The Planning Inspectorate

Appeal Decision

Site visit made on 18 November 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Appeal Ref: APP/M4320/X/22/3300634
19 Winstanley Road, Waterloo, Liverpool L22 4QN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Liam Wharton of Alternative Approach Ltd against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2022/00224, dated 3 February 2022, was refused by notice dated 5 April 2022.
- The application was made under section 192(1)(a) of the 1990 Act as amended.
- The use for which a certificate of lawful use or development is sought is proposed change of use from a dwellinghouse (Class C3) to a childrens home (Class C2).

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 Mr Liam Wharton of Alternative Approach Ltd against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In this type of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. For the avoidance of doubt, the planning merits of the proposed use are not relevant to an appeal under section 195 of the 1990 Act. Therefore, comments from local residents concerning perceived impacts on living conditions due to noise and disturbance, anti-social behaviour, on-street parking and loss of privacy cannot be taken into account since these matters concern the planning merits. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

4. The Council refused the application because – "There is no provision within the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 to change the use from C3 dwellinghouses to C2 Residential Institutions therefore a certificate of lawfulness cannot be issued". It is not clear which part of Statutory Instrument 757 to which the Council refers. In any event, the Regulations had the effect of amending the Town and Country Planning (Use Classes) Order 1987, so it is the Use Classes Order (as amended) which should be relied upon.

5. The Use Classes Order specifies classes for the purposes of Section 55(2)(f) of the 1990 Act, which provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class. However, the Use Classes Order should not be interpreted as meaning that some change between use classes is necessarily development within the meaning of Section 55(1) of the 1990 Act[1]. The key issue is whether the change is 'material'.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. What must be determined is whether the increase in the scale of the proposed use would reach the point where it would give rise to such materially different planning circumstances that, as a matter of fact and degree, it would result in such a change in the definable character of the use that it would amount to a material change of use.

Reasons

7. The appeal property is a four-bedroom, mid-terrace dwellinghouse. It has a small yard to the front and rear, and no off-road car parking. The use would be as a childrens care home, in which no more than two children would be resident at any one time along with their two staff carers. A manager may also be at the premises during the daytime on weekdays. The only time when there would normally be more staff is during the handover between shifts, which would take place every two days. It is also anticipated that there may be one or two visits from social workers or other professionals each week.

8. For the vast majority of the time there would be a maximum of four persons present on site (two children and two adults). There would be comings and goings to and from school, and at staff handover times, plus social, recreational and other outings. However, I agree this would not be materially different from the number or pattern that would be reasonably expected with a family of four carrying out their day-to-day activities. While there would be additional visits from other professionals, this would likely be comparable with social visits from friends and family associated with a household of four.

9. The parking demand generated by the proposed use is likely to be higher than would be typical for most four-bed, mid-terrace homes. However, the increase would not be significant given the proposed number of resident children and the consequent number of carers and professional visits. In addition, the area is relatively well-served by public transport and so parking demand may not be as high as the Council envisages. I do not consider the use would have a material impact on its surroundings in this respect.

10. The Council refers to appeal decisions in support of its case[2]. The appeal at Bridge Street was against the refusal of planning permission. That Inspector was considering the planning merits of the proposed development not lawfulness. Moreover, the site-specific circumstances and the nature of the proposed use were significantly different.

[1] "Development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
[2] Refs APP/M4320/W/19/3231962 dated 25 October 2019 and APP/M4320/X/19/3233476 dated 23 June 2020.

11. The appeal at Warwick Street concerned the refusal of a lawful development certificate with the Inspector reaching a finding on the materiality of change. In that respect the appeal is relevant. However, the nature of the use, the number of staff and the size of the property are not comparable. The circumstances of that particular case are significantly different to the appeal before me.

12. Overall, I find that, as a matter of fact and degree, the scale of the proposed use would not reach the point where it would give rise to such materially different planning circumstances that it would result in such a change in the definable character of the use that it would amount to a material change of use. No express planning permission would be required for the change of use and it would have been lawful had it been instituted on the date of the application.

Conclusion

13. 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 the proposed change of use from a dwellinghouse (Class C3) to a childrens home (Class C2) 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.

Debbie Moore

Inspector

The Planning Inspectorate

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 3 February 2022, 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:

As a matter of fact and degree, the scale of the proposed use would not reach the point where it would give rise to such materially different planning circumstances that it would result in such a change in the definable character of the use that it would amount to a material change of use. No express planning permission would be required for the change of use and it would have been lawful had it been instituted on the date of the application.

Signed

Debbie Moore
Inspector

Date: 13 December 2022
Reference: APP/M4320/X/22/3300634

First Schedule

Change of use from a dwellinghouse (Class C3) to a childrens home (Class C2)

Second Schedule

Land at 19 Winstanley Road, Waterloo, Liverpool L22 4QN

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.

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Plan

This is the plan referred to in the Lawful Development Certificate dated:13 December 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land at: 19 Winstanley Road, Waterloo, Liverpool L22 4QN

Reference: APP/M4320/X/22/3300634

Scale: NTS

The Planning Inspectorate

Costs Decision

Site visit made on 18 November 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Costs application in relation to Appeal Ref: APP/M4320/X/22/3300634
19 Winstanley Road, Waterloo, Liverpool L22 4QN

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Liam Wharton of Alternative Approach Ltd for a full award of costs against Sefton Metropolitan Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for proposed change of use from a dwellinghouse (Class C3) to a childrens home (Class C2).

Decision

1. The application for an award of costs is allowed in the terms set out below.

Background

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The applicant claims the Council has acted unreasonably through not providing a rational reason for refusing the LDC application. It is argued that the Council's decision notice specified irrelevant legislation and the reasoning was based on a misunderstanding of the application of the Use Classes within the Schedule to the Town and Country Planning (Use Classes) Order 1987. It is also argued that the Council has failed to determine cases in a consistent manner, with reference to a very similar proposal on the same road. Finally, the applicant maintains that the LDC should have been issued and the failure to do so has delayed a use which should have been confirmed as lawful. This has caused the appellant to incur unnecessary expense in pursuing an appeal which could have been avoided.

4. The Council counters that the officer report clearly sets out the reasoning behind its refusal to grant the LDC, and this was based on planning judgement. There was no unnecessary delay in determining the application. It is also argued that the other case, which is claimed to be similar, was eight years ago and the Council focussed on more recent appeals.

Reasons

5. The Council's decision notice states that there is no provision within the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 to change the use from C3 dwellinghouses to C2 Residential Institutions therefore a certificate of lawfulness cannot be issued.

6. As explained in my Decision, the Regulations quoted had the effect of amending the Use Classes Order, so it is the Use Classes Order (as amended) which should be relied upon. In addition, the wording points to a misunderstanding of Section 55(2)(f) of the 1990 Act. This provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class. However, the Use Classes Order should not be interpreted as meaning that some change between use classes is necessarily development. The key issue is whether the change is 'material'.

7. The officer report did set out a brief analysis of whether there would be a change in the character of the use. However, the implicit conclusion that a material change of use would occur did not find its way into the reasons for refusing the application. The applicant understood from the decision notice that the proposal was unacceptable on a point of law and it was not apparent that any further assessment had taken place. Given that the decision notice also referred to a Statutory Instrument that was not relevant, I find that this amounted to unreasonable behaviour.

8. In addition, the analysis by the planning officer was limited, and there was scant regard to the information contained in the accompanying Planning Statement, which was accurate and relevant. Further, it is unclear whether the other proposal at No 51 Winstanley Road, which the Council approved, was considered nor how the Council justified reaching a different conclusion.

9. I consider that the Council's assessment of the proposal was limited and that factual information submitted with the application was not properly analysed. The planning officer did have some understanding of the matters at issue, but this was not properly set out in their delegated report. Nor were previous decisions properly assessed for their relevance. Consequently, an invalid reason for refusing the application was provided in the decision notice. A thorough and proper assessment of the application should have been undertaken, based on the correct tests.

10. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Sefton Metropolitan Borough Council shall pay to Alternative Approach Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Sefton Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Debbie Moore

Inspector