The Planning Inspectorate

Appeal Decision

Site visit made on 21 October 2024

by A A Phillips BA(Hons), DipTP, MTP, MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 8 November 2024

Appeal Ref: APP/Z1585/X/24/3347499
22 Britannia Gardens, Westcliff-on-Sea SS0 8BN

- 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 Leah Edel against the decision of Southend on Sea City Council.
- The application ref 23/01717/CLP, dated 1 November 2023, was refused by notice dated 25 March 2024.
- 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 on the Council's decision as use as childminding services within existing dwellinghouse.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the development from the Council's decision notice because it accurately describes the development the subject of this appeal.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether as a matter of fact and degree the use for childminding services within the existing dwellinghouse results in a material change of use of the property from a dwellinghouse (use Class C3) to a sui generis mixed use comprising dwellinghouse with childminding services.

Reasons

4. S55 of the Act includes within the description of development "*the making of any material change in the use of any buildings or other land*". The primary use of the appeal site is a dwellinghouse (Use Class C3) and the other use most closely fits with Use Class E (f), creche, day nursery or day centre (not including residential use). In this case the main consideration is whether as a matter of fact and degree the use as childminding service results in there being a material change of use from a dwellinghouse to a mixed use comprising dwellinghouse and childminding service or whether the secondary use is part and parcel of the main use of the site as a dwellinghouse.

5. The ground floor of the property comprises a hall, dining room to the front, WC, kitchen/morning room and a play/nursery room with small tables, chairs, storage for toys and other childcare items. That room is clearly set aside for childminding services. In addition, at the time of my site visit an extension has

been erected to the rear of the ground floor of the property which was being used for a religious festival. It is my understanding that the extension is also used as a covered toy room and area for children's play. There is also evidence of childminding use in other parts of the ground floor kitchen, hall and WC and the rear garden is used for the childminding business purposes. It is my understanding that no other parts of the existing dwellinghouse are used or are proposed to be used for childminding purposes.

6. Up to six children attend (including one of the appellant's children) for three and a half days a week, but the appellant has stated that six children have attended at the same time on just a few occasions. The Ofsted regulated licence permits up to nine children, though. Operating hours are usually Mondays, Wednesdays and Thursdays between 0930 and 1630, Tuesdays between 0930 and 1330 and Fridays 0930 to 1230 (or 1330 during winter months). In addition to the appellant there is a maximum of one additional adult on site and sometimes this is the appellant's husband. Sometimes the day is broken into two separate sessions, with different children attending the morning and afternoon. The appellant has also stated that when the nursery is not open, the main childminding room reverts to normal residential use for play and eating. In addition, it is stated that the morning room/kitchen, toilet and outdoor decking are not used exclusively for childminding purposes but are also used for ordinary residential purposes.

7. The key test in this case is the extent to which the use results in a notable change of character of the property. The appellant contends that the small scale nursery is more akin to a home office or hobby room which fluctuates in use and therefore does not require planning permission so long as the residential character is maintained. Whilst the use has not fundamentally changed the character of the residential property its use has changed to a degree. Part of the ground floor has been effectively set aside for the childminding use and other parts of the ground floor and the rear garden are also used for childminding services. I understand that the property is only used at certain times of the week and the number of children is up to six, but the proposed use would result in an increase in traffic movements at certain times of the day including when sessions start and finish. There is some off street car parking to the front of the property, but the comings and goings, including associated traffic movements will inevitably result in some increased levels of noise and disturbance above and beyond those that can reasonably be expected from a residential use only. There may also be an increased demand for on-street parking at busier times of the day when children are being dropped off or picked up and when staff are arriving or departing.

8. The effects of any potential increase in traffic movements and on-street parking may be amplified in this location owing to the property's situation at the head of a relatively narrow cul de sac which may be used for turning and other vehicle manoeuvres.

9. In addition, the levels of noise resulting from the use of the rear covered area and garden are likely to be increased from the childminding use. I appreciate that normal residential use by a large family may also result in noise from children playing, but the nursery use is likely to extend the periods and intensity of potential noise and disturbance to the extent that it is perceivable by local residents.

10. The child-minding also materially alters the way in which the ground floor of the property functions, including one room being set aside for play and other nursery activities and other parts of the ground floor including the hall, WC and kitchen/morning room being used for childminding purposes in one way or another, including preparing meals, eating and access.

11. I do not agree that the proposed use is akin to a home office or hobby room, but instead the use has resulted in notable changes to the character of the property and therefore, although I am not aware of any complaints from the occupants of neighbouring residential properties, the use as childminding services within the existing dwelling would constitute a material change of use from residential to mixed use residential with childminding services. Such material change of use constitutes development for which planning permission is required.

12. In coming to this conclusion, I have taken account of the specific circumstances of this case, including the property itself, the location and the use proposed. I have also considered other cases to which my attention has been drawn but cases such as this are very fact specific and should be determined on the basis of the specific circumstances of the appeal and the evidence provided.

Conclusion

13. For the reasons given above I conclude that the Council's decision to refuse to issue an LDC in respect of use as childminding services within the existing dwellinghouse 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).

A A Phillips

INSPECTOR