
Appeal Decisions

Site visit made on 15 October 2013

by Mr Keri Williams BA MA MRTPI

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

Decision date: 5 November 2013

Appeal A: APP/P1560/X/12/2186388

Walnut House, Lodge Lane, Tendring, Clacton-on-Sea, Essex, CO16 0BS

- 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 Ms Veronica Patten against the decision of Tendring District Council.
- The application Ref.12/00461/LUPROP, dated 11 April 2012, was refused by notice dated 23 October 2012.
- 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 communal use of the dwellinghouse by six persons.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/P1560/A/12/2183345

Walnut House, Lodge Lane, Tendring, Clacton-on-Sea, Essex, CO16 0BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Veronica Patten against the decision of Tendring District Council.
- The application Ref.11/01279/FUL, dated 24 October 2011, was refused by notice dated 9 March 2012.
- The development proposed is described as the "change of use of existing residential property to form a small residential care home."

Summary of Decision: The appeal is dismissed.

Applications for costs

1. The applications for costs made by the appellant against the Council are the subject of separate Decisions.

Appeal A: The Lawful Development Certificate Appeal

Background

2. Planning merits are not relevant in this appeal. They are not an issue for me to consider in the context of an appeal under section 195 of the Act, which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case, relevant planning law and guidance and judicial

authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

3. The LDC application was made under section 192(1)(a), for a proposed use. The current use of Walnut House is as a dwellinghouse falling within Class C3a of the *Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)*. Annex A of Circular 08/2010: *Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation* explains that this covers "those living together as a single household as defined by the *Housing Act 2004 (basically a family)*." The use proposed is described in the LDC application as Class C3b. Annex A of Circular 08/2010 explains that this covers "those living together as a single household and receiving care." The limit for Class C3b is no more than 6 people and the UCO defines care in respect of Class C3b as "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."
4. Article 3 of the UCO provides that a change of use where both the existing and proposed uses fall within the same single class of the Order is excluded from the definition of development. It is therefore outside planning control. In the light of that, a change from Class C3a to Class C3b would, on the face of it, not amount to development. However, I must also consider whether, on the basis of the submitted evidence, the use proposed would in fact amount to a Class C3b use.

Main issue

5. The main issue is whether the Council's decision not to issue an LDC was well-founded.

The nature of the proposed use

6. The appellant's Planning Statement says that the proposed occupation of Walnut House would be by six persons who would communally use its facilities. At the time of the application the house was occupied by the appellant, her elderly mother and aunt. They occupied Areas 1-3 on the floor plans submitted with the application. Three new elderly residents would occupy Areas 4-6. In addition, the living/dining room, reading room, kitchen, larder, reading room, conservatory, office/staff room and utility room would be available for communal use. The appellant would provide general care and residents would have the use of all internal facilities. More formal care would be undertaken by a full-time manager and there would also be one full-time and two part-time carers. None of these would reside at Walnut House and there would be no more than two carers, including the manager, on site at any one time. It is intended that residents would live as a single household, with food prepared communally and eaten together, unless residents' health required them to have meals in their rooms. Unfortunately the appellant's aunt has died since the application was made. A further bedroom could therefore be available for a new elderly resident.
7. The proposed use would not exceed the limit of 6 people which applies to a Class C3b use. Nor is that use precluded by the employment of non-resident staff to supplement the care to be provided by the appellant. Walnut House is a spacious dwelling and there is extensive accommodation potentially available for communal use. However, it is a requirement is that the residents would be

living together as a single household. The appellant's intention is to accommodate elderly residents and reference is made to providing meals in their rooms when necessary. Nothing is submitted on the extent to which this is likely to occur. It seems to me likely that at least a proportion of elderly residents entering a care home is likely to be frail or to have medical conditions which would make this necessary. These circumstances are also likely to limit the extent to which these residents would use communal facilities in the house and be able to participate as a member of a single household. The bedrooms which would accommodate the elderly residents generally have en-suite facilities, so that communal use of such facilities would be unlikely. Taking these matters into account, I find that the evidence submitted is not sufficient to demonstrate, on the balance of probabilities, that this would be a single household and thereby amount to a Class C3b use. It is more likely to fall within Class C2, which covers *"Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))."*

8. My conclusion on this matter is consistent with the view expressed in paragraphs 4 and 5 of Annex A of Circular 08/2010. Paragraph 4 says that *"C3b continues to make provision for supported housing schemes, such as those for people with disabilities or mental health problems."* However, paragraph 5 explains that: *"It remains the case that in small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class (Class C2), regardless of the size of the home."*
9. My attention is drawn to appeal decision APP/P1560/A/09/2093868. While I take this decision into account I give it limited weight. It was an appeal against refusal of planning permission rather than, as in this case, an LDC appeal concerning a proposed use. Moreover, it reflects the particular circumstances of that case, where the Inspector says he observed that the building was being occupied as a single household.

Conclusion on Appeal A

10. It is outside the scope of this appeal for me to determine whether a change from Class c3a to Class C2 would amount to a material change of use and I do not do so. It is open to the appellant to submit an LDC application on that basis should she consider that such a proposal at Walnut House would not amount to a material change of use. I conclude that the Council's decision not to grant an LDC was well-founded. The appeal should not succeed.

Appeal B: The Appeal against Refusal of Planning Permission

Main issues

11. The main issues are, firstly, whether the proposal would amount to sustainable development and, secondly, the effect on highway safety and the adequacy of provision for parking and traffic movements.

Sustainability

12. Policy QL1 of the Tendring District Local Plan, 2007 (LP) provides that, in locations outside settlement limits and specific allocations, only development consistent with countryside policies will be permitted. Policy QL2 requires

development to be located so as to avoid dependence on the private car and to promote travel choice, other than in exceptional circumstances. Policy COM5 provides planning criteria for residential institutions. They include avoiding sites outside and away from settlement development boundaries other than exceptionally. This approach is also reflected in policy PEO16 of the Council's draft Local Plan (DLP).

13. The policies of the National Planning Policy Framework (The Framework) are a material consideration. Sustainable development is central to the Framework and encompasses social, economic and environmental dimensions. The Framework supports a pattern of development compatible with sustainable modes of transport but recognises the constraints on the use of sustainable transport modes in rural areas. Framework policies also support a prosperous rural economy, including the sustainable growth of all types of business and enterprise through the conversion of existing buildings. The LP policies to which I refer above are not fully consistent with the approach of the Framework to sustainable development and this limits the weight I attach to a conflict with them. I give limited weight to DLP policy PEO16. It is an emerging policy which remains subject to objection and the DLP has yet to be found to be sound.
14. Tendring is a dispersed village with limited facilities. Reference is made to the recent loss of a village shop/post office. The appeal site is outside the main part of the village and residents of the care home would rely, at least for the most part, on journeys by private vehicles. The proposal would not be consistent with the approach set out in LP and DLP policies. However, dependence on journeys by private vehicles applies equally to the existing dwelling. The proposal is relatively small scale and would provide a community facility. It would make a modest contribution to the rural economy and to employment without causing harm to the character and appearance of the countryside. On balance I consider the proposal acceptable with regard to sustainability.

Highway safety, parking and traffic movements

15. LP policy TR1a deals with development affecting highways and refers to reducing and preventing hazards. Policy TR7 addresses the provision of vehicle parking for new development. The provision of safe access to and from a development is also consistent with the Framework's approach to sustainable transport. The Council is concerned about the effect on highway safety and absence of adequate provision for parking and turning of vehicles.
16. Access to Walnut House is along Lodge Lane and its junction with School Road and Heath Road. The Highway Authority refers to the origins of Lodge Lane as an unmade farm track. It describes its limited width, light construction, the absence of footways or lighting and the absence of formal provision for vehicles to pass other than at gates and vehicle entrances to properties. At its western end Lodge Lane is split, with two arms to its junction with School Road and Heath Road at the apex of a right angle bend.
17. Although no details of vehicle parking or turning facilities for the proposed care home are provided, there is some parking to the front of Walnut Lodge and within the site. The appeal site, together with other land controlled by the appellant, is substantial in area. I consider that, if planning permission was granted, the provision of parking and turning facilities could be secured by condition. No substantive assessment is provided to support the appellant's

assertion that the proposal would not generate significant additional traffic flows. I appreciate that Walnut House is a sizeable dwelling. However, the proposed use would generate traffic movements, for example by the appellant, visitors to the elderly residents, staff and deliveries. Based on the limited evidence before me I consider it likely there would be a material increase in traffic movements along Lodge Lane. In that context I share the concerns of the Council and Highway Authority with regard to the effect on highway safety. In addition, while there is reasonable visibility for drivers entering School Road and Heath Road from Lodge Lane, visibility for drivers turning right into Lodge Lane is limited by the proximity of the right angled bend.

18. I conclude on this issue that, while provision could be made for the parking and turning of vehicles, the development would result in material harm to highway safety. It would conflict with LP policy TR1a.

Conclusion for Appeal B

19. My conclusions on sustainability and provision for vehicle parking and turning are outweighed by my conclusion with regard to highway safety. The appeal should not succeed.

Overall Conclusion

20. Having regard to the above and to all other matters raised both appeals should fail.

Formal Decisions

Appeal A: APP/P1560/X/12/2186388

21. I dismiss the appeal.

Appeal B: APP/P1560/A/12/2183345

22. I dismiss the appeal.

K Williams

INSPECTOR