



Appeal Decision

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 24th July 2025

Appeal Ref: APP/N5660/X/23/3325945 89 Elder Road, London SE27 9NB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr David Deutsch against the Council of the London Borough of Lambeth.
 - The application Ref 23/00153/LDCP is dated 18 January 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
 - The use for which a certificate of lawful use or development is sought is described in the application as follows: "from C3(a) residential to C3(b) covering up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems"¹.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal turns on the facts of the case and relevant planning law and whether the specific matter would be lawful, at the date of the application, as defined by the 1990 Act. Planning merits are not relevant at any stage in this process. A site visit is unnecessary to determine the appeal, and I proceed on that basis.
3. The Council failed to issue a decision within the statutory timeframe. In the statement of case, the proposition is that sufficient information has not been provided by the appellant about any proposed use of the LDC application premises to enable the Council to determine whether development requiring a grant of planning permission would or would not be involved.

Inspector's Reasons

4. Had the Council refused to grant the LDC, would the decision be well-founded.
5. There is judicial authority on the interpretation and distinction between uses falling within Class C2 and C3 to the Schedule of the Town and Country Planning (Use Classes) Order 1987 as amended (the "UCO"). The former relates to the use of a building for the provision of residential accommodation and care to people. The latter relates to use as a dwellinghouse by not more than six residents living together as a single household where care is provided. UCO article 2 explains that "care" means 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, and in class C2 also includes the personal care of children and medical care and treatment.

¹ In the appeal form, the proposed use is described as follows: "Change of use from C3(a)residential to C3(b) covering up to six people living together as a single household and receiving care".

6. *Bromley and Crawley*² are two cases where the Court debated the issue of whether supported living for adults came within UCO C3(b). In *Bromley*, an interested party's judicial review failed on the basis that the presence of non-resident staff did not alter the fundamental character of the use of the property by people forming a single household. The judgment emphasised whether people form a single household is a fact sensitive analysis. In *Crawley* the property was already in use by four adults with learning difficulties and carers were present on a shift basis providing round the clock care, but they did not reside permanently at the property. The Council argued that the use resembled a residential institution falling within Class C2. The Court found that non-resident carers do not automatically disqualify a property's Class C3(b) use. The Inspector's conclusion that the residents lived together as a single household was supported by evidence including the layout and prior use of the property, which are relevant considerations in this appeal.
7. In *R (Hossack) v Kettering BC and English Churches Housing Group* [2002] EWCA Civ.886, the Court of Appeal held that the concept of a single household is a matter of fact and degree, not dependent on pre-existing relationships. A common need for support and resettlement can be sufficient to constitute a single household. The small number of residents and shared facilities supported the C3(b) classification in that case and that it is unnecessary to establish deeper personal relationships to form a household.
8. In *North Devon*³ the Court considered the question as to whether a semi-detached 3-bedroom dwellinghouse in a residential area fell within UCO Class C2 or C3. The characteristic of uses contained in Class C2, which set them apart from dwellinghouses, are that the residents and staff do not form a single household. The key element in the use of a dwelling-house for non-family purposes is the concept of a single household. Although the use was found to fall within Class C2, the Court did not impugn the Inspector's finding that the change from Class C3 was not a material one. In practice, and on those particular facts, the use for up to two children, with round-the-clock care provided by up to two non-resident staff at those premises, and only at those premises, was in the circumstances a lawful use.
9. *North Devon* is legal authority for the two-stage assessment process. Contrary to arguments advanced by both parties, *North Devon* does not endorse the proposition that all similar type of children's care homes would, by implication, not amount to a material change in the use of any building.
10. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the circumstances and evidence presented. In the context of an LDC appeal, it is necessary to examine the factual evidence and circumstances of this proposal. A planning judgment will need to be reached as to whether the change in the use of no. 89 would be material. Turning to the particulars of this case, comparisons should be made between the proposed use and the existing or previous use as it took place rather than a notional use or level of occupation that might be within UCO Class C3(b).
11. The appellant maintains that the existing use of the building falls within UCO Class C3 or C3(b) and there would be no need to obtain express planning permission for the LDC

² *R. v Bromley LBC Ex p. Sinclair* [1991] 3 P.L.R. 60 and *Crawley BC vs SSETR* [2004] EWHC 160 (Admin).

³ *North Devon v FSS and Southern Childcare Ltd* [2003] EWHC 157 (Admin).

proposal, due to the operation of law⁴. There is, however, significant confusion as to the exact nature of the existing use and layout of the property. The information suggests the dwelling is occupied by up to six young adults aged 16+ who are semi-independent. The appellant maintains the property has six bedrooms but the drawings illustrating the existing floor plan shows four bedrooms. The ground floor includes a conservatory and two reception rooms, a utility, kitchen and storage room. The contradictory nature of the evidence undermines the weight I can attach to the appellant's claims.

12. Additionally, the appellant explains occupiers share communal facilities, but they require substantial amount of care by non-resident carers. For example, residents receive 24-hour on call support to allow them to transition between full-time care and independent living. The care is provided by one non-resident support staff on call to the premises 24 hours a day working on a shift basis, although the nature and pattern of the rota is unclear. The description of the existing use suggests to me residents form a small group of young people in need of considerable support with life tasks and daily activities. Apart from generalised statements, there is limited information explaining the nature and scale of support provided by external agencies. There is lack of specific detail explaining how the current occupiers share lives, or how non-resident staff and the occupiers together function as a household.
13. The contradictory nature of the factual and contextual evidence undermines the claim the property is occupied and used by individuals forming a single household. In my assessment, the quantum of the available evidence indicates the property provides residential accommodation for young children in need of care, which is characteristic of a small-scale care home. That said, it does not automatically follow a material change of use would necessarily occur if the proposed use was instituted.
14. It is necessary to assess the character of the proposed residential use. The evidence presented is particularly instructive but there is internal inconsistency. On the one hand, the appellant suggests the household will comprise one adult and up to three children, which amount to a total of four people and is reflective of the existing dwelling's layout. On the other hand, the claim is that the property would be occupied by up to six individuals and care, which is progressive in nature, would be provided to 13 to 17-year-olds with learning difficulties: they would live on a long-term basis on a placement. However, there is a lack of specificity as to the level of care that would be needed and provided. It appears to me that the property would be occupied by individuals who would require substantial amount of care and educational development by both resident and non-resident staff.
15. The proposed use may resemble a large family residing at the premises, but the size of the property is not conclusive. However, there would be a significant change to the internal layout and configuration because the ground floor play and reception rooms would be converted into bedrooms. It is unclear how the living space would be organised or where, when and how residents would meet to socialise.
16. The Council dispute the claim that there are four parking spaces at the front of the property along with adequate bicycle and bin storage. Be that as it may, the caring element would involve a closely managed and supervised regime because of the residents' needs. Residents would be educated away from no. 89, but it is also reasonable to expect the engagement of external agencies. Bi-monthly visits from social

⁴ S55(2)(f) of the 1990 Act provides that, in the case of buildings which is used for a purpose of any class specified in the UCO, the use of the buildings, subject to the provisions of the UCO, for any other purpose of the same class shall not be taken to involve development of land. Article 3(1A) and Schedules 1 and 2 to the UCO apply.

workers and six-monthly reviews are mentioned, but there is a lack of detail relating to other potential visits from those involved in the general welfare of the children, the management of the property or family contact. Additionally, it is reasonable to expect that the children's home would not operate in total isolation and there would be deliveries associated with the operations, or trips away from the premises.

17. There is, therefore, potential for vehicular movements generated by these activities in addition to staff turnover. Yet the evidence presented does not provide any specific detail. It is difficult to conclude that the likely number of people arriving and departing at different times of the day or night would not have any off-site consequences requiring assessment.
18. I find that, when the nature and scale of the proposed use is considered in combination with the arrangement and configuration of the site, the introduction of the proposed home for children would result in on and off-site effects which, to my mind, would sufficiently bring about a significant change in the definable character of no. 89 existing use.
19. Much is made of the appeal decisions at *Barking* and *Stockport*⁵. Although limited information is available to me as to the evidence before each Inspector, there is a striking difference between the latter and the appeal before me. For example, *Stockport* relates to a residential home for up to four young people whose extent of care was deemed low level by the Inspector. The premises would not be registered with OFSTED, which would be required if most residents were under 18. So, there would be a reasonable mix of young people with a good proportion being over 18 at any time. In this case, the proposed occupiers would be between the ages of 13-17, yet there is nothing before me to indicate the home would not need registration. Similarly, *Barking* relates to an appeal against an enforcement notice. The Inspector found, in ground (b), the evidence showed that particular property was occupied and used by young adults who formed a household.
20. There is a need for consistency but the material facts between the two cases and the appeal before me are clearly distinguishable. I am not persuaded these appeal decisions are strong precedents to take a different approach in this appeal. In any event, I should assess the proposed use on its individual merits, and that is what I have done.
21. Drawing all the above threads together, as a matter of fact and degree and balance of probabilities, I find that the quantum of the evidence presented does not clearly, unambiguously or precisely show that the proposed use, as described in the LDC application or appeal form, would not amount to a material change in the use of no. 89.
22. Having regard to all other matters, I conclude that, had the Council refused the LDC application, it would have been well-founded albeit for different reasons set out above. I have exercised accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A U Ghafoor

Inspector

⁵ Reference APP/Z5060/C/18/3214506 allowed on 10 May 2019 and APP/C4235/X/17/3170427 allowed on 28 July 2017.