The Planning Inspectorate

Appeal Decision

Site visit made on 30 May 2024

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/Q3820/X/24/3336877
79 Denchers Plat, Langley Green, Crawley, West Sussex RH11 7TR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Valicity Care Services Ltd against the decision of Crawley Borough Council.
- The application, Ref CR/2022/0793/192, dated 7 December 2022, was refused by notice dated 25 October 2023.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described as: Use of existing dwellinghouse as a children's home.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. By a letter dated 16 May 2024, arrangements were made for me to visit the appeal site on 30 May 2024, accompanied by a representative of the Council and the appellant. This was in response to Question 2.b. of the Questionnaire. A representative of the Council met me at the appeal site at the appointed time but nobody attended on behalf of the appellant to provide access to the building.

3. Having since reviewed the case, I am satisfied I may determine the appeal based on the information provided and without entering the appeal building. This is because the case turns on the facts of the proposal. Neither main party has indicated any objection to this approach.

Main Issue

4. The main issue is whether the Council's decision to refuse the application was well-founded.

Reasons

5. Under section 192(1) of the 1990 Act, if any person wishes to ascertain whether any proposed use of buildings or other land would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use in question.

6. Under section 192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the use described in the application would be lawful if instituted at the time of the application,

they shall issue a certificate to that effect; and in any other case they shall refuse the application.

7. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.

8. Section 57(1) of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Section 55(1) of the Act provides that "development" includes the making of any material change in the use of any buildings or other land.

9. The Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) specifies use classes for the purposes of section 55(2)(f) of the 1990 Act. Section 55(2)(f) provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class.

10. In this case, the use of the appeal site would change from a dwellinghouse (Use Class C3) to a children's home. The appellant states that it would be for 4 young people (aged 10 to 15) and a team of 2 care/support staff "living together" as a single household. But from the information provided, it is clear that the appeal site would not be the place of residence for any care/support staff.

11. It was held in *North Devon DC v FSS & Southern Childcare Ltd* [2003] JPL 1191 that the definition of 'care' in Article 2 of the Use Classes Order restricts the personal care of children to class C2 only and that children cannot form a household without the presence of a care-giver. So a children's care home cannot fall within class C3 unless a care-giver is resident. This means that in this case there would be a change of use from C3 to C2.

12. But it does not follow that a C2 use would necessarily be materially different to a C3 use. So the dispute in this case is focused on whether the change of use from C3 to C2 constitutes a material change of use for the purposes of section 55(1) of the 1990 Act.

13. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, 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.

14. Langley Green is a suburban residential area and the appeal site is an end-of-terrace house, perpendicular to the road, with a front and back garden. On the public footway to the side of the house is a narrow stretch of dropped kerb, leading to a small garage, facing the road, on the appeal site. The appellant and the Council agree that there is provision for 2 car parking spaces on-site/off-street and I have no reason to disagree with this view.

15. From the information provided, the house has 6 bedrooms (one of which is on the ground floor) and a ground floor store in addition to other rooms usually found in a dwellinghouse, ie a kitchen, lounge, dining room, WC and washing facilities. The proposal would see the ground floor store converted to a games room, the ground floor bedroom converted to an office and an upstairs bedroom converted to a store.

16. According to the appellant, the total number of residents and carers will not exceed 6. The Council's view is that this number is within the parameters of a single household size. However, 4 staff may be on site during handovers between shifts. It is said these would take place in the morning, at 1000 to 1030, every day.

17. On the balance of probability, during this time, 4 vehicles associated with the use would be parked at the site. This has not been disputed by the appellant. This being the case, given a maximum of 2 vehicles could be accommodated on the site itself, the other vehicles would contribute to the demand for parking in the area.

18. In this regard, the Council has described the road as congested. Based on the limited information provided, I have no reason to disagree with this assessment. Moreover, it is consistent with my own observations at my site visit, which took place at a similar time to the proposed handovers.

19. The appellant states that the area is well-served by public transport and that not all the staff will drive to work. But these points have not been further substantiated and they are at least in part contradicted by the appellant's acknowledgement that vehicles will be used to escort children to school and other activities. On the balance of probability, this leads me to believe that staff will access the appeal building by car.

20. So I am not satisfied that the use will not contribute to the demand for car parking in the area, with an associated change in the character of the activities on the land as a result of the comings and goings of staff, to their place of work, every day, as well as the comings and goings of the children escorted by the staff.

21. From the information provided, the children in the home would not be related. So on the balance of probability, they are likely to attend different schools and participate in different extracurricular activities. This is likely to result in more separate movements to and from the appeal building than would arise from a single family occupying the building.

22. I have taken into account that daily staff handovers would take place at what the appellant describes as a sociable hour. But there is no mechanism available to me to secure this and, in any event, in this case it would make no difference to the effect of the proposed use on the character of the activities on the land.

23. The home would be the main or sole residence of young people staying short to medium term and the staff would change daily. So occupants of the appeal building will change often. This is significantly different to a dwellinghouse and points to a significant difference in the character of the activities on the land from that use. Nothing has been provided to lead me to a different view.

24. My attention has been drawn to appeal decisions and recent approvals elsewhere, at least some of which are said by the appellant to be "identical". But from the information provided, I am not satisfied that any of the examples put forward by the appellant contain circumstances which are identical to the case before me. Either they have different staffing arrangements, a different context in terms of car parking or they are not for as many as 4 children (or they do not specify how many children they are for).

25. The exceptions to this are approvals from Swindon (Ref: S/LDP/21/0804/RACH, dated 12 August 2021) and Maidstone (Ref: 20/500576/LAWPRO, dated 8 April 2020), each for a maximum of 4 children. But I have not been provided with all of the facts of these 2 cases, to know if their circumstances are directly comparable to the case before me and each case turns on its own facts in any event.

26. I recognise that approving this proposal may provide accommodation for looked after children who are residents of the Council, to ensure that they continue in their family environment, continue to access resources like education in the community for stability and they are not cut off from the family and significant people which is a challenge with out of catchment placement.

27. I also recognise that Ofsted may expect that looked after children are as much as possible placed in the authority of residence as a priority due to the aforementioned reasons. But these are planning merits arguments and Planning Practice Guidance is clear that planning merits are not relevant at any stage in the LDC application or appeal process. So I cannot take these arguments into account.

28. The appellant states that the proposal would not cause disruption to the neighbouring occupiers above what might be expected for the existing house or a typical family dwelling with up to 6 occupants. But it is the change in the character of the use, rather than whether 'disruption' would occur, which is the relevant test. A lack of disruption is a planning merits argument, which I cannot consider in an LDC case.

29. On the application form, it is stated that 'the use is permitted development'. But this does not form the basis of any of the appellant's written submissions and there is no evidence the proposed use would benefit from any right available under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) either.

30. Taking all of the above into account, as a matter of my planning judgement, on the balance of probability, I consider that there would be a significant difference in the character of the activities on the land as a result of the change of use in this case and so the change of use would therefore be material and planning permission is required. The appellant's evidence falls short of demonstrating otherwise and consequently the burden of proof that rests with the appellant has not been discharged.

Conclusion

31. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of: 'Use of existing dwellinghouse as a children's home', was 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).

L Perkins

INSPECTOR