



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 2nd May 2025

Appeal Ref: APP/P4605/X/24/3343417

11 Burcote Road, Birmingham B24 0RJ

- 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: 2023/07031/PA, dated 11 March 2024, was refused by notice dated 24 April 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a LDC is sought is a children's home.
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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. However, the appeal form indicates that the use as a children's home is a proposal and one of the third-party representations to the LDC application states that in March 2024 the property was unoccupied and had been for at least a year. Yet the LDC application was made under section 191(1)(a) that any existing use of buildings or other land is lawful. I have therefore determined the appeal on that basis.
3. I note that the evidence before me refers to the planning merits of the case. Nevertheless, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. 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 main 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.

Reasons

6. The appeal property is two-storey and semi-detached situated within a mainly residential area. The plans submitted with the LDC application indicate that the accommodation comprises a lounge, kitchen and garage at ground floor with three bedrooms and 2 bathrooms on the first floor. 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 Town and Country Planning (Use Classes) Order 1987 (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. 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 the appeal property is a children's home focusing on daily living skills, health and wellbeing and education, employment & training for young people over the age of 14 years. He goes on to state that the property can accommodate two young people, it has two bedrooms, one with an ensuite comprising of a shower and WC the other bedroom without ensuite but has a separate shared bathroom with bath, WC and sink. Nevertheless, the plans indicate that the property has 3 bedrooms.
9. The evidence also indicates that staff can provide 1:1 support in the communal areas, or off site within the community and that support staff are on site 24 hours of the day. It indicates that staff include a Team Manager, a Senior Support Worker, Support Workers and Night Wake Staff. The appellant considers that the use of the property as a children's home falls within Class C2 Residential Institution under the UCO. On the appeal form he states that the nature of the operation as a children's home will be residential in character and will not generate excessive noise, traffic, or other disturbances.
10. The Council have stated that based on the submitted evidence that it is not clear as to whether the 'existing use' falls within Class C2 of the UCO given that there was no detail as to what 'support' is actually provided to the residents (the only detail was the support that could be provided). 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.
11. 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. In addition, there is little detail submitted with regards to the current day-to-day running of the property, the specific numbers of staff likely to be on site at any one time, their shift patterns, if any of the staff reside at the property and the current weekly movements associated with the existing use and the staff, social workers, other support professionals, friends and family of the young people. Therefore,

there is ambiguity as to what the 'existing use', at the date of the LDC application, constituted.

12. As a result, the evidence before me does not enable an evaluation to be undertaken of the precise character of the existing use and, more importantly, whether, how, or to what extent, it would be different from how the property was last used. Overall, the evidence lacks precision and clarity. Without such information I am unable to conclude that the use of the property as a children's home 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

13. For the reasons given above, I conclude that the Council's refusal to grant a LDC for a children's home 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