



Appeal Decision

Unaccompanied site visit made on 25 October 2021

by **B.S.Rogers BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 November 2021

Appeal Ref: APP/D2320/X/21/3277353

20, Briery Hey, Bamber Bridge, Preston, PR5 8HU

- 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 SBL Care Services against the decision of Chorley Borough Council.
 - The application Ref:21/00292/CLPUD, dated 11 March 2021, was refused by notice dated 6 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.

Application for costs

2. An application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Reasons

3. The main issue is whether the Council's decision to refuse an LDC for the proposed use was well-founded. The planning merits of the proposed use are not relevant to this type of appeal, in which the onus is on the appellants to demonstrate their case, on the balance of probability.
4. The appeal property is a modern, detached house with an integral garage, sited on a residential cul-de-sac containing broadly similar dwelling types. The floor plans indicate it has a lounge, a dining room, a w.c., a kitchen and a conservatory on the ground floor. Upstairs, it has 4 bedrooms, one of which has an en-suite, and a bathroom. There is no dispute that the present use, the occupation of the house by a family of four, falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987, as amended [UCO].
5. It is stated that 2 young persons between the ages of 8-18 would occupy the property as their permanent place of residence. They would have a bedroom each and would share the communal facilities of the living rooms, kitchen, bathroom and garden. The dwelling does not require any internal modification.

6. The young persons would be looked after by carers, drawn from a small pool of staff assigned to the dwelling, operating on a shift basis. There would usually be no more than 2 carers present during the daytime with no more than 2 carers present overnight. The carers would be directly responsible for the care and welfare of the young persons, supporting them in their daily routine. There would be no shift changes during unsociable hours. Any additional visits, such as by the property manager, would be in the daytime. It is indicated that a social worker would conduct a review every three months, sometimes at the appeal premises.
7. It is common ground that the proposed use, as described, would be a change of use. Having regard to the judgement in North Devon¹, I agree that the proposed use would fall within the UCO definition of a C2 institution as the carers would not be classified as residents and would therefore not be part of the household. However, the appellants submit that it would not be a *material* change of use and would therefore not fall within the definition of development as set out in S.55(1) of The Act, as amended.
8. The appellants state that the dwelling is currently occupied by a family of four, with all the comings and goings of residents and visitors that such occupancy would normally imply. For the proposed use it appears that, for the vast majority of the time, there would be a maximum of four persons present on site. The indication is that the staff are from a small pool and so they would be familiar faces. There would be regular comings and goings to and from school and at staff change-over times, plus other social, recreational and other outings. Together with the indicated frequency of visitors, this does not appear to me to be materially different from the pattern exhibited by a family of four.
9. There appears to be ample parking space on the driveway and within the garage for the number of adult staff and visitors likely to be present at any one time. Accordingly, the use would not appear to have a material impact on its surroundings in this respect.
10. A number of other appeal decisions have been submitted which raise similar considerations to those in this case. However, they appear to be of a different scale to the situation in the current case. My decision is based on the information on the proposed use provided by the appellant and, on the evidence before me I find that, as a matter of fact and degree the proposed change of use would not be material and would therefore not constitute development as described in section 55(1) of the Act, as amended. Any significant alteration to the nature of the proposed use might give rise to the need for planning permission.
11. 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 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 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.

B.S. Rogers Inspector

¹ North Devon D.C. v FSS [2003] EWHC 157 Admin



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 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 development would comprise a change of use from Class C3 to Class C2 of the Town and Country Planning (Use Classes) Order 1987, as amended. However, on the basis of the information given in the application, the change of use would not be material and would therefore not constitute development as defined in S.55(1) of the Act, as amended.

Signed

B.S. Rogers

Inspector

Date 04 November 2021

Reference: APP/D2320/X/21/3277353

First Schedule

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.

Second Schedule

Land at 20, Briery Hey, Bamber Bridge, Preston, PR5 8HU

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 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 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 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.

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.