
Appeal Decision

Site visit made on 15 August 2025

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

an Inspector appointed by the Secretary of State

Decision date: 12th September 2025

Appeal Ref: APP/Y3425/X/25/3361084

18 Brocton Crescent, Brocton, Stafford ST17 0SY

- 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 A Byrne of ProCare Children against the decision of Stafford Borough Council.
 - The application ref 24/39316/LDCPP, originally dated 26 June 2024, was refused by a notice dated 9 January 2025.
 - The application was made under section 192(1)(a) of the 1990 Act.
 - The use for which a certificate of lawful use or development is sought is use as a residential care home (Class C2) for 2 young people & 2 members of staff working on a shift basis (no material difference from existing C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed use was amended during the determination of the LDC application. Therefore, I have taken the description of the use, within the banner heading above, from the appeal form.
3. 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

4. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

5. The appeal property is a two-storey detached dwellinghouse situated within a predominantly residential street but there are commercial uses including a petrol filling station nearby. The dwelling has recently been extended and now comprises a lounge, kitchen/dining area on the ground floor and four bedrooms and 2 bathrooms on the first floor. I noted at the site visit that the dwelling is currently undergoing refurbishment. Externally, there is a rear garden, a garage and a hard landscaped parking area to the front and side of the dwelling.

6. There is no dispute that the lawful use of the property is as a dwellinghouse falling within Class C3(a) of the Town and Country Planning (Use Classes) Order 1987 (UCO) as amended 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. The meaning of “development” as defined at section 55(1) of the 1990 Act includes the making of any material change in the use of any buildings or other land. Therefore, this case turns on whether the proposed use is a material change of use from the existing use as a dwellinghouse. As stated within the submitted appeal decision¹, at appendix EP3 of the appellant’s statement of case, *‘for a material change of use to have occurred, there must be some definable change in the character of the use from what has gone on previously. Caselaw has also held that in cases such as this, the correct comparison to be made is between the actual existing or previous known use and the proposed use. The Court rejected the argument that it was appropriate to compare a proposed use with a notional use within the same Use Class in deciding whether there would be a material change of use.’*
8. In respect of the proposed use the evidence before me indicates that there would be no external changes to the dwelling or the site. Two children would live at the property with 2 carers working on a shift basis and a manager would work between the hours of 08:00 and 16:00. The 2 carers would sleep at the property and each carer, and each child would have their own bedroom. The bedrooms would have thumbprint locks on each of the doors.
9. There would be a maximum of 4 cars parked at the site during the staff handover periods of 07:30 to 08:00 at the start/end of the 2 days on, 4 days off shift pattern for the carers. The manager’s car would also be present on site when they are working from the property. Trips to and from the site would be derived from transporting the children to and from school, shopping, activities and any appointments. It is also stated that the children would not drive vehicles themselves and that the children cared for would not have extensive health needs.
10. The hard landscaped parking area could accommodate up to 7 cars and there is a bus stop nearby. Ofsted inspections would take place every 12 months, appointments with healthcare professionals would take place elsewhere and visits by social workers may take place but the frequency of those visits is unknown. There may also be visits from family and friends but again the frequency would be dependent on each child’s circumstances. Nevertheless, the appellant had stated that these visits would more than likely be outside of the handover period and they would be staggered. The trips generated by the proposed use would therefore appear to be similar to that of a family with 2 or 3 children of school age.
11. There would be an element of unfamiliarity between the occupants of the appeal property and local residents due to the changeover of staff. However, I acknowledge that the proposal is for a small-scale children’s home and there

¹ Rf No: APP/P4605/X/23/3333826

would be a 48-hour shift system in place and as such the level of unfamiliarity associated with the proposed use would be low.

12. The appeal property does not appear to be currently in use as it is being refurbished. Moreover, there is no evidence to suggest that it has been in use since it has been extended. Whilst the property can now accommodate a large family there is no evidence before me as to the number of persons who last occupied the property as a single dwellinghouse. It could have been occupied by an elderly person living alone or a large family. As stated previously, caselaw has held that the correct comparison to be made is between the actual existing or previous known use and the proposed use.
13. 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. As a result, the current evidence does not enable an evaluation to be undertaken of whether the proposed use would or would not be materially 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 several other cases, including appeal decisions² and Council decisions³. The appellant has indicated that in those cases the Inspectors/Councils found that the proposed change of use was not material. I acknowledge that in some of those cases reference is made to a typical family or notional use by a large family. However, as highlighted above the caselaw indicates that the comparison must be made with the existing or last known use. Moreover, 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 a certificate of lawful use or development for use as a residential care home (Class C2) for 2 young people & 2 members of staff working on a shift basis (no material difference from existing C3) 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

² APP/K0615/X/05/2004825, APP/P9502/X/13/2205394, APP/K2420/X/11/2155849, APP/C5690/X/22/3299351, APP/P4605/X/23/3333826 and APP/P4415/X/24/3343437

³ Application No: 24/39537/LDCPP and Application No: 24/00540/PLD