



Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 12th July 2024

Appeal Ref: APP/C5690/X/23/3329560

61 Shaw Road, Bromley, London BR1 5NW

- 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 Hardeep Dehal against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/23/132418, dated 15 July 2023, was refused by notice dated 14 September 2023
 - 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 change of use from a dwellinghouse (Use Class C3(a)) to a small children's care home (Use Class C2).
-

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.

Preliminary Matters

2. In order for a certificate of lawful use or development to be granted, the onus is on the appellant to show that the proposal would be lawful at the time the application was made. For proposed developments, an appellant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. The appellant should make out their case to the standard of the balance of probabilities. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded. In this case, that turns on whether the proposal is a material change of use from the lawful use as a single dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (UCO) as amended.

Reasons

4. The appeal site is a two storey end-of terrace dwelling located in a predominantly residential area. It is currently in Use Class C3(b) as a private dwellinghouse.

5. It is proposed that the appeal site would be registered as an Emotional and Behavioural Home accommodating up to three children. The children would be aged between 8-18, with the facility supporting them to build confidence and develop life skills. The children would be supported by two carers working on a rota basis who would sleep overnight at the house.
6. On the basis of these proposed arrangements, there is no dispute between the parties that the new use of the house would fall into Use Class C2 – Residential Institutions. The appellant's case is that, although the proposal would take the appeal site into a different use class, no material change of use would come about so that planning permission would be required.
7. The concept of a material change of use is not defined in statute or statutory instrument; it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.
8. In support of their case, the appellant submits a Planning Statement and a Management Plan detailing the proposed pattern of use. The children would live at the appeal site on a medium to long term basis. They would attend school every day, unless they were being home-schooled, in which case lessons would be conducted online. They would not receive visits from family, and visits from friends would be by arrangement.
9. In terms of staff comings and goings, the changeover of the primary carers would occur at around 9.45am and would take around 10 minutes. A carer/manager would also attend the home most weekdays. One or two social services staff would visit every six weeks to inspect the premises, and two Ofsted inspectors would visit annually. Any other appointments with social workers or clinicians would take place away from the home.
10. At their Schedule 1, the appellant provides an estimate of current weekly movements given by the existing owners of No 61. Schedule 2 is an estimate of the weekly movements under the proposed use, based on the experience of other similar homes. The conclusion drawn from the data is that the existing use of the house generates two additional movements per week over and above those estimated for the new use.
11. The Council raise some issues with the appellant's evidence. They are concerned that the appellant has provided insufficient information to determine whether there would be a material change from the actual existing use of the dwelling. Firstly, they say it is unclear how many bedrooms and occupants the existing house has. The appellant clarifies that No 61 is a four bedroomed house with three bedrooms on the first floor and one bedroom on the ground floor. The rooms will continue to be used in this way.
12. Secondly, although the current weekly movements are based on an estimate by the existing owner, the Council state that no evidence has been provided to support these figures. However, they do not specify the type of evidence that they would find to be satisfactory. The appellant states that the figures are close to the TRICS¹ figures for this use. The council does not dispute this, or offer evidence to contradict that of the appellant.

¹ TRICS (Trip Rate Information Computer System) is a database of trip rates for developments for transport planning purposes.

13. In any event, the number of trips generated by a dwelling house in C3 use could vary greatly depending on the number of occupants, their age, their employment status, and many other factors. The figures provided by the current owner seem to me to fall well within the average for a typical household.
14. Similarly, the Council question the details regarding the proposed use of the building. They are concerned that the details within the Planning Statement regarding the proposed use are not supported by evidence. For example, the comings and goings have been based on 'experience of other homes', however no evidence has been submitted to substantiate these figures. The appellant explains that they have experience of this form of care home all over England and Wales. The figures given are based both on their experience and the experience of the proposed operator, and are close to the relevant TRICS figures. Again, the Council does not dispute these statements, or offer evidence to the contrary.
15. I take into account the Council's concern that the figures assume that all of the children will be doing the same thing at the same time. Given the likely differences in the needs of each child being cared for at the site, this assumption does not seem justified in the Council's view. However, again, these figures are an average estimate. If each child is going to a different school, then the school run figures might be higher. Conversely, if some or all of the children are being homeschooled, then this figure might be lower.
16. I note also from the Management Plan that a 9pm curfew would be imposed at the home, unless otherwise agreed with management. In comparison to a typical family household, particularly one with older teenagers or adult children, this factor could significantly reduce the number of comings and goings at a time when surrounding residents would reasonably expect peace and quiet.
17. As noted above, the accommodation is intended to be long term to provide stability for the children. However, the Council are concerned that no details are available of how this arrangement will be agreed in terms of the length of each stay, nor have examples of other similar care homes been included to support this statement. Nonetheless, they provide little clarity in respect of the frequency of turnover that would amount to a material change of use of the property. I therefore attach little weight to this aspect of the Council's case.
18. A house of this size could accommodate a typical family with two or three children and two adults. It seems to me that the use of the house as a home for a maximum of three young people and their carers would not be materially different from the authorised use as a family home. The pattern of comings and goings might be different to a private family home in some aspects, but there is no evidence that this would amount to a material change of use. If anything, the 9pm curfew and the tight restrictions on social visits to the house would be likely to lessen the overall number of trips generated.
19. Drawing these factors together, I am satisfied that the appellant has adduced enough clear and precise information to show that, on balance of probabilities, the proposed change of use would not amount to a material change of use of the appeal site.

Conclusion

20. For the reasons above, I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use from single dwelling house to Use Class C2 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.

Elaine Gray

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 15 July 2023 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 use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), would not represent a material change from the authorised use of the site as a Class C3 dwellinghouse.

Signed

Elaine Gray

Inspector

Date: 12th July 2024

Reference: APP/C5690/X/23/3329560

First Schedule

The use of the dwellinghouse within Class C2 of the UCO, for occupation by no more than 3 children and 2 adults at any one time.

Second Schedule

Land at 61 Shaw Road, Bromley, London BR1 5NW

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 /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, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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 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: 12th July 2024

by **Elaine Gray MA(Hons) MSc IHBC**

Land at: 61 Shaw Road, Bromley, London BR1 5NW

Reference: APP/C5690/X/23/3329560

Scale: Not to scale

