



Appeal Decision

Site visit made on 14 January 2025

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 26 February 2025

Appeal Ref: APP/D4635/X/24/3346777

24 Pugh Road, Bradley, Wolverhampton WV14 8PT

- 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 Robbie Steeles against the decision of Wolverhampton City Council.
 - The application ref 23/01349/CPL, dated 19 December 2023, was refused by notice dated 1 February 2024.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is to allow supported living within the dwellinghouse.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. For clarity, the application sought an LDC for the proposed use of the property to allow for supported living for residents under the jurisdiction of the Care Quality Commission and therefore 18 years of age and over. The appeal statement further clarifies that the supported living would be for up to four residents aged 18-24.
3. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
4. For the avoidance of doubt, the planning merits of the matters applied for are not relevant to this appeal and thus it is not for me to determine whether or not the proposed use of the property is acceptable. My decision is based on the facts of the case and judicial authority. The burden of proof is on the appellant to show that the development referred to in the application would have been lawful if begun on the date the application was made.
5. Both parties refer to the previous use of the property as a shop with residential accommodation. Planning permission was granted on 2 March 2023 for 'Removal of previous extensions and erection of new extensions to existing shop with residential accommodation. Erection of new 3 bed dwelling on land adjacent to existing.' Although not specified in the description of development,

the reasons for granting permission¹ as stated on the decision notice state that, although not specified in the description of development, 'The existing building is a former shop that has been closed for some time. The proposal will convert this shop into a dwelling and allow for a new dwelling to be built.' The existing plans show part of the ground floor to accommodate the shop. The proposed plans show that space as accommodating a kitchen, utility room and cloakroom.

6. Taking a pragmatic view, I consider that, interpreting the planning permission as a whole and on the balance of probabilities, the property has had the effect of a grant of planning permission as a dwelling by virtue of s75 of the 1990 Act. Furthermore, there is no dispute between the parties that the existing use of the appeal property is as a dwellinghouse falling within Class C3 of Part C of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO).

Main issue

7. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This will turn on whether the proposed use as a home for up to four residents (18 to 24 years old) where care is provided by non-resident staff on a shift basis, would fall within Class C3 of the UCO and if not whether the use proposed would be a material change of use.

Reasons

Whether the use falls within Class C3

8. The appellant considers that the proposed use would fall within Class C3(b) of the UCO and, by virtue of the provisions of section 55(2)(f) of the 1990 Act, would not amount to development. It is for this reason that they suggest that the proposed use of the appeal property would be lawful. For the purposes of the UCO, Class C3(b) is a use as a dwellinghouse, whether or not as a sole or main residence and occupied by not more than six residents living together as a single household where care is provided for residents.
9. The Council consider that the proposed use would go beyond a Class C3(b) use and would instead reflect the operation of a residential institute providing care to young adults who would occupy the property under Class C2 of Part C, Schedule 1 of the UCO and that this would be materially different in character to the use of the property in a Class C3 use. It is for this reason that the proposed use would involve development for which planning permission would be required.
10. Use Class C2 (residential institutions) is for the provision of residential accommodation and care to people in need of care (other than a use within Class C3), as well as use as a hospital or nursing home and use as a residential school, college or training centre. Within Article 2 of the UCO, 'Care' is defined as "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". The appellant considers that the care that would be provided would not fall within the terms as set out in Article 2 of the UCO.

¹ LPA Ref: 22/01341/FUL

11. The proposed use is said to be for supported living for young adults with specific care requirements, and non-resident staff. The young adults are described as having been adversely affected by circumstance and need a safe and secure place to live for up to two years. They are also considered to be of an age when they can take care of themselves, and that non-resident staff would provide a low level of care with no medical procedures or personal care.
12. The staff would assist the young adults by providing help to develop life skills to enable them to live independent lives after they leave the home. Each young adult would have their own bedroom and would share the communal space with the others and the non-resident care givers. It is the intention that the young adults and staff would live a communal life as a single household integrating with the wider community, as would a family unit.
13. Direction on the definition of a C3(b) or C3(c) single household may be deduced from the Court of Appeal case of *R (Hossack) v Kettering BC* [2002] EWCA Civ 886. This concerned the use of three adjacent properties to provide temporary accommodation for young people in need of such accommodation. The Council had decided that the way the houses were occupied was a C3 use. This was challenged by a neighbour who contended that the houses were used for hostels which required planning permission.
14. The Court of Appeal held that it was too prescriptive to say that people who come to a house neither as a preformed group nor for a predetermined period, and with merely "a common need for accommodation, support and resettlement" will necessarily fail to enjoy a relationship which enables them to be regarded as living in a single household. The precise nature of the relationship between the residents will be a material consideration, but it is not necessarily determinative. A fact and degree assessment is required as to whether, in the circumstances, they live together as a C3(b) single household receiving care or the use is a C2 care home.
15. I have also considered case law brought to my attention relating to *North Devon District Council v FSS & Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 and *R (oao Crawley BC) v FSS & the Evesleigh Group* [2004] EWHC 160 (Admin) where it was held that *North Devon* (which determined that children cannot form a household without the presence of a resident caregiver) is not to be read as laying down a principle that those who suffer from disability and may need care in the community can never constitute a household for the purposes of Class C3 and that if the carers are not resident, it is necessary to focus on those in occupation and ask whether they form a single household as a matter of fact and degree.
16. In the case before me, while the proposed level of care is described as low, there would be a requirement for 24-hour care by non-resident carers, who it seems, with no allocated sleeping quarters, would generally operate a waking shift through the night. In the absence of fuller details concerning the care plan for the residents, it seems to me that the support proposed may well go beyond the level of care that might be provided in a functioning single household. This level of care may indicate that those in need of care would not be able to live by themselves unaided and function as a single household because they would not be capable of undertaking the tasks associated with running and living within a dwellinghouse.

17. Therefore, I find it more likely than not that the proposed use of the property would, as a matter of fact and degree, be one that falls within Class C2 of Part C of Schedule 1 of the UCO, and not within Class C3(b) of the same Part. It does not, however, automatically follow that the proposed change from a use falling within Class C3(a) to a use falling within Class C2 would be a material change of use, such that it would fall within the definition of development set out in section 55(1) of the 1990 Act and require planning permission. Despite the proposed change from one use class to another, for a 'material' change of use to occur, there would have to be some definable change in the character of the use when compared to what has gone on previously.

Whether the proposed use constitutes a material change of use

18. Although there is no statutory definition of 'material change of use', to establish whether there is a material difference is linked to the significance of a change between the existing primary use and the resulting impact of the proposed use on land and buildings. Whether a material change of use would occur is a matter of fact and degree and this is determined on the merits of a case.
19. The appeal property is a detached two-storey house in a predominantly quiet residential area and one where the houses are largely in single occupancy as family homes. There are residential properties either side and to the front of the appeal site and these are closely spaced. To the rear is a recreational public park. Pugh Road forms part of a circular road with Baker Road and Wells Road. The properties are mostly semi-detached and have limited off-street parking to the property frontage. The roadway is narrow with no dedicated footways and on-street parking is likely constrained.
20. The property is shown as having a kitchen/dining room, a lounge, one bedroom, a shower room and a w.c. and a further reception room on the ground floor. On the first floor, plans show there to be 3 bedrooms, a shower room and a bathroom. There are no internal or external changes proposed. To the front of the property is an expanse of hard surfacing with parking space for 3 vehicles. From the outside there would be nothing to visually differentiate any change between the existing and the proposed use of the property.
21. It is suggested that the existing use as a dwellinghouse could accommodate several adults, such as two parents and 17+ year-olds who all have their own cars and travel independently to work, school, for hobbies, social visits, and receive visitors. The appellant contends that in terms of the residents' comings and goings, there would be little difference from its use as a large family house. Although this may well be the case, the more valid comparison is with the current use, as described by the appellant, that is its occupation by a family of two adults and four children.
22. In addition to the residents, the appeal statement suggests that the proposed use would have two on-duty staff, who would provide 24-hour cover with changeover times occurring between 09.30 and 10.30 each day. Thus, it seems that two members of staff would be on duty for a 24-hour shift. Depending on needs, it is suggested that there may be a requirement for staff to sleep at the premises. In such circumstances, only three residents would be accommodated at the appeal property.

23. Submissions dated November 2023, which accompanied the LDC application, however, state that there would generally be up to three members of staff on a shift basis providing 24-hour care, and support for community access such as for appointments, activities and shopping. One or two staff members would be at the property and sleep there at night depending on the needs of the residents, although this would not be their principal place of residence. Staff would be on site as required and rotas designed to accommodate the individual needs of the residents. It is suggested that staff changeover would likely be at 7.30am and 7.30pm each day, thus the staff would be on duty for a 12-hour shift.
24. The potential activity that could arise is unclear as different approaches to providing care have been suggested with different shift patterns and numbers of staff. It is also unclear regarding whether staff would sleep overnight or not. One pattern indicates employees on shift for 24 hours, however there are no dedicated staff facilities said to be provided, and it seems to me that a 24-hour shift would be unlikely without respite. In this respect I find that the details regarding the proposed operation of the supported living home are unsure and in the absence of a care plan or management plan, it is not entirely clear how the property would actually function.
25. The appellant states that the residents would attend educational facilities and that care within the home would be limited to support with life-skills. While it is claimed that no medical procedures or personal care would be provided, it is also said that the residents would not require 'an unusual amount of nursing or medical care'. Notwithstanding this, the submissions refer to staffing levels being dependent on the 'needs of the residents', which suggests to me that an increased level of care could be required at times.
26. It is stated that visits by any other care staff or clinicians would not be frequent and visits from social workers and the NHS would generally be undertaken at the 'day opportunity', doctors' surgery, or hospital. Visits for purposes such as maintenance, social services, Ofsted, CQC inspections would be on an ad-hoc basis as required. It is also said that family visits would not be encouraged at the property and would generally take place elsewhere. Notwithstanding this, it is expected that there would be 4-5 visits by non-staff per day. What is meant by 'non-staff' is not explained.
27. The level of activity for a property providing supported living, as considered by the appellant, may not be dissimilar to that of a dwellinghouse occupied by a single family consisting of two parents and four children. However, the proposed change of use could be material and the use far more intensive than would be expected from a normal family use. While I accept that medical matters may well occur mostly at the doctors' surgery or hospital, depending on the individual needs of the residents, I would expect visits from social workers and other professionals to be on a fairly regular basis and for appointments to take place at the property, as well as visits from family members. Therefore, I consider the proposal has the potential to be a significant change in the character of the existing use, by reason of associated noise and disturbance generated by factors such as shift patterns, change overs and visitors. To conclude otherwise, I would need more detail regarding how the proposed use would actually operate at the property.

28. I have noted the decisions of other councils referred to by the appellant in their planning statement. I have not, however, been provided with the particular circumstances of each of these cases. It may well have been that the residents of the properties in question, to whom care was to be provided, were themselves capable of forming a household. The lack of detail of those cases referred to means that I am unable to make an informed comparison with the case that is before me. Those examples do not, therefore, alter my conclusion above.
29. Overall, the case lacks precision and clarity and creates an element of uncertainty. This makes it difficult to properly evaluate the precise character of the proposed use and, more importantly, whether, how, or to what extent, it would be different from the existing use of the property or how it was last used. Without such information I am unable to conclude that the proposed use of the property would be lawful if implemented on the date the LDC application was made.

Conclusion

30. For the reasons given above I conclude, on the evidence available, that the council's refusal to grant an LDC to allow supported living within the 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.

S A Hanson

INSPECTOR