



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 February 2025

Appeal Ref: APP/M1520/X/24/3339303

14 Telese Avenue, Canvey Island, Essex SS8 7LR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Terri Wright (Oasis Supported Housing) against the decision of Castle Point Borough Council.
 - The application Ref 22/0880/CLP, dated 10 March 2023, was refused by notice dated 19 July 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 'Change of use from residential (Class 3) to supported living accommodation (Class C3b)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The outcome of the appeal is based on assessing the facts of the case presented in the written evidence. It does not turn on assessing planning merits such as the acceptability of the use on, for example, the character and appearance of the area. The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents. As such, I have determined the appeal without the need for a visual site inspection. No party has been prejudiced by this course of action.
3. In LDC cases, the burden of proof to make out the case rests firmly with the appellant. The test of the evidence is the balance of probability.

Main Issue

4. The main issue is whether the Council's decision was well founded.

Reasons

5. Under s192(1)(a) of the 1990 Act, if any person wishes to ascertain whether any proposed use of buildings or other land would be lawful, they make an application for the purpose to the local planning authority specifying the land and describing the use in question. S192(2) of the 1990 Act specifies that if, on an application under this section, the local planning authority is provided with information satisfying it that the use described in the application would be lawful if instituted or

begun at the time of the application, it shall issue a certificate to that effect; and in any other case it shall refuse the application.

6. S191(2) of the 1990 Act specifies that for the purpose of the Act uses are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. S55(1) of the 1990 Act defines what constitutes development, which includes the making of any material change in the use of any buildings or other land. S55(2) sets out operations or uses of land that for the purposes of the 1990 Act do not involve development of land. At s55(2)(f), that includes buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.
8. Relevant here is that Schedules 1 and 2 of the Town and Country Planning (Use Classes) Order 1987 (the UCO), provide that where a building or other land is used for a purpose of any class specified in Part C of Schedule 1 of the UCO, the use of that building or other land for any other purpose of the same class is not to be taken to involve development of the land. Accordingly, no development is involved with a change within the same use class even if the character is substantially different, and the change would otherwise be material.
9. The use of a property falls within Part C of Schedule 1, Class C3 Dwellinghouses of the UCO if it is used as a dwellinghouse (whether or not as a sole or main residence) 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)'.
10. The UCO defines 'care' as meaning personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder.
11. I have read the background history to the use of the property which includes planning permission in 2004 for a two-storey side extension to be used as an annex. It seems that the current layout does not accord with that which was granted planning permission. The annex does not have an internal door connecting it with the rest of the property. It is accessed via an external side door. Nevertheless, having analysed the history of the use of the property, which included the connectivity between the annex and the rest of the house due to the shared and undivided rear garden, the Council concluded that the existing use of the property is as a dwellinghouse falling within Class C3(a). There is no dispute about this by the appellant. I have no reason to disagree with this position.

12. With the above background in mind, the dispute boils down to whether the proposed use would fall within Class C3. The appellant asserts that the use would be Class C3(b). The Council assert that is not the case and there would be a material change of use, thus constituting development for which there is no planning permission. Accordingly, I shall examine whether the proposed use would fall within Class C3(b) and, if not, consider whether there would be a material change of use.

UCO Use Class C3(b)

13. The proposed layout plan shows four bedrooms in the larger part of the property, as well as a staff sleep room. In the ground floor annex/flat there would be a further bedroom. The Council raise that the room layouts shown might indicate 8 persons would be living at the property, excluding the staff member. That conclusion appears to be based on the proposed layout showing some rooms with double beds.
14. However, the appellant is clear on the application form that 4 adults would live in the home and 1 person, possibly a couple, would live in the independent flat. I also note that Essex County Council Supported Living Accommodation Standards require that there should be no more than four tenancies in a shared house, because any more than that means the supported living home could unintentionally become more residential home in feel, contrary to the purpose of a supported living home environment. These standards can be applied on a case by case basis, but they are what is expected before a Care Quality Commission supported living provider is on-boarded by the County Council. All in all, therefore, it is reasonable to accept that the house would accommodate 5 or 6 tenants.
15. To be eligible to live in the property the individuals concerned must be 18 and over and they will have a learning disability, autism or other mental impairments that have a substantial and long-term negative effect on their ability to do normal daily activities without personal care and support as and when required. In addition, they may have a physical impairment, social emotional and behavioural needs, issues with mental health, and behaviours that challenge or a communication disability. The aim of the service would be to ensure that the residents can reach the highest level of self-determination and independence that they can achieve.
16. Given the above, the tenants require constant care and supervision. All the appellant's supported living properties are staffed 24/7, with a trained staff team of three support workers and a team leader supported by a professionally qualified management team. It is not clear whether the 24/7 presence would be one permanent member of staff living at the property. If they were and they could probably then be considered as part of the household, because the number of tenants could be 6, this would lead to 7 residents meaning that the use of the property would exceed the level set by Class C3(b) and so the use would be outside this Class.
17. However, given that there would be a staff team of three and the proposed plans show only a small staff sleep space which also does not show a bed, it seems more likely to me that the 24/7 presence would be delivered by carers working a pattern of shifts. As such, the carers occupation of the property would only be for the duration of their shift.

18. It seems to me that the needs of the adult residents would be such that they themselves would be very unlikely to be able to run a home and form a single household. They would need care, support and supervision to do so and to make sure that the household operates as it should. Based on those providing the care not residing at the property, they could not be regarded as living together with the adult tenants as a single household. Consequently, with support staff coming and going on shifts, as a matter of fact and degree the use cannot be considered to fall within Class C3(b). In my view, the use would fall into Class C2 of the UCO as a use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).
19. Notwithstanding this finding, I shall go on to examine whether there would be a material change of use in the context of s55 of the 1990 Act to see if development would be constituted or not.

Material Change of Use

20. For a material change of use to have occurred there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. Although in this case there is no dispute that the use of the property is as a C3 dwellinghouse, there is no substantive information about how the property with seven bedrooms and a self-contained annex operated. For example, there is nothing to show what the character of the use was that might have included reference to former occupancy levels and comings and goings. From such a base line it may have been possible to compare the new use and to establish whether the differences were material or not.
21. The situation is not helped by what the appellant has declared on the application form. On there reference is made to the last use being unclear. Whilst the appellant was led to believe it was a family home, there are suspicions that it was an unregistered and/or unlicensed HMO. I note that the Council does not have any formal reports to either its planning or environmental health departments about a house in multiple occupation use. Nevertheless, doubt has been cast about how the property was used prior to its purchase by the appellant. Details of its actual use or last known use are what is needed to compare with what is proposed.
22. I have tried above to reasonably draw from the evidence about how the staff situation might work. However, there is no such solid evidence to draw from about the former use and it is not my role to cast around for that evidence or to make assumptions about how a large seven bed property may have operated. The onus in this respect is firmly on the appellant. With this evidence being absent, I cannot conclude that the proposed use of the property would be lawful if implemented on the date the LDC application was made.

Other Matters

23. I appreciate that my decision will come as a disappointment to the appellant. I am also mindful that they have proceeded to purchase the property and carry out works to meet its intended purpose and its future tenants. I also note the various reports about the company behind the business and the assessment of them as a service provider, and the on boarding letter from Essex County Council for the appeal house. I am also aware of the concerns raised about being able to engage with the Council over their intentions for setting up the facility. Nonetheless, the outcome of the appeal is a legal determination based on evidence to show, on the

balance of probability, whether the proposed use would be lawful. This has not been made out.

Conclusion

24. For the reasons given above I conclude that, the Council's refusal to grant a certificate of lawful use or development in respect of 'Change of use from residential (Class 3) to supported living accommodation (Class C3b)' was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Gareth Symons

INSPECTOR