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## Appeal Decision

Site visit made on 6 January 2025

**by Paul T Hocking BA MSc MRTPI**

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

**Decision date: 20 January 2025**

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**Appeal Ref: APP/Y3615/X/23/3331615**

**Greenways, Fox Corner, Worplesdon, Surrey GU3 3PP**

- 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 Anthony Marris against the decision of Guildford Borough Council.
  - The application Ref 23/P/00968, dated 2 June 2023, was refused by notice dated 20 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: C3(b).
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### Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

### Preliminary Matters

2. The appeal does not concern the refusal of a planning permission. My decision therefore relates solely to the lawfulness of a proposed use. The planning merits of the proposal, planning policy considerations or other constraints or issues are therefore not relevant to my assessment. Accordingly, unless relevant to the main issue below, I am unable to consider representations relating to the proposal on wider planning or other grounds.
3. For the purposes of my decision, I have also had regard to the definition of a dwellinghouse within the Use Classes Order 1987 (as amended) (the Order).
4. During my site visit it was apparent that a use of the site involving care was being carried out. My assessment is however confined to the lawfulness of the proposed use on the date of the appeal application.

### Main Issue

5. The main issue is whether the Council's decision to refuse a certificate of lawfulness was well founded.

### Reasons

6. The site relates to a detached residential property and annexe building located in a semi-rural area situated between neighbouring residential properties.

7. The appellant seeks certification for the proposed use of the main house and annexe for purposes falling within use class C3(b) of the Order. This defines use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents.
8. Section 192 of the 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. In matters such as this, the onus is on the appellant to demonstrate their case on the balance of probabilities. 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. My assessment is therefore very fact sensitive.
9. The appellant explains that the proposed care use relates to adult residents with mental health conditions and learning disabilities, who are said to require a low level of assistance and care. The property is rented by a company who are said to specialise in this type of supported living. Residents would therefore require a degree of supervision and support, with 4 support workers present during the day and 3 at night. There would be no live-in support workers and they would not be sleeping at the property.
10. The Order does not prescribe how many support workers there may be or what type or scope of care they are restricted to. They are also not prescribed to form part of the single household, as they are simply providing support and supervision for those who do. In this case, it is also said that the residents would take shared meals in communal areas as well as other shared activities being undertaken both inside and outside. I then note from the layout plan that there are numerous communal areas including a single kitchen area as well as a sitting room, media room and utility. Only two of the bedrooms would have access to an ensuite. Whilst an office would be provided for management, aside from a medicine cabinet, it would be accessible to residents. Whilst finely balanced, the evidence demonstrates on the balance of probabilities that the residents would therefore form their own household.
11. The residents are said to be capable of looking after themselves and engage in independent activities, with a level of support then at home. The Council has raised assistance with cooking as a concern. However, it would seem to me to be an entirely appropriate form of support for the resident's, in terms of health and safety, particularly given the amount of preparation required for communal meals. I therefore do not accept the care proposed would be akin to a parent and child relationship.
12. The occupation of an average resident is then said to be 2 years to provide a sufficient period to develop life-skills and progress to independent accommodation and work. On the balance of probabilities this would accordingly be consistent with the care use catered for by the Order.
13. I appreciate the care use might result in a larger number of people present at the site at any given time, however there is no prescription on the number of care workers, visits by family members or number of deliveries to a dwellinghouse, within reason. I however then have very little evidence to demonstrate on the balance of probabilities a material change of use arising through intensification or other material change in character from what is

catered for by the Order. Moreover, it cannot be said to be a business or institutional use because the care use relates to the only or main home for the residents, which is not disputed, and the aforementioned evidence then demonstrates on the balance of probabilities the intention for residents to form a single household, in contrast to a care home. Reference has also been made to a care plan/s for the residents. These are not before me but are said to be individually tailored. Whilst the absence of these casts some doubt in my mind, on-balance this does not outweigh the other evidence pertaining to the use.

14. I then have little evidence that the use of the annexe would be unlawful simply because it was originally granted planning permission as a garage and outbuilding, which thus formed part of the residential planning unit.
15. Extracts from case law and other appeal decisions have been brought to my attention. However, these do not provide the full evidence or context of those uses. In any event, each assessment will be fact sensitive as I have already noted, and I have determined this appeal on the evidence of the proposed use before me.
16. I appreciate that an HMO licence had been sought and subsequently issued by the Council, but that does not demonstrate the proposed use would not be lawful.
17. As a matter of fact and degree, whilst finely balanced, the appellant has demonstrated on the balance of probabilities that the proposed use would be lawful. A certificate citing the definition of a use class C3(b) dwellinghouse use should therefore be issued.

### **Conclusion**

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawfulness 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.

### **Formal Decision**

19. The appeal is allowed and attached to this decision is a certificate of lawfulness describing the use which is lawful.

*Paul T Hocking*

INSPECTOR

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# 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

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**IT IS HEREBY CERTIFIED** that on 2 June 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated their case on the balance of probabilities.

Signed

*Paul T Hocking*

Inspector

Date: 20 January 2025

Reference: APP/Y3615/X/23/3331615

## **First Schedule**

Use of the main house and annexe as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents, falling within Use Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended).

## **Second Schedule**

Land at Greenways, Fox Corner, Worplesdon, Surrey GU3 3PP

## 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, 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 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: 20 January 2025

**By: Paul T Hocking BA MSc MRTPI**

**Land at: Greenways, Fox Corner, Worplesdon, Surrey GU3 3PP**

**Reference: APP/Y3615/X/23/3331615**

**Scale: DO NOT SCALE**

