
Appeal Decision

Site visit made on 18 February 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 15th April 2025

Appeal Ref: APP/M4320/X/24/3336414

34 Kensington Road, Southport PR9 0RT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Sophie Horton of Phoenix Leaving Care Solutions Ltd against the decision of Sefton Metropolitan Borough Council.
 - The application ref: DC/2023/01211, dated 11 July 2023, was refused by a notice dated 4 September 2023.
 - The application was made under section 192(1)(a) of the 1990 Act.
 - The use for which a LDC is sought is existing family home proposed to be a children's care home C2 for two children.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs Sophie Horton of Phoenix Leaving Care Solutions Ltd against Sefton Metropolitan Borough Council. This application for costs is the subject of a separate decision.

Preliminary Matters

3. I have taken the description of the use, within the banner heading above, from the appeal form.
4. In order for a certificate of lawful use or development to be granted, the onus is on the appellant to show that the proposal would be lawful at the time the application was made. For proposed developments, an appellant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. The appellant should make out their case to the standard of the balance of probabilities.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a LDC is 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 of the Town and Country Planning (Use Classes) Order 1987 (UCO) as amended.

Reasons

6. The appeal property is a two-storey semi-detached dwellinghouse situated within a predominantly residential street but there are commercial uses including a large retail park close to the dwelling. The accommodation comprises a lounge, dining

room, kitchen and utility at ground floor with three bedrooms and a bathroom on the first floor. Externally, there is a rear garden and on-site parking for 2 vehicles to the front. There is no dispute that the lawful use of the property is as a dwellinghouse falling within class C3(a) of the UCO and that the proposed use would fall within Class C2 of the UCO. Nevertheless, whilst children cannot form a household without the presence of a resident caregiver, as held in *North Devon District Council vs FSS and Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 a change from C3(a) to C2 will not always be material. It will be a matter of fact and degree, depending upon the circumstances of the case in question.

7. This requires a comparison between the character of the proposed use and that of the established lawful use of the property. A Statement of Purpose accompanied the LDC application. It is proposed that the appeal site would offer supported semi-independent accommodation and an independent programme that is structured and planned for the individual's needs. The children would be aged 16 years plus, with the facility supporting and guiding them to fulfil their potential. The children would be supported by support workers and the manager on a rota basis. At least one member of staff would sleep overnight at the house.
8. The appellant's statement of case indicates that there would be one member of staff on duty at all times with the smaller bedroom used as a staff bedroom overnight. It goes on to state that staff change over is proposed at 10:00 with approximately half an hour handover period and that the dining room would be used as the staff office. It is also stated that there will be no multi agency visits to the property apart from a social worker visiting every 8 weeks. I acknowledge that the appellant considers that the proposed use would involve considerably less movements to and from the property, with only one car space being occupied apart from the short handover period, when compared to how the property was occupied prior to the submission of the LDC application.
9. However, the Statement of Purpose indicates that *'staffing levels and how these are organised will depend on support needs of individuals using the service. Support provided during night time hours will again depend on the needs of the young people in the home. The homes manager will usually be available on site through Monday to Friday and on some weekends.'* That document also states that all young people will have an Individual Support Plan which is drawn up and agreed with the young person, social worker and other professionals. It goes on to state that each placement will be subject to statutory reviewing and that review meetings are held to monitor, evaluate and modify if necessary, the current Placement Plan. It indicates that the resident, social worker, support worker, home manager, parents and any other appropriate parties will attend the meetings.
10. Therefore, the potential movements that could arise due to staff arriving and leaving the property is unclear as the submissions refer to staffing levels being dependent on the *'support needs of individuals'*, which suggests to me that an increased level of care could be required at times. The appellant has confirmed that she will be the manager of the property and will be taking part in the shift arrangements. However, it is not clear if she would be on site through Monday to Friday, as stated within the Statement of Purpose, in addition to a support worker.
11. Moreover, the evidence provided within the Statement of Purpose with regards to the review meetings potentially conflicts with the evidence that there would be no

multi-agency visits to the property. I acknowledge that it is possible that the review meetings may not take place at the property. Yet, I would expect that at least some of those meetings would more than likely be held at the property given that they are reviewing the individual's progress at the property. Therefore, there is insufficient clarity as to the frequency of visits from any support professionals. Furthermore, the Statement of Purpose indicates that family and friends are welcomed and encouraged and reference is made to a visiting friends and family policy and procedure. However, no further details are provided with regard to how the visits of family and friends would be managed.

12. The appellant has stated that the property was occupied by a couple and their 2 teenage children prior to the submission of the LDC application. The appellant suggests that the use by that family would have included journeys to and from work for the couple in the week and at the weekend shopping and social trips. It is also stated that the teenagers would have travelled to and from school and had friends round to visit during evenings and weekends. It is not clear how many vehicles, if any, those occupiers had access to. Moreover, there is limited specific detail regarding the actual or even estimated number of weekly movements associated with the occupation by the couple and their teenage children. It is not my role to cast around for that evidence or to make assumptions about how many movements that family made in a typical week or day. The onus in this respect is firmly on the appellant as details of its actual use or last known use are what is needed to compare with what is proposed. This is so it can be determined whether or not the proposed use would be materially different (i.e. have some definable difference in character) to the existing or last known use.
13. In any case, as stated above it is unclear as to what the proposed weekly movements associated with the proposed use and the staff, social workers, other support professionals, friends and family of the residents would be. Overall, the evidence lacks precision and clarity and there are several elements of uncertainty. As a result, the current evidence does not enable an evaluation to be undertaken of the precise character of the proposed use and, more importantly, whether, how, or to what extent, it would be different from how the property was last used. Therefore, I am unable to conclude that the proposed use of the property would be lawful if instituted or begun at the time of the LDC application.
14. The appellant has drawn my attention to a number of other cases, including appeal references 3161037: The Cottage, Stonebridge Green Road, Egerton, Ashfield, 3263178; 214 Dale Road, Matlock Bath and 3277353; 20 Briery Hey, Bamber Bridge, Preston. The appellant has indicated that in those cases the Inspectors found that the proposed change of use was not material. However, I have no substantive details of the cases cited and cannot therefore be sure that they are comparable to the appeal scheme before me. Additionally, a grant of a LDC is dependent on the appellant demonstrating, on the balance of probability, that the proposed use or development would be lawful. Therefore, the proposal before me is determined on the basis of the specific evidence submitted with this case.
15. As stated above, the onus of proof rests with the appellant to demonstrate, on the balance of probabilities that the proposed use does not amount to a material change of use. That burden has not been discharged in a precise and unambiguous manner. As with all LDC applications, it is open for fresh applications to be made if, for example, additional evidence can be provided.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of existing family home proposed to be a children's care home C2 for two children 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.

D Boffin

INSPECTOR