



Appeal Decision

Site visit made on 23 April 2025

by **E Brownless BA (Hons) Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 05 November 2025

Appeal Ref: APP/C1570/X/24/3342932

Helvetica, Watling Lane, Thaxted, Essex, CM6 2RA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended)(the “Act”) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Secure Base Homes Ltd against the decision of Uttlesford District Council.
 - The application ref: UTT/24/0458/CLP, dated 20 February 2024, was refused by notice dated 8 April 2024.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is described as ‘*Change of Use to a Children’s Home*’.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has indicated on the appeal form that the LDC application was made under section 191 of the Act which concerns an existing use of the building. However, the application was originally made under section 192 of the Act for a proposed use of buildings and other land. The appellant’s evidence and comments of interested parties point to the property having been used as a children’s care home for a brief period albeit the property is described by the appellant as being vacant at the time of the LDC being made and its use at that time as being a ‘*nil use*’.
3. As part of this appeal, the appellant has clarified that their appeal is made under section 192 of the Act for a proposed use of buildings and other land. I have therefore considered the appeal before me on the basis of it being an application for a LDC for a proposed use of buildings and land.
4. The appellant fails to clearly set out within the application form a description of the use which is sought. The description provided within the appeal form is also imprecise and vague. Again, as part of this appeal, the appellant has clarified that the proposed use for which a LDC was sought is a ‘*change of use to a Children’s Home*’. This description accords with the Council’s certificate of refusal which cites a ‘*Change of Use to a Children’s Home*’. I have considered the appeal on this basis.
5. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. The planning merits of a proposal are not

relevant to the question of lawfulness. In an LDC appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities.

Main Issue

6. The main issue is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

7. An application under section 192(1)(a) of the Act¹ seeks to establish whether (a) any proposed use of buildings or other land would be lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development would be lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
9. Section 55(1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land. Section 55(2)(f) of the Act provides in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.
10. Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO) concerns dwellinghouses and includes use as a dwellinghouse (whether or not as a sole or main residence) by (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). Article 2 of the UCO provides that "care" means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.
11. In the event that I find the proposed use would fall within Class C3(b), then there would be no development by virtue of section 55(2)(f) of the Act. Even if I find the use of the property would not fall within Class C3(b), it does not follow that a change of use will always be material. Were I to find, for example, that the proposed use would fall within Class C2, which is use for the provision of residential accommodation and care to people in need of care (other than a use

¹ Town and Country Planning Act 1990 (as amended)

within class C3 (dwelling houses)), whether the change would be material will be a matter of fact and degree, depending upon the circumstances of the case in question.

12. The Council's certificate of refusal cites a 'Change of Use to a Children's Home' and the Council determined the application on the basis that what has been applied for proposed a change of use of the appeal property to a Class C2 residential institution of the UCO. Whilst this matter does not appear to have been disputed by the appellant, the provision of '*accommodation for a single child*' with staff offering '*round-the-clock-support*', as is described by the appellant in their supporting information, could fall into other use class categories.

Whether the proposed use would fall under Class C3

13. Use Class C3 (Dwellinghouses) is split into three parts:
 - C3(a) a single person or people living together as a single household, as defined by the Housing Act 2004;
 - C3(b) not more than six people living together as a single household and receiving care; and
 - C3(c) not more than six people living together as a single household with no care provided and who do not fall within the C4 definition of a house in multiple occupation.
14. All categories of Class C3 require the occupiers to be living together as a single household. It is therefore necessary to focus upon those in occupation and consider whether they would form a single household, as a matter of fact and degree. Since children cannot form a household without the presence of a care-giver, a 'children's home' cannot fall within Use Class C3 unless a care-giver is resident.
15. The appellant has pointed to 24-hour care being provided but it is not known whether that person would be living permanently at the property as part of the household or whether carers would operate on a shift basis and therefore would not be resident and thus not regarded as living together in a household. From the information before me, there is ambiguity regarding precisely what change of use is sought by the appellant. The evidence is not sufficiently precise to indicate that the use should be considered to fall within Use Class C3(b).
16. As such, it is necessary to consider whether a proposed change of use to Use Class C2 would be a 'material' change of use, as a matter of fact and degree in the circumstances of the individual case.
17. There is no statutory definition of a 'material change of use' and it is therefore necessary to consider the significance of a change and the resultant impact on the use of land and buildings. In assessing the materiality of a change of use, it is necessary to compare the proposed use against the existing actual use of the appeal site rather than a notional use or level of occupation that might be within the use class.
18. The original application fails to set out the actual use of the site at the time of the LDC application being made. The appeal form describes a '*nil*' use. The evidence before me points to the property being vacant at the time of the application being

made and the property being unoccupied from the 1 September 2023 to 27 February 2024 after the property being briefly used as a 'children's home' in August 2023. However, the fact that a property is not occupied does not necessarily amount to a nil use. It is not clear whether a change of use which was not material to a C2 use occurred in August 2023, or whether a material change of use occurred in August 2023 to a C2 use, or whether the use comprised a C3 use.

19. As such, there is ambiguity surrounding the actual existing use of the property at the time of the LDC application being made, and the correct baseline against which the proposed use should be compared to. The submitted information is inadequate to establish the character of activities undertaken previously.
20. Although some routine maintenance and repairs may be undertaken at the property, the appellant sets out that no external or internal alterations to the property are required to enable the proposed use. As such, these changes would not materially alter the basic character of the property as a dwellinghouse.
21. Little detailed information has been provided to explain the age and needs of the child/children and the extent of support that would be likely to be required by that child. The evidence is absent of any detailed information that describes how and by whom the property was used, the number of vehicles that were at the property, the frequency, timings and type of mode of travel of occupants' movements to and from the appeal site. The extent of visitors and deliveries to the property are also unknown.
22. In addition to the number of carers that would be required to provide care for a child at the property being unknown, their associated comings and goings are also not understood. Furthermore, the appellant's evidence also sets out that a second child may be accommodated albeit subject to "appropriate matching" and in this instance, it is unclear whether additional staffing requirements would arise as a consequence.
23. There is, in my experience, a likelihood that there would be visits by family, friends and professional visitors such as healthcare workers, social workers and Ofsted. It is also not clear from the evidence how any child would be educated and whether this would be undertaken within the property or if not, whether additional visitors to the property in the form of educational providers would be necessary, or whether additional trips to and from the property to an off-site educational provider would be likely.
24. In the absence of detailed information about the likely number of staff working at the property and the anticipated extent of movements of occupants, staff and visitors to and from the appeal site, an assessment of the extent of the likely activity at the property cannot be properly understood. Accordingly, for the reasons explained above, an analysis of the materiality of change between the existing and proposed uses cannot be properly assessed.
25. Although the appellant has suggested that the proposed development would provide a safe and supportive environment for vulnerable members of the community and submits that the scheme is in conformity with national, regional and local planning policies, these issues would form part of the planning merits of the proposed change of use and they form no part of the assessment for a LDC which must be considered in light of the facts and the law.

26. On the evidence before me, the appellant has failed to show that, on the balance of probabilities, the use of the appeal property as a children's home would not constitute a material change of use. Accordingly, the appeal must fail.

Conclusion

27. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development 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 Act.

E Brownless

INSPECTOR