



Appeal Decision

Site visit made on 9 March 2021

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021

Appeal Ref: **APP/P1045/X/20/3263178**

214 Dale Road, Matlock Bath DE4 3PT

- 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 Mr Sandeep Manaktala of Blue Mountain Homes against the decision of Derbyshire Dales District Council.
 - The application Ref 20/00902/CLPUD, dated 14 August 2020, was refused by notice dated 13 November 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 described on the application form as C2 – residential institution.
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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 decision to refuse to grant a certificate of lawful use or development was well-founded. In this case that turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3.

Reasons

3. The appeal property is a detached two storey dwellinghouse situated on the main road (A6) between Matlock Bath and Matlock. It is situated adjacent to a row of terraced houses and is separated from the main road by a small front garden with a path leading to the front door. It has a small rear garden that backs onto a steep cliff and there is on-site parking immediately adjacent to the house. The proposed use is as a home for up to three children or young people with care provided on a rota basis. A member of staff would sleep on the premises to provide 24 hour care and a carer would attend during the day. Therefore, the carers would not live permanently at the property but rather would operate on a shift basis.
4. A similar scenario to this case was considered in the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C. R. 38* which determined that children cannot form a household and that if their carers do not live permanently at the property, the use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO).

This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use.

5. As previously set out in this decision, the property would be occupied by up to three children or young people who would live in the house under the care of two carers working on a rota basis sleeping overnight (two days on and two days off). A manager would be on site during weekdays between 0900 and 1700 and there may be occasional visits from a social worker or clinician. The property would not be the main residence of the carers. Consequently, the Council states that the main consideration in this case is that the carers would not be full time residents, but would work in shifts, consistent with a C2 use. The Council goes on to argue that there is no permitted change from C3 to C2 under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and the proposed use cannot therefore be considered to be permitted development.
6. However, a change of use to a different use class only requires planning permission if it is material in planning terms. In this case, the appellant accepts that the proposed use is within Class C2 but contends that the nature of the use as detailed in the application would not be materially different than a typical household in Class C3. That is the basis on which I have determined this appeal and in order to establish whether or not there would be a material difference a comparison between the existing and proposed uses must be carefully considered.
7. The property currently comprises of a sitting room, living room, dining room, kitchen, WC and hall at ground floor level with four bedrooms, an additional bedroom/dressing room, WC and bathroom on the first floor. The house could quite easily accommodate a family with two adults and three or more children and therefore the proposed use for up to three children or young people and their carers would not be materially different from the authorised use as a single four or five bedroom family dwellinghouse. There would be some vehicle movements associated with carers coming to and going from the site on a daily basis in accordance with their shift patterns and there would be additional journeys linked to taking children and young people to school or college and taking them to other activities or appointments. The number of these movements is unlikely to be significantly more than the number that would be undertaken by a family and certainly not enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. There is insufficient evidence before me to show that the use would be likely to result in greater levels of noise and disturbance than the existing authorised residential use.
8. It is my understanding that the appellant will be required to comply with a range of regulations and rules governing the operation of the accommodation for children and young people in care, including their supervision. Should these regulations be adhered to and the appellants meet the necessary staffing and management requirements, I do not find there to be any reason why the use proposed would have planning impacts that would result in it being considered to be a material change of use.

Conclusion

9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in

respect of use of the property for C2 - residential institution purposes 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.

A A Phillips

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 August 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), would not represent a material change from the authorised use of the site as a Class C3 dwellinghouse.

Signed

A A Phillips

INSPECTOR

Date: 15 March 2021

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First Schedule

The use of the dwellinghouse within Class C2 of the UCO, for occupation by up to three children or young people with care provided on a rota basis

Second Schedule

Land at 214 Dale Road, Matlock Bath DE4 3PT

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 March 2021

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Scale: Do not scale

