



Appeal Decisions

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal A Ref: APP/C1950/X/23/3325924

48 The Runway, Hatfield, Hertfordshire, AL10 9GL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (“the Act”) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Lina Chirandura (Savannah Lodge Ltd) against the decision of Welwyn Hatfield Council.
 - The application Ref: 6/2022/2506/LAWP, dated 1 November 2022, was refused by notice dated 24 November 2022.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which a LDC is sought is use of a dwelling C3(a) as a children's home for a maximum of four children, with three carers, two carers of whom sleep overnight, working on a rota basis (C2).
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Appeal B Ref: APP/C1950/W/23/3325982

48 The Runway, Hatfield, Hertfordshire, AL10 9GL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (“the Act”) against a refusal to grant planning permission.
 - The appeal is made by Savannah Lodge Ltd against the decision of Welwyn Hatfield Council.
 - The application reference is 6/2023/0989/FULL.
 - The development proposed is for the change of use of use of a dwelling C3(a) to a children's home for a maximum of four children, with three carers, two carers of whom sleep overnight, working on a rota basis (C2).
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DECISIONS

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.
2. **Appeal B** is allowed and planning permission is granted for the change of use of a dwelling C3(a) to a children's home (C2) for a maximum of four children, with three carers, two carers of whom sleep overnight, working on a rota basis at 48 The Runway, Hatfield, in accordance with the terms of the application, Ref: 6/2023/0989/FULL, and the plans submitted with it, 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 48TR-DRA-01, 48TR-DRA-03.
 3. The property shall be used as a residential care home for up to 4 children between the ages of 8 to 18 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.

4. Prior to the commencement of the use of the children's home, a Management Plan (MP) shall be submitted to and approved in writing by the Local Planning Authority. The MP shall include the following details:
 - a) Details of vehicle movements and parking arrangements related to residents, staff, deliveries and other services associated with the use.
 - b) Details of how any instances of disturbance or noise related to the use of the property will be monitored and managed.

The use shall not operate other than in accordance with the approved MP.

APPEAL A

Main Issue

3. I have taken the description of proposed development from the application form as originally submitted to the Council. The main issue is whether the Council's decision to refuse the application for a LDC was well founded. This turns on whether the proposed change of use from a single dwellinghouse within Use Class C3(a) of the UCO¹ to a use as a children's home within Use Class C2, as described in the application and in more detail in the planning statement and submitted plans, would be lawful.

Reasons

4. It is common ground that the proposed use would not be statutorily exempt or benefit from planning permission under any Order. Instead it is argued that the proposed C2 use, as described, would not be so significantly different in character from the current use so as to constitute a 'material change of use' (MCU) and consequently would be lawful without the need for planning permission. The burden of proof in this regard, tested on the balance of probabilities, falls to the appellant.
5. The concept of a MCU is not defined in statute or in any statutory instrument, it is a question of fact and degree in each individual case. As set out in long established case law, for a MCU use to occur there must be a significant difference in the character of the new activity from what has taken place previously. Off-site impacts of any new activity may be relevant material considerations in making such a judgment, although they are not determinative by themselves and should not be considered in isolation.
6. No.48 is a 2 storey detached dwellinghouse with rooms in the roof, comprising living room, dining room, kitchen, hall and WC at ground floor, 3 bedrooms and a bathroom at first floor, and 2 further bedrooms at second floor. Outside to the front and side there is a garage with driveway and small garden area, and an enclosed garden to the rear.
7. The proposed use would make no changes to the exterior of the property. Internally, one of the bedrooms at first floor would be used as an office with the

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

- remaining 4 bedrooms occupied by up to 4 resident children between the ages of 8 and 18 years.
8. The children would be looked after 24 hours a day continuously by 6 staff carers working on a rotating shift pattern. Other than changeover times, there would be no more than 3 carers on the premises at any one time. There would be one changeover of the overnight care staff per day, usually 8am each morning, which would last for around 10 minutes. A manager, also a carer, would usually visit the site at some point each day between 9am and 6pm.
 9. The children who would occupy No. 48 would not be living together as a single household, since the children could not form a household without the presence of a permanent resident carer, as established in *North Devon*². While that is the case, and hence differs to that extent from single household occupation in Use Class C3(a), I note that the proposed residential use and day to day living would operate and reflect, as closely as possible, that of a typical family house.
 10. The Council's concerns that disturbance from anti-social behaviour would be more likely as an impact of the proposed use are not supported evidentially. Moreover, the operation and provision of care services and supervision of occupation would be regulated and controlled in compliance with OFSTED³ standards. As such, I have no reason to consider that off-site impacts with regard to this matter would be significantly different in the local area compared to currently.
 11. The appellant's existing and proposed use comparison tables indicate likely movements to and from the property. Overall, even accepting the figures may be an under-estimate of trip movements, I find it unlikely there would be any significant increase in movements over that which could be expected from occupation of a 5 bedroom family home.
 12. I also note the parking provision within the property and the limited on-street parking in this tight knit residential housing layout. However, since the children will either be under the legal age for driving, or unlikely to have the use of a car if they are above the legal age, and given that the number of movements of staff and their parking needs would not be substantially different to those existing for residents and visitors to a 5 bedroom house, I find there would be no significant increase in the demand for parking space, or effects on highway safety, above that which currently exists.
 13. Bringing all these points together on a fact and degree basis, I find overall that the proposed use would not result in a definable change in the character of the use of the property compared to the current C3(a) residential use. As such there would be no material change of use.
 14. I have reviewed the other appeal decisions referred to by the parties. However the circumstances are not exactly the same as those before me. Each case must be considered on its own individual facts and circumstances, as I have done so in this appeal.

² *North Devon District Council vs FSS and Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191

³ Office for Standards in Education, Children's Services and Skills

Appeal A - Conclusion

15. For the reasons given above, I conclude on the evidence now available that the Council's refusal to grant a certificate of lawful use or development for use of a dwelling (C3a) as a children's home for a maximum of four children, with three carers, two carers of whom sleep overnight, working on a rota basis (C2) was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in s195(2) of the Act.

APPEAL B

Main Issue

16. Different to Appeal A, this Appeal B seeks planning permission for a MCU from Use Class C3(a) to a use within Use Class C2. Since a MCU would go *materially* beyond the level of use and impacts I have found would be lawful in Appeal A, I consider Appeal B on that basis.
17. Having regard to the Council's reasons for refusing the application the main issue in this appeal is whether the site is a suitable location for a children's home with particular regard to: the effect on the character and appearance of the area, highway safety, and the living conditions of neighbouring occupiers in terms of noise and disturbance.

Reasons

18. Following the refusal of planning permission the Council has since adopted the Welwyn Hatfield Borough Council Local Plan (2023) (LP). I have taken account of the adopted LP policies in reaching my decision.
19. The location and internal and external layout of No. 48 is the same as described in Appeal A and as shown in the plans submitted with the application.
20. Residential homes such as that proposed in this appeal meet an important need in providing a stable environment for children to develop, based on a model which seeks to reflect, as far as possible, a typical family home and day to day living within communities. As such, the proposed residential use does not in principle conflict with LP Policies SADM9, SP1 or SP7 or with the provisions relating to housing and sustainable development within the National Planning Policy Framework (2023).
21. Concerns regarding the potential for disturbance from occupiers is referred to by the Council and also by local residents. In addition the Police have provided details of how similar homes both locally and nationally have in some cases resulted in problems for neighbouring occupiers due to disruptive behaviour from home occupiers.
22. However, I note the home could not operate without being registered with OFSTED and would be regulated and controlled in compliance with their standards and inspections. Moreover, since the proposal is for up to 4 children this level of use (and no other use within Use Class C2) could be controlled through the imposition of a planning condition.

23. Additionally, as alluded to by the Police, and suggested by the Council and the appellant, a management plan could also be secured and implemented by a planning condition. Amongst other matters this could include, for example, how any problems affecting neighbours would be recorded and managed, contact phone numbers for neighbours to report incidents, and other measures and safeguards to deal with any identified persistent problems. As such, the use would be controlled and managed effectively so as not to conflict with the requirements of LP Policies SP9, SADM11, and SADM18.
24. As described previously the current on-site parking provision relates to a 5 bedroom dwellinghouse with limited off-site provision. Given planning conditions would control occupancy and management of the use I have no reason to consider the proposed use would result in any significant increase in demand for parking space, or any on significant adverse effect on highway safety or efficiency than currently exists. As such, there would be no material conflict with the requirements of LP Policies SADM2 or SADM12.
25. For these reasons, subject to appropriate planning conditions, I find there would be no significant adverse effect upon the character and appearance of the area, the living conditions of occupiers of nearby properties, or on highway safety. The proposed use would thereby satisfy the requirements of the LP policies and with the Development Plan as a whole.

Other Matters

26. Concerns raised by third parties with regard to property values and covenant restrictions are not material planning considerations.

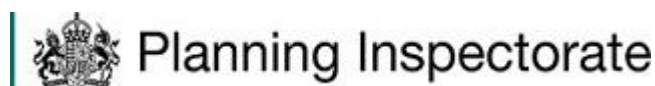
Conditions

27. In addition to the standard time limit condition (1), conditions are necessary to require the development to be carried out in accordance with the approved plans (2), and to restrict the level and nature of occupation so as to provide certainty in respect of the proposed use and its management (3 and 4).

Appeal B - Conclusion

28. For all these reasons, the appeal is allowed.

Thomas Shields



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 1 November 2022 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 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed change of use of the dwelling house from Use Class (C3a) of Part C of Schedule 1 of the Town and Country Planning (Use Classes) Order 1987, to use as a children's home within Use Class C2 of Part C of Schedule 1 of the Order, for a maximum of four children between the ages of 8 to 18, with three carers, two carers of whom sleep overnight, working on a rota basis, would not constitute a material change of use and thereby would not be 'development' as defined by section 55 of the Town and Country Planning Act 1990 (as amended).

Signed

Thomas Shields

INSPECTOR

Date: 26 March 2025

Reference: APP/C1950/X/23/3325924

First Schedule

Use as a children's home within Use Class C2 of Part C of Schedule 1 of the Order, for a maximum of four children between the ages of 8 to 18, with three carers, two carers of whom sleep overnight, working on a rota basis.

Second Schedule

Land at 48 The Runway, Hatfield, Hertfordshire, AL10 9GL

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: 26 March 2025

by Thomas Shields

Land at: 48 The Runway, Hatfield, Hertfordshire, AL10 9GL

Reference: APP/C1950/X/23/3325924

Scale: Not to Scale

