Application by New Hope Adolescent Services Ltd for a Certificate of Lawfulness for a Proposed Use in respect of

7 Chalford Road,

Newall Green,

Wythenshawe

M23 2SG

Introduction

1. This is to submit an application for a Certificate of Lawfulness for a Proposed Use in respect of an existing property at 7 Chalford Road, Newall Green, Wythenshawe, Greater Manchester.

2. It should also be noted that this proposal is the subject of a Request for Preapplication Advice.

3. The application is formed by the following documents:

- Application form dated 16/10/2021
- Red line plan extracted from deeds showing the boundary of property
- Floor plans in respect of ground and first floor showing existing and proposed layout
- This Statement

The Property

4. T and T Rentals are the owners of the property, which is rented to the applicant company, New Hope Adolescent Services Limited, with full permission from the property owner. New Hope Adolescent Services is a new company which is developing its operations in respect of young people of less than 18 years of age. A typical home would be for up to 4 children with carers in residence but changing in accordance with a rota.

5. The current building was erected in the form of a police station and single floored family dwelling but had been converted into the large, detached home (2004) that it is currently in. And some point following its erection of the property has become used as a children's residential care home (September 2011). In approximately 2019 the unit was deregistered returned to its use as a residential dwelling. The applicant has now acquired the property in the form of a rental agreement.

6. Floorplans are supplied which show the layout as it would be intended to be operated. The property is a large 5 bedroomed, detached property, with a large garden to the front, side and rear offering an outdoor space. There is a lounge, a spacious, modern kitchen/dining area, toilet, and office on the ground level. On the second floor, there are 4 young people's bedrooms, 2 of which have on-suite facilities, a staff sleep in room with on-suite facilities and there is a separate young people's bathroom/toilet. Located on the top level is a "chill out" room, with aids to relaxation and moderation of mood, and calm reflection. The room will also be used for key working session, and as a visitor's room. There is also a garage next to the building.

The Application

7. The application is for the use of the property as a home for 4 young persons and carers who will remain on site as part of a rota system for up to 24-hours.

8. Certificate applications are said to be a matter of fact and law. In the case of Certificates for a proposed use, the onus of proof that the use would be lawful is on the applicant and the relevant test is the balance of probability.

9. The factual background of this application is the planning permission for a dwellinghouse in the physical form in which the building currently exists. The subsequent use as a care home is also relevant. The proposed use for four residents and three carers is also relevant.

10. The legal background is contained in the Town & Country Planning (Use Classes) Order (SI 1987 764) and relevant case law as discussed below.

11. Use Classes Order - The relevant use classes are: "C2", Residential Institutions, defined as: "Use for the provision of residential accommodation and care to people in need of care (other than the use within class C3 [dwellinghouse]) use as a nursing home, use as residential school, college or training centre"; and Class C3, Dwelling House defined as: "Use as a dwellinghouse (whether or not as a sole or main residence)- a) by a single person or by people living together as a family; or b) by not more than 6 residents living together as a single household (including a household where care is provided for residents) c) ……. d) ……."

12. The Existing Use - The relevance of the two use classes set out above is firstly as follows.

13. Either the lawful existing use of this property is as a Class C3 Dwelling House, or it is as a Class C2 Residential Institution.

14. Within Class C3, the existing use could be either pursuant to part a) or part b), but which of these is not actually relevant because they are within the same use class and so there is, by the operation of the Order itself, no need for planning permission to pass from one to the other.

15. However, if the existing use is in fact Class C2 then the question arises as to whether or not planning consent would have been needed to pass from C3 to C2. As set out below it is argued that it would not require planning consent because there would not have been a material change of use involved.

16. The Proposed Use - There is some flexibility to argue that the proposed use falls within Class C3(b). This is because there would not be more than six residents living together and they are arguably living together as a single household, and various care is being provided for the residents.

17. So, appeal decisions have found that even where staff providing care to other residents are on a shift system living in their own homes the property is still within the use class C3 (b). This was the case with at least two appeals reported in Development Control Practice.

18. In one of these, four residents were looked after by three staff on a shift system providing 24-hour cover with one of them staying on the premises from maximum of eight hours (Enfield 11/7/06). In another case an inspection noted that residents and staff would share all facilities and take meals together, that it was a group home and not a care home, and that it would not have an institutional 4 character. On that basis the Inspector concluded that the use would fall squarely within C3 (Croydon 8/1/03).

19. It could, however, be argued that, because any carers living in the property would not always be the same people, because they change according to a rota, this would not be up to six people living together as a single household, and the use would fall outside C3, and in fact be within C2.

20. In the context of this application the proposed use would be in respect of four residents with up to two carers on the premises at any one time, subject to a rota.

21. Although, as noted above, there is some authority to the effect that this arrangement could lie within Class C3(b), this was a question that was considered most extensively in the case of North Devon District Council v. Secretary Of State [2003], but very helpfully the case also considered what would apply if it did lie outside of this use class.

22. The case considered, in the first instance, whether a dwellinghouse used as a residential home for two children with care provided by two non-resident carers fell within class C2 or class C3. In the second instance it was considered whether, if the use fell within Class C2, there would actually be a "material change of use" that required planning permission.

23. Mr Justice Collins concluded as follows: "In short, it is my analysis that it would be unlikely that up to 4 children could be regarded, in the circumstances proposed in this case, as living together as a single household. Nevertheless, I consider on current evidence that the proposed use would be unlikely to constitute a "material change of use" and therefore constitute development. The change from a conventional dwellinghouse to the limited care provision that is referred to for up to 4 children and non-resident carers operating a rota at the property would not give rise to the land use changes that could be regarded as "material" therefore triggering the requirement to obtain planning permission."

24. Application of Case Law to this Application - In this case there is some uncertainty as to whether the existing use is C3 or C2. There is also some legal uncertainty as to whether the proposed use could lie within use class C3, whether it must necessarily lie within C2. However, when all the possibilities are examined, as

below, it can be seen that there is no requirement under any single possibility for planning permission for the use which is proposed.

25. The possibilities are as follows:

- Both existing and proposed uses lie within C3 - no requirement for planning permission by operation of the Use Classes Order itself
- Both existing and proposed uses lie within C2 - no requirement for planning permission by operation of the Use Classes Order
- The existing and proposed uses do not lie within the same use class - there is a potential change of use therefore, but on the basis of case law, notably the North Devon case, there is no material change of use that requires consent.

Summary and Conclusions

26. This application is in respect of a property which receive planning permission for a C3 dwellinghouse which was constructed in circa 1960. It has in fact been used for much of its life as a residential home of some variety.

27. As noted above there are various possibilities as to the precise nature of the uses that have taken place, and, indeed, which are proposed, and their legal definition.

28. However, in the case of all possibilities there is no requirement for a specific planning permission for the use which is now proposed.

29. It is therefore respectfully requested that the Certificate applied for be granted confirming that the proposed use as a home for four persons receiving care from up to 3 carers resident in the home in accordance with a rota, would be lawful in this property without the need for planning permission.