



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: 02 July 2025

Appeal Ref: APP/C1570/X/24/3352800

32 Tyler Avenue, Flitch Green, Essex, CM6 3GB

- 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 Mr Edward Anning of Aktive Kids Limited against the decision of Uttlesford District Council.
 - The application ref: UTT/24/1919/CLP, dated 27 July 2024, was refused by notice dated 23 September 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 ‘use of a (3a) dwelling as a children’s home for up to three children, with a manager and three carers, two of whom will sleep overnight, working on a rota basis (C2)’.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council’s decision to refuse the certificate of lawfulness is well-founded. This will turn on whether there would be a material change of use from the lawful use as a single dwellinghouse falling within Class C3a to the proposed use as a home for up to three children, with a manager and three carers, two of whom will sleep overnight, working on a rota basis.

Reasons

3. An application under section 192(1)(a) of the Act seeks to establish whether any proposed use of buildings or other land would be lawful. Section 192(2) sets out that if on application under this 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.
4. Planning merits form no part of the assessment of an application for a lawful development certificate (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 proposed development would be lawful.
5. The appeal property is a two and a half storey detached five-bedroom dwelling located within a predominantly residential area. To the front of the property is a double garage and areas of maintained lawn, vegetation and hardstanding. The submitted block plan shows the hardstanding area would provide parking for four vehicles and which, based upon my observations, is sufficient to enable users to

enter and leave in a forward gear. The plan also shows that two vehicular parking spaces would be contained within the garage, however, given the presence of two external parking spaces immediately to the front of the garage doors, I consider it is unlikely that the garage would be frequently used due to inconvenience of accessing those spaces.

6. As established in *Gravesham*¹, the distinctive characteristic of a dwellinghouse is its ability to afford those who use it the facilities required for day-to-day private domestic existence. Those characteristics are not lost if the dwellinghouse were to be occupied for only part of the year, or at infrequent intervals, or by a series of different persons, or if it was under commercial management.
7. The appeal property would be used as a specialist children's care home to support up to three children who have been diagnosed with learning disabilities, and/or emotional and/or behavioural difficulties. It is intended that children would remain at the property on a medium to long-term basis and that their length of stay would be more than temporary or passing. It is not intended that it would be a 'halfway' house or provide overnight emergency lodgings.
8. The children would be cared for by a manager and three carers, two of whom would remain at the property and sleep overnight. Six carers would operate on a rota basis with a shift pattern of 48 hours on, followed by 60 hours off. Shift changeover of one of the overnight care staff would occur every 24 hours and usually take place around 10am. A manager and/or third carer would visit the site most days between 9am and 5pm. It is claimed that there would be no more than four staff members at the property at any one time, with the exception of staff changeover times, which are expected to last fifteen to thirty minutes.
9. The Council refused the LDC application on the basis that it deemed the proposed development was not in accordance with Schedule 2, Part 3 of the Town and Country Planning General Permitted Development Order 2015 (as amended) and it was not therefore permitted development and it would require planning permission. However, the main thrust of the appellant's case is that the proposed change would not be development for the purposes of the Act.
10. Section 55(1) of the Act defines the meaning of development as '*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change (my emphasis) in the use of any buildings or other land*'.
11. It is stated that children residing at the property would not have special or additional needs, and so the use would not be considered to be Use Class C2A of the Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO). In the case of *North Devon District Council v First Secretary of State and Southern Childcare Ltd [2003] EWHC 157 (Admin)*, it was held that children cannot form a household without the presence of a care-giver and so a children's home cannot fall within class C3 unless a care-giver is resident. There is no dispute between the parties that, on the basis of what has been applied for, the proposed use would be a change of use of the appeal property from Class C3(a) to Class C2 of the UCO. Notwithstanding this, a change of use from C3(a) to C2 will not always be material and it will be a matter of fact and degree, depending upon the circumstances of the case in question.

¹ *Gravesham BC v Secretary of State for the Environment & O'Brien* [1983] JPL 306

12. Although the appellant points to paragraph 25 of Circular 05/2010 as being relevant, this publication has now been cancelled. 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.
13. The Council has provided limited information regarding any analysis of the materiality of the proposed change of use. Despite this, I am required to have regard to whether the refusal to grant an LDC is well-founded and not whether the Council's reasons for the decision were well-founded. I have had regard to the appellant's evidence in order to assess whether the change of use will be 'material'.
14. No external alterations to the property would be undertaken except for some emergency lighting as required by Ofsted. Any alteration to external lighting would have no visual distinction from normal lighting. Some internal changes would also be necessary to fulfil Ofsted requirements such as fire doors, lockable bedroom doors and lockable furniture to store personal items of the children. However, overall, these changes would not materially alter the basic character of the property as a dwellinghouse. In considering this matter, I have had regard to a previous appeal decision² which has been referenced by the appellant and whereby the Inspector gave consideration to the effect of the inclusion of an office and fire alarm as part of a change of use to a children's home.
15. The appellant argues that use class C3 of the UCO is broad in scope and that, as a consequence of the lawful use of the dwellinghouse, it could bring with it considerable activity, associated ancillary use, and vehicular movement. It is suggested that the prevailing character of the proposed use would be that of a small group of children living together and using the property in a way similar to that of a family home where they would be cared for and supervised by adult guardians. It is conceded that whilst there may be identifiable differences between the existing and proposed uses, these would not be 'material' or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwellinghouse.
16. In assessing the materiality of a change of use, it is necessary to compare the proposed use against the existing actual use rather than a theoretical or historical past use. The appellant has provided a comparison in tabled form of the '*Current Weekly Movements (estimated previous occupants)*' (Schedule 1) set against the '*Proposed use (based upon experience of other homes)*' (Schedule 2). Each figure within the tables is stated to represent a single movement either in or out over a typical week.
17. Whilst the table at Schedule 2 is stated to show the expected number of car movements as a result of the proposed use, the position regarding the movement stated in the table at Schedule 1 is not expressed in this manner and it is therefore not clear whether the cited number of trips includes vehicular trips, or whether these include weekly movements by other methods of travel including on foot, by bicycle or taxi. In addition, the figures in table 1 are stated to be an 'estimate of the average number of comings and goings' (my emphasis underlined) rather than an accurate account of actual trips to and from the appeal property. Little information has been provided to clarify how many vehicles are owned by the current owners.

² Appeal Decision: 2162636 (full appeal reference not provided and decision letter not produced in full)

18. It is stated to be company policy to encourage members of staff to use bicycles, public transport, to provide free bus passes or subsidised taxi fares and to discourage on-street parking. However, little evidence has been provided to explain what public transport provision is available locally such that it is effective at providing a realistic opportunity to travel by other modes of transport and thus dissuade staff members from utilising a private motor vehicle. Nor is it clear how this can be effectively controlled by the company. Use of a taxi service would still result in a vehicular movement to and from the site.
19. On the basis of the evidence before me, I consider it is likely that the majority of staff members would utilise a private motor vehicle to travel to and from the site particularly given the availability of ample parking space to the front of the appeal property. I note that the appellant has provided a 'Good Neighbour Policy' which sets out that staff will ensure appropriate parking. However, it is not clear what is meant by 'appropriate' or how this will be controlled. An LDC cannot be subject to conditions and so the appellant would not be bound by the document.
20. The appellant points to an electric/hybrid vehicle being available on the site for the purpose of transporting the children to school and for other visits which appears to indicate that an additional vehicle would be parked within the drive of the property, in addition to any parked vehicles owned by carers.
21. During weekday daytime hours, in the event that all of the carers and the manager were to drive to the site using their own private motor vehicles, when taken together with the hybrid/electric vehicle, this could result in there being some five vehicles being parked to the front of the dwelling and this figure would likely increase at times of staff changeover.
22. It would be necessary for Ofsted to visit the site annually and there would be a 'Regulation 44' independent visitor attending the property on a monthly basis. Each child would be attended to by a social worker every 4-6 weeks. Whilst it could be the case that a social worker would be able to visit multiple children at the same visit date, it is also the case that each child could be visited individually. There may also be occasional visits by other social workers. I take the view that it is likely that attendance by professional visitors is likely to take place by private motor vehicle and any such vehicles are likely to park within the area of hardstanding to the front of the property. There is little information before me to suggest that the existing occupants of the appeal property would receive support and visits from professionals with such regularity.
23. Visits by family members are stated to 'normally' take place away from the appeal property to avoid causing upset to other children. However, it appears that visits from members of a child's family would not be entirely unexpected, and I would expect that, with careful management, it would be appropriate in some instances for family members of the child to visit at their home³. Visits from friends at the property would also be allowed. Whilst visits by family and friends are claimed to be no more frequent than those to a typical family home, and this may be the case, I consider that it is likely that visits by family members would be likely to be facilitated by a family member travelling to the site by private motor vehicle and this would add to the accumulation of vehicles parked to the front of the property. Whilst the

³ Paragraph 2.8 of the appellant's Planning Statement suggests there may be visits by family members and friends.

table at Schedule 2 includes movements by 'other visitors' it is not clear which types of visitors have been included in those figures.

24. In terms of education, the appellant states that children are likely to be tutored from home initially which would be carried out online as part of a bespoke individual education plan and without the need for a tutor to visit the property. Children may then progress onto a specialist unit with smaller class sizes and mainstream education which would take place away from the site. However, the appellant also states that *'in cases where children have a home tutor, this is no different from an ordinary family who chose to have their children educated at home'* which appears to indicate that some tutors may attend the site in person. These statements regarding tutoring are contradictory. I consider it likely that any tutor attending the site in person is likely to travel to the site using a private motor vehicle and thus would park their vehicle within the hardstanding area at the front of the property.
25. Reference has been made to their being an urgent need for this type of facility and the appellant has pointed to the statutory duty of local authorities to take steps, as reasonably practicable, that ensure children in care are provided with accommodation that (a) is within the authority's area and (b) meets the needs of those children. In addition, a number of reports published by the Children's Commissioner, and which are stated to identify failures in meeting the need for appropriate children's care, have also been highlighted by the appellant. However, these issues 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 the light of the facts and the law.
26. A number of previous appeal decisions have been supplied in support of the appeal. The appeal at Dukeries Crescent⁴ for a change of use to a children's home (C2) concerned an application for planning permission rather than an application for an LDC and therefore considered the planning merits of the proposal, which included whether the location was suitable to accommodate vulnerable children with particular regard to levels of crime and antisocial behaviour in the locality. Since it was not looking at the materiality of change between existing and proposed uses it is therefore not comparable to the appeal scheme before me.
27. A number of appeal decisions⁵ referred to were for a LDC for a change of use to a children's care home where the materiality of the change of use was considered. However, the specific facts of those appeals were comprised of a lesser number of children and carers and, in the appeal at Shaw Road⁶ this comprised a terraced dwelling which was located in an area relatively well-served by public transport and so parking demand was suggested to not be as high as the Council envisaged. These appeal decisions are different and are not therefore directly comparable to the scheme before me.
28. A number of other submitted appeal decisions share similarities between the specific circumstances of those appeals and the current appeal. For instance, I note that the Whitburn Road⁷ and Chestnut House⁸ appeals were both for a

⁴ Appeal Reference: APP/A3010/W/23/3322527 – Dukeries Crescent, Workson

⁵ Appeal References: APP/Z5630/X/23/3329058 – The Crescent, Kingston upon Thames; APP/U2370/X/21/3277997 – Chiltern Avenue, Poulton-Le-Fylde; APP/M4320/X/22/3300633 Winstanley Road, Waterloo

⁶ Appeal Reference: APP/C5690/X/23/3329560 – Shaw Road, Bromley

⁷ Appeal Reference: APP/C5690/X/22/3299351 – Whitburn Road, London

⁸ Appeal Reference: APP/A3010/X/21/3277785 – Chestnut House, Cottam

change of use to a home for up to three children or young people with two carers working on a rota basis sleeping overnight and a third carer/manager. Similarly, the Egerton appeal⁹ comprised a maximum of three young people under the care of 2 adults. Whilst the findings in those appeal decisions were that, broadly speaking, the proposed use would not result in significantly more movements, those appeal decisions do not appear to have been concerned with the parking requirements of the proposed use and its consequent effect on materiality of the change of the character of the dwellinghouse.

29. The appeal at Offerton¹⁰ was concerned with a change of use to a residential home for up to four young people aged between 16 and 25 years of age and it was predominantly concerned with whether the proposed use would fall within the ambit of use class C3(b). It is therefore not analogous with the appeal before me.
30. Reference has been made to appeal 3263178 at Dale Road, however, since the details of this appeal are not before me, I therefore cannot be certain whether it is comparable to the appeal scheme.
31. Whilst I have considered the appeal decisions provided to me by the appellant, as each case turns on its own facts these are of limited assistance in assessing whether there would be a material change of use in the appeal case. I have determined the appeal before me based upon its individual circumstances and the relevant law.
32. In comparing the submitted tables at Schedule 1 and Schedule 2, these show that there would be a modest increase in movements to and from the site on most days of the week, with the exception of Wednesdays when there would be no numerical difference. However, it is unclear whether the figures cited by the 'previous owners' represents the actual existing use of the dwelling and whether the movements relate to vehicular comings and goings or include other modes of travelling to and from the appeal site. The evidence in this respect is ambiguous. The evidence is not sufficiently precise to show what is the extent of the existing actual use and the baseline upon which the proposed use should be assessed against.
33. I consider it is likely that the number of vehicles parked at the site at any one time would far exceed the number of vehicles that are likely to park at the site as part of the actual existing use of the appeal site. While space to the front of the property appears generous, multiple vehicles parking to the front is likely to limit the ability of users to enter and exit in a forward gear. Furthermore, external agencies visiting the site may choose to park on the road, to avoid blocking in vehicles that are already parked within the site. This is likely to be significantly different to the existing use.
34. 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 for up to three children, with a manager and three carers, two of whom will sleep overnight, working on a rota basis (C2) would not constitute a material change of use. Accordingly, the appeal must fail.

⁹ Appeal Reference: APP/E2205/X/16/3161037 – The Cottage, Stonebridge

¹⁰ Appeal Reference: APP/C4235/X/173170427 -Hillcrest Road, Offerton

Conclusion

35. For the reasons given above, I conclude that the Council's refusal to grant a LDC in respect of use as a children's home for up to three children, with a manager and three carers, two of whom will sleep 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.

E Brownless

INSPECTOR