The Planning Inspectorate

Appeal Decision

Unaccompanied site visit made on 5 February 2020

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 14th February 2020

Appeal Ref : APP/V2255/X/19/3224363
Loyterton Farmhouse, Tickham Lane, Lynsted, Sittingbourne, Kent, ME9 OHW

- 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 Parkview Care against the decision of Swale Borough Council.
- The application reference 18/506067/LAWPRO dated 21 November 2018 was refused by notice dated 23 January 2019.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the (proposed) change of use from C3 to C2.

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

Preliminary Matter

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

2. The description of use quoted above is that stated in the application and first schedule of the refusal notice. An application for an LDC should describe precisely what is being applied for and not rely solely on reference to a Use Class. The statement supporting the application describes the proposed use as a children's home and I shall consider whether that proposal would be lawful.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. The appeal site is a detached house, formerly a farmhouse. It sits within a farm complex in a relatively isolated location in a rural area. The property is large with seven bedrooms.

5. The statement accompanying the application explains that the proposal is to use the property for residential care for children and young people. The intention is that the property offers short to medium term placements for five children between the ages of 8 to 17.

6. There is no dispute between the parties that the lawful use of the property as a dwellinghouse falls within Use Class C3 of the Town and Country (Use Classes) Order 1987 (as amended) (the UCO) and I have no reason to conclude otherwise. Use Class C3(b) is use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household (including where care is provided to residents). Care is defined as use for the provision of residential accommodation and care to people in need of care (other than a use within a class C3 (dwelling house)).

7. There is no dispute between the parties that the proposed use would fall within Use Class C2 – use for the provision of residential accommodation and care to people in need of care (other than a use within C3 (dwellinghouse)). This is consistent with the North Devon[1] decisions drawn to my attention. I have no reason to disagree.

8. The issue in dispute between the parties is whether, as a matter of fact and degree, the proposal would be likely to result in a material change of use whereby there is some significant difference in the character of activities undertaken from what has gone on previously.

9. My attention is drawn to various planning appeal decisions. I do not know the particular facts of these cases and shall determine this appeal on its own particular facts. I shall consider whether a material change of use is likely to occur in this case.

10. The proposal is for a maximum of five children and two non-resident carers. The adult staff will work on a rota system with on-site presence at all times but no carer would live at the property as their main residence. It is likely given the location of the site that most if not all journeys by staff to the property will be by car. Similarly, journeys with the children for their entertainment and to access local facilities for day to day living are likely to be by car.

11. A house of this size could accommodate a relatively large family with numerous cars. I do not find the opportunities to minimise trips, for example, by car sharing or making multi-purpose trips to be any more likely by carers than would be the case for a large family living as a single household. The vehicular movements to and from school, work, social and recreational events are not likely to be significantly different for a children's home compared to a large family. Whilst I recognise that during shift changes there are likely to be up to four carers on site during handovers and therefore potentially four cars this is not likely to be atypical for a large family in a house of this size. Any difference would not in my view be likely to be of a scale that would result in an intensification of use that would change the character of the land and give rise to planning concerns.

12. In this case I find as a matter of fact and degree that the proposed use is not likely to generate a significantly different pattern and/or volume of vehicular

[1] North Devon DC v FFS and Southern Childcare Ltd [2002]QBD; North Devon DC v First Secretary of State [2004](1P&CR38)

movements than could be the case in a single family household. I would not expect a residential institution to generate more traffic than a dwelling of this size occupied by a single family household. There is no other planning harm suggested. On the balance of probabilities I conclude that the proposal to use the property as a children's home for a maximum of five children with two adult carers would not comprise a material change of use for which planning permission is required.

13. I conclude for the reasons given above, on the evidence now available, that the proposed change of use from C3 to C2 would be lawful as it would not comprise a material change of use. I consider that the Council's decision to refuse to grant the LDC 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 as amended.

Formal Decision

14. 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.

S.Prail

Inspector

The Planning Inspectorate

LAWFUL DEVELOPMENT CERTIFICATE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

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

IT IS HEREBY CERTIFIED that on 21 November 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked in red 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:

The use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) would not represent a material change from the authorised use of the site as a Class C3 dwellinghouse.

The development does not contravene the requirements of any enforcement notice in force.

S.Prail

INSPECTOR

Date: 14th February 2020

Reference: APP/V2255/X/19/3224363

First Schedule

The use of the dwellinghouse within Class C2 of the UCO for occupation by no more than 5 children and 2 non-resident adults at any one time as set out in the supporting statement accompanying the application reference 18/506067/LAWPRO dated 21 November 2018.

Second Schedule

Loyterton Farmhouse, Tickham Lane, Lynsted, Sittingbourne, Kent, ME9 OHW

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 uses/operations 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the uses/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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 operation is only conclusively presumed where there has been no material change, before the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 14th February 2020

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

Land at Loyterton Farmhouse, Tickham Lane, Lynsted, Sittingbourne, Kent, ME9 OHW

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Not to Scale



