
Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 22 April 2025

Appeal Ref: APP/T0355/X/25/3359489

The Admin Block, St Marks Hospital, 112 St Marks Road, Maidenhead SL6 6DU

- 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 Mr David Ross of P2P Community against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 24/02679, dated 2 November 2024, was refused by notice dated 8 January 2025.
 - 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 the change of use to a private hire service.
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Decision: the appeal is dismissed

Background and Procedural matters

1. I have taken the description of the use for which the LDC is sought from the Appeal Form, as in my view this neatly encapsulates the use described elsewhere in the appeal documentation. To clarify, as I understand it the office in the Admin Block at St Marks Hospital is currently used, in part at least, as a base for a community transport charity. The office currently consists of one large room divided into four separate spaces. No vehicles are kept on the site, the two vehicles that are used in the provision of this service being kept at separate locations in Windsor and Maidenhead because there is no available space at St Marks Hospital. No passengers come to the office. Transport is booked via the phone and drivers collect passengers from their homes. None of this would change as a result of the proposed use.
2. P2P Community are seeking to operate under a Private Hire Licence, using the same location, staff and systems. There would be no additional vehicles at the site, no additional staff, and no additional members of the public using the service.
3. I am satisfied that the appeal can be determined on the papers that are before me, without a site visit. The issues involved relate solely to whether the proposed use would be lawful on the date the application for the LDC was made, based on the consideration of documentary evidence and judicial authority. Accordingly, I consider that in this case there would be no benefit to be gained from undertaking a site visit.

Reasons

4. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
5. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...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 building or other land.
6. The basic approach adopted by the courts is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously. The test in that regard is as a matter of fact and degree.
7. The difficulty is that I do not have before me a detailed description of the current use of the office as base for a community transport charity or of the use itself. For example, I have no information about the type of vehicles involved in this use, the number of vehicles movements generated and the hours during which the use operates.
8. Similarly, I do not have before me a detailed description of the proposed use as a private hire service, again in terms of the type of vehicles that would be involved in this use, the number of vehicles movements that it is anticipated would be generated by the proposed use and the hours during which the proposed use would operate. I therefore cannot know if and how the two uses might differ and, if so, to what extent.
9. However, the key piece of information that is missing is whether or not the vehicles operate from St Marks Hospital. The appellant confirms that the vehicles used are not kept on the site, but does not then go on explain from where those vehicles operate. There would obviously be a significant difference in the character of the use if they operated from where they are kept and returned there at the end of the day without ever coming to St Marks Hospital, compared to if those vehicles travel into St Marks Hospital from where there are kept each morning and then operate from there until returning back to where they are kept after the last journey of the day. Clearly, if the former and the only changes proposed are to the office itself there would be only minimal difference, in any, in the character of the use.
10. Absent that information, I am not in a position to assess whether, as a matter of fact and degree, there would be some significant difference in the character

of the activities from what has gone on previously. In LDC applications, the onus is squarely on the appellant to show, on the balance of probability, that the use would be lawful on the date the application was submitted. Unfortunately, the evidence that has been submitted in this case falls a long way short of achieving that. The appeal process should not be used to evolve a proposal, and for that reason I am not able to request additional information at this stage. The appeal must therefore be determined on the basis of the evidence initially submitted. Accordingly, I have no option other than to dismiss the appeal.

11. I hasten to add that this does not necessarily mean that the use proposed could not be shown to be lawful if further information/evidence became available. However, that would be a matter for the local planning authority in the first instance. In that context, I note from its appeal statement that in principle the local planning authority has no objection to the proposed use.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use to a private hire service at The Admin Block, St Marks Hospital, 112 St Marks Road, Maidenhead SL6 6DU is 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.

Paul Freer
INSPECTOR