
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 15/06/20

gan Mr A Thickett BA(Hons) BTP Dip
RSA MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 21.08.2020

Appeal Decision

Site visit made on 15/06/20

by Mr A Thickett BA(Hons) BTP Dip RSA
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 21.08.2020

Appeal Ref: APP/H6955/X/20/3247381

Site address: Croeshowell Cottage, Croeshowell Lane, Burton, LL12 0LB

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Woodlands Ltd against the decision of Wrexham County Borough Council.
 - The application Ref ROS P/2019/0664, dated 29 August 2019, was refused by notice dated 17 January 2020.
 - 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 the use of the property for the care and supervision of a maximum of 3 young people (aged 11 – 18) with specific needs, supported by qualified and experienced staff on a 1:1 ratio.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's refusal to issue a certificate of lawful use or development was well-founded.

Reasons

3. It is common ground that the lawful use of Croeshowell Cottage is a dwelling house as defined in Class C3 to the Schedule in the Town and Country (Use Classes Order) 1987. The appellant argues that the use of the property for the care and supervision of a maximum of 3 young people (aged 11-18) with specific needs, supported by qualified and experienced staff on a 1:1 ratio would not amount to a material change of use from a C3 dwelling house. The appellant contends that the proposed use falls within Class C3(b) which is defined as: *'not more than six residents living together where care is provided to residents'*. The Council take a contrary view that the proposed use falls in to Class C2; *'Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))'* and as a consequence planning permission is required to change the use of the property from Class C3 to C2.
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4. Up to 3 children would live at the property supported by staff on a 1:1 ratio. A typical shift pattern for the staff would entail starting at 08.00 hours, working all day, spending the night at the property, working the following day and leaving at 22.00 hours. Only two staff members would sleep over¹. All domestic duties would be undertaken by the staff. The children would attend school and any therapy or consultations with social workers would take place elsewhere.
5. The Oxford English dictionary defines resident as someone '*living somewhere on a long term basis*'. It seems to me that although the carers will spend long periods at the property it would be a place of work. That would not necessarily mean that one cannot work and reside in the same place but I have seen nothing to suggest that the staff would go anywhere else but home after the end of their shift. Croeshowell Cottage would primarily be their place of employment not their home or place that they reside.
6. The appellant does not dispute the Council's assertion that the staff would not be permanent residents. Indeed, in an e mail to the Council at application stage the appellant's agent agreed with the Council's interpretation of the 'Devon' case that the proposed use cannot be described as occupation by a single household². Having considered the submissions on the Devon case, I agree with the Council that, for the reasons given above, the proposed use does not fall within Class C3. I will now turn to whether the proposal would constitute a material change of use that would require the grant of planning permission.
7. Half of the people present in the house during the day would be employees and the appellant does not dispute the Council's claim that there would be records and information kept at the property. The children would attend school and either be driven or go by bus as any conventional family. Nothing is submitted to say how often the children would travel to meet social workers or therapists but nor have I read anything to indicate that the number of comings and goings would be materially different from a household with teenage children. From experience, depending on the number of sport, musical/theatrical and other things they may be involved with, including meeting friends, a household with children can generate a lot of activity.
8. No physical changes are proposed to the house and from the outside would not have the appearance of an institution, nor according to the appellant would it operate as one as their aim is to avoid an institutional feel to the care provided. The adults would be employees of the appellant company. The nature of the relationship between them and the children would be different to that of a parent child relationship and I agree with the Council that the character of the use would be different to that of a family home. Nevertheless, the adults would cook, clean, ferry the children about, care for them and largely carry out the same duties as a parent. I do not consider the difference would be sufficiently noticeable or material in a planning use sense to constitute a change of use.
9. For the reasons given above I conclude that, on the evidence available, the Council's refusal to grant a certificate of lawful use in respect of the use of land for the use of the property for the care and supervision of a maximum of 3 young people (aged 11 – 18) with specific needs, supported by qualified and experienced staff on a 1:1 ratio was not well-founded and that the appeal should, therefore, succeed. I shall exercise

¹ E mail from David Fitzsimon to the Council 15/11/19.

² North Devon District Council v The First Secretary of State (CO/4245/0 [2003] EWHC 157 Admin).

the powers transferred to me under section 195(2) of the 1990 Act as amended accordingly.

Anthony Thickett

Inspector



Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (WALES)
ORDER 2012: ARTICLE 28

IT IS HEREBY CERTIFIED that on 29 August 2019 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 192(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use of the land described within the First Schedule would not amount to a material change of use.

Signed

Anthony Thickett

Inspector

Date: 21.08.2020

Reference: APP/H6955/X/20/3247381

First Schedule

The use of the property for the care and supervision of a maximum of 3 young people (aged 11 – 18) with specific needs, supported by qualified and experienced staff on a 1:1 ratio.

Second Schedule

Land at Croeshowell Cottage, Croeshowell Lane, Burton, LL12 0LB

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

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, was /were not 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.

