
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/24/3343416

602 Chester Road, Sutton Coldfield, Birmingham B73 5HJ

- 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 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. 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 detached, and it is situated within a largely residential area. The floor plans submitted with the LDC application indicate that the accommodation comprises a kitchen/dining area and what appears to be 4 units of accommodation

- on the ground floor and 5 further units of accommodation on the first floor (all with en-suite bathrooms and a few with what appears to be a kitchen/kitchenette).
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 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 5 service users and that there is always at least 1 member of staff on site with every service user, with the homes manager in the house as well. Nevertheless, the appeal form states that at the time of the appeal the property is occupied by one young adult who is supported by 2 members of staff and an on-call manager at all times. The appellant considers that the use of the property aligns with the definition of a Class C2 Residential Institution under the Town and Country Planning (Use Classes) Order 1987 (UCO), as it is used for the provision of residential accommodation and care. He also states 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. He goes on to indicate that it has weekly checked fire alarms on each floor, and a secure key safe and medication cabinet only accessible to staff.
 9. The appellant's evidence also indicates that the 5 service users have spacious and fully furnished bedrooms, 2 living rooms and a kitchen. Nevertheless, that evidence does not correlate with the submitted floor plans showing what appears to be 9 units of accommodation and a kitchen/dining room.
 10. The Council's Officer Report includes a planning history section relating to the appeal property. That planning history indicates that in February 2018 planning permission¹ was granted, subject to conditions, for a change of use from dwelling house (Class C3) to house in multiple occupation (Sui Generis), erection of two storey side and two and single storey rear extensions to allow for the creation of 8 bedsits and communal kitchen and living room. In November 2019 planning permission² was granted, subject to conditions, for a change of use from HMO (House in Multiple Occupation) (Sui Generis) to children's home (Use Class C2), retention of single-storey rear extension and retention of lean-to roof over existing single-storey rear extension (in lieu of approved flat roof).
 11. Copies of the decision notices relating to those planning permissions are not before me. Moreover, there is little evidence before me to indicate, that for the purposes of section 56 of the 1990 Act, whether development was begun in accordance with either or both of those planning permissions prior to the expiry date that would be controlled by planning condition/s on those permissions. The appellant has indicated on the LDC application form that the 'existing use' began on the 1 March 2023 but there is no corroborating evidence such as statutory declarations from him or other parties to support that date. Moreover, the submitted floor plans appear to indicate that the property was laid out as 9 units of accommodation, at the time the

¹ Ref No: 2017/09647/PA

² Ref No: 2019/04482/PA

LDC application was submitted, which may have constituted a house in multiple occupation (HMO). Therefore, the evidence before me is not precise and lacks clarity in these respects.

12. In addition, there is little detail submitted with regards to the 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. Moreover, due to the ambiguity with regard to the above planning permissions it is also unclear as to what the last lawful use of the property was.
13. Overall, the evidence lacks precision and clarity. Without such information I am unable to conclude that the use of the property for 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 a fresh 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 certificate of lawful use or development 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 (as amended).

D Boffin

INSPECTOR