



Appeal Decision

Site visit made on 11 November 2024

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

an Inspector appointed by the Secretary of State

Decision date: 4th December 2024

Appeal Ref: APP/L2440/X/24/3337831

68 Newgate End, WIGSTON, LE18 2GG

- 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 Favour Health Ltd against the decision of Oadby and Wigston Borough Council.
 - The application ref 23/00360/CLP, dated 8 September 2023, was refused by notice dated 23 November 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 Class C3(b) dwelling.
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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 which is found to be lawful.

Preliminary Matter

2. I have taken the description of the proposed use for which a LDC is sought from the Council's decision notice because this accurately describes the proposal before me. Furthermore, there is no concise clear description of the proposed use on the application form.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. In this case that turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3.

Reasons

4. The appeal property is a three storey mid-terrace townhouse situated within a predominantly residential part of Wigston. The accommodation comprises a garage, bedroom and shower room at ground floor, living room/dining area, kitchen and balcony at first floor level and two bedrooms and a bathroom on the second floor. Externally, there is a parking space and driveway to the front with a garden to the rear.
5. It is proposed to use the existing C3 dwellinghouse as a dwelling for a maximum of one young person with two carers at once. It is my understanding that one carer will live on-site permanently with an additional carer working a 24 hour shift on a rotational basis starting at 0730 each morning.

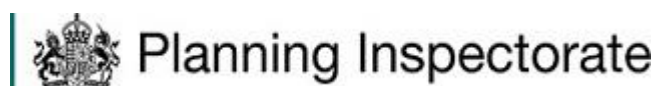
6. I have considered case law relating to cases such as this and in *North Devon District Council v FSS & Southern Childcare Ltd [2003] EWHC 157 (Admin); [2003] JPL 1191* it was determined that children cannot form a household and that if their carers do not live permanently at the property, the use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). The same principle applies to others who need care. Class C2 is defined as use for the provision of residential accommodation and care, other than within a Class C3 use.
7. The case of *R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin)* also confirms that *North Devon* does not lay down a principle that those who may need care can never constitute a household. It is necessary to focus first on those in occupation and ask whether they form a single household as a matter of fact and degree. It would be counter to the language of Class C3 to conclude that where care is needed, C3 only applies to where the carer-givers are resident. However, in this case, it cannot be said that those described as "a single household" form a single household because one of the two carers present on-site at any one time has their main dwellinghouse elsewhere, would not be permanent occupants of the appeal property and would only be present on a 24 hour shift basis. Therefore, in my planning judgment the proposed use would fall within C2 (residential institutions) of the UCO.
8. However, a change of use to a different use class only requires planning permission if it is material in planning terms. In this case, the appellant considers that the proposed use would fall within Class C3(b) and that the nature of the use as detailed in the application would not be materially different than a typical household in Class C3. In order to establish whether or not there would be a material difference a comparison between the existing and proposed uses must be carefully considered.
9. The house could quite easily accommodate a family and therefore the proposed use for one young person and a carer plus an additional carer on a shift basis would not be materially different from the authorised use as a single three bedroom family dwellinghouse. There would be some vehicle movements associated with carers coming to and going from the site on a daily basis in accordance with their shift patterns and there would be some journeys linked to taking the young person out to undertake normal day-to-day tasks or attend activities or appointments. The number of these movements is unlikely to be significantly more than the number that would be undertaken by a family and certainly 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. There is insufficient evidence before me to show that the use would be likely to result in greater levels of noise and disturbance than the existing authorised residential use.
10. The appellant will be required to comply with regulations and rules governing the operation of the accommodation for children and young people in care, including their supervision. Should these regulations be adhered to and the appellants meet the necessary staffing and management requirements, I do not find any reason why the use proposed would have planning impacts that would result in it being considered to be a material change of use.

Conclusion

11. For the reasons given above I conclude, on the evidence now available that the proposed use is not a material change of use from the lawful use as a single dwellinghouse falling within Class C3. Therefore, the Council's decision to refuse to grant a certificate of lawful use 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).

A A Phillips

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 8 September 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), would not represent a material change from the authorised use of the site as a Class C3 dwellinghouse.

Signed

A A Phillips

INSPECTOR

Date: 4th December 2024

Reference: APP/L2440/X/24/3337831

First Schedule

Class C3 (b) dwelling

Second Schedule

Land at 68 Newgate End, WIGSTON, LE18 2GG

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.

Plan

This is the plan referred to in this decision dated: 4th December 2024

by **A A Phillips**

Land at: 68 Newgate End, WIGSTON, LE18 2GG

Reference: APP/L2440/X/24/3337831

Scale: Not to Scale

