
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/24/3343427

35 Cavandale Avenue, Great Barr, Birmingham B44 9TW

- 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: 2023/07028/P, dated 11 March 2024, was refused by notice dated 17 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.
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, semi-detached and situated within a mainly residential area. The plans submitted with the LDC application indicate that the accommodation comprises a lounge, kitchen and lounge/reception at ground floor

with three bedrooms and a bathroom 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 who may need support with becoming fully independent citizens in the community. He goes on to state that specialised support for young adults that may present challenging behaviours and/or emotional needs, 24 hours a day, 365 days a year is provided.
9. The evidence also indicates that the property can accommodate 2 service users and that there is always at least 1 member of staff on site with every service user and the home manager based in the house also. It is also stated that the front door of the property locks when closed, all internal doors have thumb locks fitted, to ensure they remain accessible without a key for service users or staff in the event of an emergency. The house has weekly checked fire alarms on each floor, and a secure key safe and medication cabinet only accessible to staff.
10. 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 staff currently provide 1:1 support in the communal areas, or off site within the community.
11. The Council have stated that based on the submitted evidence that it is not clear as to whether the children's home use falls within Class C2 of the UCO given that there was no detail as to what 'care' is actually provided to the individuals residing at the property. 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.
12. Whilst some evidence has been submitted with regard to the use as a children's home, 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 use as a children's home, at the date of the LDC application, constituted.

13. 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 afresh application/s to be made if, for example, additional evidence can be provided.

Conclusion

14. 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