decision

Site visit made on 4 September 2024

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2024

Appeal Ref: APP/Z4718/X/23/3335778

116 Victoria Road, Huddersfield HD1 3RT

- 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 Mr Imtiaz Rasool against the decision of Kirklees Metropolitan Council.
 - The application ref 2023/CL/93061/W, dated 16 October 2023, was refused by notice dated 14 December 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 described as 'Change of use via lawful development use from a vacant mid townhouse C3 use to form residential institutional C2 use'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded. This turns on whether the proposed use would be materially different to the established lawful use of the property.

Reasons

Clarifications

3. It is necessary to clarify certain matters at the outset, since it is evident that there has been some misunderstanding.
4. First, the LDC procedure is not a planning application. The sole purpose of this application under s192 of the Act is to establish whether the proposed use would be lawful. There is no assessment of the merits of what is proposed, which is a separate matter (and which would be assessed if a planning application were made).
5. Second, Class C2 and Class C3 are separate planning use classes¹. Class C2 is concerned with residential institutions whereas Class C3 deals with

¹ As set out in Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 (as amended)

dwellinghouses. This means that a change from a use falling within Class C3 to a use falling within Class C2 may amount to development requiring planning permission. Whether or not it does in any given instance will depend on whether, on the facts of that particular case, the change would be a material one. That is the principal matter I have to decide in this case.

6. Third, there has been misunderstanding regarding the appellant's description of staffing requirements. The appellant's statement now makes clear that reference to a 2:1 staff to resident ratio was a reference to overall staff numbers, not those present at the property. In fact, there would be at least 2 members of staff at the property at any one time. The Council report indicates that there would be only 1 member of staff at night, but this contradicts the appellant's assertion that there would be at least 2 staff at all times. I have taken the appellant's figure to be correct.

Assessment

7. In LDC cases, the burden of proof falls on the appellant. To succeed in this instance, the appellant must demonstrate, on the balance of probability, that there would not be a material change of use. This requires a comparison between the character of the proposed use and that of the established lawful use of the property. I don't have details of precisely how the property has been used in the past, but it is described by the appellant as a 'vacant mid townhouse C3 use'. That indicates use as a dwellinghouse, which is consistent with its appearance when I saw it.
8. The Government's Planning Practice Guidance provides advice relating to LDCs. It advises that 'An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.'
9. It continues '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 involved'.
10. Here, the appellant has provided only limited detail regarding the proposal, although some further detail is provided in the Council's report. It is described as an 'Emotional and Behavioural Disorder (EBD) Provision'. The unit would be regulated by Ofsted. It would provide accommodation for children, and the intention is to create an environment that feels like a home for them. The care to be provided would include medication administration, sessions on emotional wellbeing and general life skills and various therapeutic services. The proposal would involve internal works to the building and CCTV would be provided.
11. There would be up to 3 resident children and a minimum of 2 staff present at any one time. I understand there would be visits to the property by other professionals from time to time, including a monthly visit by a social worker for each child and a care review meeting for each child every 6 months which, the Council states, would typically be attended by 4-5 professionals.

12. From the above, it is clear that the use would involve people living at the property and, to that extent, it has something in common with a C3 dwellinghouse use. Furthermore, in light of the appellant's clarification of staff numbers, it appears that there would normally be 5 people at the property (3 children and 2 staff). That seems typical for a house of this general type if occupied as a C3 dwellinghouse.
13. However, that does not show that the character of the use would not be materially different to that of a dwellinghouse. On the face of it, an 'Emotional and Behavioural Disorder Provision' could be something quite different to a dwellinghouse. That might depend on detailed matters, such as the nature and severity of the behavioural disorders of the residents. The behaviour of the residents of a property clearly has the potential to have an effect on neighbouring residents (particularly where, as in the case of this terraced house, there are adjoining properties) and on the character of the use. Further details of the proposal might show otherwise, but the burden of proof falls on the appellant and I can only make my decision on the basis of the information before me.
14. Furthermore, it appears that the staff would work on a shift pattern, which means that there would need to be regular staff changeovers. The site can be reached by public transport, but I do not know what proportion of staff would make use of this and how many would drive to work instead. I don't know how the shifts would be managed either, but if 2 staff were to be replaced at the same time, that would involve up to 4 cars manoeuvring and parking at and around the site at every shift change, 7 days a week. There would also be visits from various professionals from time to time, including some meetings, which would have the potential for multiple vehicle movement and parking.
15. The manoeuvring of vehicles on this scale and pattern is not typical of activities at a C3 dwelling. In my view it would be very noticeable to neighbouring occupiers, particularly since it would take place at weekends as well as weekdays and would mark the appeal property out as something other than a dwellinghouse. There is no off-street parking at the property, so neighbouring residents might be directly affected by the increased movement of vehicles into and out of on-street parking spaces. It may be that the use could be managed to address these issues, but that is for the appellant to show.
16. The Council has raised concerns regarding the fear of disorder arising from the proposed use. There is no specific evidence to support that concern. However, that does not alter my view that the appellant has failed to show that there would not be a material change of use.
17. For these reasons I find that it has not been demonstrated, on the balance of probability, that the character of the proposed residential institutional C2 use would not be materially different to that of the existing lawful use of the property as a C3 dwellinghouse. Accordingly, on the evidence before me, the proposal outlined in the appellant's application would amount to a material change of use for which planning permission is required.

Other matter

18. The appellant has sought to argue that the use actually falls within Class C3 (dwellinghouses). However, the description of the application refers to the proposed use specifically as a C2 use. That appears to me to be a correct categorisation of the use. The proposed use concerns the care of children. Article 2 of the Use Classes Order states that "*care*" 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*.
19. The specific linking of care for children with Class C2 appears, by implication, to exclude it from the other classes, including C3. That was the view of the High Court in *North Devon DC v FSS & Southern Childcare Ltd [2003] JPL 1191*, which rejected the view that use as a dwellinghouse providing care for up to two children living together as a single household with care provided by up to two non-resident staff was a C3 use. Thus, it is clear that the proposed use is not lawful on the basis that it falls within the same use class as the lawful dwellinghouse use. In any event, the application sought is for a C2 use, and that is what I have considered.

Conclusion

20. I conclude that the Council's refusal to grant a certificate of lawful use or development 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 and dismiss the appeal.

Peter Willows

INSPECTOR