
Appeal Decision

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/U3935/X/21/3272462

8 Carroll Close, Liden, Swindon SN3 6JH

- 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 Erica Pryce of The White Horse Care Trust against the decision of Swindon Borough Council.
 - The application Ref S/LDP/21/0134/CHHO, dated 20 January 2021, was refused by notice dated 15 March 2021.
 - 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 use as a Class C3(b) dwelling.
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Decision

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

Procedural Matters

2. I have taken the description of the use proposed in my banner heading above from the appeal form and appellant's statement since no full description was given on the application form. The appeal involves the consideration of relevant planning law and the facts which have not necessitated a site visit.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. Pursuant to section 195 of the Town and Country Planning Act 1990 as amended (1990 Act), my decision is whether the Council's refusal was well-founded, not the reasons for that decision. Hence, it is proper that I consider additional information which was not before the Council when it took its decision.

Reasons

4. Section 192 of the 1990 Act states that if a person wishes to ascertain whether any proposed use of buildings or other land is lawful, they may make an application to the local planning authority for a certificate of lawful use or development.
5. In a lawful development certificate (LDC) appeal, the onus of proof is firmly upon the appellant to make their case on the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent

evidence. If the Council has no evidence of its own to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous. The appellant needs to show that the proposed development would have been lawful at the date of the LDC application. My decision is therefore made upon relevant facts, legislation, and judicial authority - planning merits are not relevant.

6. Section 57 of the 1990 Act states that planning permission is required for development of land. Section 55 of the 1990 Act then states that development includes the making of a material change in the use of land. Section 55(2) makes exclusions from the definition of development and s55(2)(f) states effectively that a change of use within the same use class¹ will not represent development. Section 55(3) though specifically states that the use as two or more separate dwelling houses of any building previously used as a single dwelling house involves a material change of use. Section 55(3) thus disapplies the s55(2)(f) exclusion.
7. There is no dispute that the appeal property is currently in use as a Class C3(b)² dwellinghouse being used by not more than six residents living together as a single household where care is provided for residents. The application is to change the internal configuration of the dwelling to optimise the living arrangements of the residents, with the intention that the residents still function as a single household based on the arrangements as described³.
8. The question to be determined is thus whether the arrangements proposed would mean that the residents in receipt of care would no longer live together as a single household. If I were to find that the proposal means that two separate households would be formed, I would then need to consider whether this would represent a material change of use since it would no longer fall within the s55(2)(f) exclusion.
9. Looking at the application plans, the current layout of the property at ground floor level is of an entrance lobby which gives access to a lounge. Through the lounge, the stairs for the first floor can be reached. The lounge also gives access to a sitting area, kitchen and breakfast room and utility room. The utility room provides access to a bathroom and bedroom. The proposed ground floor plans would see the arrangement of the ground floor unchanged other than by the introduction of a new partition within the existing lounge, forming an inner lobby giving access to the first floor.
10. The plans submitted then show the current first floor arrangement has a central landing which provides access to three bedrooms and a bathroom. The appellant advises that bedroom three is currently used as a staff bedroom. The proposed first floor plan then shows bedroom two remaining as a bedroom for the resident receiving care, bedroom three is labelled as a staff bedroom, reflecting its current use. The former bedroom one would be used as a lounge and kitchen area with a new stud partition between the former bedroom two and former bedroom one, enabling a lounge and kitchen area, and a smaller bedroom for the first floor resident.

¹ As set out in Town and Country Planning (Use Classes) Order 1987 as amended (UCO)

² Per Schedule 1, Part 3, Class C3 to the UCO

³ The supporting information submitted with the application indicates that the carers stay overnight at the property but are not residents, thus the assessment is whether those in receipt of care form a single household

11. The proposed internal changes would mean that both the ground floor and first floor would each have bedrooms, bathrooms, kitchens, and lounge areas. Thus, each would have the facilities for independent day-to-day living. However, the appellant has clarified that, whilst bedroom and bathroom areas would be intended to be more private, the intention is for both residents to spend time together in the lounge to the front of the property, which is intended as a shared lounge. Residents would also have shared use of the ground floor utility room, along with access to the shared garden from the breakfast room. Access to the garden would involve passing through the ground floor lounge, sitting area and breakfast room.
12. The appellant has explained that the new entrance vestibule is for energy efficiency purposes and that there would be no locks on any of the internal doors, including those providing access as between the ground and first floor. It is stated that the primary reason for the additional facilities is to enable both individuals receiving care to develop their independent living skills. It is emphasised that the residents' support needs indicate the intention to spend time living together in a shared living arrangement, but with a requirement for facilities such that they can have support independently and privately when necessary.
13. The assessment of whether or not residents are living as a single household is a question of fact and degree in each case. The residents would have separate bathrooms and there would be a kitchen on each floor. This would not though, in my view and in the particular circumstances of this case, mean that there would not be a communal sense of living. It is not uncommon within a single household for residents to have ensuite bathrooms, which would have a similar effect to separate bathrooms on each floor. Further, a sense of communal living would remain from the sharing of living accommodation being the lounge at the front of the property, sharing the utility room, and shared enjoyment of the garden area also.
14. Thus, I find that, as a result of the proposal, the residents would remain living as a single household with care and the proposed use would therefore fall within use Class C3(b). Thus, the proposal would not result in a material change of use and planning permission would not be required. A use that would provide a different type of living arrangement (i.e. residents not living together as a single household) 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.

Conclusion

15. 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 was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

V Bond

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 20 January 2021 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 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would have been in Use Class C3(b): use as a dwellinghouse (whether or not as a sole or main residence) by not more than 6 residents living together as a single household where care is provided for residents. Thus, it would not have represented a material change of use under section 55 of the Town and Country Planning Act 1990 as amended.

Signed

V Bond

Inspector

Date 13 July 2021

Reference: APP/U3935/X/21/3272462

First Schedule

Use as a Class C3(b) dwelling as described in the details submitted with application Ref S/LDP/21/0134/CHHO and with this appeal.

Second Schedule

Land at 8 Carroll Close, Liden, Swindon SN3 6JH.

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 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, was not 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, 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 use is instituted or 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: 13 July 2021

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Scale: Not to scale

