
2024/0306

Ease Assist Ltd

Lawful Development Certificate. Change of use from C3 dwelling to C2. children's home for two children

2 Melvinia Crescent, Barnsley, S75 1DZ

Site Location and Description

The application site refers to 2 Melvinia Crescent a modest 3 bedroomed single storey detached dwelling located within a purely residential area which characterised by a mix of single storey, dormer bungalows and 2-storey family sized dwellings. The property benefits from a paved parking area to the side of the dwelling, a semi-enclosed front garden and enclosed garden to the rear.

The site is located in the Urban Fabric in what is an entirely residential area characterised by dwellings similar in appearance to the site.

Planning History

2021/0758 – Erection of single storey extension to rear and side window to dwelling (Approved with Conditions July 2021)

Proposed Development

The application is for a Section 192 Lawful Development Certificate of proposed use or development which is used for the following.

1. If any person wishes to ascertain whether –
 - a. Any proposed use of buildings or other land; or
 - b. Any operations proposed to be carried out in, on, over or under land, would be lawful.

The applicant seeks confirmation for the change of use from C3a (covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child) to use class C3b (covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems).

The applicant's planning statement indicates that Ease Assist Ltd, is the owner/operator of this detached property and it is intended to be used as a care home for 2 children/young adults (aged 16-18) leaving care. With regard to the property, its lawful use is as a dwellinghouse. The applicants are not aware of any relevant planning history.

As noted above, accompanying the application are existing floorplans, which outline the existing accommodation arrangement, consisting of a hallway leading to a living/dining, kitchen, family bathroom and 3no bedrooms.

No physical works, internal or external, are proposed, and it is not intended to carry out any changes to the internal layout. The plans do not indicate the single storey rear extension approved under application 2021/0758, however this development can be implemented until 21st July 2024.

There is room on site to accommodate 2no parking spaces to the side of the property onto Melvinia Crescent.

Consultations

Legal – The supporting statements on this case indicate that the applicants appear to accept that the proposal amounts to a change of use from C3 to C2(b). This is the inevitable result of the decision in the case of North Devon District Council [2003]. However, for the use to require planning permission the Local Planning Authority (LPA) must be satisfied that the change amounts to a “material” change of use.

The law provides that a change within a use class (assuming a condition has not been added to the planning permission limiting the scope of the authorised use) is to be treated as lawful and not a material change. However, it is not necessarily the case when there is a change from one use class to another. It must still demonstrate that the change is “material”. What constitutes a ‘material change’ is not defined within planning legislation and is a matter of fact and degree to be determined on the individual merits of each case.

Highways – No objections

Pollution Control – No objections

Representations

There is no statutory requirement for Local Planning Authorities (LPA) to consult third parties, including neighbouring residents or parish councils on a lawful development certificate (LDC) application since an LDC application is a matter of fact and law and is not determined on its planning merits or judged against National or Local planning policies or guidance. No representations have been received.

Assessment

General

Where activity results in a material change of use of a building to a use falling within a different use class then planning permission will be required to authorise that change of use. Depending on the circumstances of each case, a children’s home will fall into either a C2 or C3 use classification.

A material change of use from class C3 to C2 amounts to development requiring planning permission. There is therefore a potential requirement for planning permission in order to use a dwelling house as a children’s home. The starting point is to first establish as a matter of fact and degree, whether such a use would constitute a change of use from C3 to C2. The issue largely centres on whether or not the children are in themselves capable of living together as a single household.

Class C3 (b) of the Town and Country Planning (Use Classes) Order as amended refers to “up to six people living together as a single household and receiving care e.g., supported housing schemes such as those for people with learning disabilities or mental health problems.” If a children’s home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there would be no requirement for planning permission.

However, the matter is less clear when the care is based on shift patterns, as is the case proposed. In the North Devon District Council [2003] case Justice Collins made the point that children “need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing

fulltime care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should.”

The North Devon case was assessed against a two-stage test as follows:

- a. does the use lie within C3?
- b. in any event is there a material change of use involved?

As a result of the North Devon Case, the proposal is considered to fall outside C3, and within C2, because of the way in which the residents interact, including with the staff, to the extent that they may not be regarded as living together as a single household. However, for the use to require planning permission the LPA has to be satisfied that the use amounts to a “material” change of use. The law provides that a change within a use class (assuming a condition has not been added to the planning permission limiting the scope of the authorised use) is to be treated as lawful and not a material change. The opposite is not necessarily the case when there is a change from one use class to another, one still must demonstrate that the change is “material”.

What constitutes a 'material change' is not defined within planning legislation and is a matter of fact and degree to be determined on the individual merits of each case, so the LPA has to weigh up the facts of this case and make a planning judgement as to whether the change would amount to a material change or not. The applicants have referred to a number of appeal decisions where this change has not been found to be material.

Specific

The application relates to a modest 3-bedroomed single storey detached dwelling located within a purely residential area which characterised by a mix of single storey, dormer bungalows and 2-storey family sized dwellings. The property benefits from a paved parking area to the side of the dwelling, a semi-enclosed front garden and enclosed garden to the rear.

It is to be established whether the use of the existing family dwelling (C3) as a children's home (C2) is material and would require planning permission.

The applicant's statement indicates that the proposed use is for the accommodation of up to two children and one care staff, with an additional manager visiting the site between 9am and 5pm Monday to Friday. The 1no care staff would work on a 36hour shift pattern, with a team of four staff in the rotation. Shift changes would take place at either 8am or 8pm, with the exception of changeover times, there will no more than two members of staff on the premises at any one time.

Appeal decisions have found that even where staff providing care to other residents are on a shift system living in their own homes, the use may still, on its facts, be within use class C3. It is considered that the level of staffing proposed for 2no children would not amount to a material change of use of the premises.

The applicant has indicated that there is off-street parking to the side of the property for 2no vehicles. The dwelling, as mentioned previously is located within a residential estate with no on-street parking restrictions; sufficient off-street parking is provided for the two members of staff.

The applicant has provided details in relation to the vehicular movements at the premises and in relation to education and visitors. It is outlined that the children/young adults (aged 16-18) will attend college etc. and that any family visits, would normally take place away from the home; it is considered that the movements would not be materially different to those associated with a standard household.

It is agreed that this property is a modest 3-bedroomed, dwellinghouse set within a modest plot, and in consequence it would, in its dwellinghouse form, have a larger number of vehicular movements than a smaller dwellinghouse would. Whilst the specific number of estimated movements haven't been provided it is not considered that the proposed use would lead to a significant increase in vehicular movements which would give rise to an increase in noise and disturbance above that of a standard 3-bedroom family dwelling.

Ultimately, the onus of proof test for an LDC application always falls with the applicant, not the Council to prove. The submitted information indicates that the use of the dwelling as the children's care home would not operate in a way which would amount to a material change to the existing use as a modest 3-bedroomed dwelling, which could have a large family residing within it. Essentially, this detached property will continue to function in very much the same way as it does as a dwellinghouse.

In this case, based on the current information, the Council determines that the proposed development and associated activity would not lead to a material change of use on the land or this large 4 bedroomed property to C2(b) and that the LDC for the proposed use should be granted.

Recommendation: Approve