
Appeal Decision

Site visit made on 3 July 2024

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 16th July 2024

**Appeals ref: APP/M4320/C/23/3335692; APP/M4320/C/23/3335693;
APP/M4320/C/23/3335694
66 Elm Road, Seaforth, Liverpool L21 1BL**

- The appeals were made by Mr Vivek Srivastava on behalf of THE CARE ADVANTAGE LTD, (APP/M4320/C/23/3335692), by Company Secretary xxx xxx, (APP/M4320/C/23/3335693) and by Company Secretary DREAMPOSTCODE LIMITED, XXX, (APP/M4320/C/23/3335694), under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The notice was issued on 23 November 2023; reference EN/2023/00628.
- The breach of planning control was: Without planning permission, the material change of use of the land from use for a house in multiple occupation (HMO) to a Childrens residential home.
- The requirement of the notice is: You must cease using the property (as shown cross hatched on the plan attached to the notice) as a Childrens residential home (C2).
- The time for compliance with the requirement of the notice is two months.
- The CARE ADVANTAGE LTD, the Company Secretary xxx xxx and Company Secretary DREAMPOSTCODE Ltd appealed against the enforcement notice on grounds (a), (f) and (g) as set out in the amended Act.

Summary of decision: the enforcement notice is upheld. Planning permission is not granted on the applications deemed to have been made

Enforcement notice appeals

The appeals on ground (a)

1. The appeals concern the use of the 2 storey end of terrace dwelling, No. 66 Elm Road, Seaforth as a children's residential home, (Use Class C2 (residential institutions) (The Town and Country Planning (Use Classes) Order 1987). The internal layout is that of a normal family home, with the exception of the provision of accommodation for carers and the numbering and securing of rooms. There is a small and narrow hard surfaced yard to the side and rear.
2. Planning permission was granted on 30 June 2021 for the change of use of No. 66 from dwellinghouse (C3) into a house in multiple occupation (HMO) (sui generis) (3 units) (ref: DC/2021/00690). A planning application made by Mr Vivek Srivastava for the change of use of No. 66 Elm Road from an HMO (Sui Generis) to a Children's residential home (C2) ref: DC/2023/01266, was refused planning permission on 16 October 2023. No appeal was made against that decision. Nevertheless, the appeals made on ground (a) against the enforcement notice that planning permission should be granted to retain the use of No. 66 as a children's residential home fall to be considered.

3. The Council's 2 reasons for issuing the enforcement notice were the same as those given for refusing the DC/2023/01266 application. The first reason said the children's residential use would result in an intensification of activity at the site, having regard in particular to the frequency and pattern of visits by staff and the number of children. It would result in an unacceptable impact on neighbouring amenity. Associated additional noise and disturbance from the use would be to the detriment of the amenity of neighbouring residents and the character of the area, contrary to the National Planning Policy Framework, (NPPF), and Policy HC3 Part 2a and b of the Sefton Local Plan.
4. An extract from the Government statement - Planning for accommodation for looked after children, 23 May 2023 – said: *"The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children's communities. These need to be the right homes, in the right places with access to good schools and community support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love."* That statement by the Minister of State for Housing and Planning was supported by the Secretary of State for Education. It is significant that the statement looks to the provision of homes for vulnerable children in the "... right homes in the right places ...".
5. The Appellants said there was no evidence that the children's home use would produce any intensification of activity at No. 66. The shift pattern as indicated in the Management Statement would be little different to shift workers coming and going living in the house used as a normal domestic dwelling. Similarly, if No. 66 was occupied for its lawful use as an HMO, the activity generated would be no less, probably more, than if occupied as a children's home.
6. I understand that at the time of my site inspection, there were 2 children living at No. 66. Two care workers were to be there at all times, with a daily change over for day and night shifts. The Appellants were content that a permission for that use be conditioned to limit the number of children living at No. 66 to a maximum of 4. I accept it may be that for much of the time an HMO occupation of No. 66 would generate a similar level of activity, or disturbance to immediate neighbours as its use as a children's home. There would be different patterns of living at a children's home, however. The comings and goings of carers working a 24 hour caring regime could disturb close neighbours. The possible disruptive behaviour of the most vulnerable child occupants of No. 66 at any time of the day or night could also be disruptive to those living close by. There is also a lack of usable private outdoor space at No. 66 which suggests the children could have to be locked inside for much of the time, as perhaps indicated by the locks to each room. Additionally, the close proximity of the curtilage of No. 66 to the rear private amenity areas of Nos. 38 to 42 Rawson Road to the south-west and to Nos. 33 and 35 Cecil Road as well as the attached house at No. 64 Elm Road suggest to me that the appeal dwelling used to accommodate vulnerable children is not well placed in this locality.
7. I am less persuaded by the Council's second reason for issuing the enforcement notice which said there would be an increase in the level of crime and antisocial behaviour in an already high crime area. The Police seemed to take an opposing view, worried about possible adverse social influences on the

child occupants of No. 66. I consider that with the level of care and supervision of vulnerable children expected at No. 66, it would seem unlikely that the children in care would be harmfully influenced by those living around them. Equally, I would not expect the occupants of No. 66 to have any adverse effect on the behaviour of neighbours.

8. Probable harmful effect on neighbour amenity leads me to conclude that planning permission for the use of the dwelling at No. 66 Elm Road as a children's residential home for up to 4 children should be withheld. The appeals on ground (a) fail.

The appeals on ground (f)

9. No representations were made with respect to the appeals made on ground (f). I consider that the main purpose of the enforcement notice is "to remedy any injury to amenity caused by the breach", (s.174(2)(f) of the Act). The only cogent remedy, where the unlawful use is unacceptably harmful to local amenity, is to require that use to cease. That is what the requirement of the notice appropriately purports to do. The appeals on ground (f) fail.

The appeals on ground (g)

10. The appeals on ground (g) ask that more time is granted to comply with the requirement of the enforcement notice. The notice requires the children's residential home use of No. 66 to cease within 2 months of the issue of this decision. The Appellants asked that at least 12 months be allowed. The children were reliant upon the service. They were settled. Any enforced removals could have an adverse and long-lasting effect upon them.
11. I agree that a 2 month period for compliance with the requirement of the notice could cause an unnecessarily hurried disruption to those at No. 66. To allow the requested period of 12 months would be tantamount to an unwarranted temporary planning permission. However, I increase the period for compliance to 6 months to allow more time for suitable changes to be made. Subject to that limitation, the appeals on ground (g) succeed.

FORMAL DECISION

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12. The appeals are dismissed. The enforcement notice is varied by the deletion of the words "Two months" in line 3 of para. 6. on page 2 of the notice and the substitution therefor of the words "Six months". Subject to that, the varied enforcement notice is upheld. Planning permission is not granted on the applications deemed to have been made for the retention of the use of No. 66 Elm Road, Seaforth, Liverpool L21 1BL as a Children's residential home, (Use C2).

John Whalley

INSPECTOR