



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2026

Appeal Ref: APP/X1355/X/25/3359936

18 Dene Terrace, Shotton Colliery, Durham DH6 2QX

- 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 Ms N Hussain, Welcare Global Limited against the decision of Durham County Council.
 - The application ref DM/24/02282/CPO, dated 20 August 2024, was refused by notice dated 17 December 2024.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which an LDC is sought is use of a dwellinghouse (C3a) as a children's home for a maximum of one child, with two carers, with one sleeping overnight, working on a rota basis (C2).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The parties were advised that a site visit was not necessary and would not be carried out.

Main Issue

3. The main issue is whether the Council’s refusal to issue an LDC was well founded. This will turn on whether the change of use of the building to use as a children's home described above would have been lawful if it had been made on the date of the application.

Reasons

4. Under section 191(2) of the Act a use may be found lawful if no enforcement action may be taken in respect of it and it does not contravene any requirement of an enforcement notice then in force. There was no relevant enforcement notice in force when the application was made, so it only needs to be determined whether enforcement action could have been taken if the proposed use had begun then.
5. The definition of development in section 55(1) of the Act includes “the making of any *material* change in the use of any buildings or other land” (emphasis added). It follows that making a change of use that is not material is not development requiring planning permission, meaning that enforcement action cannot be taken against it.
6. For a material change of use to occur, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.

7. The proposed use of the dwellinghouse is occupation by one child, aged between 8 and 18, with a total of 3 carers working a rota system. The child and carers would eat and carry out domestic chores together. The appellant states that 2 carers would be at the premises between 0930 and 2130, reducing to one overnight, with each carer working for 2 days followed by 2 days' leave.
8. The Council considers that information to be inconsistent with the appellant's statement that there would be "changeover of one overnight care staff per day," usually at 0930. While it seems that could be achieved with 3 carers, perhaps with the one who had stayed overnight going on leave the next morning, it has not been shown how the pattern would be sustained if they had 2 days off, as stated. It is more likely that 3 carers would need to work in co-ordinated 2 days on/1 day off patterns over a 6-day cycle for the stated level of care to be achieved.
9. It is therefore not clear how the comings and goings of carers would only be "one change over every couple of days," as set out in the appellant's planning statement. The alternative that "there would be one staff changeover a day" in her statement of case seems more realistic. However, this does not account for all comings and goings, which would include the evening departures and morning returns of the carer not staying overnight. Overall, it appears the appellant may have underestimated the number of movements made by carers.
10. There is further uncertainty about the visits made by the manager. The appellant's statement of case variously describes them as "for example per day," "usually ... at some point during the working day," and "during the working week." Collectively, these suggest daily visits, or possibly Monday to Friday, if that is what is meant by the working week. In contrast, a table of comings and goings submitted with the application shows the manager visiting on Monday, Wednesday, and Friday only. This ambiguity is surprising when the appellant's planning statement indicates that the estimated comings and goings are based upon experience of other homes.
11. The appellant argues there is little material difference between the proposed and the previous uses, the latter being described as a family dwelling. However, little detail of the previous use is provided. The appellant suggests it "could typically have two parents with their own cars and possibly children with their own cars," confirming that it is not a current use and that a degree of conjecture is involved.
12. The appellant's approach runs counter to the judgment in *Waltham Forest*¹ in which the court did not accept that it was appropriate to compare a proposed use with a notional use within a use class when deciding if there would be a material change of use. The court held that the interposition of a notionally permitted use between the existing use and the use applied for is a complication not relevant to the exercise under section 192 of the Act. The correct comparison is therefore with the actual use on the date the application was made, or when the property was last used before then.
13. There is some other evidence of the previous use in the current owner's estimate of vehicle movements, set out in a table in the planning statement, which relies on information provided by neighbours. The methodology is not explained, so it is unclear whether the typical total of 60 movements each week is from observation or assumption. Furthermore, it is surprising that neighbours could estimate vehicle

¹ *Waltham Forest LBC v SSETR & Tully* [2002] EWCA Civ 330.

movements but not, it seems, identify the composition of the resident household that would have given rise to those movements.

Conclusion

14. The appellant's case lacks detail of the last actual use and presents uncertainty about the patterns of arrivals and departures in the proposed use. Consequently, it has not been demonstrated, on the balance of probabilities, that there would not be a significant difference in the character of the activities between the 2, and that the change of use would not be material.
15. Accordingly, and for the reasons given above, I conclude that the Council's refusal to grant an LDC for use of a dwellinghouse (C3a) as a children's home for a maximum of one child, with two carers, with one sleeping overnight, working on a rota basis (C2) 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.

Mark Harbottle

INSPECTOR