



Appeal Decision

Site visit made on 24 January 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI Assoc I HBC

an Inspector appointed by the Secretary of State

Decision date: 07 February 2022

Appeal Ref: APP/U2370/X/21/3277997

12 Chiltern Avenue, Poulton-Le-Fylde FY6 7DY

- 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 D Haliday against the decision of Wyre Borough Council.
 - The application Ref 21/00358/LAWP, dated 11 March 2021, was refused by notice dated 20 May 2021.
 - 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 use of the dwellinghouse as a home for the care of up to two young persons under the age of 18 years old, with 24 hour care provided by carers operating on a shift basis.
-

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 three bedroom semi-detached house with front and rear gardens situated within a predominantly residential part of Poulton-Le-Fylde. It is situated on the northern side of Chiltern Avenue which is a cul de sac and pedestrian and vehicular access is directly off Chiltern Avenue with parking provided in the driveway to the front and side. In the rear garden is a detached building which I understand is used as an office with a shower room. At ground floor the accommodation comprises a hall, lounge, dining area and kitchen whilst at first floor level there is a landing, three bedrooms and a bathroom.
4. The proposed use is as a home for the care of up to two young people with care provided 24 hours a day by four staff on a rota basis. It is my understanding that there would only be two carers present during the daytime and no more than two carers present overnight. The carers would be responsible for the day-to-day needs of the young people and provide support with the daily routine. The carers will have breakfast at the property each

- morning before taking the young people to school or other activities and will then return home with the young people, spend the evening with them and participate in normal household activities.
5. Section 55(1) of the 1990 Act sets out the meaning of development which includes the making of any material change in the use of a building. Section 55(2) states that in the case of buildings which are used for a purpose of any class specified by the Secretary of State the use of the building for any purpose within the same use class shall not be taken for the purpose of the Act as being development. Planning permission is required for the carrying out of any development of land **and s336(1) defines "land" as including a building.**
 6. The appeal property is an existing self-contained residential unit including facilities for cooking, eating, sleeping and living and consequently falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO). C3 use includes use as a dwelling house by not more than six residents living together as a single household where care is provided for residents. **"Care" is specifically defined** as personal care for people in need and in Class C2 it includes the personal care of children. Class C2 is defined as use for the provision of residential accommodation and care to people in need of care (other than use within C3 (dwelling houses)).
 7. Case law¹ 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 UCO. Therefore, in this current case, the proposal would result in a change of use from Class C3 to C2. However, a change of use to a different use class only requires planning permission if it is material in planning terms. The *North Devon* case also determined that whilst a change of use had occurred, it was not a material change of use and therefore planning permission was not required. Consequently, it is necessary to determine whether the proposed use of the property would constitute a material change.
 8. There is no dispute between the main parties with respect to the appearance of the property, layout and the proposed level of occupation. However, on the number of vehicles, parking, nature of occupation and character of the buildings in the surrounding area the Council considers there are material differences with respect to the existing and proposed use.
 9. With respect to vehicle movements the proposed shift changeover would be at 0800 every 48 hours and there would be other traffic movements associated with other professionals visiting the property to provide management services as well as social care as necessary. The 0800 time reflects the time of day when local residents may be leaving their homes to go to work or take children to school, for example. Therefore, the movement associated with the shift change is unlikely to be at odds with other movements in the locality or even be discernible to other residents in the area. The movements associated with the staff changeover are unlikely to be materially different to the movements that may be expected with a family residential dwelling house. The evidence before me also shows that there may be occasional visits from the property manager and the local authority social worker who would attend the property once every three months. Therefore the level of vehicle movements associated with the change of use are unlikely to be materially different from the existing conditions.

¹ North Devon District Council v FSS & Southern Childcare Ltd (QBD 30.1.03 Collins J) [2004] 1 P. & C. R. 38

10. The appeal property has its own off street parking to the front and side and there are no proposals to alter the existing arrangements. The Council considers there to be inadequate parking on site to accommodate vehicles associated with shift changeovers and therefore parking would be mainly on the road in a quiet cul de sac. The number of cars associated with the proposed use is unlikely to be higher than the number associated with other residential uses along the street and in the wider locality. On street parking was evident at the time of my site visit and the pattern of parking is not unusual for a residential street such as this. The proposed parking requirements would not be materially different from the existing residential use or the surrounding area and given the on-site provision available I see no clear **justification for the Council's assertion that** parking would be mainly on the road.
11. The Council contends that the property would become a place of work for the carers and the alternation of workers results in a property of commercial employment practices and not purely domestic. The *North Devon* case was one where the home operated with non-resident carers on a shift pattern, but it was found that a material change of use had not occurred. I understand that the appeal property would be a place of employment for staff, but that does not on its own determine whether or not a material change of use is proposed.
12. The property would accommodate up to two young people who would be cared for in a way which reflects family life as far as practicable. The level of occupancy and level of use would be similar to other residential properties in the locality and I see no justification for the assertions that the type of accommodation, the presence of carers, movements and overall pattern of use would be materially different from its current use as a residential unit or any other family-occupied residential property in the vicinity.
13. I am aware of the concerns of local residents, but I have made this determination on the evidence presented to me and the specific circumstances of the proposed use in the light of the case law and associated legislation to which my attention has been drawn.

Conclusion

14. 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 as a home for the care of up to two young persons under the age of 18 years old, with 24 hour care provided by carers operating on a shift basis 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 192
(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 11 March 2021 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: 07 February 2022

Reference: APP/U2370/X/21/3277997

First Schedule

Use of dwellinghouse as a home for the care of up to two young persons under the age of 18 years old, with 24 hour care provided by carers on a shift basis.

Second Schedule

Land at 12 Chiltern Avenue, Poulton-Le-Fylde FY6 7DY

NOTES

This certificate is issued solely for the purpose of Section 192 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 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.

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.

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: 07 February 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI Associ HBC

Land at: 12 Chiltern Avenue, Poulton-Le-Fylde FY6 7DY

Reference: APP/U2370/X/21/3277997

Scale: Do not scale

