
Appeal Decision

Site visit made on 11 December 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2021

Appeal Ref: APP/C5690/X/20/3251459

194 Firhill Road, Bellingham, London SE6 3LL

- 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 Sean Smith against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/115640, dated 7 February 2020, was refused by notice dated 20 April 2020.
 - 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 use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents (Class C3(b) Part C, Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 as amended).
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Summary Decision: The appeal is allowed and a certificate of lawful development is issued in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Council's decision notice describes the proposed use as 'a residential care home for not more than 6 residents including carer (Use Class C3b)'. However, a description of the proposed use is not provided in the application form. Nevertheless, part 5 of the form (Grounds of Application) asks the applicant to state which Use Class of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) the proposed use would be within. The appellant states 'C3 – Dwellinghouses'. The appellant has also referred to 'C3(b)' in the appeal form in the section that asks for a precise description of the proposed use as outlined in the application in respect of which a certificate is sought.
2. The appellant's reference to Class C3(b) of Part C, Schedule 1 of UCO in the appeal form is consistent with the use class referred to in the decision notice. Otherwise, there are differences between the description provided in the decision notice and that provided in the appeal form.
3. In the interests of clarity, I have used the text from Class C3(b) of Part C, Schedule 1 of the UCO as the description of the use for which the LDC is sought in the heading of this decision. The appeal has been determined on this basis.
4. I note the representations from interested parties regarding the acceptability or otherwise of the development that is the subject of the appeal. Whilst the representations are acknowledged, for the reasons I set out below I am not

able to consider the planning merits of the proposed development. Accordingly, many of the points raised are not relevant to the decisive matter in this appeal.

Main Issue

5. Section 192(2) of the Town and Country Planning Act 1990 as amended indicates that if, on an application under this 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 they 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 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 referred to in the application would be lawful if begun on the date the application was made.
6. The appellant has provided a description of how the site would be occupied and used in a document accompanying the LDC application. In the application form the appellant has stated that the proposal does not consist of a change of use. In refusing to grant the LDC, the Council suggest that 'insufficient information has been provided to demonstrate that the proposed use amounts to no more than six residents living together as a single household where care is provided in accordance with Class C3(b)'.
7. Having regard to the above, the main consideration in this case is whether the use described by the appellant falls within Class C3(b) of Part C, Schedule 1 of the UCO and, therefore, whether or not the proposal amounts to a change of use that is materially different from the existing use of the site.

Reasons

8. The Council describes the lawful use of the site as 'C3(a)'. Class C3(a) of Part C, Schedule 1 of the UCO is a use as a dwellinghouse by a single person or by people to be regarded as forming a single household. This is consistent with the appellant's description of a 'private household' given in the appeal form as the use of the site at the time of the LDC application.
9. The use for which the LDC is sought is a use falling within Class C3(b), which is a use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents. Although in the application form the appellant states that the proposal does not consist of a change of use, there would indeed be a change in the use of the property if the use falling within C3(a) were to cease and the use falling within C3(b) were to commence. However, as these uses fall within the same class (Class C3) the change from one use to the other would not be material and would not, therefore, amount to development as defined under section 55(1) of The Town and Country Planning Act 1990 as amended.

10. With regard to the use described by the appellant, he states that the property would provide residential care, board and accommodation for up to 6 adults and that the home will be staffed on a 24 hour basis. The proposed layout plans for the site show the provision of 6 rooms, along with a lounge, kitchen, office, therapy room, and a bathroom on the ground and first floor.
11. I acknowledge that the intended residents of the property would require the support suggested. Nevertheless, the proposed layout of the property would be conducive to residents living together as a single household, having regard to the single kitchen, lounge and shared bathroom facilities. Notwithstanding the room labelling on the proposed layout plan, the proposed layout would be similar to that of a family home falling within Class C3(a), rather than a care home falling within Class C2¹.
12. The 'operator' of the site is not relevant in this case and further information regarding the residents is not necessary to the determination of this appeal. The appellant describes the care provided as support for residents with particular impairments. Whilst I note that overnight staff would not sleep during the night, I have no reason to conclude that the care that would be provided is not that referred to in Class C3(b).
13. The Council has drawn my attention to the recent planning application for the site², which proposes a use of the site falling within Class C2. I have not, however, been provided with the particular details of that application so as to make an informed comparison between it and the case before me. Notwithstanding this, the Council point to the proposed accommodation in that case for 7 residents, which in itself is a reason why that use would not have fallen within Class C3(b). Furthermore, there is no dispute that a use falling within Class C3(b) could provide accommodation for 6 residents, which is the number of residents that would be accommodated in this case.
14. Notwithstanding this, I have determined the LDC appeal on the basis of the application that was submitted. It would not apply to development that is materially different from the proposed scheme. A use that would provide a different type of care, a different type of living arrangement (i.e. residents not living together as a single household), or involve a greater number of residents might well be considered to be a use that is materially different to a use falling within Class C3(b). In these circumstances any LDC granted in this case would not apply to such a use.
15. In summary, I am satisfied that on the balance of probability the use as described would be a use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents falling within Class C3(b) Part C, Schedule 1 of the UCO. Furthermore, a change to this use from a use as a dwellinghouse by a single person or by people to be regarded as forming a single household falling within Class C3(a) would not amount to the development of the land as it would not constitute a material change of use under section 55(1) of The Town and Country Planning Act 1990

¹ Class C2 of Part C, Schedule 1 of the UCO - Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

² Application reference DC/19/113060 - 'The change of use of 194 Firhill Road, SE6 from a dwelling-house (Use Class C3) to provide a residential care home (C2) for adults with learning disabilities'.

as amended. The proposed use would, therefore, be lawful if begun on the date the application was submitted.

Conclusion

16. 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 'a use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents (Class C3(b) Part C, Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 as amended)' was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Formal Decision

17. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed use which is found to be lawful.

J Moss

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 7 February 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The described use would have been a use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents falling within Class C3(b) Part C, Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 as amended. A change to this use from a use as a dwellinghouse by a single person or by people to be regarded as forming a single household falling within Class C3(a) of Part C, Schedule 1 of the Order would not have amounted to the development of the land as it would not have constituted a material change of use under section 55(1) of The Town and Country Planning Act 1990 as amended.

Signed

J Moss

INSPECTOR

Date: 23rd February 2021

Reference: APP/C5690/X/20/3251459

First Schedule

A use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents (Class C3(b) Part C, Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 as amended).

Second Schedule

Land at 194 Firhill Road, Bellingham, London SE6 3LL.

NOTES

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

It certifies that the use 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

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

by J Moss BSc (Hons) DipTP MRTPI

Land at: 194 Firhill Road, Bellingham, London SE6 3LL.

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Scale: Not to scale

