

Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 17/12/13

Site visit made on 17/12/13

gan James Ellis LLB (Hons) Cyfreithiwr
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 18 Chwefror 2014

by James Ellis LLB (Hons) Solicitor
an Inspector appointed by the Welsh Ministers
Date: 18 February 2014

Appeal Ref: APP/P9502/X/13/2205394

Site address: Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU

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 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mac McHugh against the decision of Brecon Beacons National Park Authority ("the Authority").
- The application Ref 12/08756/CPL, dated 12 December 2012, was refused by notice dated 15 August 2013.
- The application was made under section 192(1) (a) of the Act.
- The use for which a certificate of lawful use or development is sought is proposed use as community home for young children.

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. This relates to most, but not all, of the land the subject of the application for the reasons given in paragraph 8 below.

Procedural matters

2. The application form dated 12 December 2012 does not specify what the proposed use the subject of the application is. However, the supporting statement submitted with the application refers to the proposed use of Ty Rhos Bach as a community home for young persons and the Authority made its decision on this basis. Again, the appeal form refers to such proposed use. The supporting statement makes no reference to the number of children who would be resident at the community home at any time, but documentation submitted in support of the appellant's case at appeal clearly indicates that there would be no more than 5 children. Accordingly, I will make my determination on the basis that the proposed use the subject of the appeal is as a community home for no more than 5 young persons.
3. When the Authority made its decision on the application, it did so in respect of a smaller area of land at Ty Rhos Bach than was shown on the site plan submitted with the application. In effect, the Authority limited its consideration to an area shown as Ty Rhos Bach and the curtilage of the building when it was granted planning permission a number of years ago. I queried this with the parties. In the light of

responses received from the parties, I shall need to refer to the curtilage of Ty Rhos Bach in my reasoning set out below.

Background

4. Ty Rhos Bach is a six bedroom detached dwelling. There is a large area of tarmac to the side of the dwelling which provides off street parking and access to a detached double garage which is located at the rear of the dwelling. The dwelling is bounded to its south-west by an activity centre and to its north-west and north-east by fields. However, there are residential properties on the opposite side of the road fronting the property. There is no dispute between the parties that the existing lawful use of the Ty Rhos Bach and its original curtilage is as a family dwelling constituting a dwellinghouse within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended ("the UCO").
5. The proposed use would involve the property being used as a home for up to 5 children in care (aged 11 to 17), though I am told that the property has been registered for 3 children. The children would live there for periods of typically 6-12 months under the supervision of adults, some of whom would sleep in at the property. I am told that 2 staff are likely to be in the building every night with one of them 'sleeping in', as back up. The 'sleeping in' would be on a shift basis, with shifts including nights between waking duties. There would be no more than 6 persons (adults and children) resident at the home at any time.
6. It is intended that those children resident at the home would live together as a group, learning skills necessary for family life, and that staff would seek to provide a stable 'family' environment. Part of the package would involve the children receiving schooling from the adults. It is envisaged that this would take place in a room within the garage building. Most of the ground floor of the main building would provide accommodation for day to day living, although a small room would be likely to be used as an office. Six bedrooms would be located on the first floor and within attic space.

Main Issues

7. The main issues are: whether the proposed use would fall within Class C3 or Class C2 of the Schedule to the UCO; and, if it falls within Class C2, whether the change of use from a family dwelling to a community home for no more than 5 young persons would be material.

Reasons

8. It appears that the land within the area shown on the site plan is now within the curtilage of Ty Rhos Bach. However, from the evidence before me, I am not satisfied that the part of the current curtilage outside that which originally received planning permission has lawful use for residential purposes. The appellant's arguments in this case are predicated upon the appeal site having a current lawful use as a family dwelling and there is no suggestion that land without lawful use for residential purposes can be used for the purposes of the proposed use as a community home for young persons. I cannot therefore grant a certificate of lawful use or development in respect of that part of the appeal site falling outside the original curtilage and will now consider the respective arguments of the parties in the context of Ty Rhos Bach and its original curtilage.

Whether the proposal would fall within Class C3 or C2 of the Schedule to the UCO

9. I shall start by referring to the wording of the UCO, and to what I consider to be the most relevant of the case law drawn to my attention by the parties. Following this, I shall then examine whether the proposal would fall within Class C3 or Class C2.
10. Class C3 of the Schedule to the UCO (as it applies to Wales) is: 'Use as a dwellinghouse (whether or not as a sole or main residence) by – (a) 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)'.
11. Class C2 (which refers to residential institutions) is: 'Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre'.
12. 'Care' is defined in Article 2 of the UCO and means '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, and in Class 2 also includes the personal care of children and medical care and treatment'.
13. The case of *North Devon DC v First Secretary of State* [2003] EWHC 157 (Admin) is authority for the fact that children cannot, by themselves, constitute a household. *North Devon* has been relied on in a previous appeal decision¹ where the Inspector found that the use before him fell within Class C2 rather than Class C3 and said that *North Devon* 'provides authority for the view that children cannot, as a matter of law, form a household'.
14. It has been suggested that the reference to personal care of children in Class C2 means that where children are receiving such care, their home could not fall within Class C3 (b). I do not accept this. Clearly, children needing care living in a home without resident adults could not form a household (following *North Devon*) and would therefore fall within Class C2. However, where there are resident adults living in a home, the use would not necessarily be precluded from Class C3 (b). It seems to me that the determinative issue of whether the proposal would fall within Class C3 (b) is whether residents of the home (including adults) would be living together as a 'single household', irrespective of whether one or more of the children would be receiving care, including personal care. I shall now look at the proposal in the context of this.
15. At this stage, I consider it appropriate to quote extracts from paragraphs 16 and 17 of the judgement in *North Devon* as follows: "...Children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go into running a home....the whole point of these homes is that children are regarded as needing full-time 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. It seems to me that, in the context, "household" means more than merely bodies. You have to consider whether the bodies are capable of being regarded, in the true sense, as a household.... One has to have regard to the need that they be living together as a single household. The question then arises as to whether carers who do not live but who provide, not necessarily through the same person, continuous 24-

¹ Appeal decision Ref: APP/U5930/C/11/2151319 and A/11/2146559.

hour care can be regarded as living together. In my view, the answer to that is no.... What is required is indeed residential care with a carer living in full time and looking after those in the premises who otherwise would be unable to live as a household."

16. In *North Devon* and in Appeal decision Ref: APP/U5930/C/11/2151319 and A/11/2146559, the houses were under the supervision of teams of adult carers who worked shifts, but who did not 'sleep in' at the premises. The Court in *North Devon* and the Inspector in the previous appeal decision therefore found that in those cases there was no household to bring the use in Class C3 (b). With the proposal, there would be carers 'sleeping in' at the premises. However, this would be on a shift basis (albeit shifts lasting a number days), with those carers being there as back up at night, whilst another carer was at the premises. To my mind, this is more akin to a 'household' than the situation in *North Devon* and the previous appeal decision. Nevertheless, on balance, I am not satisfied that the 'sleeping in' arrangements would demonstrate that there would be a single household. This is because the shift system suggests to me that carers would not be resident at the property 'full time' and, in any event, primary responsibility for looking after the children at night time would fall to carers other than those 'sleeping in'.

17. I therefore conclude that the proposal would fall within Class C2 of the Schedule to the UCO, rather than Class C3 (b).

Whether the change of use would be material

18. I now need to consider whether the change of use from a family dwelling to a community home for no more than 5 young persons would be 'material'. This is a matter of fact and degree and depends upon the particular circumstances of each case. Established case law provides that it is necessary to look at whether the change gives rise to planning considerations which can include the effects of the change on local amenity.
19. The proposal would display many features of a family dwelling. For example, most of the accommodation on the ground floor would be used for day to day living. It is also intended that staff would seek to provide a stable 'family' environment for those in care. However, in appeal decision Ref: APP/U5930/C/11/2151319 and A/11/2146559, the Inspector identified a number of characteristics of a children's care home which could distinguish it from a family dwelling. These include: possible noise and disturbance arising from incidents of extreme behaviour of residents (with consequential visits from regulatory agencies); the presence of fire alarms, reinforced fire doors and locks on bedroom doors; the property having an office; and the cumulative level of activity, traffic movements and requirement for parking given the comings and goings of staff over a 24 hour period, and the visiting of residents by family and friends. I shall now look at the proposal in light of these points and also others raised by the Authority
20. The grounds of appeal lodged by the appellant refer to the fact that, due to their background, some of the children may be in receipt of 'care' that goes beyond the care normally associated with bringing up a child or adolescent. It is possible that such children could make more noise and create more disturbance than children associated with a typical family dwelling, but I note that the proposal is small in scale (with no more than 5 children at any time) and that Ty Rhos Bach is a detached house (which could reasonably be occupied by a family with more than 5 children) and not bounded by other residential properties. This was not the case with the house the subject of the previous appeal decision which was an end of terrace dwelling where

noise could be heard by the occupiers of the adjoining property. In my view, any change to the character of the Ty Rhos Bach arising from noise and disturbance emanating from the intended occupiers of the proposal would not be significant and would not have a material impact on local amenity.

21. Staff would work on a shift basis with some staff working on extended shifts over a number of days. The website for Fairview Care (UK) Ltd (which would operate the home) suggests that at other homes run by it there is a minimum of one to one staffing throughout the day. However, I am advised that whilst one to one care may be provided on occasion, this does not necessarily result in a rotation of three staff per child. There would be visits by the Care and Social Services Inspectorate Wales and also, possibly, by other agencies. However, visits by friends and relatives would not be encouraged and would not be likely given the remote location of Ty Rhos Bach.
22. Ty Rhos Bach is a sizeable family home set in a rural location, where there is every likelihood that family members of appropriate age would have their own vehicles. Again, visitors to a family occupying the property would be likely to arrive by car. I also understand that, in the past, bed and breakfast accommodation has been provided at the property. The evidence suggests to me that whilst the traffic movements associated with the proposal may be more than those associated with the existing lawful use, the increase is not likely to be significant. From what I saw on my site visit, the existing parking area should be able to accommodate parking associated with the proposal without there being a change in the character of the property.
23. The property already has fire alarms and fire safety doors which remain from when it provided bed and breakfast accommodation. Doors to the bedrooms have locks on them, but it is intended that only the staff bedroom be locked. The small size of the ground floor office is such that it is unlikely that it would be used for meetings. The office would be locked at times but, in my experience, it is not unusual for this to happen at 'home offices'. There would be activity associated with the 'classroom' in the garage but home education is an option available to the parents of any children and, in my view, the level of activity associated with the building is unlikely to be significantly more than that associated with a hobby room/games area at a large family home. The 'classroom' would also have supervised access. However, it is again not unusual for unsupervised access to certain rooms or outbuildings at family homes to be restricted, particularly where they might contain dangerous tools or materials.
24. The Authority has suggested that the proposal would result in the loss of a residential dwelling in a small community, but has given no detailed explanation as to how this could impact on the community. The proposal would, however, be used as living accommodation throughout the year with residents making use of local facilities and adding to activity levels in the community. I consider this to be positive in an area where residential properties are used as holiday homes.
25. After taking all the evidence before me (including the case law and previous appeal decisions cited by the parties) into account, I find, on the balance of probability, that the proposal would not result in a significant change in the character of the existing lawful use at Ty Rhos Bach and that it would not have a material impact on local amenity. It follows that the change of use from a family dwelling to a community home for no more than 5 young persons would not be material and that, as such, it would not require planning permission.

Conclusion

26. For the reasons given above, I conclude, on the evidence now available, that the Authority's refusal to grant a certificate of lawful use or development in respect of the proposed use of Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU as a community home for not more than 5 young persons was not well-founded, insofar as it relates to Ty Rhos Bach and land within its original curtilage and that the appeal should succeed in this respect. I will exercise the powers transferred to me under section 195(2) of the Act.

James Ellis

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 (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 12 December 2012 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in green 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 change of use of the land from a family dwelling (within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended) to a community home for no more than 5 young persons (within Class C2 of the Schedule to the 1987 Order) would not constitute a material change of use and would not, therefore, require planning permission'.

Signed

James Ellis
Inspector

Date: 18 February 2014
Reference: APP/P9502/X/13/2205394

First Schedule

The use of the land as a community home for no more than 5 young persons

Second Schedule

Land at Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU

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, 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.



Plan

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

by James Ellis LLB (Hons) Solicitor

Land at: Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU

Reference: APP/P9502/X/13/2205394

Scale: Not to scale

