



## Appeal Decision

Site visit made on 9 April 2025

**by John Whalley**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> April 2025**

**APP/V4305/X/24/3353196**

**22 Diana Road, Bootle L20 6EB**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Sefton Metropolitan Borough Council to grant a certificate of lawful use or development.
- The appeal was made by Blue Polygon Ltd.
- The application, reference DC/2024/01419, was dated 30 July 2024. It was refused by a notice dated 19 September 2024.
- The Application for a Certificate of Lawful Development, (LDC), was for the proposed change of use from dwellinghouse (C3) to a childrens home (C2) in respect of the property at No. 22 Diana Road, Bootle L20 6EB.

**Summary of decision: The appeal is dismissed.**

### **Costs application**

1. The Appellants, Blue Polygon Ltd, made an application for an award of costs against Sefton Metropolitan Borough Council. That application is the subject of a separate decision.

### **Appeal property and location**

2. The appeal property, No. 22 Diana Road, Bootle, is a small 2 storey house in a long terrace of similar houses. There is a lounge, a kitchen/diner, a small bathroom and an office/staff restroom on the ground floor. Upstairs has 3 bedrooms and a bathroom. There is a small private yard at the rear.
3. The terrace of houses which includes No. 22 extends almost the whole length of the north-eastern side of the short and straight Diana Road. The junctions of 2 residential roads join the south-western side of Diana Road.

### **Application description**

4. The description of the proposed use of No. 22 Diana Road in the application for a certificate of lawfulness dated 30 July 2024 was unclear. It appeared to be an application for a change of use from a C3 residential dwelling to a C3(b) use, a change that would not require planning permission, but failed to describe the use proposed. Subsequent correspondence sought clarification. A Council Officer's note dated 19 August 2024 suggested an application wording: "*Certificate of lawfulness for the proposed change of use from dwellinghouse (C3) to a childrens home (C2)*". That was ultimately agreed, (polygonenergy.com note 27 August).
5. However, with the application showing no details of the intended manner of operation of a C2 residential institution, a change of use from a C3 use to a C2 use would not be permitted development. It would be necessary to describe the manner of the use, such that it might be shown that the particular scheme would not bring

about a material change of the lawful C3 residential use. In my view, it indicates a possible shortcoming in the use here of a s.192 of the Act application, rather than a s.78 planning application where conditions could be attached to a permission.

6. The description of an application for a certificate of lawfulness of an existing use or development made under s.191 can be amended under the provisions of s.191(4). There is no equivalent power for an application made for a proposed use or development under s.192 for a local planning authority, the Secretary of State or an Inspector to modify the terms of an LDC application. It is for the appellant to propose the use or operation for which they wish to ascertain lawfulness. However, the terms may in practice be modified by the appellant or where they agree, (*R v Thanet DC ex parte Tapp & Another* [2001] EWCA Civ 559).
7. In the present circumstances I consider it reasonable and equitable to the parties if I change the description of the application to: "*The change the use of No. 22 Diana Road from a dwelling house, (Use Class C3 Town and Country (Use Classes) Order 1987 as amended), to use as a children's home, (Use Class C2), for a maximum of 3 children aged between 12 and 16 years old with 24-hour care provided by care workers on a shift basis*" – the description as set out in the Appellants' statement. The Council's submissions show they dealt with the application on that basis. No useful purpose would be served by refusing a futile application claiming the lawfulness of a change of use from dwellinghouse (C3) to a children's home (C2) that did not specify how the children's home would be run and where the materiality of the change of use could not be assessed. Planning conditions cannot be attached to an LDC. The scope and limitations must be set out in the description of the use or development in the application.
8. Further detail added by the Appellants said each carer would stay at the house for at least 24 hours, (for a maximum of 48 hrs), for each rotation (continuous) and would carry out the day-to-day tasks associated with running a household. There would be one carer working shifts with no more than one arrival or departure each day of carers during a shift change, as well as the usual day-to-day activities of the carer and the children. Shift changes would take place at around 8:00/8:30am. A manager would be on site each day from 9am to 6pm. Up to 3 children would be in occupation, each having a bedroom, the on-site carer presumably sleeping during their 24 - 48 hour shift in the office/staff restroom.

## **Considerations**

### ***Material change of use C3 to C2 use?***

9. In a Ministerial Statement by Rachel Maclean MP on 23 May 2023 it was said, in respect of Children's homes developments, that planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order where the children's home remains within Class C3 or there is no material change of use to a Class C2 use. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate.
10. The Appellants said it appeared the Council were of the view that because a C2 children's home operated differently to a residential C3 use, it should be treated as a material change. That took no account of the Appellants' intentions. A typical 3 bed family home could include 2 adults and 2 children. It could include a young adult who also travels independently to work or college. Adults may go to work at

different times of the day, including working shift patterns outside daytime hours. They could be leaving/arriving at unsociable hours. There could be family or friends visiting the property at various times. A family home could also be occupied by households that have care needs requiring regular visitors to the house, including elderly or disabled residents or alternatively foster children who would also require social worker visits. In contrast, the Appellants' children's home would be carefully managed including that in relation to staff hours and shifts and visitors. The children would be those with minimal behavioural challenges who, for whatever reason, could not at the time live with their families but require a stable domestic life. That included mainstream school attendance and community integration. Staff changeovers would be limited to 1 person at a time. The pattern of movements would be no more than expected in a typical family home. There were likely to be fewer family visits.

11. Countering the Council's suggestion that the children's needs, which may include emotional or behavioural challenges typical in a care setting, could also contribute to elevated noise levels through play, distress, or interaction with staff, the Appellants said the application did not make any reference to the children having emotional or behavioural challenges leading to excessive noise and disturbance. The intention was that the home would provide care for children who cannot currently reside with their families. They would aim to provide a stable domestic life. It was wrong to assume that all children in care were disruptive and/or noisy. The Appellants compared their project with a Council cited case where the characteristics of the children being cared for were those with challenging behaviour/learning difficulties. That was different to the children who it was proposed to care for at Diana Road. Also, staffing levels in that case were higher than proposed here.
12. I note the intention to accommodate children with few or hardly any behavioural or emotional problems. If the children could be settled in to live at No. 22 in a manner reasonably similar to normal family life, the children's home use would be similar to that which might be expected in a normal domestic C3 use of the house. However, I consider that would be difficult to ensure and maintain in the context of a certificate of lawfulness where conditions cannot be applied.
13. The house at No. 22 is small. Two of the 3 bedrooms appear adequate for a child. Bedroom 3, as shown on the application plan, less so. The accommodation for one carer, on site for a 24 to 48 hour shift also seems quite inadequate, bearing in mind they would need to use the room as an office, a restroom and presumably, for sleeping. I consider that the number and size of 2 of the rooms in the house not appropriate to accommodate 3 children under care for and for a sleep over staff member, suggesting an over intensive use. The proposed use of the small house at No. 22 as a children's home would have a significant impact on its residential character, materially different on the scale proposed, to the lawful residential use. Also, the comings and goings of carers and managers each day as well as visiting supervisory personnel from time to time to look after 3 children would have an impact on the character of this part of the residential terrace. They would be more likely than neighbours to arrive and leave by car to this property that has no on-site parking.
14. I consider that the intended level and type of operation at the proposed children's home at No. 22 Diana Road would result in a material change of use of the existing dwelling.

## Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the change of use of No. 22 Diana Road, Bootle L20 6EB from a dwelling house, (Use Class C3 Town and Country (Use Classes) Order 1987 as amended), to use as a children's home, (Use Class C2), for a maximum of 3 children aged between 12 and 16 years old with 24-hour care provided by care workers on a shift basis was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

## FORMAL DECISION

16. The appeal is dismissed.



INSPECTOR