



Appeal Decision

No site visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20TH AUGUST 2025

Appeal Ref: APP/B5480/X/23/3335573

19 Hall Terrace, Colchester Road, Havering, Romford RM3 0XR

- 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 Hasnain Naeem (Open World 2 Limited) against the decision of the Council of the London Borough of Havering.
 - The application ref D0442.23, dated 16 October 2023, was refused by notice dated 7 December 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 proposed is the use of 19 Hall Terrace as a residential care home C3 (b) for up to 5 young persons with learning disabilities or mental health problems in need of care, but living as one household. They would be cared for by 2 full time carers who would be working on a shift basis. The 5 young people needing care will be between 8-18 years old and will be living at the property as their principal residence.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It was determined that a site visit was not necessary. Both main parties were informed of this decision, and no objections were raised concerning the appeal being decided without a site visit.
3. Planning Practice Guidance (PPG) states that an application for a Lawful Development Certificate (LDC) must accurately describe what is being applied for, rather than merely stating the use class and the land to which the application pertains.
4. Although the description on the Application Form was detailed, it was lengthy and included unnecessary information that could be amended and made more concise. For clarity, I have removed the last sentence set out in the application form from the banner header above as it was simply indicating that the appellant has provided more details of the use in the attached statements. For completeness, the sentence deleted was "for more details about the proposed use, please see the attached planning statement and the applicant's care statement, which we submitted with the application."
5. The Decision Notice for the development presents an alternative description compared to the Application Form: "Change of use from Use Class C3 (a) (Dwellinghouse) to Use Class C3 (b) (up to six people living together as a single household and receiving care)." I have not received any correspondence indicating that the appellant formally agreed to this description in the Decision Notice. More

critically, the description in the Decision Notice is quite broad, potentially encompassing a variety of Class C3 (b) dwellinghouse uses of different scales, natures, and levels of intensity.

6. According to the appeal submissions, it is evident that the proposed use is more specific concerning the nature of the use, as well as the number of residents and carers. Following the advice and guidance outlined in the PPG, it is necessary to secure the appellant's agreement to any amendments to the proposal's description. I reached out to both main parties and suggested a change to the description for clarity, which is as follows:

"A change of use from a single dwelling to a residential care home for five child residents, with two carers working on a rotational 24-hour shift basis."

7. Both parties were consulted about the proposed change to the description; however, no comments were received from either side. Therefore, aside from the removal of unnecessary words in the banner heading, I have not formally amended the description from the original Application Form.

Main Issue

8. The main issue is whether the Council's decision to refuse to grant an LDC was justified. This determination hinges on whether the proposed use falls within Class C3 of Part B of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 (as amended), and if it does not, whether the proposed use constitutes a material change of use.

Reasons

9. An application under S192(1)(a) of the Town and Country Planning Act 1990 (the 1990 Act) seeks to establish whether any proposed use of buildings or other land would be lawful. In an application for an LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful if instituted or begun at the time of the application.
10. Section 55(1) of the 1990 Act defines development, which includes making any material change in the use of buildings or land. According to section 55(2)(f), in the context of buildings or land used for any specified class under The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), using those buildings or land for another purpose within the same class does not entail development of the land. A use is considered lawful under section 191(2)(a) of the 1990 Act if no enforcement action can be taken against it, either because it does not involve development or require planning permission.
11. There is no dispute the existing use of the appeal property is use Class C3 (a), which is a dwellinghouse in use by a single person or single household. Floor plans indicate that it is a 5-bedroom property, comprising a lounge, kitchen/dining area, bathroom, two bedrooms on the ground floor, and three bedrooms, a shower room, and a study on the first floor. The proposal does not include any external changes, and the internal layout will not significantly alter the accommodation, other than repurposing the study as an office.
12. The appellant asserts in the Application Form, Planning Statement, and Appeal Statement that the proposed use would fall under Class C3 (b) of the UCO. Class C3 (b) pertains to a single household of no more than six residents receiving care.

Detailed submissions indicate that this would consist of five residents aged between 8 and 18, with learning disabilities or mental health issues, who require care while living as one household. Two carers would provide 24-hour care on a shift basis but would not reside in the property.

13. A critical factor in this case is that the UCO defines 'care' in Article 2 and restricts the personal care of children to Class C2 only. In this regard, children cannot constitute a single household without the presence of a caregiver, and a children's care home may not fall within Class C3 unless a caregiver is a resident. It is evident from the submitted details that the caregivers in this proposed scenario would not reside at the property but would instead work on a shift basis. Therefore, the use being proposed is more likely to be classified as a C2 use rather than a C3 (b) use as defined in the UCO.
14. However, it does not necessarily follow that all proposed C2 uses will always be considered materially different from the existing C3 use. As indicated, the term 'development', defined in section 55(1) of the 1990 Act, includes 'the making of any material change in the use of any building or other land.' If a change of use is not considered a 'material' change, it would not constitute 'development' and could be deemed lawful as per the provisions outlined in 191(2) of the 1990 Act. Therefore, I will now assess whether the change of use from Class C3 to Class C2 would amount to a material change of use and thus require planning permission.
15. To determine whether a material change of use has occurred, it is necessary to compare the actual existing use with the proposed use rather than considering a hypothetical range of activities associated with notional uses. For a material change of use to be recognised, there must be a significant difference in the character of the activities compared to what was previously carried out. This assessment is a matter of fact and degree based on the available evidence.
16. From the information provided, I can conclude that the current or lawful use is as a dwelling. The floor plans indicate that there are currently five bedrooms, which will remain unchanged, along with communal areas and facilities that will continue to be shared. However, limited information has been submitted regarding the actual existing use as a dwelling house. For example, the submission does not specify how many occupants currently or last resided at the property. Additionally, there is no detail about the composition of the single household, their average weekly movements to and from the property, whether they own and use vehicles, as well as the levels of waste and general activities occurring from the use at the property.
17. While there is more detail regarding the proposed use, there is still a lack of detailed information about the average weekly movements to and from the property by the residents, visitors and staff. It is noted that the site is accessible and that a company car would be available for staff, but there is limited detail on how staff shifts would operate, their frequency, and what form of transport they would use to access the property. Additionally, the submission does not indicate whether the proposed use would result in changes to the levels of waste and noise generated by the proposed activities.
18. Consequently, I have limited information on the existing use, which would provide a baseline for comparison with the proposed use of the property. Given the lack of detail regarding the existing use and the limited insight into the daily activities of the proposed use, I do not have a sufficient evidential basis to make an accurate

comparison. As indicated earlier, it is the responsibility of the appellant to substantiate their case. In my judgment, this burden has not been satisfactorily met, as I do not have the necessary evidence to make a well-reasoned decision.

19. Therefore, based on the evidence before me, the appellant has failed to demonstrate that the proposed use would not amount to a material change from a Class C3 use to the residential care home use described in the submissions, if the change were to occur at the time of the LDC application.

Other Matters

20. In coming to the above conclusions, I have had regard to the principles in caselaw referred to by the appellant in the appeal statement.¹ However, the proposed use is a change of use from C3 use to a C2 use as defined in the UCO, rather than being an intensified C3 use where the number of occupants exceed more than six. Furthermore, due to the lack of evidence, I am unable to compare the proposed use with the existing use to determine whether the change of use is material.

Conclusion

21. As with all LDC applications, it is open for fresh applications to be made if, for example, greater detail or other evidence comes to light to make a comparison on the proposed change of use.
22. However, 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 from a single dwelling to a residential care home for five child residents, with two carers working on a rotational shift working basis is 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).

M. P. Howell

INSPECTOR

¹ R (oao Hossack) v SSE & Kettering BC & English Churches Housing Group [2002] EWCA Civ 886; [2002] JPL 1206 CoA and Baner v. Sheffield City Council (1995) 27 HLR 719