

Appeals Decisions

Site visit made on 31 October 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 6 December 2024

Appeal A: Ref: APP/P4415/X/24/3343437
19 Rotherham Road, Maltby, Rotherham S66 8ES

- Appeal A is made by Friends Together Care Homes Ltd / Friends Care Homes Ltd under section 195 of the Town and Country Planning Act 1990 against a refusal by Rotherham Metropolitan Borough Council to grant a lawful development certificate.
- The application Ref: RB2023/0988, dated 6 July 2023, was refused by notice dated 8 September 2023.
- The application was made under section 192(1)(a).
- The development for which the certificate is sought is the use of the dwelling as a children's home for up to two children.

Appeal B: Ref: APP/P4415/W/24/3343351
19 Rotherham Road, Maltby, Rotherham S66 8ES

- Appeal B is made by Friends Together Care Homes Ltd / Friends Care Homes Ltd under section 78 of the Town and Country Planning Act 1990 against a refusal by Rotherham Metropolitan Borough Council to grant planning permission.
- The application Ref: RB2023/1237, dated 12 September 2023, was refused by notice dated 30 November 2023.
- The development proposed is the change of use of the property to a children's residential care home (Use Class C2) for up to two children and the carrying out of associated works including the provision of cycle storage.

Decisions

Appeal A: Ref: APP/P4415/X/24/3343437

1. Appeal A is allowed and attached to this decision is a certificate of lawful use relating to the use described in the application, which I consider would be lawful if instituted at the time of the application.

Appeal B: Ref: APP/P4415/W/24/3343351

2. Appeal B is allowed and planning permission is granted for development at 19 Rotherham Road, Maltby, Rotherham S66 8ES consisting of the change of use of the property to a children's residential care home (Use Class C2) for up to two children and the carrying out of associated works including the provision of cycle storage, in accordance with the application reference RB2023/1237 dated 12 September 2023 and the plans submitted therewith, subject to the following conditions:-

1. The development shall begin not later than 3 years from the date of this decision.
2. The development shall be carried out in accordance with the approved plans.
3. The property shall be used as a residential care home for up to two children and for no other purpose (including any other purpose in Class C2 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)).

Reasons for the decisions

Appeal A

3. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the proposed use at the time of the application. The planning merits of the proposed use are not relevant to this appeal.
4. The Council refused the application for the following reason: -

"It is considered that based on the information provided the proposed use would constitute a use falling within Use Class C2 'Residential Institution' and that this would constitute a material change of use from Use Class C3 'Dwellinghouse.'"
5. 19 Rotherham Road is a Class C3 Dwellinghouse. Class C3(a) includes use as a dwellinghouse by people to be regarded as forming a single household – in other words, a family home (see 'Interpretation of Class C3' in the Order and refer to section 258 of the Housing Act 2004).
6. The proposed use of the house is as a children's home for up to two children, who could live there from the age of nine to the age of eighteen. This use would be within Class C2 and not within Class C3, because (i) the personal care of children is placed in Class C2 by Article 2 of the Order and (ii) the children would not form a household, on account of their age and their dependence on carers who were not permanently resident but would live in the home on a rota basis.
7. The change of use from a family home to a children's home for up to two children will not require planning permission if it does not amount to a material change of use for planning purposes. For this to occur there must as a matter of fact and degree be some significant changes in the character of the activities from the existing use as a family home that result in an impact on the use of land and buildings.
8. The appellants propose to manage the children's home as if it were a family home in all respects apart from the rotation of resident carers. They state that there would be two staff present during the daytime and a minimum of one overnight. The staff would work two-day shifts. They maintain that these arrangements would be no different from a family home with two parents.

- Parking for one car would be required and visitors would be encouraged to use public transport, or alternatively they should be able to find on-street parking.
9. The Council consider that this will result in a material change of use due to regular shift changes of staff, the number of staff on site and visiting the property during staff changeovers and the regular car journeys to and from the property. They consider that the property has insufficient parking and manoeuvring areas for the number of vehicles visiting and the outcome will be detrimental to highway safety.
 10. 19 Rotherham Road is a three-bedroom two-storey detached house with a forecourt at the front providing pedestrian access to Rotherham Road and a rear yard and parking area that is reached from Rotherham Road via Byford Road and an accessway. The parking area can accommodate two cars and there is limited on-street parking available away from Rotherham Road. Reversing movements take place. There is a frequent bus service on Rotherham Road. The house is close to a range of local amenities.
 11. When consulted about the application, the Council's Transportation Infrastructure Service stated that they had "no evidence to support or contradict the evidence submitted in support of the application". The existing use of the house as a family home generates a variety of traffic movements and a demand for parking facilities. I do not envisage that the proposed use as a children's home for up to two children will change the effect the existing use has on traffic conditions or on the demand for parking spaces, particularly as the children will either be too young to drive or be unlikely to have the use of a car if they have reached driving age. The movements of the staff attending the home and their parking needs would not be different to the number and type of movements and parking needs associated with residents and visitors to the existing use of the house.
 12. For the above reasons, I have concluded that there would not as a matter of fact and degree be a material change of use. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and the certificate has been granted.

Appeal B

13. The main issues in this appeal arise from the Council's three reasons for refusing planning permission. The issues are: (i) the effect of the proposed change of use on traffic and parking matters and (ii) safeguarding considerations relating to the children to be accommodated in the home.

Traffic and parking matters

14. The first two reasons for refusal relate to parking and traffic matters. They derive from the consultation response from the Council's Transportation Infrastructure Service, who recommended refusal of the application on the basis that the proposals would be an intensification of the use of the site, leading to additional on-street parking, reversing movements and highway obstruction. I concluded in relation to Appeal A that there would not be an intensification in the use of the site and I therefore do not accept that the change of use will adversely affect the state of affairs relating to traffic and

parking that already exists at the house when it is in use as a family home, a use that is likely to continue if this appeal is dismissed.

15. The Council have drawn my attention to an appeal decision relating to the refusal of planning permission for a change of use of a house to a children's home elsewhere in the Borough (APP/P4415/W/23/3316055). The concerns were different there, an important consideration being the likelihood of vehicles being parked on the pavement on a sharp bend in the road. The appellants have drawn my attention to other appeal decisions where permission has been granted for changes of use from a house to a children's home. All decisions are taken on their planning merits taking into account the specific circumstances arising at each site, as I have done in this appeal.

Safeguarding considerations

16. The third reason for refusal is that "The property is considered to be unsuitable for vulnerable young children due to its location in an area which is known to have a medium to high crime rate". I do not consider that this reason for refusal is justifiable, for the reasons set out in paragraphs 17 to 20 below.
17. The reason for refusal derives from the consultation response from South Yorkshire Police, which raised concerns "about the nature of this application due to its location in Maltby" and added "it seems quite inappropriate to place children, perhaps vulnerable children into a medium to high crime area". The response appears to call into question the whole of the town of Maltby.
18. The Council have not produced any further evidence in support of this reason for refusal. The appellants have produced evidence which indicates that crime rates are low within a one-mile radius of the house. They have also drawn attention to regulations enforced by Ofsted which require providers and managers to ensure that children's homes are located so that the children are safeguarded effectively and to review this requirement annually.
19. The Government announced in May 2023 that the planning system should not be a barrier to providing homes for the most vulnerable children in society and that it is important that the care system provides stable, loving homes close to children's communities. It advised councils to support applications, where appropriate, for accommodation for looked-after children and to consider whether it is appropriate to include accommodation for children in need of care as part of their assessment of housing need.
20. The Council have not drawn my attention to any local planning policies that directly reflect the May 2023 advice, but the Rotherham Local Plan places this house in a residential area and Policy SP11 of the plan states that all residential uses are to be considered appropriate in such areas. This includes use as a children's care home. In this instance, the children's care home will be very well located as far as its proximity to the community and to all local facilities are concerned.

Overall conclusion

21. For the above reasons, I have concluded that the appeal should be allowed and planning permission granted. The Council have suggested that four conditions should be imposed in this event. I have given effect to these suggestions apart

from Condition 04, which is not required since the area concerned is already hard surfaced.

D.A.Hainsworth

INSPECTOR