



Appeal Decision

Site visit made on 18 September 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Appeal Ref : APP/N5660/X/18/3216458

93-109 Knollys Road, London, SW16 2JP

- 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 Capital Care Villages against the decision of the Council of the London Borough of Lambeth.
- The application ref. 18/00745/LDCP dated 14 February 2018, was refused by notice dated 18 May 2018.
- The application was made under section 192(1) of the 1990 Act as amended;
- The works for which a LDC is sought is (proposed) amendment to the internal layout to the approved Planning Permission ref. 17/01991/FUL.

Summary of Decision: the appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use/operation which is considered to be lawful

Preliminary Matters

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.
2. I note that the description of development on the appeal form is different from that on the application in that it refers to care studios. The Appellant has confirmed that the reference to care studios was an error. The Council also point to new information submitted with the appeal. I shall determine this appeal based on the description of development submitted with the application and the evidence as presented to me in this appeal.

Reasons

3. The appeal concerns a three/four storey building last used as accommodation for nursing and personal care. Planning permission was granted in 1995 for the erection of a building for use as a residential nursing home for the elderly providing 93 bed spaces. In 2010 planning permission was granted for an additional 46 bed spaces in a rear extension. LDC ref. 15/07254/LDCP has been issued for the provision of 13 care home beds, 12 x 1 bed care apartments, 16 x 2 bed care apartments and 2 care studios in place of 88

- existing care bedrooms. LDC ref. 18/02852/LDCP has been issued for 11 non self-contained bedrooms and 26 self-contained apartments in place of 88 existing care beds.
4. There is no dispute between the parties that the lawful use of the appeal site falls under Use Class C2 and I have no reason to conclude otherwise. Use Class C2 is defined as 'use for the provision of residential accommodation and care to people in need of care (other than a use within use class C3). Use as a hospital or nursing home. Use as a residential school, college or training centre'. Article 2 of the Use Classes Order indicates that, for the purposes of the Order 'care' means 'personal care for people in need of such care'.
 5. The main issue in the determination of this appeal is whether the amendments to the internal layout facilitate a change of use of the building from Use Class C2 to Use Class C3. Use Class C3 is use as a dwellinghouse and C3(b) concerns persons living together as a single household and receiving care.
 6. The Council argues that the proposal would constitute a material change of use from Use Class C2 to Use Class C3 and requires planning permission. The Appellant argues that the proposal comprises extra care accommodation which falls within Use Class C2 and does not require planning permission. There is no definition of 'extra care housing' or government guidance as to which use class it falls into. Each case is determined on its merits balancing a range of factors to assess whether the care provided satisfies Use Class C2.
 7. The development would comprise 30 self-contained units. The plans submitted with the application show communal, office and care facilities areas including a restaurant, lounge and dining area, bars, communal kitchen, staff room, home care office, care manager's office, assisted wc, laundry room, hairdressers, therapy room, lounge, library and café. The living accommodation comprises a mix of 1 and 2 bedroom apartments. Each apartment has wheelchair accessible doors and electric sockets, level floor showers and grabrails. Residents are to be provided with a wellbeing care and support package. The facilities available are aimed at supporting independent living for persons aged over 55 years of age with services tailored to need.
 8. The proposed layout and facilities in the building lead me to conclude that the proposed use falls within Use Class C2. It provides a level of provision that exceeds what is likely to be expected in C3 residential environments. Health care workers will be on site 24 hours a day 7 days a week throughout the entire year. All residents have a minimum of 2 hours a week care and support which provides access to a staffed and supervised clinic, a 24 hour monitored emergency call provision, communal facilities, a staffed office which coordinates and organises care services such as GP visits. Additional packages of service are available to include, for example, mobility support, system and medication administration. The extent of communal facilities is also significant.
 9. Whilst I recognise that independent living is possible the development is designed to enable residents to tailor care to individual needs as needs change and there is a minimum package of care for all residents. The minimum level of care goes beyond reception and domiciliary help. The care element is provided by a registered Care Quality Commission provider and the focus and additional payments for tailored provisions are likely to deter prospective occupants who are not in need of care provision. I have taken into account that units are self

contained but balanced against other factors I do not find this to be conclusive or to alter my main conclusion.

10. I have taken into account the London Housing SPG (2016) and note its reference to Class C2 providing non-self contained residential accommodation. But whilst I recognise that whether the accommodation is self contained is one factor to be taken into account I do not consider it to be a determinative factor. I have also taken into account Lambeth Local Plan Policy H8 and the Departments of Health's Extra Care Housing Toolkit.
11. Taking all these factors together lead me to conclude that as a matter of fact and degree the proposed works facilitate a use where the provision of care forms an integral part of the package on offer and is reasonably considered a C2 Use.
12. My attention is drawn to other appeal decisions. I do not have the particular circumstances of those decisions before me and I shall determine this appeal on its own particular facts.
13. The Appellant has demonstrated on a balance of probabilities that the building as proposed is to be in class C2 use. The Council's decision to refuse to grant a LDC was therefore not well founded.

Conclusion

14. For the reasons given above I conclude, on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of amendment to the internal layout to the approved Planning Permission ref. 17/01991/FUL was not well founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

S. Prail

Inspector



LAWFUL DEVELOPMENT CERTIFICATE

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by the Planning and
Compensation Act 1991)

IT IS HEREBY CERTIFIED that on 14 February 2018 the proposed operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked in pink on the plan attached to this certificate would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 as amended, for the following reason:

The development falls within the same use class as the existing lawful use of the land and does not constitute development as defined in section 55 of the Town and Country Planning Act

The development does not contravene the requirements of any enforcement notice in force.

S. Prail

INSPECTOR

Date: 11 October 2019

Reference: APP/N5660/X/18/3216458

First Schedule

Amendment to the internal layout to the approved Planning Permission ref. 17/01991/FUL as shown on the drawings submitted with the application including AL(9)900, AL(9)910, AL(0)050 Rev A, AL(0)051 Rev A, AL(0)052(A), AL(0)053 Rev A, AL(0)054 Rev A, AL(0)060 Rev C, AL(0) 062 Rev B, AL(0)063(B), AL(0)064 Rev A, AL (0) 070 Rev C, AL(0)071 Rev C, AL(0)072 Rev C, AL(0) 073 Rev C for the use described in the supporting documentation.

Second Schedule

Land at 93-109 Knollys Road, London, SW16 2JP

NOTES

This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 October 2019

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Not to Scale

