



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/H4315/X/22/3294620

81 Penny Lane, Haydock, St Helens WA11 0QR

- 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 Mudiayappu Sandaroyes of Mayden Care Ltd against the decision of St. Helens Metropolitan Borough Council.
 - The application Ref P/2021/1079/CLP, dated 21 December 2021, was refused by notice dated 16 February 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 the proposed use as a children's home for 2 no young persons.
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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.

Preliminary Matters

2. 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. 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.
3. Both parties refer to *North Devon*¹, which concerned the question of whether a semi-detached house used to provide residential care for two children fell within class C2 or class C3(b)². The Court held that children cannot form a household without the presence of a care giver and so a children's care home cannot fall within class C3 unless a care giver is resident.
4. The parties agree the proposed use would fall within class C2, which is the provision of residential accommodation and care to people in need of care. The dispute concerns whether the change of use from class C3 to class C2 would amount to a material change of use of the property within the meaning of Section 55(1) of the 1990 Act³, as a matter of fact and degree. If so, the proposed use would not be lawful because express planning permission would be required.

¹ *North Devon DC v First Secretary of State & Southern Childcare Ltd* (QBD 30.1.03) and *R v Bromley LBC ex p Sinclair* [1991] 3 PLR 60.

² This refers to the Schedule to the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order).

³ "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.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

6. The appeal property is a detached bungalow with three bedrooms, a kitchen and a living room. It was lawfully used and occupied as a dwellinghouse within class C3 on the date of the application. It is explained that up to two children would live in the property. They would be supported by carers over the 24 hour period, who would operate on a shift basis. There would usually be no more than two members of staff at any one time. There would be occasional visits from a social worker and from the property manager, who is also the lead carer, during daytime hours.
7. The Council considers that a material change of use would occur due to the increased level of activity, which would be beyond that generated by a dwellinghouse. There is also concern about the role of the property manager.
8. I understand that the children would attend local schools and there would be visits by other professionals associated with the use. The activity resulting from attending school and other outings by the two children and their carers would not be materially different from a family of four. The Council is concerned the visits by professionals and social workers would generate significantly more activity than would normally be expected. I agree that professional visits would be required, but this is unlikely to be daily. In my opinion, visits associated with two children would not lead to more activity than a single household with visiting friends and relatives. I appreciate that there would be more carers present during shift changeovers, but this would only be for a limited time. There is a small area for parking on the driveway and, despite parking restrictions nearby, there is additional parking on local streets. There is nothing to suggest the levels of vehicular activity would be in excess of that generated by a family dwelling.
9. The Council assumes the role of site manager goes beyond the provision of care, but this is not necessarily the case. The provision of care includes ensuring a safe and suitable place to live. The site manager would not be undertaking a professional property management role that would be for a purpose distinct from the proposed use.
10. The Council refers to a Rochdale appeal decision, which is not provided. However, it seems the proposed use in that case was a care facility for up to four children, with separate rooms for education and therapy to be provided by other visiting professionals. While the issues in that appeal may be similar to those before me, the site-specific circumstances differ, in particular, the size and layout of the premises and the greater number of children being cared for.
11. A further appeal decision has been provided⁴, which concerned a facility for two young people. The Inspector found the proposed use would not result in significantly more movements than typical occupation of a 3-bedroom dwelling or a pattern of comings and goings that would be more intensive and constant than might reasonably be expected to be generated by even a large dwellinghouse. However, they considered the on-site presence of a property

⁴ Ref APP/H4315/X/20/3262649 dated 9 February 2021.

manager, with responsibility for matters relating to the administration of the appellant's business, would go beyond the provision of care to the resident children. Although the information is limited, it appears the role of property manager was wide ranging. The site manager's role in this case would be confined to the appeal premises in connection with their role as lead carer.

12. I consider the level of activity that would occur on a daily basis associated with the proposed use would be comparable with that which might reasonably be expected to be generated by a single dwellinghouse occupied by a family of four. As such, the overall character of the proposed use would not be significantly different to the existing use. It would not comprise a material change of use, as a matter of fact and degree, for which express planning permission would be required. Overall, the totality of the evidence shows that the proposed use of the property as a children's home for two young persons would be lawful if it had 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 use as a children's home for 2 no young persons 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



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 21 December 2021 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 level of activity that would occur on a daily basis associated with the proposed use would be comparable with that which might reasonably be expected to be generated by a single dwellinghouse occupied by a family of four. As such, the overall character of the proposed use would not be significantly different to the existing use. It would not comprise a material change of use, as a matter of fact and degree, for which express planning permission would be required. Overall, the totality of the evidence shows that the proposed use of the property as a children's home for two young persons would be lawful if it had been instituted on the date of the application.

Signed

Debbie Moore

Inspector

Date: 13 December 2022

Reference: APP/H4315/X/22/3294620

First Schedule

Proposed use as a children's home for 2 no young persons

Second Schedule

Land at 81 Penny Lane, Haydock, St Helens WA11 0QR

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.



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**

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Scale: NTS

