The Planning Inspectorate

Appeal Decision

Site visit made on 25 October 2011

by Chris Hoult BA BPhil MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 November 2011

Appeal Ref: APP/K2420/X/11/2155849
15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Chartwell Care Limited against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00279/CLU, dated 24 March 2011, was refused by notice dated 6 June 2011.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a certificate of lawful use or development is sought is the use of a dwellinghouse as a children's care home.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Application for costs

1. An application for costs was made by the appellants against the Council. This application is the subject of a separate decision.

Preliminary matter

2. The description of the proposed use on the application form refers the reader to a statement from the appellants. I adopt the shorthand description on the Council's decision notice.

Main issue

3. The single main issue for consideration is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. The appeal property is a large modern detached house with an open frontage to the street on a residential estate on the southern edge of Burbage. It is proposed to operate it as a care home for children/young people between the ages of 9 and 17 with learning disabilities, in which the age range at any one time would be no more than 3 years[1]. Although the evidence indicates that the property was previously in use as a care home for children, the parties are agreed that its lawful use is as a dwellinghouse in Use Class C3 of the Use

[1] Although the initial application referred to children between the ages of 10 and 18 with an age range of 5 years at any one time, these figures were revised in a subsequent e-mail to the Council from the appellants dated 20 May 2011.

Classes Order[2]. The appellants contend that the proposed use could be argued to fall within part (b) of Class C3. In the alternative, if the use were to fall within Use Class C2 (residential institutions), any change of use from Class C3 would, they argue, not be a material change of use and would not therefore amount to development for purposes of the 1990 Act.

5. Under the Order, Class C3 includes use by *"…(b) not more than six residents living together as a single household where care is provided for residents"*. Care homes more typically fall under Class C2 as use *"for the provision of residential accommodation and care to people in need of care"*. The definition of "care" as set out in Article 2 of the Order includes, in Class C2, the personal care of children. There is therefore some overlap between classes C2 and C3 in so far as they relate to care homes, a point which the appellants emphasise in making their case. For a change of use from a use in Class C3 to a use in Class C2 to amount to development, and thereby require planning permission, the change of use has to be material[3]. That applies to the overall character of the use not just to certain aspects of it.

6. No alterations are proposed to the appeal property. A previous application for a LDC, made in November 2010, was refused by the Council on the basis of insufficient information. The Council took the view that, in the absence of evidence to the contrary, a material change of use from a C3 use to C2 requiring planning permission would occur. The current application seeks to demonstrate by reference to details of the operation that it would amount to a use of a character which would be largely the same as if the property were used as a family dwelling (Class C3). Any change of use to use in Class C2 would not therefore be material and would not amount to development. In refusing to grant a LDC, the Council refers to the number of staff required to operate the home as a basis for its view that the proposal would "materially alter the character of the property" (as it is put in the reason for refusal).

7. I deal firstly with which Use Class the use should fall into before going on, in the event that it falls into Class C2, to consider whether any change of use would be material.

Whether C2 or C3(b)

8. The home would provide for care for up to 3 children, administered by non-resident care staff who would work in shifts, thereby providing round-the-clock care. The appellants give details in the application of the numbers involved and the pattern of working. The case of *North Devon DC v FSS and Southern Childcare Ltd* [2003] EWHC 157 Admin provides authority for the view that use as a care home for children, where carers are non-resident, falls within Class C2. Children need 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 24-hour care but who are not resident could not be regarded as living together in a household. The concept of living together as a household means, in the context of Class C3(b), that a proper functioning household must exist.

9. The facts of this case align with those of *North Devon* and, while the appellants refer me to an appeal decision from 1992 which comes to a contrary view, any authority deriving from it must be regarded as being superseded by that case.

[2] The Town and Country (Use Classes) Order 1987 as amended.
[3] See s55(1) of the 1990 Act wherein "development" is defined as (among other things) "…the making of any *material* change in the use of any buildings or other land." (My emphasis)

In the light of this, I conclude that the proposed use falls into Class C2 and that a change of use from a use in Class C3 has taken place.

Whether material change of use

10. By way of a forerunner, it may be noted that, in *North Devon*, the Inspector determined that, although the use fell within Class C2, the change from Class C3 use was not material. *North Devon* therefore provides authority for the two-stage assessment process which I have outlined. The appellants explain that the model of care provided seeks to replicate, as far as possible, typical family life in an ordinary local community. It is emphasised that young people with emotional and behavioural difficulties would not be cared for.

11. At any one time, and excluding short-term changeover periods in the early mornings and mid-afternoons, there would be up to three children and three carers present. The pattern of working means that vehicle movements to and from the property would peak at the following times: (a) 07.00 to 08.00 – two staff and the manager arriving and one night staff departing; (b) 14.30 to 15.00 – three staff arriving and two departing; and (c) around 22.00 – two staff departing. To these movements should be added school transport and transport related to outings etc. at weekends and during school holidays. The appellants give assurances that no activity involving vehicle movements would occur before 07.30 or after 22.00.[4]

12. In refusing a LDC, staff numbers are cited by the Council as the sole cause for concern. However, looking at the numbers involved, they are not materially different from what might be expected of a large family house in which, say, a parent and two teenagers or young adults live together and each uses a car to get to work or college and for socialising. Peak daytime vehicle movements, setting aside the potential for the use of car sharing or public transport by staff, coincide broadly with school run periods when there would be similar activity associated with neighbouring properties and the locality in general. Transport associated with school and weekend outings would not be an untypical occurrence in a family house. Up to two vehicles departing from the property late at night would not, on its own, be a sufficient basis for determining that a materially different character of use would be taking place.

13. I acknowledge that the Council, in its statement, highlights that these figures are qualified by reference to "normally" and that the potential exists for greater staff numbers to be at the property to deal with particular difficulties. However, this should be regarded as an exception and not part of the typical day-to-day operation of the home. As regards the Stockport appeal decision which is referred to by the Council[5], that can be distinguished from this case as it appears to involve young people with a history of behavioural difficulties.

14. A number of arguments are put forward by neighbouring residents in support of a view that a material change of use would occur. However, there is no reason to suppose that suppliers and visitors would be attending on a 24-hour basis. The appellants explain that parents are unlikely to visit the home as the care will, to an extent, be respite care for their benefit. There are two parking spaces, with the possibility of more on the gravelled area alongside them and ample safe on-street parking close by. The appellants have given assurances

[4] See e-mail from appellants to Council dated 20 May 2011.
[5] Appeal Ref. APP/C4235/X/10/2132351 – 73 The Crescent, Stockport, SK3 8SL

that not more than three cars would be parked at any one time at the property. The garage would be converted to a sensory room and there are no proposals for office facilities or the holding of meetings. Much of the objection stems from a mistrust of assurances given by the appellants in the light of residents' previous experience of a home for young people with behavioural difficulties.

15. In bringing matters to a conclusion, the nature of a LDC and the relatively narrow remit of the decision-maker should be borne in mind. Planning merits are not for consideration. The application relates to a use taken in a snapshot in time, which is capable of being described in precise terms. The lawfulness of the use relates to the use as so described and it is lawful only so long as it conforms to the description on the LDC. It is incumbent on the applicant to describe precisely the proposed use for this very reason. Given this, and in the light of a fact and degree assessment, I conclude that the proposed use would not, as a use within Class C2, amount to a material change of use from Class C3 use as a dwellinghouse. The change of use would not therefore amount to development for which planning permission would be required.

16. For these reasons, I conclude, on the available evidence, that the Council's refusal to grant a LDC in respect of the use of a dwellinghouse as a children's care home was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

Decision

17. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

C M Hoult

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 24 March 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Although a change of use from a use in Use Class C3 dwellinghouse to Use Class C2 residential institutions would occur, it does not amount to a material change of use and no development requiring planning permission would therefore take place.

Signed

C M Hoult

INSPECTOR

Date 7 November 2011

Reference: APP/K2420/X/11/2155849

First Schedule

The use of a dwellinghouse as a children's care home pursuant to the Children's Act 2000 for children who fall within the Ofsted registration for children with learning disabilities, in which:

(1) no more than three children are receiving care at any one time;

(2) the children in care are aged from 9 to 17 years' old with an age range of no more than three years at any one time;

(3) the home at no time provides care for children with emotional and/or behavioural difficulties;

(4) there are no more than (a) two staff on duty between 07.00 and 08.00 to prepare the children for school or between 14.30 and 22.30, unless

exceptionally a further member of staff is required to meet individual needs (b) no more than three staff on duty at weekends and during school holidays, and (c) normally no more than one waking staff at night to provide support to the children with a further member of staff sleeping in who would be available should further assistance be required;

(5) no parental visits to children normally take place;

(6) no room is used as an office and no business meetings of any kind take place;

(7) no more than three vehicles are parked at or around the home at any one time;

(8) no activity in relation to staff vehicle movements takes place before 07.30 or after 22.00.

Second Schedule

Land at 15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 7 November 2011

by C M Hoult BA BPhil MRTPI MIQ

Land at: 15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

Reference: APP/K2420/X/11/2155849

Scale: not to scale

