



Appeal Decision

Site visit made on 18 October 2021

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 9 November 2021

Appeal Ref: APP/V1260/X/21/3277678

7 Vale Road, Poole BH14 9AT

- 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 Mrs Laura Jamieson against the decision of Bournemouth, Christchurch, and Poole Council.
- The application Ref 21/00386/K, dated 11 March 2021, was refused by notice dated 21 June 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 described as: 'Proposal to use the garage to run a small private Physiotherapy clinic. The clinic will be solely used by the owner of the property, no additional staff. The process to be carried out will be alterations to the garage, including the garage doors into a single door with window, insulating (walls and flooring), changing the rear windows, fitting a toilet facility and separate sink. Hours of work would run between 8am to 8pm (latest), and on average being no more than 8 hours a day, five days a week. No working on a Sunday. Expectation of an average of 5 clients a day, 25 clients a week. The clinic would allow home working whilst bringing up children. The property would remain fundamentally as a home with a small business on site. There will be adequate parking available on site for at least 4 cars. No more than 2 clients would be anticipated to be present at one time. A 30 minute gap will be used between appointments to prevent the use of road side parking. There is adequate space on the drive for cars to turn around and drive out safely.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the purposes of obtaining a lawful development certificate (LDC) the burden of proof lies with the applicant/appellant, and the standard of proof is on the balance of probabilities. The relevant date for ascertaining whether the proposed development would be lawful is the date of the application. No issues of planning merit are relevant.
3. The description of the proposal by the appellant references works to the exterior of the garage building. However, it appears that neither the Council nor the appellant has made representations related to whether or not these works would require planning permission. Accordingly, in the interests of fairness and my determination being based upon the same proposal dealt with by the Council, I determine the application as in respect of a change of use only.

Background and Main Issue

4. The application which is the subject of this appeal related to a proposal to change the use of a double garage within the curtilage of the dwellinghouse at 7 Vale Road to use as a private physiotherapy clinic.
5. The Council's decision notice sets out that the proposal would not represent permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, explaining its basis for taking this view. However, since Class E relates to a proposals for new buildings, it is not applicable to the proposal in this case. The matter to be determined then is whether the proposed use would be ancillary to the enjoyment of the dwellinghouse or whether it would represent a material change of use (MCU) and so would require planning permission.
6. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded. This will turn on whether the proposal represents a MCU constituting development as defined in section 55 of the Town and Country Planning Act 1990 (1990 Act).

Reasons

Site context/proposal

7. The appeal property is a detached bungalow accessed from what appears to be a private lane leading from Vale Road. The double garage is of a fairly large footprint, relative to that of the dwelling. Further, due to the topography of the site, although it appears to be single storey from the front, the garage is in fact a two storey building, as is apparent from the rear elevation. There is a fairly large area of hardstanding to the front of the bungalow and garage available for parking/turning space.
8. The application sought a LDC for the proposed use of the upper ground floor of the garage as a private physiotherapy clinic. It would be run solely by the owner of the dwellinghouse, with no additional staff. The application form states that working hours would be between 8am to 8pm (at the latest), with no more than 8 hours working per day 'on average'. The working days would be five days per week, with no working on a Sunday. There would be an expectation of seeing 5 clients per day by appointment only. Parking would be available for at least 4 cars to park on site. No more than two clients would be expected to be present at one time with a 30 minute gap between appointments to seek to prevent on road parking.

Legal position

9. There is no statutory definition of a MCU and whether or not a MCU would occur is a matter of fact and degree, and this will be determined on the facts and circumstances in any particular case. A material change of use is one which results in a significant difference in the character of the activity from what has taken place previously. Any off-site impacts of a new use may also be relevant in making such a judgment, for example effects on the living conditions of neighbours, but are not determinative of themselves and should not be considered in isolation.
10. For the purposes of assessing whether a material change of use has taken place, it is helpful to determine the appropriate planning unit at the relevant

point in time. The leading case of *Burdle*¹ held that the planning unit should be determined with regard to the unit of occupation, and the concept of physical and functional separation. Three categories were identified in that case being:

1. a single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
2. a single planning unit where the whole unit of occupation is in a mixed use because the land is put to two or more activities and it is not possible to say whether one is incidental to another; and
3. the unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes, in which case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

Analysis

11. On the evidence before me the bungalow, garage, outbuildings, parking/turning area, and garden are currently in the same occupation and are all used for one main purpose, being a single residential use. I therefore consider these together to represent one planning unit.
12. As to whether the proposed use would be ancillary to that primary residential use, the private residential use of the house and rear garden would continue and it would appear that these would remain in the same occupancy. However, one entire floor of the double garage, along with a significant portion of the parking/turning area would be used in connection with the proposed private physiotherapy clinic use 5 days per week and over extensive working hours of 8am to 8pm. The clinic would see up to 5 patients per day, which would result in ten movements (in and out) five days per week over and above the present position. These would occur from a relatively early time in the morning to a fairly late time at night. I find as a matter of fact and degree that this would result in a change in the character of the use compared to that existing.
13. On the available evidence, whilst the business would not result in any particular activities which would be unusual in a residential area, I do consider that there would be a marked rise in traffic and people calling over an extended period of time throughout the day.
14. Thus, whilst a physiotherapy clinic use on the site might not represent a material change of use in all circumstances, based upon the particular circumstances described, the proposed use would go beyond a use ancillary to the primary residential use and would constitute a material change of use.
15. I acknowledge that the appellant in the proposal has sought to reduce any effect on local neighbours. However, for the reasons stated, I do not consider that the proposal as described would be sufficiently low key and small scale to remain ancillary to the main residential use. I note a Council officer has indicated during a telephone conversation with the appellant that the proposed use would not constitute a material change of use. However, the Council is not

¹ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

bound by statements made by its officers in this context. The fact that the garage building could be changed back to an ancillary residential use with minimal effort also does not alter my assessment above.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development for the use described in my banner heading above was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

V Bond

INSPECTOR