Appeal Decision

Hearing held on 3 October 2000

by Derek Thew DipGS ARICS

an Inspector appointed by the Secretary of State for the Environment, Transport and the Regions

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Date
20 OCT 2000

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Appeal Ref: APP/D0515/C/00/1044895
27A Plough Road, Whittlesey

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr A Sweeney - Fenland Care Services Ltd. against an enforcement notice issued by Fenland District Council.
- The Council's reference is ENF/04/2000.
- The notice was issued on 31 May 2000.
- The breach of planning control as alleged in the notice is, without planning permission, change of use from residential to mixed use residential and business use as a children's home.
- The requirement of the notice is cease the unauthorised use of the site as a children's home.
- The period for compliance with the requirement is 3 months.
- The appeal was made on the grounds set out in section 174(2)[a],[f] and [g] of the 1990 Act. Since the prescribed fees have been paid within the specified period, the deemed application for planning permission also falls to be considered.

Summary of Decision: The appeal is allowed following correction of the notice in the terms specified in the Formal Decision below.

The Alleged Breach

1. It was accepted by the Council at the hearing that the premises are not in a mixed use as alleged in the notice. It was therefore requested that the allegation be corrected to read 'change of use from residential to business use as a children's home'. I am satisfied that I can make this correction without causing injustice.

Ground C Matters

2. There was no appeal specifically on this ground. However in their statement of case Fenland Care Services Ltd. suggested that the premises are still being used as a dwelling house and that there has been no breach of planning control. I therefore decided that it was appropriate I consider these particular matters and some time was spent at the opening of the hearing discussing them.

3. The lawful use of the appeal premises is as a dwelling house. The term 'dwelling house' is defined in the Class C3 of the Town & Country Planning (Use Classes) Order 1987, as use:

   (a) by a single person or by people living together as a family, or

   (b) by not more than six residents living together as a single household (including a household where care is provided for residents).

   If I were to conclude that the premises are being used for a purpose falling within either of the above categories then this would mean they are still being used as a dwelling house for

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the purposes of the 1990 Act. As such, that would mean there had been no breach of planning control and so I would be obliged to quash the enforcement notice.

4 I will therefore start by considering the manner in which the premises have been used since they were first occupied by Fenland Care Services Ltd. I understand that the company started using the premises in May 1999. Since then they have been occupied by a maximum of 3 children between the ages of 12 and 16, who have been cared for at any one time by 2 or occasionally 3 members of staff. The children are resident at the premises whilst the staff work a shift pattern designed to ensure that the children are never unsupervised whilst in the building. The property consists of a lounge, kitchen/diner and office on the ground floor, with 3-bedrooms and bathroom on the first floor. The office contains a bed which is available for staff use. The bedrooms are fitted with door locks and safety chains have been installed on the outside of first floor windows. However, there have been no substantial alterations to either the interior or the exterior of the building, and I consider that the interior of the premises are laid-out and furnished in the manner of a dwelling house. All meals are prepared in the kitchen. I understand that children living at the premises may take part in the preparation of meals and the cleaning of the premises if they so chose. In addition the children appear to have free access to all ground floor living accommodation.

5. In the absence of a permanently resident adult, fulfilling the role of a parent or guardian, I consider that the occupants of the building are not living together as a family. However, having regard to each of the factors outlined in the preceding paragraph, I am satisfied that there is a sufficient basis for finding that the premises are being occupied by not more than six residents living together as a single household.

6. During the hearing it was put to me that the premises are not being occupied as a single household, first, because the staff come and go from the premises on a regular basis and are not resident there, and secondly because the use is being operated as a commercial business. I will consider each of these factors in turn. With regard to the staffs' working patterns, I understand that the day is divided into three shifts, with the first starting at 0700hours, the second at 1530 hours and the third at 2300 hours. Staff may come and go at each of those times, but I also understand that it is not unusual for some staff to start work at 1530 and then stay at the premises until 0700 hours the following day. There is no suggestion that staff movements involve any more than one or two cars arriving at or leaving the premises around these changeover times; and I do not regard this pattern of comings and goings as materially different from what might reasonably occur at many dwelling houses during certain times of the day. As for the fact that the staff are not resident at the premises, this point was considered in R v Bromley LBC, ex parte Sinclair [1991] 3PLR60. In that case three mentally handicapped people were living together as a single household and 24 hours-a-day supervision was to be provided by social workers attending on a rota basis. The social workers were not to be resident at the property, although a box room was to be used as a bedroom by the care assistant who was there at night. In those circumstances it was held that Class C3(b) of the 1987 Order only requires that residents live together as a single household, and there is nothing in the Order which requires staff to be permanently living with the residents. I find the facts of the Bromley case to be comparable with the circumstances in appeal before me. Turning to the matter of the use being operated as a commercial business, I consider in this instance there is no material evidence to suggest that the character of the use has been affected by the fact that the persons providing the care are being paid. As a result the commercial element of the use does not affect my findings that

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the premises are being occupied as a single household

Conclusions

7. In view of these findings I am satisfied that the premises are still being used as a dwelling house and hence there has been no breach of planning control. Consequently the appeal succeeds and the corrected notice will be quashed. In these circumstances there is no need for me to consider the planning merits of the use or the appeal on grounds [f] and [g].

Formal Decision

8. In exercise of the powers transferred to me, I direct that the enforcement notice be corrected by the deletion from section 3 of the words "mixed use residential and". Subject thereto, I allow the appeal and direct that the enforcement notice be quashed.

Information

9. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.

[redacted]

Inspector

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APPEARANCES

FOR THE APPELLANT:

Mr A Sweeney	Operations Manager, Fenland Care Services Ltd.
Mr B Mapes	Manager, 27A Plough Road.
Mr V McGrath	Director, Fenland Care Services Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mrs H Addison	Assistant Planning Officer, Fenland District Council

INTERESTED PERSONS:

Mr J Lee	1 Anthony Close, Whittlesey
Mr D Willows	5 Anthony Close, Whittlesey
Mr R Barnes	27 Plough Road, Whittlesey
Cllr M Speechley	6 Snoots Road, Whittlesey

DOCUMENTS

Document	1	List of persons present at the hearing.
Document	2	Letter of notification and list of persons notified
Document	3	Letters of response to notification.
Document	4	Appeal Decision T/APP/X/99/M9496/003111- re Care Today Children's Service
Document	5	DoE Circular 13/87 – extract
Document	6	Appendices to Council's statement of case

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Appeal Decision

by John Parnell

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A person appointed by the Secretary of State for Communities and Local Government

Date: 11 JUL 2006

Appeal ref: APP/Q5300/X/06/2006017
Land at 11 Osborne Road, Enfield EN3 5RN

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is brought by Sanjeev Soobdhan against the London Borough of Enfield Council's refusal to grant a lawful development certificate (LDC).
- The Council's reference is LDC/05/0243
- The application was made under section 192(1)(a) of the 1990 Act, as amended.
- The application was registered on 17 June 2005.
- The proposed development for which a LDC is sought is the use of existing premises as a residential care home for a maximum of 4 individuals recovering from mental ill health and living together in a single household with a low level of care.

Summary of decision: The appeal is allowed and a Certificate of Lawfulness describing the proposed development which I consider to be lawful is attached to this decision.

Procedural matters

1. According to the application form and accompanying letter of 15 June 2005 the LDC was sought for a maximum of four residents sharing a dwelling as a family home with some support and care. The Council's application refusal dated 11 August 2005 described the proposal as "use of existing premises as a residential care home for 3 individuals recovering from mental health" *(sic)*. The appeal was made for the use of the dwelling home as a residential care home for 4 persons recovering from mental ill health and living together as a single household with a low level of care. The Council's case officer in his recommendation for refusal described the proposal variously as "use of premises as residential care home for 3 individuals", "use of the premises as a residential care home for up to four people with learning difficulties due to autism" and "use of the premises as a residential care home for up to four people". Although the Council's notification letter to neighbouring residents also referred to "three people" most third parties saw, from the grounds of appeal that accompanied the notification letter, that the appellant was seeking an LDC for 4 individuals and responded on that basis. I consider that the use for which the LDC is sought is properly described above as: "the use of existing premises as a residential care home for a maximum of 4 individuals recovering from mental ill health and living together in a single household with a low level of care."

2. I have considered the written representations made in support of the appeal, together with those of the Council. Since all the representations have been made available to both parties, I do not intend to summarise them in detail. In LDC applications and appeals, the onus is entirely on the appellant to show that the

carrying-out of the proposal in question would have been lawful at the date of the application.

3. I have taken into account the letters from the next door neighbour, from local residents, the Osborne Road Association and Joan Ryan MP. However, while I can appreciate that these letters strongly oppose the application, the representations made are only relevant to the extent that they provide factual evidence about the property in question and address legal issues pertaining to the determination as to whether it would be lawful to use the appeal site for the use described in the application; the planning merits of the proposed use would not be matters that would determine such lawfulness and are not before me for consideration.

The background and main issue

4. The appeal site lies in a predominantly residential area with a sports ground, park, primary school and Brimsdown Railway Station all within the immediate neighbourhood. The appeal property is described by the Council as a two-storey semi-detached dwelling house. However, from the drawings that accompanied the application and appeal it is clear that a third storey has been created in the loft area. There is no dispute that the appeal property was last used as a single family dwelling house.

5. It is proposed to use the premises as a group home for the accommodation of four adults recovering from mental illness. The property will be registered with the CSCI[1] under the category 'Mental Illness excluding Dementia for people aged 18 to 65 years old.'

6. The intention would evidently be that residents would live a communal life as one household, enabling them to live as normal lives as possible in touch with the wider community. It would not be the case that any of the residents would need nursing or medical care or attention; they would only need a measure of support, as provided by a maximum of three staff on duty in a shift system, providing 24 hour cover with one of the three staff staying in the premises at any one time, and forming part of the household. The members of staff employed on the shift system would each have their own homes. The residents would share communal facilities such as the kitchen, living room, dining area, toilet and bathroom, and have individual bedrooms. This indicates that a substantial measure of interdependence would be a necessary prerequisite of day-to-day living, not just between the residents themselves, but also between the residents and staff. From the appellant's description of the intended use, the on-duty member of staff would share the communal facilities as part of a single household and participate in domestic and leisure activities with the residents.

7. Some uses of land are so similar, in planning land-use terms, that to require planning permission to change between them might be considered as overly burdensome. The 1990 Act[2] excludes from the definition of development any change of use where both the existing and proposed uses fall within the same class of use as defined by the Use Classes Order (UCO)[3]. By section 57(1) of the 1990 Act (as amended), planning permission is required for the carrying out of any development of land and by section 336(1) "land" includes a building. By section 55(1), "development" includes the making of any change in the use of any

[1] The Commission for Social Care Inspection which registers, inspects and reports on social care services in England.
[2] The Town and Country Planning Act 1990 as amended
[3] The Town and Country Planning (Use Classes) Order 1987 (as amended)

buildings. But by section 55(2)(f) in the case of buildings used for a purpose of any class specified by the Secretary of State, the use of any buildings for any other purpose within the same class shall not be taken for the purposes of the 1990 Act (as amended) as amounting to "development".

8. Class C3 of the Schedule to the UCO concerns dwellinghouses and embraces:-

"Use as a dwelling house (whether or not as a sole or main residence) -

(a) by a single person or by people living together as a single family, or

(b) by not more than six residents living together as a single household (including a household where care is provided for residents)".

In addition, "care" is defined in Article 2 of the UCO as including:-

"...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 class C2 also includes the personal care of children and medical care and treatment"

9. As noted above, it is the appellant's case that the intended residents would not need "care" in the terms of the definition contained in the UCO as related to a C2 Class Use. They would only need minimal support and supervision.

10. The Council argues that there would be a change of use from Class C3 "residential" as defined above to Class C2.

11. Class C2 of the Schedule to the UCO concerns residential institutions and embraces:-

"Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre".

12. It is the Council's case that the indicated level of care (24 hours) for the intended residents would be more akin to a residential institution and the proposed use would therefore constitute a material change of use from Class C3 to Class C2 requiring formal planning permission.

Reasons

13. Relevant advice is found in paragraphs 63-73 of ODPM Circular 03/2005. The Circular explains that small group homes play a major role in the Government's community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community.

14. The Circular advises that the key issue in considering whether a proposal would constitute a change in land use from a dwelling house to a residential institution, as defined in the UCO, is whether or not the proposal would constitute a single household. The Circular also advises that Class C3 not only includes families, or people living together under arrangements for the provision of care, but also other groups of people, not necessarily related to each other, who chose to live together on a communal basis as a single household.

15. The Circular adds that in the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and therefore the use will fall into the residential institutions, regardless of the size of the home; any resident care staff should be included in the calculation of the number accommodated.

16. It is established in case law[4] that the limit in Class C3 to no more than six persons is an important consideration as, with no more than that number, it would be more likely that persons would be living as a single household than if there were significantly more than six; the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy would be likely to be and the more likely to be regarded as a single household.

17. The proposal is for a maximum of four residents and it is clear from the plans attached to the application that they are to have communal areas, namely: the lounge, kitchen/diner, bathrooms and toilet as well as individual bedrooms, totalling four as shown on the plans. For the proposal to be consistent with the concept of a single household I consider that the member of staff staying overnight would need to have use of the fourth bedroom. That would rule out more than three residents in addition to resident care staff operating a 24-hour shift. On this basis I conclude that 3 residents, each having individual bedrooms, with 1 on-duty member of staff occupying the fourth bedroom where staying overnight, would, as a matter of facts and degree, form part of a single household comprised in the proposed use of the site.

18. The Council consider the proposed provision of care over a period of 24 hours to be an indicator of the level of care provided. However, the proposal is for a low level of care, excluding nursing care and medical care and treatment; and it does not include care for children. Having regard to the definition of 'care' in the UCO, as outlined above, I conclude, on the balance of probabilities and as a matter of fact and degree, that overall the proposed use of the dwellinghouse falls within Class C3 of the Schedule to the UCO, consistent with the concept of a single household. I do not consider it necessary to draw any fine distinction between the description of the level of support or supervision that the appellant intends to employ and that which would be typical in the case of "care". That is because even if the proposed use, as a matter of fact and degree, would amount to the provision of "care" for residents, such a use is included in Class C3(b), as well as in Class C2.

18. For the reasons given above and having regards to all other matters raised, I conclude, on the evidence available to me, that the Council's refusal to grant a certificate of lawful use or development in this case was not well-founded and that the appeal should succeed, subject the limitation of residents to 3 in total.

Formal decision

19. For the reasons given above, in exercise of the power in section 195(2) of the 1990 Act, as amended, which has been transferred to me, I hereby allow the appeal and grant a lawful development certificate for the use of existing premises at 11 Osborne Road, Enfield EN3 7RN as a residential care home for 3 individuals recovering from mental ill health and living together in a single household with a low level of care provided by members of staff throughout the day and night on a shift basis. A certificate to this effect is attached to this letter.

[4] See Encyclopedia of Planning Law and Practice - 38-979

Right of appeal against the decision

20. This decision is issued as the determination of the appeal before me. Particulars of the right of appeal against my decision to the High Court are enclosed for those concerned.

John Parnell

Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 15 June 2005 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

> the existing lawful use as a single family dwelling house and the proposed use for a residential care home for 3 individuals recovering from mental ill health and living together as a single household, with a low level of care provided throughout the day and night by a staff member on a shift basis, would both be uses that would fall within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and, by virtue of the provisions of section 55(2)(f) of the Town and Country Planning Act 1990 (as amended), the proposed use would not amount to development within the meaning of section 55(1) of the same Act.

Signed: *John Parnell*

Date: 11 JUL 2006

Reference: APP/Q5300/X/06/2006017

First Schedule

Use of existing premises as a residential care home for 4 individuals recovering from mental ill health and living together in a single household with a low level of care within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Second Schedule

Land at 11 Osborne Road, Enfield, EN3 7RN.

IMPORTANT NOTES – SEE OVER

Appeal Decision

Site visit on 29 August 2006

by Alan Upward BA(Hons) MCD MRTPI

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

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Date

15 Sep 2006

Appeal Ref: APP/D4635/X/06/2013826
1 Craven Street, Parkfields, Wolverhampton WV2 2EN

- 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 Mrs S S Perrin against the decision of Wolverhampton City Council.
- The application Ref 05/2073CE/R, dated 6 December 2005, was refused by notice dated 27 April 2006.
- 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 "TO USE THE 3 BED DETACHED HOUSE AS A SMALL, FAMILY STYLE 2 - BED UNIT FOR CHILDREN AGED BETWEEN 10 - 16 WITH EMOTIONAL + BEHAVIOURAL DIFFICULTIES. (NO SCHEDULE 1 OFFENDERS) 24 HOUR CARE WILL BE PROVIDED AT THIS RESIDENTIAL CHILDREN'S HOME. A SHIFT WILL BE 15 HRS + SLEEP IN. STAFF CHANGE OVER WILL THEREFORE ONLY OCCUR ONCE EVERY 48 HOURS. THIS WILL MEAN MINIMAL MOVEMENT TO + FROM THE PROPERTY."

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 Formal Decision.

The appeal site

1. No.1 Craven Street is a modern detached 2 storey house within a short residential street to the north of Parkfield Road, a distributor road within the city classified as A4039. The street is suburban in pattern with a variety of 2 storey dwellings, those on the western side being terraced and semi-detached. Off-street parking facilities appear mainly to be within front garden spaces.

2. Plans accompanying the application showed the layout of number 1 with a kitchen and 2 living rooms on the ground floor, and 3 bedrooms and a bathroom on the first floor. The house is built closely up to its northern boundary with 1a, a further detached house. On the southern side is a driveway of single vehicle width passing alongside the building. This was said to be able to accommodate 3 parked cars with a fourth in the garage at the site. Relatively close to the driveway is the principal rear elevation of a larger house, number 43, which faces towards Parkfield Road.

Clarification of the proposal

3. The appeal was on the basis that use as a residential children's home in the detailed manner specified would not amount to a material change of use of the property from a dwellinghouse last occupied by a family of 2 adults and 2 children. The application had explained in greater detail proposed staffing arrangements as part of the intention to model a 2 child, 2 parent family. External interventions in the form of educators and therapists would be minimal. The majority of therapy would be carried out by staff rather than external therapists. There would be nothing to distinguish the property from a dwelling as there would be no signage or external alterations to the building. In the appeal it was said that references to educators and therapists had been made on a "worse case scenario" as therapy away from the home would be the norm, as more effective, and following discussions with the LPA in March 2006 it had been agreed that all education would take place away from the home in a mainstream setting.

4. The proposal was therefore regarded as falling within the same Use Class C3 as a dwellinghouse, that being the last and lawful use of the property. There would be no material change of use as the impact upon local amenities would not differ from the former occupation by a household of 2 parents and 2 children. The additional presence at the site of the home manager as a third adult would not be a material change by comparison to the former tenants who had had family

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members from abroad staying with them for long periods of time, and who had employed a child carer. The maximum number of cars parked on the driveway on a daily basis at 3 vehicles would have been the same as proposed. Regular family visits to the site would not be the norm. Communication with social workers would be largely by telephone, very rarely via a physical home visit. Integration of children into mainstream education would be the norm, with no regular visits by educators to the home.

Appraisal

5. In relation to the claim that the use would fall within Use Class C3(b), this involves *Use as a dwellinghouse ..... by not more than six residents living together as a single household (including a household where care is provided for residents)*". Within the detailed description of the appeal proposal it is referred to as a "residential children's home". Children residing at the property would expressly require care, and could not on their own be regarded in the true sense as a household without the presence of a carer. The concept of "living together as a household" would require a proper functioning household to exist, and in the context of this appeal this would mean that the 2 children and a carer or 2 carers must reside in the premises. Although 24 hour care was to be provided with 2 adult carers present at all times, they would not be resident as such. They would be staff working a shift pattern and then leaving the premises at the end of each shift. They could not therefore be regarded as living together with the children in a household.

6. The use would therefore not fall within C3(b). Having regard to the wording of Class C2 *Residential institutions*, and the interpretation of "Care" at Article 2 of the UCO 1987, it is clear that the proposed use would be one for the provision of residential accommodation and care of 2 children within Use Class C2. That would of course not be the end of the matter, as it is necessary to assess whether in terms of its detailed operation it would amount to a material change of use of the property from that as a C3 dwelling, last used as a family house by 2 parents with 2 children.

7. The residential accommodation of 2 children "WITH EMOTIONAL AND BEHAVIOURAL DIFFICULTIES (NO SCHEDULE 1 OFFENDERS)" would not automatically result in a use of a materially different character. This would depend upon the detailed operational and management measures applied at the home and their likely impact in practice. These effects would need to be compared with what had happened when the property was last used and what might generally be expected to occur in association with family occupation of a 3 bedroomed detached house in this locality. No physical external alterations were being proposed.

8. Modifications of proposed working arrangements between the application and latest appeal representations are capable of affecting the overall character of the use in terms of the numbers of persons visiting the premises and the extent of such activity. This would apply to off-site mainstream education and current intentions that most therapy would either take place off-site or involve only resident carers. On this latter subject the situation appeared not to be sufficiently clear cut to allow it to be formally incorporated into the description of the use, although the probability is that it would lead to fewer external visitors coming and going at the property. The Council appear to have assumed that children might stay for between 1 month and 12/18 months. More recent representations from the Appellant indicated that the home would be required by the Commission for Social Care and Inspections [CSCI] to focus on medium to long term provision with placements normally of between 6 months and up to 2 years. This would have the effect of reducing activity explicitly associated with 'changes-over', and involve a more stable pattern of residential occupation.

9. On the overall question of whether activity would affect the amenity of the neighbourhood to a greater degree than a family dwelling, many aspects of occupation would be similar to a dwelling use. Day to day activity associated with occupation of the premises would be of the same kind, and matters such as household cleaning and maintenance, shopping for food and its preparation were intended to follow the pattern which a family household would operate without external agencies.

10. Arrivals and departures of residents, staff and visitors would be an important element of activity requiring comparison, particularly where cars were used and parked at or around the site. The maximum of 3 employee cars likely to be parked at the site would not differ materially from what

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was recorded as having happened in the recent past or what might be expected at a dwelling of this kind in a suburban location. As with residential occupiers, not all employees might bring cars to the site. Such a level of parking could be accommodated within the site. Although involving more off-road space than most houses along Craven Street, the parking of 3 cars on the driveway, some of which would be placed at the side of the house rather than in front of its street building line, would not materially alter the character of the street as a residential road. Shift changes could be associated with a number of extra vehicle movements, including the moving around of cars between the street and driveway. On the basis of the shift pattern being proposed, these would be relatively few in number.

11. Trips undertaken by staff to take children to school by car would probably differ little from the choices made by parents living in a family household. In their use of local amenities there would be no clear reason why resident children and carers should operate differently from a parent and child household in terms of the choice of car use or walking. There would be some visits by external agencies such as CSCI and social workers, but on the evidence these would be few in number per annum. Nothing suggests that these and other visitors to the property would be of a magnitude likely to impact materially upon the neighbourhood or affect the overall character of the use.

12. Concerns expressed by a third party over the promotion of ant-social behaviour around the home would clearly be capable of affecting the amenity of local residents if realised on a significant scale. The scope for such problems would depend upon the quality of management of the home. Having regard to the extent of staff presence at the site on a 24 hour basis, the physical relationship of the dwelling to the street and its neighbours, and the small scale of the facility involving only 2 children, I do not consider that incidents of the kinds feared would be an inherent part of the use bearing on its overall character. A similar conclusion would apply to the Council's fears that the emotional and behavioural difficulties of the children may result in outbursts triggering visits by professionals or emergency services, particularly at unsociable hours. I doubt that such events would be of a magnitude, frequency or impact to affect neighbours materially.

13. So long as management of the home was to the standards anticipated by the Appellant, it would be unlikely that incidents of the above kinds would materially change the local living environment by comparison with occupation by a family.

14. Drawing matters together, I consider that the use being proposed would not be of a materially different character to the lawful use of the property as a 3 bedroomed dwellinghouse. The Council's refusal was not therefore well-founded. I shall allow the appeal, and grant an LDC on the basis of the express terms sought. Child numbers, ages, periods of residence, staff numbers, shift patterns and educational arrangements will be specified in the LDC to define more precisely the use which is found to be lawful.

Formal Decision

15. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed use which I consider to be lawful.

Alan Upward

INSPECTOR

Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 6 December 2005 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would not constitute a material change of use of the land from its lawful use as a dwellinghouse within Use Class C3.

Signed

Alan Upward

INSPECTOR

Date 15 Sep 2006

Reference: APP/D4635/X/06/2013826

First Schedule

Use as a residential children's home for a maximum of 2 children, aged between 10 – 16 years, with emotional and behavioural difficulties but not Schedule 1 offenders. The use would involve the placement of children at the premises for durations of not less than 6 months and for up to 2 years, with resident children being educated off-site. Two adult carers would work at the premises at any one time rotating on a shift pattern involving changes-over on a 48 hour basis. A third carer (the Manager) would be present between the hours of 0900 – 1700 hours. No alterations would be made to the internal layout of the premises from that shown on the plans accompanying the application.

Second Schedule

Land at 1 Craven Street, Parkfields, Wolverhampton, WV2 2EN.

ARUN DISTRICT COUNCIL:A/106/08/CLP

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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.
4. 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

Plan

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

by Alan Upward BA(Hons) MCD MRTPI

Land at: 1 Craven Street, Parkfields, Wolverhampton WV2 2EN

Reference: APP/D4635/X/06/2013826

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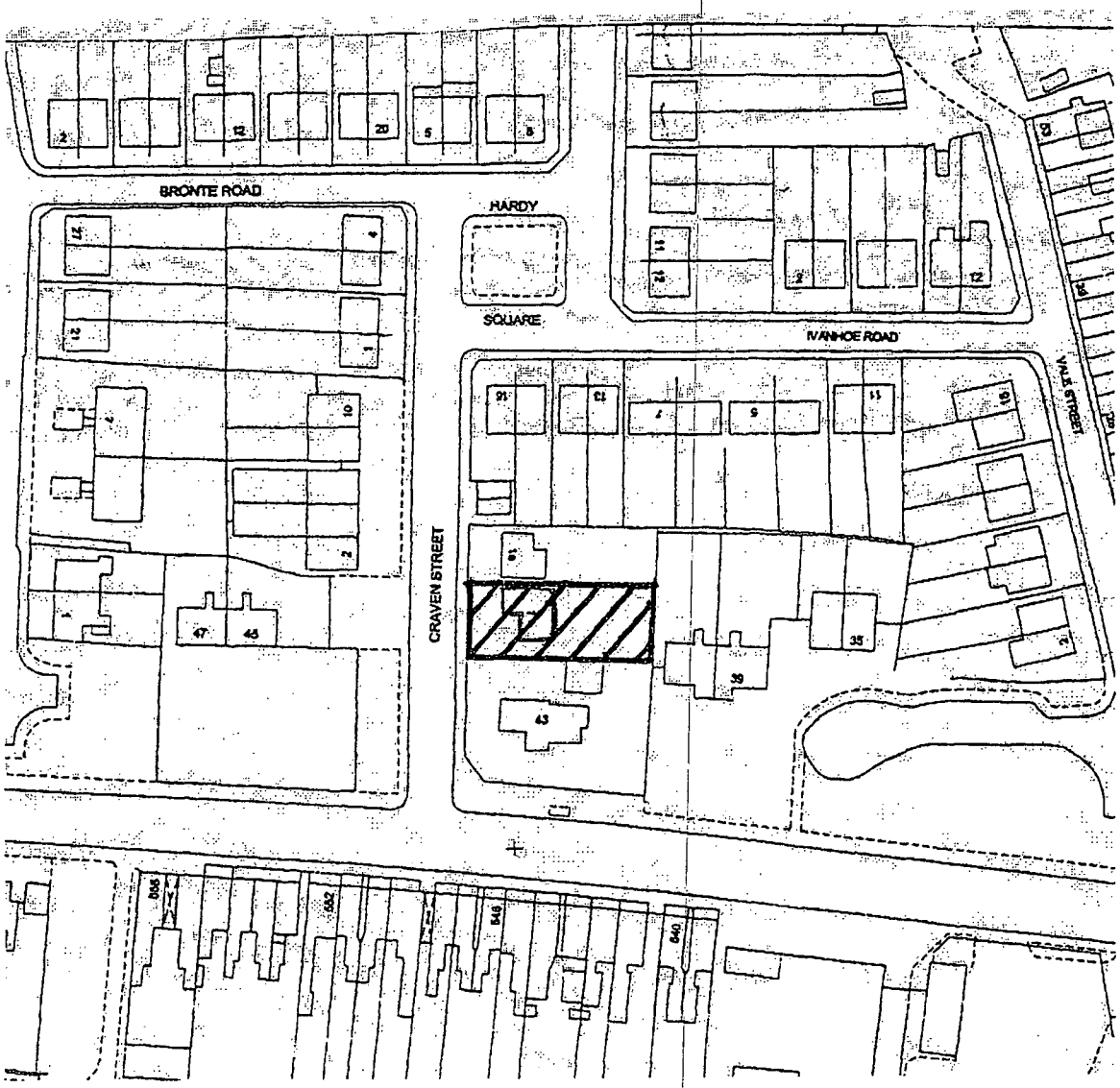
Scale: 1/1250

15 Sep 2006



10004209S

Appeal Decision

Site visit made on 28 March 2006

by Derek Thew DipGS MRICS

an Inspector appointed by the First Secretary of State

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CASE COPY
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Tel: 01452 835820
Date
24/04/06

Appeal Ref: APP/K0615/X/05/2004825
Briar Cottage, Wrexham Road, Bickerton, Malpas, Cheshire

- 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 Sedgemoor Ltd. against the decision of Crewe & Nantwich Borough Council.
- The application ref. P05/0380, dated 7 April 2005, was refused by notice dated 31 May 2005.
- 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 use of the property as a children's 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 Formal Decision.

The Application

1. The submitted application form does not specify the precise nature of the proposed use. Rather it just states that both the existing and the proposed uses are Class C3, as defined in the Town and Country Planning (Use Classes) Order 1987, and it refers to an attached statement in support of the application. Paragraph 3 of that statement describes the proposed occupancy as follows:

   "*4 children between the ages of 11 and 17 years; minimum of 2 adult carers, 7 days per week on an 8-hour shift rota basis 24 hours per day*".

2. The Council's notice of refusal describes the proposal as:

   "*Use of the Property for Children's Home within Class C3 as described in the application*".

The Basis of the Appeal

3. The appellants now accept that the proposed use is not a use as a dwellinghouse as defined in Class C3 of the Order. Rather they now accept that proposed use is use as a residential institution, as defined in Class C2 of the Order. There is a duty on the Secretary of State on appeal to issue a certificate of lawful use in respect of the premises applied for where a lawful use is demonstrated, and, if the facts so require, to modify the description of that use from that described in the application (see Panton & Farmer -v- SSETR & Vale of White Horse District Council (1999) JPL 461). In the light of the factors set out above, it seems to me that the proposed use should now be described as:

"Use of the property as a children's home for 4 children between the ages of 11 and 17 years, with a minimum of 2 adult carers, within Class C2 of the Town and Country Planning (Use Classes) Order 1987"

4. Planning permission is required for development, which includes the making of a material change in the use of a building or land. The Use Classes Order operates by prescribing a number of classes of use and by specifying that a change of use within each class is outside planning control. However, the effect of the order is permissive and development (requiring planning permission) is not necessarily involved just because a new use would fall within a different class from the existing use. What I need to determine in this appeal is whether the proposed Class C2 use would be materially different from the lawful Class C3 use, such as to amount to development requiring planning permission.

Consideration

5. Briar Cottage is a very substantial 7-bedroom detached house standing in a large garden. It is situated in the open countryside, some distance from the nearest settlement. The lawful use of the premises is use as a dwellinghouse as defined in Class C3 of the Use Classes Order. Class C3 defines use as a dwellinghouse as use by an individual or people living together as a family (Class 3(a)); or by up to 6 residents living together as a single household, including a household where care is provided (Class 3(b)).

6. It is proposed that 4 children would live at the premises and they would be looked-after by a minimum of 2 adult carers at any one time. The children would each have their own private bedroom and 2 bedrooms would be available for use by the carers. All normal domestic duties, such as cooking, cleaning and gardening, would be shared by the children and the carers. No staff would be employed specifically for those tasks. There are no proposed substantial physical alterations to the premises.

7. If Briar Cottage were to be lived in by a family of 2 adults and 4 children then there would be no dispute it was being used as a dwellinghouse (Class C3). If it were to be lived in by a single household comprising 4 children with 2 adult carers permanently resident at the same address, then it seems to me the use of the premises would still amount to use as a dwellinghouse (Class C3). However, on the basis of the judgement North Devon District Council -v- The First Secretary of State (2004) JPL 1396, in a situation such as that now proposed, where there would be 4 resident children and 2 carers who are not permanently resident, then the occupants would not be living together as a family or single household and, consequently, the use would be outside the definition of a dwellinghouse for the purposes of Class C3. On this basis it seems reasonable for me to ask the question, in what physical ways would the fact that the carers are not permanently resident materially alter the character of the proposed use of Briar Cottage?

8. In land use terms, it seems to me that one of the most likely effects of the carers being non-resident could be an increase in the number of comings to and goings from the premises, and I am mindful of the Council's concern that the proposed use would be likely to lead to "*more and different patterns of activity, transport and disturbance*". Details submitted in May 2005 on behalf of the appellants estimated that with the proposed use there would be 14.5 vehicle movements to and from the property each day, and that 12 of those movements would be the carers arriving and departing every 8 hours, at the beginning and end of their shifts. In the appellants' statement of case for this appeal, vehicle movements are estimated

at 10 - 14 a day, but the basis for this estimate is markedly different from that of May 2005. It is now claimed that the current practice is for carers to work shifts of 24 – 48 hours, thereby eliminating the regular 8-hourly staff changes. The principal components of the estimated 10 – 14 vehicle movements a day appear to be 2 - 4 trips associated with the comings and goings of carers at the beginning and end of their shifts, plus other trips for school-runs, shopping and outings, as well as those made by people visiting the children at Briar Cottage. The May 2005 figure did not make any significant allowance for trips other than those made by carers when starting and ending their shifts. As such, I think the latest estimate provides a better balanced assessment of the range of reasons for vehicle movements. But, just as working practice for carers has changed over the last twelve months, I think it reasonable to bear in mind that, at some point in the future, working practice could change back to a situation where each carer works just an 8-hours shift. This would have implications for both the total number trips to and from the premises each day (possibly increasing them to as much as 20 vehicle movements) as well as the pattern of those comings and goings.

9. In principle I accept that 10 – 14 vehicle movements a day (as estimated by the appellants) would be more than what might be expected as part of the normal day-to-day usage of an average dwellinghouse. As such, up to 20 trips in one day would be significantly above normal day-to-day usage of an average dwellinghouse. However, Briar Cottage is not an average dwellinghouse. It is a very large, modern property with ample parking and considerable garaging space. As a dwelling, I could well imagine it attracting a family with a high-level of car ownership and usage. For such a property to be in use as a children's home attracting 10 – 14 vehicle movements a day would not be likely, in my view, to have any material effect upon the character of these specific premises. Furthermore, even if the number of vehicle movements were to increase to about 20, spread over, say, a 16-hours day, then I would still not be able to conclude that such an increase would have any material effect upon the particular character of Briar Cottage.

10. The fact that the carers would not be resident may have some effect on the way they relate to the children in their care and their ability to control the actions of those children. In this context it is apparent that children living at other premises in Cheshire operated by Sedgemoor Ltd have been a cause of considerable concern to local residents because of unruly and anti-social behaviour. It is, therefore, not surprising that residents living within walking-distance of Briar Cottage are concerned that they would experience similar problems with the proposed use. The Council's fifth reason for refusal states:

> *"the use will give rise to a concentration of occupants with behavioural problems that would not occur in a normal household. This will have an impact on the surrounding community and emergency services. The proposed change of use would therefore have a material impact on local amenity and environment."*

In addition, a legal opinion obtained by various residents in Bickerton advises that the use would place a strain on welfare, education and police services in the area.

11. Having read the submitted evidence I accept that these concerns are not without foundation. The fear of crime is capable of being a material consideration in determining the planning merits of a scheme, as is clear from the West Midlands Probation Committee -v- SSE and Walsall MBC (1997) JPL 323. On this basis I think it reasonable for fear of crime to be a material consideration in determining whether or not a change of use amounts to

development. But, having regard to both the West Midlands case and Smith -v- FSS & Mid-Bedfordshire District Council (2006) JPL 386, I consider the basis of that fear must be the character of the use and not just the behaviour of some of the occupants. Children are taken into care for a variety of reasons, of which abuse and neglect are recorded in the Children Act Report 2001 as being the most common. From this same Report it is apparent that only a small percentage of children are classified as being in need because of socially unacceptable behaviour. Furthermore, the submitted evidence indicates that children taken into care can demonstrate differing patterns of behaviour not all of which are unruly and anti-social. Accordingly, it seems to me that it is not inherent in the character of a children's care home that the proposed use of Briar Cottage would have an adverse impact upon the local community and welfare services.

12. For each of the above reasons, I consider the fact that the carers are not resident would not result in the proposed use of Briar Cottage being materially different in character from its lawful use as a dwellinghouse.

13. The Council's sixth reason for refusing to issue a certificate of lawfulness refers to the fact that the building would contain office facilities and be fitted with a fire alarm system, fire doors and emergency lighting. I acknowledge that such facilities within a building are more typical of an institutional use than a dwellinghouse. But it is only proposed that one room in Briar Cottage be used as an office. It is not uncommon for one room in a dwellinghouse to be used as an office/study and, bearing in mind the size of this particular property, the use of one room as a records office would be most unlikely to have any material effect upon its character. Similarly I am not persuaded that the installation of the proposed safety facilities would materially alter the character of the premises.

14. One institutional aspect of the proposed use is the fact that there would be written rules governing referral and admission criteria, and behaviour management within the premises. It would be unusual for a family home to have a similar set of written rules. But it would not be unusual for a family to have its own set of un-written rules with which its members would be expected to comply and, to my mind, simply producing those rules in written form does not indicate a material change in the character of the use.

15. In the preceding paragraphs I have considered a number of factors individually and found that none of them are sufficient to lead me to the conclusion that the proposed use of Briar Cottage would result in material change of use of those premises requiring planning permission. I have also had regard to the probable cumulative effect of these factors but, as a matter of fact and degree, I do not find there to be a sufficient basis upon which to conclude that their combined effect would result in material change of use of the appeal premises.

16. The submitted details refer to there being a "*minimum of 2 adult carers*" at the premises at any one time. If two is the minimum number of carers then theoretically there is the potential for there to be substantially more than two. I understand that the normal arrangement would be for two carers to be on duty at any one time and I have seen no substantial evidence to suggest that the number of carers would usually exceed two. However, the inclusion of the word "minimum" introduces uncertainty into the description of the proposed use. Furthermore, if there were to be more than two carers at the premises on a regular basis, then this could either itself lead to a change in the character of the use or

ARUN DISTRICT COUNCIL:A/106/08/CLP

be indicative of other changes in the character of the use. I therefore intend to delete the word "minimum" from the description of the use.

Conclusions

17. For the reasons given above and having regard to all other matters raised, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of Briar Cottage 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

18. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed use which I consider to be lawful.



Inspector

Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 7 April 2005 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would not result in a material change of use of the premises from their lawful use as a dwellinghouse as defined in Class C3 of the Town and Country Planning (Use Classes) Order 1987.

[redacted]

Derek Thew
Inspector

Date 24/04/06
Reference: APP/K0615/X/05/2004825

First Schedule

Use of the property as a children's home for 4 children between the ages of 11 and 17 years, with 2 adult carers, within Class C2 of the Town and Country Planning (Use Classes) Order 1987.

Second Schedule
Land at Briar Cottage, Wrexham Road, Bickerton, Malpas, Cheshire

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use /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.
3. This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.
4. 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.

Plan

This is the plan referred to in my decision dated:

by Derek Thew DipGS MRICS

Land at: Briar Cottage, Wrexham Road, Bickerton, Malpas, Cheshire

Reference: APP/K0615/X/05/2004825

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