

100042095



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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COMPASS
CASE COMPLETED
UNDER CLICK USE EVIDENCE
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

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.

A handwritten signature in black ink that reads "Jerick Thew". The signature is written in a cursive style and is underlined with a long horizontal stroke that extends to the right.

Inspector

Lawful Development Certificate

The Planning Inspectorate
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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.



Derek Thew
Inspector

Date 24/04/06

Reference: APP/K0615/X/05/2004825

First Schedule

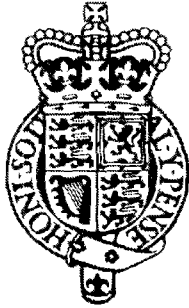
Use of the property as a children's home for 4 children between the ages of 11 and 17 years, with 2 adult carers, within Class C2 of the Town and Country Planning (Use Classes) Order 1987.

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**

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