
Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 1st May 2025

Appeal Ref: APP/P4605/X/24/3342875

433 College Road, Kingstanding, Birmingham B44 0HE

- 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 Mr Anthony Walters against the decision of Birmingham City Council.
 - The application ref: 2023/07030/PA, dated 22 February 2024, was refused by notice dated 8 April 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a LDC is sought is supported living accommodation for 16–25-year-olds.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the existing use within the banner heading above is taken from the application form.
3. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability. The appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
4. Having considered the evidence submitted, the main considerations in this case, and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were, however, sought on this matter before my determination of the appeal. No objections to this were raised.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded. In this case that turns on whether the existing use falls within Class C3 - Dwellinghouses - of the Town and Country Planning (Use Classes) Order 1987 (UCO) as amended. Additionally, if the existing use does not fall within Class C3 of the UCO whether a material change of use has occurred

Reasons

6. The appeal property is a two-storey semi-detached dwellinghouse situated within a mixed residential and commercial area. The plans submitted with the LDC

application indicate that the accommodation comprises a lounge, education room, kitchen and toilet at ground floor with three bedrooms and a bathroom on the first floor. Externally, there are front and rear gardens and on-site parking on a drive to the front. From the evidence before me it appears that the lawful use of the property is more likely than not as a dwellinghouse falling within class C3(a) of the UCO.

7. Section 55(1) of the 1990 Act provides the meaning of development, which includes the making of any material change in the use of any buildings or other land. In accordance with the provisions of section 55(2)(f), in the case of buildings or other land which are used for a purpose of any class specified in the UCO, the use of the buildings or other land for any other purpose of the same class shall not be taken to involve the development of the land. A use is lawful under the provisions of section 191(2)(a) of the 1990 Act if no enforcement action may be taken in respect of it whether because it did not involve development or require planning permission or because the time for enforcement action has expired.
8. The appellant's evidence states that specialised support for young adults that may present with challenging behaviours and/or emotional needs, 24 hours a day, 365 days a year is provided at the property. He goes on to state that the property can accommodate 2 service users and that there are always at least 2 members of staff on site with every service user, with the homes manager in the house as well. At the time of the appeal the property is occupied by a one young adult according to that evidence. The appellant considers that the young person resides in the home as their main residence, and the property provides the facilities typically associated with a dwellinghouse, including sleeping accommodation, a kitchen, and bathroom facilities. He also states that the property is not being used for any commercial purposes, and there is no change in the overall character of the dwellinghouse and that the use of the property aligns with the definition of Class C3 of the UCO, as it is being used by a single person with learning disabilities who requires care. It is for this reason that he suggests that the existing use of the appeal property is lawful.
9. Class C3 is a use as a dwellinghouse, as a sole or main residence and occupied for more than 183 days in a calendar year by:
 - (a) a single person or by people to be regarded as forming a single household;
 - (b) not more than six residents living together as a single household where care is provided for residents; or
 - (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).
10. I acknowledge that Class C3(b) describes residents living together as a single household where care is provided for residents. However, the appellant states that there are always at least 2 members of staff on site for each service user with the homes manager in the house as well. There is little evidence to indicate that the care staff would reside at the property. It is more likely than not based on that statement that their occupation of the property would only be for the duration of their shift. Moreover, there is no suggestion that the appeal property would be the sole or main residence of the care staff including the homes manager.
11. The Council has drawn my attention to the case of *North Devon District Council v First Secretary of State* [2003] EWHC 157 (*North Devon*). This case is similar to

that before me in that, whilst the children might have been resident full time within the property, the care providers were not. In that case it was determined that the children resident in the property could not be regarded as a household on their own. It was said that children needed to be looked after and that they could not run a house; the full time care of an adult was needed to ensure that the household operated as it should. In that case it was determined that the concept of living together as a household meant a proper functioning household had to exist. Mr Justice Collins said that this requires a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household. It was said that, otherwise, the use of the premises would fall within Class C2 of the UCO which relates to residential institutions and includes the use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

12. The *North Devon* case confirms that for the proposed use to fall within Class C3(b) there must exist a single household. The evidence before me indicates that there is little difference between the *North Devon* case and the circumstances in the case before me. The appellant describes the young people as requiring care and support 24 hours a day. This indicates that those young people would be unable to live as a household; that full time care is necessary to ensure that the household would operate as it should. As it appears as those providing the care would not reside at the property full time, they cannot be regarded as living together with the young people as a single household. As such, I cannot agree with the appellant, that the existing use is the sole or main residence of not more than six residents living together as a single household, in accordance with Class C3(b).
13. The Council considers that the existing use is a 'sui generis' use that does not fall within a Use Class of the UCO. As there is little evidence provided on the specific support or care provided for the young people it is not clear if the use falls within Class C2 of the UCO or is a 'sui generis' use as suggested by the Council. It does not, automatically follow that the change from a use falling within Class C3(a) to a use falling within Class C2 of the UCO or another use would be a material change of use. 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.
14. Whilst some evidence has been submitted with regard to the existing use, I must also understand how the property was last used prior to the start of the existing use. There is little in the appellant's evidence to establish this. Details of its actual last known lawful use is what is needed to compare with the current use. Moreover, it is unclear as to what the current weekly movements associated with the existing use and the staff, social workers, other support professionals, friends and family of the young people are. As a result, the current evidence does not enable an evaluation to be undertaken of whether, how, or to what extent, the current use is different from how the property was last used.
15. Overall, the evidence lacks precision and clarity. Without such information I am unable to conclude that the existing use of the property as supported living accommodation for 16–25-year-olds was lawful on the date the LDC application was made. 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 a LDC for supported living accommodation for 16–25-year-olds is 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