

Appeal Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal Ref: APP/B5480/X/23/3334274

27 Kingston Road, Romford, Havering RM1 3NB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Luiz Orlando against the decision of the Council of the London Borough of Havering.
 - The application ref D0344.23, dated 27 July 2023, was refused by notice dated 21 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 a use as a dwellinghouse by no more than 6 residents, comprising no more than 5 children and young people aged from 10 to 18 years old and a care provider who is a permanent resident of the dwellinghouse, living together as a single household where care is provided for residents.
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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 found to be lawful.

Preliminary Matters

2. Having considered the evidence submitted, the main considerations in this case, and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were, however, sought on this matter before my determination of the appeal. No objections to this were raised.
 3. The description of the development on the LDC application form is for a use of the appeal property as 'a care home for children and young people aged from 10 to 18 years'. The documents submitted with the LDC application and appeal describe the proposal in more detail, as providing a home for five children together with a care provider who is a permanent occupant of the property. The appellant suggests that this is a use that would fall within Class C3(b) of Part C of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). Class C3(b) is described in the 1987 Order as a use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents.
 4. The Planning Practice Guidance on Lawful development certificates informs that 'precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it'. Having regard to this, the matter for which the LDC is sought (i.e. the description given in the application form) is ambiguous and does not describe in sufficient detail the use that is described by the appellant in their LDC application and appeal submissions, which is the use that the Council's case responds to.
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5. Any certificate granted in this case should be precise in the description of the development. To this end, and with the agreement of both parties, I have changed the description of the development that is the subject of the appeal to that specified in the header above. Having regard to the respective case made by each of the parties, I am satisfied that no injustice would be caused in doing so.

Main Issue

6. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) 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.
7. For the avoidance of doubt, this means that the planning merits of the proposed development, including matters such as parking, noise and disturbance, and traffic, are not relevant to this appeal. By this I mean it is not for me to determine whether or not the proposed use of the appeal property is acceptable. My decision is based on the facts of the case and judicial authority. The main issue is whether the Council's decision to refuse to grant a LDC is well founded. The main consideration in this case is set out below.

Reasons

8. Section 55(1) of the 1990 Act provides the meaning of development, which includes the making of any material change in the use of any buildings or other land. In accordance with the provisions of section 55(2)(f), in the case of buildings or other land which are used for a purpose of any class specified the 1987 Order, the use of the buildings or other land for any other purpose of the same class shall not be taken to involve the development of the land.
9. Section 191(2) of the 1990 Act informs that uses and operations are lawful at any time if:
 - (a) no enforcement action may be taken in respect of them because, for example, they did not involve development; and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
10. There is no dispute that the existing use of the appeal property is as a dwellinghouse falling within Class C3(a) of Part C of Schedule 1 of the 1987 Order. Class C3 is a use as a dwellinghouse, as a sole or main residence and occupied for more than 183 days in a calendar year by:
 - (a) a single person or by people to be regarded as forming a single household;
 - (b) not more than six residents living together as a single household where care is provided for residents; or
 - (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).

11. The appellant suggests that the proposed use would fall within Class C3(b) and that, for this reason, the proposed change of use would not involve the development of land, by reason of section 55(2)(f) of the 1990 Act. It is for this reason that they suggest that the proposed use of the appeal property would be lawful.
12. This is disputed by the Council, who says that the proposed use would fall within Class C2 of Part C, Schedule 1 of the 1987 Order, which is a residential institution, including a 'use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3. Dwellinghouses, used as sole or main residences)'. It is for this reason that the Council suggests that the proposed use would involve the development of the land for which planning permission is required.
13. The main dispute between the parties and the main consideration in this case is, therefore, whether or not the change of use of the property to the proposed use would involve development within the meaning of section 55 of the 1990 Act.
14. The proposal does not include any alteration to the layout of the property. The semi-detached property currently accommodates 6 bedrooms (5 at first floor and 1 on the ground floor. There is also a kitchen and at least 4 reception rooms at ground floor. The property also accommodates space for a gym, an office, and laundry.
15. Both parties have drawn my attention to the case of *North Devon District Council v First Secretary of State* [2003] EWHC 157. The case involved the provision of accommodation for children that might not have been family members, but would have nonetheless resided full time within the property. However, in that case those who cared for the children would not have resided in the property full time. In their judgment, Mr Justice Collins considered whether or not the full time residents (i.e. the children) could be regarded as living together as a single household, within the meaning of Class C3(b).
16. In that case it was determined that the children resident in the property could not be regarded as a household on their own. It was said that children needed to be looked after and that they could not run a house; the full time care of an adult was needed to ensure that the household operated as it should. In that case it was determined that the concept of living together as a household meant that a proper functioning household had to exist. Mr Justice Collins said that this requires a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household. It was said that, otherwise, the use of the premises would fall within Class C2 of the 1987 Order.
17. In the case that is before me, the appellant says that for the five children and young people who would reside in the property 'care [would be] provided throughout the day and night by a permanent occupant of the dwelling'. They indicate that 'the permanent occupant of the dwelling would also share the communal facilities as part of the single household and would participate in domestic and leisure activities with the residents'. The indication is, therefore, that carers would not work on a shift basis and at other time reside elsewhere. Rather, the same care giver would permanently reside in the appeal property, on a full time basis, with the other resident children and young people.

18. In view of the above, there is a material difference in the circumstances of the case before me and those of the *North Devon District Council* case. In the *North Devon District Council* judgment, it was made clear that for there to be a proper functioning household for the purposes of Class C3(b), the children and the carer must reside in the premises. The evidence before me indicates that this would be the case for the proposed use.
19. I note the Council's reference to the lack of information regarding the provision of care for the children at times when the resident care provider 'has an appointment or leave'. However, the appellant indicates that the care giver is a permanent resident of the property and forms part of the household with the children to whom they provide care. As such, I would expect any incidents of the care givers absence from the property to be minimal, as one would expect in a household where one resident is wholly reliant on the care of (i.e. looked after by) another. Indeed, if the resident care giver were to be regularly absent or absent for prolonged periods from the property and away from the children they care for, such that the care of the children would be reliant on non-resident carers, it is likely that I would reach a different conclusion. However, the evidence does not indicate that this would be the case.
20. Notwithstanding the above, a use falling within Class C3(b) would include care provided for its residents by others who are not part of the single household (i.e. non residents). This means that the proposed use in this case would still remain within Class C3(b), even if additional care were to be provided by non-resident carers. This is, of course, provided that there would also be a full time permanent resident care provider looking after the children (i.e. necessary for there to be a single household), which the appellant indicates that there would be.
21. I have had regard to the representations of interested parties, who suggest that 'looked after children'¹ are frequently those with complex needs who require 'high levels of one-to-one care' and that this is not typical of normal family life. They suggest that the need to comply with certain regulatory standards would mean that the property would not be run as a conventional house. They also refer to the care providers as having only a quasi-parental role, that is materially different from a usual family.
22. As I note above, for a use to fall within any of the criteria of Class C3, there must be a single household (except for a person living alone). Whilst this would include a family living together in a property, as might be the case in a conventional home, Class C3 clearly casts the net wider than this to include uses involving people who are not related, but nonetheless live together as a single household. Even if a family living together is the most common type of single household, it is not the only type of single household to fall within Class C3. If it were, there would be reference to this in the description of the uses falling within the class.
23. The evidence indicates that it is more likely than not that the children and the care provider would reside in the property as a single household. They may not live together in a way that would be described as a typical family life. Nevertheless, Class C3 includes more than a typical family home. It includes a use comprising a

¹ My understanding is that these are children who are cared for by their local authority.

single household that is supported by care provided for its residents, where those residents need not be related.

24. I note reference to certain statutory requirements relating to the care of 'looked after children'. Whether or not the activity within the property would comply with the legislation relevant to 'cared for children' and whether the property would be registered with the relevant organisation is outside of the remit of this appeal. If the need to comply with certain standards or statutory regulations means that the appeal property is used in a way that is materially different to that set out in the appellant's evidence, then I would refer to the notes within the certificate at the end of this decision. These state that 'any use which is materially different from that described, may result in a breach of planning control which is liable to enforcement action by the local planning authority'. In this regard, it is likely that the certificate would be of no relevance to a use that is materially different to that described.
25. Having regard to the evidence before me, I conclude that the proposed use of the property would, on the balance of probability, fall within Class C3(b) of Part C of Schedule 1 of the 1987 Order.
26. I note that the Council has considered the character of the proposed use and compared this with the existing or last use of the appeal property. Indeed, I note that the character of the proposed use and its effect on the existing area and local residents is the subject of many of the representations of interested parties. I acknowledge that such comparisons would be necessary, were I to determine that the proposed use would not fall within the same class of use as the existing or last use of the property (i.e. Class C3). However, as I have concluded that the proposed use of the appeal property would fall within the same class of the 1987 Order as the existing use, these comparisons are not required. This is because, in accordance with the provisions of section 55(2)(f) of the 1990 Act, the proposed change of use would not involve the development of land.
27. Whether or not the proposed use would be restricted by any legal covenant on the appeal property is a matter outside of the remit of this appeal and does not, therefore, alter my conclusions in this case. The enforcement of any covenant relating to the appeal property is a separate matter, and I can see no reason why it would be affected by the issue of a certificate of lawful use in this case.
28. Having regard to all of the above, I find as a matter of fact and degree that the proposed change of use of the property would not involve development, on the balance of probability. The proposed use would, therefore, have been lawful if it had commenced on the date the LDC application was made.

Conclusion

29. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a change of use of a single dwelling to a care home for children and young people age from 10-18 years is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

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 27 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(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It is more likely than not that the proposed use of the property would fall within Class C3(b) of Part C of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended. Accordingly, having regard to the provisions of section 55(2)(f) of The Town and Country Planning Act 1990 as amended, the proposed change of use of the property would not involve development.

Signed

J Moss

Inspector

Date: 24 January 2025

Reference: APP/B5480/X/23/3334274

First Schedule

A use as a dwellinghouse by no more than 6 residents, comprising no more than 5 children and young people aged from 10 to 18 years old and a care provider who is a permanent resident of the dwellinghouse, living together as a single household where care is provided for residents.

Second Schedule

27 Kingston Road, Romford, Havering RM1 3NB

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, would not be 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: 24 January 2025

by J Moss BSc (Hons) DipTP MRTPI

Land at: 27 Kingston Road, Romford, Havering RM1 3NB

Reference: APP/B5480/X/23/3334274

Scale: Not to scale

