



Appeal Decision

No site visit made.

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 DECEMBER 2024

Appeal Ref: APP/P4605/X/23/3333826

193 Holyhead Road, Birmingham B21 0AS

- 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 Shokat Zaman (Care and Support Services Ltd) against the decision of Birmingham City Council.
 - The application ref 2023/05525/PA, dated 10 August 2023, was refused by notice dated 2 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 a change of use from a dwellinghouse (Class C3) to a children's care home, for a single child with three carers sleeping overnight and working on a rota basis. (Class C2)
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing a change of use from a dwellinghouse (Class C3) to a children's care home, for a single child with three carers sleeping overnight and working on a rota basis (Class C2), which is found to be lawful.

Preliminary Matters

2. Due to the nature of this case, it was determined that it was not necessary for me to conduct a site visit. I have based my decision on the evidence submitted with the appeal as part of the written representation procedure. The main parties were made aware of this fact, and no objections were made regarding the appeal being determined without a site visit.
3. Planning Practice Guidance (PPG) outlines that an LDC application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates¹.
4. The appellants describe the change of use from a dwelling to a children's home. However, this is a broad description, which could include a range of children's homes of a differing scale, nature, and levels of intensity. Furthermore, the Supporting Statement and Planning Statement were inconsistent, with one indicating a maximum of 2 carers working on a 24/7 rotational basis, and the other proposing 3 staff on a 48 hour rotational basis.
5. In view of the above, it was necessary to be more precise in the wording of the description, to outline what was specifically being applied for and to resolve any inconsistencies in the submissions. I proposed to change the description to

¹ Paragraph: 005 Reference ID: 17c-005-20140306

specify the proposals set out in the Planning Statement, namely, '*a change of use from a dwellinghouse to a children's care home, for a single child with three carers sleeping overnight and working on a rota basis*'. Both parties were consulted on the change to the description, and aside from the Council's request to include use classes, no significant concerns were raised. The description of the proposal has been amended, including reference to the use classes, and is reflected in the banner heading above.

6. In cases such as this, the onus rests with the appellant to make their case. The evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability. Matters such as planning policies and the effect of the development on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
7. The LDC application submissions included the application form, a block plan, a site location plan, existing and proposed floor plans, a Planning Statement as well as a Supporting Statement by Care and Support Services Limited. The appeal submissions included an Appeal Statement as well as Appendices, which included a copy of a highlighted appeal decision² as well as copies of the Council Officer Reports for the refused applications, Council references 2023/05525/PA and 2023/01380/PA.

Main Issues

8. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

9. A Class C2 use, as indicated in The Town and Country Planning (Use Classes) Order 1987 (as amended) ('UCO') includes the provision of residential accommodation and care to people in need of care (other than a use within Class C3). Class C2 can include use as a hospital, nursing home, residential school, college, or training centre, but in this instance, the LDC is seeking lawfulness in respect of a children's home for a single child with three carers sleeping overnight and working on a 48 hour rotational basis.
10. The two parties do not dispute that using the property as a children's home, where the carers are not full time residents, is a change of use from a Class C3 residential dwelling to a children's home, Class C2. Also, the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) does not allow a permitted change from a C3 to a C2 use class. However, 'development' is defined in section 55(1) of the Town and Country Planning Act 1990 (1990 Act) as including 'the making of any material change in the use of any building or other land'. It therefore follows that if a change of use is not a 'material' change of use then it would not constitute 'development' and could be lawful due to the provisions set out in 191(2) of the 1990 Act.
11. The appellant, therefore, seeks confirmation that the change of use is not 'development' as defined within section 55 of the 1990 Act. Consequently, the issue on which the appeal turns is whether the change of use to the children's home, as described, can be regarded as materially different to the existing use

² Appeal reference APP/M4320/X/22/3300634

as a dwelling house, which is based on a matter of fact and degree. For a material change of use to have occurred, there must be some definable change in the character of the use from what has gone on previously. *Case law*³ has also held that in cases such as this, the correct comparison to be made is between the actual existing or previous known use and the proposed use. The Court rejected the argument that it was appropriate to compare a proposed use with a notional use within the same Use Class in deciding whether there would be a material change of use.

12. The appellant has provided evidence to show that the actual previous use (last used in 2022) was as a single dwellinghouse by a family of five, which comprised two adults and three children. Although the appellant does not have specific details of how that family of five used the property, the typical characteristics and movements of a family of this size and composition was used as the baseline. In summary, this amounts to two adults, with the use of two private cars and at least one of them in full time employment. The three children were considered to be of school age.
13. The proposed use is as a children's home for a single child⁴, with three carers working on a 48 hour rotational basis. The provision of care proposed includes administration of any prescribed medication, assistance with meal preparation, personal hygiene and other requirements as necessary. The home will focus on children with emotional and behavioural needs, and the proposed mode of care seeks to replicate that of a typical family home. The placement at the home for the resident child is intended to be long term rather than a short term solution, or for emergencies.
14. A bedroom will be allocated to the child resident, and three to each of the carers. Shared facilities of a living space, kitchen, bathroom and garden would be used and shared by the occupant and carers. There will be no door locks and aside from the fitting of carbon monoxide detectors and fire alarms there will not be any external or internal changes made to the property. Administration work by the home manager will be carried out on their laptop, with no room allocated as an office space. There is no off street parking currently and none is proposed as part of the development.
15. Six carers would be operating on a regular shift pattern of 48 hours, which includes sleeping in the property, and a switch of staff every Wednesday, Friday, and Sunday. Two staff and one occupying child would be at the property most of the time, with persons visiting being largely restricted to staff members. An occasional third carer staying awake overnight could be present if and when required and a home manager visits regularly but does not stay overnight. There would also be a monthly visit from a social worker and occasional visits by Ofsted every 2 years. There is no indication that movements associated with the use would include any regular family visitation for the resident child at the property.
16. In terms of education, the Supporting Statement clarifies that an increase in the permanent staffing would not be needed for home education, rather an additional tutor may access the home in line with an education timetable. However, the Planning Statement sets out that the child resident in this instance is intended to be taken and brought home from school.

³ SSETRv Waltham Forest LBC[2002] EWCA Civ 300

⁴ Between the ages of 8 and 18 years old

17. A chart showing the movements associated with the proposed use has also been provided, and by way of a comparison, the typical number of comings and goings associated with the previous use has also been indicated. It includes movements for work, family visiting, a school run and social purposes over a week. Along with the carers, the staff movements suggest the home manager would visit regularly, but the location is accessible by public transport, and no cars are needed to accommodate the proposed use.
18. Based on the evidence before me, no structural changes are proposed to the property, and it is intended that the dwellinghouse would retain its character and appearance as a four bedroomed terraced dwellinghouse. Having regard to the position of the garden in association with neighbours as well as the number of occupiers and carers, the levels of noise and disturbance experienced by the closest neighbouring residents is unlikely to change.
19. From the evidence before me, the 48 hour shift change would mean the movements by carers are more infrequent. Also the staff movements would not be significantly different in scale or character to those that would have taken place by the previous family of five. In coming to this conclusion, I have also had regard to movements associated with an emergency carer as well as the home manager over a week. Furthermore, due to the accessible location, the limited parking requirements and the modest number of vehicle movements associated with the proposed use, it is unlikely to result in any definable change in traffic, parking stress and inconvenience for neighbouring residents.
20. For the most part there would be one resident in occupation and two members of staff occupying the site overnight at any one time, with a third attending as and when needed. As such, the number of persons occupying the property would be less than the actual previous use. The care also seeks to replicate that of a typical family home, with specific allocated bedrooms, no unique requirements and the use of the shared facilities in the same way. Accordingly, based on the evidence before me, the way in which the property would be used would not result in any definable change in the character when compared to the previous use of the dwellinghouse by a family of five.
21. Consequently, as a matter of fact and degree, the proposed use as a children's home for a single child, with three carers working on a 48hr rota basis would not result in a definable change in the character of the use from what has gone on previously. Accordingly, on the balance of probability, the appellant has demonstrated that the change of use is not material and, therefore, would not constitute 'development' having regard to section 55 of the 1990 Act.

Other Matters

22. I acknowledge that the Council has raised concerns over deficiencies in respect of the submitted information. However, I am satisfied that the appellant has provided sufficient information in respect of the previous use and proposed use for me to make a comparison.
23. Furthermore, my decision rests solely on the facts of the case, relevant planning law and judicial authority. Accordingly, planning considerations, such as the amount of amenity space and a fear of crime, cannot alter my determination on whether the proposed use is development or not.

Conclusion

24. For the reasons given above I conclude, on the evidence now available that, had the Council refused to grant a certificate of lawful use in respect of a change of use from a dwellinghouse to a children's care home (as described), that refusal would not have been 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).

M. P. Howell

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 10 August 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 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

In the circumstances of this case, the proposed change of use from a dwellinghouse (Class C3) to children's care home, for a single child with three carers sleeping overnight and working on a rota basis (Class C2) would not constitute a material change of use. Therefore, the proposed change of use does not require planning permission as it does not amount to development by virtue of Section 55 of the Town and Country Planning Act 1990.

Signed

M. P. Howell

Inspector

Date: 20 DECEMBER 2024

Reference: APP/P4605/X/23/3333826

First Schedule

A change of use from a dwellinghouse (Class C3) to children's care home, for a single child with three carers sleeping overnight and working on a rota basis (Class C2).

Second Schedule

193 Holyhead Road, Birmingham B21 0AS

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 the Lawful Development Certificate dated: 20 DECEMBER 2024

by **M. P. Howell BA (Hons) Dip TP MRTPI**

Land at: 193 Holyhead Road, Birmingham B21 0AS

Reference: APP/P4605/X/23/3333826

Scale: Not to Scale

