



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

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.

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