



Appeal Decision

by Richard W Pratt

A person appointed by the Secretary of State for the
Environment, Transport and the Regions

Tollgate House,
Houlton Street
Bristol BS2 9DJ
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05 JUN 2000

Appeal ref: APP/E2001/X/99/3301

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is brought by Mrs L Morris against the East Riding of Yorkshire Council's refusal to grant a lawful development certificate (LDC).
- The appellant's agent is Christopher Kendall, Hickling Gray Associates, whose reference is CK/111.
- The Council's reference is 366-10034/CH1/LH.
- The site is located at Prospect House, West Lambwath Road, Withernwick, East Riding of Yorkshire.
- The application (ref: DC/99/01078/CLP/BEVEE) dated 14 April 1999 was refused by the Council on 22 October 1999.
- The application was made under Section 192(1)(a).
- The proposed use for which a Certificate of Lawfulness is sought is as a home for people with learning difficulties.

Decision: The appeal is allowed and a Certificate of Lawfulness describing the proposed use which I consider to be lawful is attached to this decision.

Procedural matters

1. During the course of the appeal, the appellant made an application for an award of costs against the Council. This will be the subject of a separate decision in due course, once the exchange of written representations on that application is complete.

The background and main issues

2. I have considered the written representations made in support of the appeal, together with those of the Council, and of 9 interested local residents in so far as these are relevant to the purely legal and factual issues involved in my determination. The planning merits of the proposal are not before me. There appeared to be no dispute that the appeal property was last used as a single family dwellinghouse, in Class C3 of the Schedule to The Town and Country Planning (Use Classes) Order 1987 (the UCO). The proposal described in the LDC application was to use the property as a home for five residents with learning difficulties, who were intended to live together as a single household. Two members of staff would be present 24 hours a day, on a rota basis; one would remain awake overnight, while the other would sleep in one of the bedrooms. The appellant claimed that, since only the staff member sleeping overnight should be included as a resident in the household, this arrangement would also fall in Class C3 of the UCO. Alternatively, even if it did not, the use of the property would remain as a dwellinghouse, and there would be no material change of use requiring planning permission. The Council's view was that there was insufficient evidence to demonstrate that the proposal would not involve more than six residents, or that all the residents would live together as a
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single household. Consequently, it had not been established that there would be no material change of use.

3. In LDC appeals, the onus is on the appellant to demonstrate, on the balance of probability, that the proposed use would have been lawful at the date of the application. In my view, the main issues are, first, whether the proposal would fall within the definition of a dwellinghouse in Class C3 of the UCO, and then, if not, whether the character of the use, including its effects in planning terms on the immediate surroundings of the premises, would be likely to be materially different from that of the previous use as a single family dwellinghouse.

Reasons

4. Class C3 includes use as a dwellinghouse (whether or not as a sole or main residence) - (a) by a single person or by people living together as a family, or (b) by not more than six residents living together as a single household, including a household where care is provided for residents. The appellant did not argue that the residents in this case would be living as a family, so the first issue turns on whether use by five people with learning difficulties, with care provided by two staff on a 24-hour basis, would constitute use by not more than six residents living together as a single household.
5. Paragraph 27 of the former Department of the Environment's Circular 13/87 advises that resident care staff should be included in the calculation of the number of people accommodated. The previous appeal decisions and judicial authorities quoted, however, seem to give conflicting guidance on this point. The application referred to an appeal decision involving a property in Port Talbot, where the then-Secretary of State for Wales concluded that a support worker who stayed at the house overnight should be regarded as a resident. It was suggested that the staff member who would sleep at the appeal property should similarly be counted as a resident, bringing the total to six, within the limit of Class C3(b). However, in the case of *R v Bromley London Borough ex parte Sinclair* [1991] 3 PLR 60, the High Court did not include staff in the household, even though sleeping overnight, finding that the UCO did not require them to live together with the residents. Bearing this in mind, and having considered the evidence and submissions, my view is that the question of whether staff should be counted as residents must be one of fact and degree, to be determined on the basis of the particular circumstances in each case.
6. In this case, the application indicates that none of the staff would occupy the property as their permanent home, but would attend in shifts throughout the day. However, the words "whether or not as a sole or main residence", which follow "Use as a dwellinghouse" under the heading "Class C3 Dwellinghouses" in the UCO, indicate to me that staff would not necessarily be disqualified from counting as residents during the course of their work, even though they lived elsewhere. Two staff members would be present constantly throughout each 24-hour period, and, on the information available, would share the same facilities and take part in the same activities as the five residents. One bedroom would be used by a staff member overnight, but I can find no evidence that the staff would have the use of separate facilities, or live otherwise than as part of the household. On this basis, it seems to me that the nature of their occupation while at the property would be more that of residents than of domestic employees or visiting support staff, such as nurses or social workers, who might attend from time to time as required. I do not think that these characteristics would be affected because the identity of the staff members would change during the day, or because one member would remain awake at night. I therefore conclude, as a matter of fact and degree, that both the members of staff who would be present at any one time should reasonably be regarded as residents in this case, and be

included in the number accommodated, in line with the advice in paragraph 27 of Circular 13/87. Since the total number of residents would therefore exceed six, the use of the property as proposed would not appear to come within Class C3 of the UCO.

7. However, the effect and purpose of the UCO is entirely permissive. If there is a proposal to change the use of land, and both the present and proposed uses are in the same use class, then the UCO will apply and the proposal will not constitute development of the land by virtue of section 55(2)(f) of the 1990 Act. If, on the other hand, the proposed use is not in the same use class as the present or last use, then the UCO is simply irrelevant, and it is not necessary to determine whether or not the proposed use would fall in any other use class. The Council accepted that the last use of the property fell within Class C3. Because of the number of residents, I do not consider that the proposed use would also fall in that class, but, as explained in the quoted extract from the Encyclopaedia of Planning Law, at 3B-975, that does not imply that the excess in numbers would necessarily constitute a breach of planning control.

8. This point was addressed in an appeal decision submitted by the appellant, in which an Inspector found that a house in Southampton shared by eight students remained a dwellinghouse, occupied by a single household. I agree with the Inspector that it is the character of the occupation that is important, rather than the number of occupiers. I do not agree with his conclusion that the use will remain in Class C3(b) even when there are more than six residents, but in practical terms I do not think that this is significant. In my view, the only remaining question to be considered in the present appeal is simply whether, as a matter of fact and degree, the character and nature of the proposed use would be materially different from the last use as a single family dwellinghouse.

9. There was no indication that any significant alterations to the house were proposed, either internally or externally. I therefore assume, for the purpose of the appeal, that it would retain the appearance of a normal dwellinghouse in a residential area. The information provided in the application and in the appeal representations suggests that the residents would live on a communal basis, eating together and sharing responsibility for cooking and other household tasks, and taking part in the normal range of leisure and domestic activities that might be expected in a large family, or among a group of students or young people sharing a house and living together *en famille*. The proposal would not involve individual tenancy agreements, or the provision of lockable rooms and individual facilities that might be expected in premises in some form of multiple occupation. Nor do I consider that the number of occupants, including staff, is so great as to cause any more vehicular or other general activity than might use by any large family or group of people living together as a single household. At least one of the interested third parties who have written objecting to the proposal has referred to an increase in traffic, noticed since the care unit opened. In my view, however, bearing in mind that five of the seven residents are unlikely to run cars themselves, the number of visitors and the effect generally on the surrounding area is unlikely to vary significantly from that arising from the social and domestic activity of any normal dwellinghouse of this size, where there might, for instance, be a number of grown-up children living at home and running cars in addition to those of their parents; or there might be an extended family including elderly relatives who receive frequent visits from district nurses and the like; or the family might be socially active and frequently entertain guests and other visitors; or indeed, a combination of two or all three of these instances.

10. Clearly, the purpose of the proposal is to enable people with learning difficulties to live in as normal a residential household environment as possible, as part of the community, rather than in an institution. In all the circumstances, I take the view that, as a matter of fact and degree,

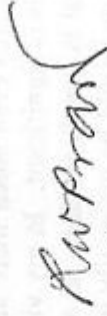
the character and nature of the proposed use would not differ materially from that of the previous use of the property as a single family dwellinghouse. I conclude that no material change of use requiring planning permission would be likely to occur if the property were used in the manner proposed, and therefore that the use would have been lawful at the date of the application.

Conclusions

11. For the reasons given above I am satisfied, on the evidence now available, that the Council's refusal to grant an LDC in respect of the use of the appeal property as a home for people with learning difficulties was not well-founded and that, on balance, the appeal should succeed. I shall therefore exercise the powers transferred to me in section 195(2) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

Right of appeal against decision

12. This decision is issued as my determination of the appeal before me. The leaflet which is enclosed for those concerned, sets out the right of appeal to the High Court.



RICHARD W PRATT



Lawful Development Certificate

THE PLANNING INSPECTORATE
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☎ 0117 987 8927

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 14 April 1999 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 be materially different from the present or last use of the premises, and the proposed change of use from the last use as a dwellinghouse within Class C3 of the Schedule to The Town and Country Planning (Use Classes) Order 1987 would not, therefore, constitute development requiring planning permission.

Signed

Richard W Pratt

05 JUN 2000

Date

Reference: APP/E2001/X/99/3301

First Schedule

Use as a home for up to five people with learning difficulties, with 24-hour supervision by two staff members at any one time.

Second Schedule

Land at Prospect House, West Lambwath Road, Withernwick, East Riding.

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



Plan

This is the plan referred to in the Lawful Development Certificate dated:

05 JUN 2000

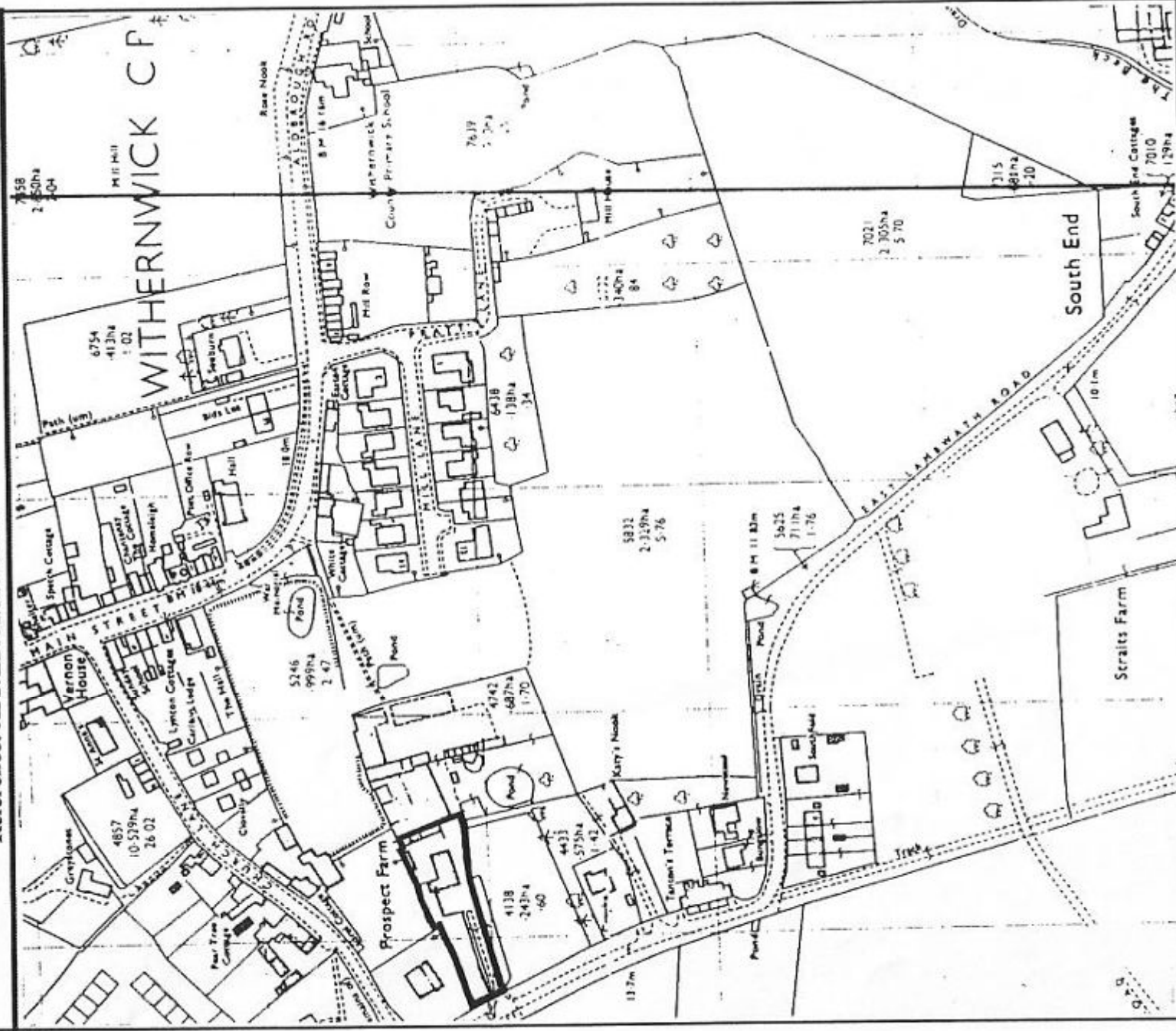
Richard W Pratt

Richard W Pratt

Land at: Prospect House, West Lambwath Road, Withernwick

Reference: APP/E2001/X/99/3301

Houlton Street
Bristol BS2 9DJ
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Costs Decision

by Richard W Pratt

Tolgate House,
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A person appointed by the Secretary of State for the
Environment, Transport and the Regions

21 JUN 2000

Application ref: APP/E2001/X/99/3301

- The application is made under the Town and Country Planning Act 1990, sections 195 & 196(8), and the Local Government Act 1972, section 250(5).
- The application is made by Mrs L Morris for a full award of costs against the East Riding of Yorkshire Council.
- The appellant's agent is Christopher Kendall, Hickling Gray Associates, whose reference is CK/111.
- The Council's reference is 366-10034/JDE/LH.
- The site is located at Prospect House, West Lambwath Road, Withernwick, East Riding of Yorkshire.
- The appeal was against the refusal of a certificate of lawfulness for a proposed use as a home for people with learning difficulties.

Decision: The application for an award of costs is refused.

The case for the applicant

1. The claim for costs was made on the grounds that the Council had behaved unreasonably in their handling of the LDC application. In the applicant's view, the Council's determination had been unreasonably delayed and had failed to give full reasons for the decision. Although the applicant had responded to their request for additional information, the Council had given no clear indication of why they thought permission was required, or what further information was lacking. If clear and convincing reasons had been given, the appellant would have been in a position either to submit a revised application, or to decide not to pursue the matter to appeal.

The case for the Council

2. In response, the Council pointed out that the application had raised complex issues which had required due consideration before coming to a decision. An exchange of correspondence had raised further matters needing proper investigation. The application had been refused because of the lack of evidence to demonstrate that the proposed use would have been lawful. That was a sufficiently clear reason why a certificate had not been issued.

Reasoning

3. In lawful development certificate appeals, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour which has given rise to unnecessary or wasted expense. I have considered the costs application in the light of the policy guidance in the former Department of the Environment's Circular 8/93, the appeal papers, the representations on costs and all the relevant circumstances.
 4. On the question of delay, I accept that the Council took longer than the statutory period to determine the application; but it is apparent from the evidence produced during the appeal
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that they were addressing the relevant legal issues arising from the application and from the subsequent correspondence with the applicant's agent. As I noted in my appeal decision, the previous decisions and case law on the subject offer contradictory guidance, and I accept that the matter was not straightforward. Nevertheless, it was open to the applicant, at any time after the end of the statutory period, to appeal against the Council's failure to determine the application. In view of that, I do not consider that the time taken to decide the application amounted, in itself, to unreasonable behaviour in the terms of Circular 8/93.

5. The application was refused on the grounds that the evidence submitted did not satisfactorily establish that the proposal would not involve a material change of use. In this respect, I have taken account of the guidance in Annex 8 to the former Department of the Environment's Circular 10/97. In particular, paragraphs 8.12 and 8.26 emphasise that the burden of proof is firmly on the applicant for a LDC, who must submit sufficient information to satisfy the local planning authority that a certificate should be granted; the authority itself need not go to great lengths to show that the proposal specified in the application would, or would not, be lawful. In my view, the Council's approach to determining the LDC application in this case complied with that advice. I note that, after the application had been submitted, the Council asked for additional information, which they took into account. However, they remained unsatisfied that the proposal would be lawful. Section 192(2) of the 1990 Act provides that, in those circumstances, the application should be refused. The Council were not obliged to seek more information, or to provide specific reasons why planning permission would be required. In my view, they were clearly aware of, and addressed, the relevant issues, and their approach to the application was not unreasonable.

Conclusions

6. I do not consider that unreasonable behaviour, as described in Circular 8/93, has been demonstrated and I therefore conclude that an award of costs is not justified. I shall exercise the powers transferred to me accordingly.



RICHARD W PRATT