Application by Phoenix Adolescent Care Ltd
for a
Certificate of Lawfulness for a
Proposed Use
in respect of
226 Errwood Road, Burnage, Manchester. M19 1HX

Introduction

by Phoenix Adolescent Care Ltd to submit an application for a Certificate of Lawfulness for a Proposed Use in respect of an existing property on
226 Errwood Road.
Burnage
Manchester
M19 1HX

I am Ian Baistow-Davies, responsible individual for Phoenix making an application on behalf of the owner MAZAFFAR SALEEM of DBH House, The Bridgewater Complex 36
Canal Street, Bootle, Merseyside L20 8AH

The Property
This is a terraced property used for residential purposes throughout its lifetime. The proposed use is for a residential children's home for no more than 2 children and 4 staff.

A typical home would be for up to 6 children, but more usually 4, with carers in residence, but changing in accordance with a rota.

The property was erected in July 1927 and was originally under a lease for 999 years from 9 July 1927.

Parties : (1) The Council of the City of Manchester
(2) Thomas Jordison (2) Thomas Jordison

In 2007 a disposition occurred regarding the property and the title absolute was obtained by MAZAFFAR SALEEM. After this tenants moved in and it continued to be a residential property.

The Property

The current building was erected in the form that it is currently in, although at present the property is empty.

The main accommodation is at ground floor level and consists of two bedrooms for clients with the kitchen and lounge diner forming part of the shared facilities. There is also a staff office and accommodation.
At first-floor level are residential sleeping facilities.

The Application
The application is for the use of the property as a home for 2 young persons and 4 carers. This will involve some renovation of the property, clearing of the garden and cosmetic improvement of the property inside and in the garden.

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.

The factual background of this application is the planning permission for a dwellinghouse in the physical form in which the building currently exists. There is no relevant history of similar use of this property.

The proposed use for two and up to four staff / carers is also relevant.

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

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

The lawful existing use of this property is as a Class C3 Dwelling House, it is submitted that there will be insufficient occupancy to fall within C2.

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.

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.

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.

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 character. On that basis the Inspector concluded that the use would fall squarely within C3 (Croydon 8/1/03).

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.

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

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.

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.

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."*

Application of Case Law to this Application – all the caselaw supports that the proposed changes to the property do not alter the class and that the maximum occupancy would fall within C3. Nevertheless for both Classes C2 and C3 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.
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Summary and Conclusions

This application is in respect of a property which receive planning permission for a C3 dwellinghouse which was constructed in circa 1927. It has in fact been used for much of its life as a residential home of some variety.

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.

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

It is therefore respectfully requested that the Certificate applied for be granted confirming that the proposed use as a home for 2 persons receiving care from up to 4 carers resident in the home in accordance with a rota, would be lawful in this property without the need for planning permission.