

Appeal Decision

Site visit made on 6 April 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 21 April 2022

APP/F1040/X/21/3283867

3 Sandpiper Lane, Mickleover, Derby DE3 0UU

- 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 the failure of South Derbyshire District Council to determine an application for a certificate of lawful use or development within the prescribed period.
- The appeal was made by Apsley Care.
- The application, reference DMNP/2021/0799, was accepted as valid on 13 May 2021. The Council failed to issue a decision on the application within the prescribed period.
- The development for which a certificate of lawful use or development was sought was for the change of use from a residential dwelling (use Class C3a) to a children's care home (use Class C3b) at 3 Sandpiper Lane, Mickleover, Derby DE3 0UU.
- The application was made under section 192(1)(a) of the Act for a certificate of lawfulness for the proposed use as a children's care home (use Class C3b).

Summary of decision: A certificate of lawfulness is issued.

Appeal property

1. No. 3 Sandpiper Lane is a 2 storey detached house situated in a residential part of the village of Mickleover. It was said to have a lounge, kitchen, dining room, small utility room and a w.c. on the ground floor. Upstairs, there are 4 bedrooms, one of which has an en-suite bathroom, another has an ensuite w.c. There is also a shared bathroom on this floor. The dwelling has a front forecourt with a car parking space and an integral single garage. It has an enclosed rear garden.

Proposal

2. The Appellants, Apsley Care, proposed to change the use of No. 3 Sandpiper Lane from a residential dwelling, (use Class C3 to the Town and Country (Use Classes) Order 1987 as amended), to a children's care home, (use Class C3b). Up to 2 children/young people, between the ages of 10 and 18 years, would live at the property as their main residence. They would need additional support to live within the community.
3. Facilities in the house would be shared. Each young person would have their own bedroom. Bedrooms would be fitted with locks to meet legal requirements, including human rights legislation. Support workers would have a key to each room.

4. The total number of support staff would be 6, with 2 on shift plus a senior member at any given time. During the day there would be about 3 members of staff on site. There would be 2 staff members present at night. In addition to support workers, there would be short and infrequent visits from social workers and other support professionals. The support workers would not be part of the family and would not be resident at the premises. The Applicants accepted that, following the judgement in the case *North Devon DC v FSS & Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 since only young people would be resident at the property, they would not constitute a "household". They acknowledged that the proposed use would not fall within Class C3(a) but submitted it would be within Class C3(b).
5. I agree with the Applicant's assessment that the new use would not fall within Class C3(a). The young people would need looking after at No. 3 but their carers would come and go and not live in. In the *North Devon* case, Mr Justice Collins said that children "*... need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing fulltime care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should.*". That judgement confirmed it is unrealistic to expect children to look after themselves in a single household. It also clarified that carers who provide 24 hour care but were not resident could not be regarded as living together in a household. It was accepted that those living at No. 3 Sandpiper Lane would not constitute a household.
6. I do not, however, agree with the Applicants that the new use of the house at No. 3 would be within Class C3 (b) of the Order. Use Class C3 (Dwelling houses) includes: Use as a dwelling house (whether or not as a sole or main residence) by — (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4). The present proposal would be a children's home in Class C2, where the Order defines the use, including: use for the provision of residential accommodation and care to people in need of care, (other than a use within Class C3 (dwelling houses)).
7. A children's home run on shift patterns by carers could not be considered to fall within Class C3(a) because it would not be occupation of a dwelling house by a single person or people living together as a family. Class C3(b) refers to "use as a dwelling house by not more than six residents living together as a single household, (including a household where care is provided for residents)." If No. 3 was to be run on that basis, with children being looked after by a permanent occupant or occupants of the dwelling, it would not need planning permission. Where support staff come and go on shifts, the use cannot be considered to fall within Class C3(b). Use of No. 3 as a children's home would fall within Class C2 of the Order (Residential institutions).

8. It may be, however, that the change of use here from the C3 lawful use to a C2 use may not amount to a material change of use and thereby not amount to development which requires planning permission. That is, to conclude that no material change of use has occurred where there is no material difference in activity to that which may be anticipated in the normal residential use of a house.
9. The application proposal is for no more than 2 children to be looked after at No. 3. It is likely that the house and its curtilage would retain the look and character of neighbouring houses; that of a normal residential dwelling. The use and associated activity, including comings and goings of care workers would be unlikely to cause a greater level of disturbance or amenity harm than could be expected by a C3 use of this large family home. In my view, that would be such that no material change of use would occur. The new use would not constitute development. The new use would not be a Class C3(b) use as applied for. It would be a C2 use. However, as a change of use from a C3 use to a C2 use normally requires planning permission, it would be inappropriate for the certificate of lawfulness to describe the new use as a C2 use. I also consider it necessary to set out the limit of 2 children living at No. 3. That was the level of use sought by the Applicants and is the basis of the assessment of the materiality of the change of use.

FORMAL DECISION

10. For the reasons given above, I conclude that the Council's failure to decide on the application to grant a certificate of lawful development for the proposed change of use from a residential dwelling (use Class C3) to a children's care home for 2 children at No. 3 Sandpiper Lane, Mickleover, Derby DE3 0UU was inapt and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the relevant plan.

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 13 May 2021 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, would be lawful within the meaning of section 192(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use from a residential dwelling (use Class C3) to a children's care home at No. 3 Sandpiper Lane, Mickleover, Derby DE3 0UU would not constitute a material change of use that would require planning permission.

John Whalley

INSPECTOR

Date: 21 April 2022

Reference: APP/F1040/X/21/3283867

First Schedule

The change of use from a residential dwelling (use Class C3) to a children's care home for 2 child residents.

Second Schedule

The dwelling at No. 3 Sandpiper Lane, Mickleover, Derby DE3 0UU.

IMPORTANT NOTES OVERLEAF
NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule would be lawful, on the certified date and, thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

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The dwelling at No. 3 Sandpiper Lane, Mickleover, Derby DE3 0UU



Plan attached to the Lawful Development Certificate – Scale as shown

John Whalley

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