



Appeal Decision

Site visit made on 5 March 2024

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th April 2024

Appeal Ref: APP/G4240/X/23/3327733

8 Richards Close, Audenshaw, Manchester M34 5EN

- 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 Parkwood Care against the decision of Tameside Metropolitan Borough Council.
 - The application ref 23/00029/CPUD, dated 24 January 2023, was refused by notice dated 5 June 2023.
 - 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 proposed use of the property as a children's home for up to three children with two carers sleeping overnight.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description on the application form states '*The property is a semi-detached house which we wish to continue. As such, with no material changes, in order to provide care for up too 3 young people aged 11-17*'. The appellant states that they submitted the LDC application on the basis of '*proposed use of the property for up to 6 residents living together with care provided (Class C3b)*'.
3. At the time of the application, the Council considered whether the proposed use would fall within the use Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Class C3 allows the use of a dwellinghouse (whether or not as a sole or main residence) subject to limitations, which includes C3(b) not more than six residents living together as a single household where care is provided for residents.
4. The appellant wrote to the Council to amend the description of development and maintained that no material change of use would occur. The amended description was '*proposed use of the property as a children's home for up to three children with two carers sleeping overnight*'. The Council determined the appeal on the revised description, of which is stated in the banner heading above. I have therefore dealt with the appeal on this basis.
5. In support of their appeal the appellant has submitted revised information including at Appendix C – Revised Operational Statement, Appendix D – Transport Statement¹. The Council have had the opportunity to provide

¹ Technical Note, Reference 2306-018/TN/01, Transport Planning Associates dated July 2023

comments and have done so on this evidence, I have therefore had regard to this information pertaining to the facts of the case in coming to my decision.

Main Issue

6. The main issue is whether the Council's refusal to grant a LDC was well founded. This turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3.

Reasons

7. The decision is based on the facts of the case and any relevant judicial authority. For the avoidance of doubt, this means that any planning merits are not relevant to this appeal including those raised by interested parties relating to privacy, overlooking, utility pipes, fear of crime, financial damage, internal space standards, compliance with national policies and policies in the development plan. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the proposed use would be lawful.
8. The Council have raised two main issues, whether the proposal can fall under Class C3 of the UCO and secondly, if not whether such a change of use would amount to a material change to the property. The appellant asserts that a change of use would not take place and the proposed use will be less than or the same as the current planning use, thus maintaining there would be no material change of use.
9. The appeal property relates to a 4 bedroomed semi-detached dwellinghouse that is sited at the end of a cul-de-sac within a predominantly residential area. The property features a rear garden, small front garden and driveway with space to accommodate 1 off street parking space. The proposed use is sought to accommodate a maximum of 3 children and 2 carers at any one time.
10. The carers when on duty would be there for 24 hours (hr) without change over with an option for staff to work over a 24hr or 48hr rota. It is intended that both staff members would swap in the morning at different times with shift changes between 9:30am and 10:00am, and 10:30am and 11:00am which would lead to at least 3 staff members being present during the shift changes. It is indicated that staff would meet off site for meetings, training and development.
11. There is no dispute between the main parties that the current lawful use of the property is a Class C3 dwellinghouse. For the purposes of Class C3, Article 2 of the UCO defines 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 use Class C2 it includes the personal care of children and medical care and treatment.
12. My attention has been drawn to the case of *North Devon District Council v First Secretary of State and Southern Childcare Ltd [2003] EWHC 157 (Admin); [2003] JPL 1191*, where a LDC was sought for use as a dwellinghouse providing care for up to 2 children living together as a single household with care provided by up to 2 non-resident staff. In that case, it was held that, while both Classes C2 and C3(b) referred to care, the definition of care in Article 2 of the UCO restricted the personal care of children to Class C2. Unless the circumstances meant that it would fall in Class C3.

13. The case determined that in the context of Class C3(b), children needed to be looked after, and could not on their own be regarded in the true sense as a household, without the presence of a carer. Carers who provide 24hr care but were not residents could not be regarded as living together in a household. The concept of living together as a household meant that a proper functioning household must exist, that means that children and a carer must reside in the premises, or the use would clearly fall within Class C2. It does not follow, however that a Class C2 use would necessarily be materially different from the last C3 use.
14. Nevertheless, I consider that there are similar circumstances and characteristics from that case to the proposal before me. This includes that care is to be provided for children living together as a single household with care provided by non-residential staff. I accept that the children would be looked after by adults and the vision & values of Parkwood Care including the ethos and outcomes. However, the carers would not reside at the property and be employed by Parkwood Care with shift changes likely resulting in alternative and various carers on a 24hr or 48hr rota. For these reasons, and on the manner of the intended use and on the balance of probabilities the use would not fall within Class C3(b) and would fall within Class C2 of the UCO.
15. Section 55(1) of the Act sets out the definition of development. This includes the making of any material change in the use of any buildings or other land. A material change of use is not defined in any statute or statutory instrument and is a question of fact and degree² to the circumstances of the individual case. In judging whether there would be a material change of use in any given case there must be a significant difference in character of any activity from what will take place previously. Any off-site impacts of any new activity may also be relevant to the considerations in making such a judgement³, including the impact on residential amenity, highway safety and parking. These are not determinative by themselves and should not be considered in isolation but whether the increase in scale of use has reached the point where it gives rise to materially different planning circumstances.
16. As I have already set out the proposed use of the home would provide care for up to 3 children which would be administered by residential care staff who would work shifts. The proposed shift changes would result in a minimum of change of 4 times a week with a maximum of 7 times a week. The resulting rotas would see staff crossovers during changes which would increase the number of staff on site at any one time. Furthermore, I cannot be certain from the evidence that any handovers would be quick or have certainty that crossovers would always be limited for up to 30-minute periods.
17. As the children would be in the care of the Local Authority there would be multi-agency visitors during periods of the day and not necessarily restricted to just infrequent reviews depending on the needs of an individual child and to the extent of associated professional and personal visitors to the property for each individual child.
18. In addition, it is likely that at least two or even three vehicles would be present at any one time just for care staff. As I saw Richards Close has a narrow width

² *Moore v SSCLG [2012] EWCA Civ 1202*

³ *Hertfordshire CC v SSCLG & Metal and Waste Recycling Limited [2012] EWCA Civ 1473; Lewis v SSE [1971] 23 P&CR 125*

highway and there are no footpaths along Richards Close. Although some properties feature garages and driveways at the time of the visit there were several cars parked along the road on the cul-de-sac including the turning area. The lack of adequate parking to accommodate additional vehicles at the appeal site would likely result in considerable off-site impacts to the immediate and wider area including those existing residents of the Close.

19. The appellant places much emphasis on their transport assessment (TA) including that parking being available on different streets nearby. However, the appeal site can only accommodate 1 vehicle, with limited space and I do not consider there is any certainty that spaces elsewhere would be readily available. As I saw parking is a premium in this built-up residential area not just on Richards Close. Moreover, it appears from interested parties that part of the proposed land / spaces available is property of Poplar Street Primary School which is sited at the rear of the appeal site and only available for use with the school.
20. In terms of the swept path analysis this only serves to demonstrate 4 vehicles parked in the turning circle and does not take account of the potential for existing residential occupiers, additional visitors to Richards Close and/or that vehicles would not necessarily line-up, side by side. In addition, the TA acknowledges that additional parking on its eastern side could make it difficult for access to be obtained for refuse and emergency vehicles. Nevertheless, the TA seeks to show compliance with the Council's development plan policies, parking standards and the Framework which are planning merits and are not relevant considerations in an LDC application.
21. The appellant asserts that most staff will arrive via public transport given the site is near to public transport links. I have no substantive evidence how a monthly public transport card would work or a proposed e-bike scheme. However, whilst this may be the case that staff may use public transport, I cannot consider this to be a realistic prospect of being controlled including any working terms of employment by Parkwood Care. Moreover, I cannot be certain that public transport timetables would not change throughout the year resulting in the operational change over timings being compromised.
22. As a result, comings and goings to the property, both in terms of people and vehicles, would likely occur on a more frequent basis than that which might be generated by a single household living in the property. The appellant refers to guidance of a House in Multiple Occupation, however this is not what the proposed use is before me.
23. Taking account all these factors, the property would result in a significantly different character from just the existing residential use and would result in off-site impacts as a consequence of the proposed use including the comings and goings by the staff, visitors, multi-agency workers, vehicles and parking. It would thereby amount to a material change of use which would require planning permission. Therefore, I consider that there would be a material difference in the character of the use of the property in comparison to the existing use of the dwellinghouse.
24. The appellant has not demonstrated, on the balance of probabilities, that the proposed use would be permitted development. Therefore, in the absence of an express grant of planning permission it has not been demonstrated that the proposed use would be lawful.

25. The appellant has submitted a Unilateral Undertaking seeking to address matters of operational management. However, in view of my finding above that the proposed use would not be permitted development for other reasons, it is not necessary to consider this matter further. The appellant has also raised concern over the Council's handling of the LDC application, however these are outside my remit in the appeal and they do not affect the precise circumstances of the case.
26. I have had regard to several cited appeal decisions and developments the parties consider to be relevant as similar circumstances. However, I do not have the full details of these individual cases and they are not determinative. I accept there may be some similarities in those LDC decisions with arguments for and against proposals, but some of the developments relate to compliance with development plan policies and planning merits which are not relevant in this case. Nonetheless 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 considered on the individual facts of the case and its compliance or otherwise with the provisions of the Act and UCO.

Conclusion

27. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of proposed use of the property as a children's home for up to three children with two carers sleeping overnight 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).

K A Taylor

INSPECTOR