



Appeal Decision

Site visit made on 10 June 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2025

Appeal Ref: APP/G5180/X/24/3344848

243 Court Road, Orpington, Bromley BR6 9BY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Norma Goldsmith of Goldsmith Personnel Ltd against the decision of the Council of the London Borough of Bromley.
- The application ref DC/22/04947/elud, dated 16 December 2022, was refused by notice dated 6 March 2024.
- The application was made under section 191(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 'care home facility which provides care and supported living for up to three vulnerable adults living together as a single household. There is one full time member of staff who is resident and a non-resident part time member of staff.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. From the evidence provided, it seems the application has been considered by the Council's Sub-Plans Committee a number of times. The recommendation made to the Sub-Plans Committee was that a certificate be granted for the following reason: 'The use of a C3(a) dwellinghouse as a C3(b) dwellinghouse would not comprise development of the land or a material change of use of the land/building according to Section 55 of the Town and Country Planning Act 1990. On the balance of probabilities, the use of the property for this purpose had begun prior to the submission of this application.' Notwithstanding the recommendation, the Council refused the application on the basis that the information provided is not sufficiently precise and that it cannot be satisfied, on the balance of probabilities, that the use was in operation under Class C3(b) on the date of the submission of the application.
3. Within their application form, the appellant describes the use as '243 Court Road, Orpington, is a single storey, detached bungalow. It has four bedrooms, two bathrooms, three toilets, a large kitchen/dining/living area of 43 square metres and a utility room. The accommodation is a care home facility which provides care and supported living for up to three vulnerable adults living together as a single household. There is one full time member of staff who is resident and a non-resident part time member of staff. The accommodation consists of three bedrooms for clients and one for the resident staff member.' The appellant makes it clear within their statement of case that they seek a Certificate in the terms sought in the original application. Notwithstanding the description used by the Council on its decision letter and by the appellant in their appeal form and

statement, which refer to use of C3(a) dwellinghouse as C3(b) dwellinghouse, I have therefore taken the description of development from the application form and shall consider the appeal on that basis. I have omitted wording which describes the characteristics of the property, rather than the use.

4. Concern has been raised by interested parties as to whether the appellant has the right to make the application; the appropriateness of the application given the level of objection to a previous planning application; and the implications of a covenant which, it is asserted, prevents the use of the property for business use. The Planning Practice Guidance (PPG) makes it clear that any person may apply for a lawful development certificate, regardless of whether they have an interest in the land. The PPG also advises that land ownership, including any restrictions that may be associated with land, is not a planning matter¹.

Main Issue

5. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

6. An application under section 191(1)(a) of the Act² seeks to establish whether (a) any existing use of buildings or other land is lawful. Section 191(2) sets out that uses and operations 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. The appellant states that the appeal site is used as a care home facility which provides care and supported living for up to three vulnerable adults living together as a single household, with one full time member of staff who is resident and a non-resident part time member of staff. The main thrust of the appellant's case is that the change of use does not require planning permission.
8. As set out above, the Council refused the application on the basis that the information provided is not sufficiently precise and that it cannot be satisfied, on the balance of probabilities, that the use was in operation under Class C3(b) on the date of the submission of the application. Within its Statement of Case, the Council states that Councillors decided that it was not clear from the evidence provided about the extent and nature of care provided to residents at the property. Concern is also raised by interested parties regarding the lack of any proof of evidence from the applicant to support their submission.
9. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

¹ Paragraph: 005 Reference ID: 13-005-20140306

² Town and Country Planning Act 1990 (as amended)

10. Section 55 (1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land. Section 55(2)(f) of the Act provides in the case of 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.
11. Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO) concerns dwellinghouses and includes use as a dwellinghouse (whether or not as a sole or main residence) by (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). Article 2 of the UCO provides 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.
12. Should I find the use of the appeal property fell within Class C3(b) or C3(c), then there would have been no development by virtue of section 55(2)(f) of the Act. Even if I found the use of the property did not fall within Class C3 (whether (a), (b) or (c)), it does not follow that a change of use will always be material. Were I to find, for example, that the use fell within Class C2, which is use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)), whether the change was material will be a matter of fact and degree, depending upon the circumstances of the case in question.
13. Within the application form the appellant states they received advice from the local authority about the application, the details of which are ‘Following an application for Full Planning Permission, seeking Change of Use from Class C3(a) to Class C3(b), we were advised that we may not need Full Planning Permission. We were advised that the proposed change might be possible through a Lawful Development Certificate application.’ Within the appellant’s grounds of appeal, they state ‘The application sought confirmation that the change in the use made of the property from Class C3(a) to Class C3(b) was lawful and did not require planning permission’. It therefore seems the appellant’s case is that the use as a care home facility is considered to not be development because it comes within the terms of Class C3(b).
14. The appellant has submitted an application under section 191, for a use which has already occurred, namely ‘243 Court Road, Orpington, is a single storey, detached bungalow. It has four bedrooms, two bathrooms, three toilets, a large kitchen/dining/living area of 43 square metres and a utility room. The accommodation is a care home facility which provides care and supported living for up to three vulnerable adults living together as a single household. There is one full time member of staff who is resident and a non-resident part time member of staff. The accommodation consists of three bedrooms for clients and one for the resident staff member.’.

15. This is not a theoretical question as to whether a C3(b) use would be development, it is a question as to whether the use existing at the time of the application is lawful. Section 191(4) provides that if, on application, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
16. This appeal will therefore turn on whether the use of the property as 'a care home facility which provides care and supported living for up to three vulnerable adults living together as a single household with one full time member of staff who is resident and a non-resident part time member of staff' comes within the terms of Class C3, such there has been no development or material change of use or, if the use does not come within the terms of class C3, whether the use is materially different to the previous C3 use of the property.
17. The appellant explains they have been commissioned by the London Borough of Bromley and the National Health Service to support people with mild to moderate learning difficulties, autism and underlying mental issues cope with trying to live independently in the local community. In their statement of case, the appellant states that there is 24 hour supervision and care over the residents, in order to oversee medication, keep them on their care treatment order, and also offer mental health and welfare guidance.
18. I have been provided with contracts between the appellant company and NHS England, and The London Borough of Bromley. However, the documents refer to the company address rather than the appeal address and, from an email provided by the appellant, it seems likely that these are contracts between the appellant company, which is involved with a number of other properties. The fact that the company holds these contracts does not mean they had clients for them residing in the appeal property.
19. Employment contracts provided by the Council show that individuals have been employed by the company in roles such as 'Support Worker' and 'Live-in Support Worker', however, the appeal address is not identified on the contracts provided, nor do they explain in any detail what type of care the individual is required to give. A number of contracts provided pre-date 2019, when the use is alleged to have started at the appeal property and so it is not clear whether they relate to the appeal property at all.
20. As set out above, for the purposes of the UCO, "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.
21. However, it is not clear whether it is 'personal care' which was provided for residents. I note in the Council's statement that it states the service provided at the appeal property did not involve personal care. A report taken to the Sub-Plans Committee states that 'the applicant also advised that the service provided at 243, Court Road did not involve personal care', which would suggest that the use would not fall within Class C3(b).

22. The report taken to the Sub-Plans Committee also makes reference to the staff working in partnership with the Community Multi-Disciplinary Team, which includes nurses and doctors, though it is not clear whether this extends to medical care and treatment being given at the property. References to rehabilitation suggest medical care and treatment may be provided at the property.
23. An interested party has also drawn my attention to data breaches, which they state, include medicine administration records, populated with names, medicine administration times and administrators' initials. It is suggested this points towards the residents not self-medicating. Were this the case, it may be that the use of the property was within Class C2, which includes medical care and treatment.
24. I find the appellant's evidence regarding the care which was provided to the residents to be ambiguous. It does not show that the care provided to the occupants would be limited to personal care, such that the use would fall under Class C3(b).
25. In order to fall within Class C3(b) (or C3(c)), the occupants must live together as a single household. Whether residents live together as a single household is a matter of fact and degree.
26. The appeal property comprises a detached bungalow, which has been extended to the rear, with a modest rear garden with outbuildings. An investigation by an officer of the Council in November 2023 confirmed that one of the outbuildings was in use as a day-room for activities such as hobbies or television and this is consistent with my observations. The bedroom doors have locks on them, though access to communal areas appears unrestricted, with a substantial living/dining area with open plan kitchen.
27. I have been provided with two tenancy agreements by the Council. One is dated 27 August 2020 (signed on 24 November 2020) and the other is dated 9 March 2021 (signed 9 March 2021). From the evidence, it seems tenants each have an Assured Shorthold Tenancy Agreement and arrive at the property independently. Within an email to the Council, the appellant explains that the commencement of a tenancy can coincide with discharge from hospital, as individuals they support often require a gradual transition period which may extend beyond six months, involving periods of stay followed by return to hospital.
28. However, there is limited information regarding the individuals concerned, or how they have occupied the property. While the size of the establishment and layout is such that it would lend itself to residents living together as a single household, it has not been shown whether the occupants of the household achieved a degree of close familiarity and friendship, suggesting they comprise a single household. Examples of communal living, such as sharing of costs, meals, cleaning and socialising have also not been provided.
29. Although it is stated that the tenants live together as a single household, it is clear that the company has a number of other properties which it manages. For example, in an email to the Council, it is stated that Goldsmith Personnel Ltd employs close to 200 care workers, not just the ones working at 243 Court Road. The company is described as having 'a vast number of other service users we look after.' It is therefore not clear how the individual filling out the form, or Ms Goldsmith, knows whether the occupants of the appeal property have occupied it as a single household. Indeed, concern was raised by interested parties regarding

Ms Goldsmith's apparent inability to answer some basic questions about the operation during a Plans Sub-Committee Meeting.

30. The appellant states that since 2019 the property has housed a maximum of three individuals. However, the appellant states in their application form that the use or activity was begun on 02 March 2021 and the Council states in its report to its Sub-Plans Committee (paragraph 3.13) that the property was sold in January 2020. While these dates are all prior to the date of the application, this lack of precision is concerning, given the limited evidence provided by the appellant through this appeal.
31. As set out above, the burden is firmly on the appellant to show, at the date of the application, the use of the property was lawful. While some evidence has been provided through the appeal, much of it appears to relate to the activities of the appellant company, rather than the appeal site. While it may be possible for unrelated individuals to live together as a single household and their use of the property to fall within Class C3(b), it is not clear from the evidence provided that, at the date the application was made, this is how the appeal property was used, nor is it clear whether, if the use does not fall within Class C3(b), the use of the property fell within Class C3(c).
32. If the use of the property did not fall within Class C3 (whether (b) or (c)) it does not follow that a change to some other use will always be material. Although planning merits are not relevant to determination of an LDC, whether a change of use is material will depend upon whether there is some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. This could include differences in terms of noise and disturbance. The comparison must be between the new use and the old use as it took place, rather than a notional use or level of occupation that might be within the use class.
33. Various interested parties have written in raising concerns regarding the use of the property, including concerns about noise and disturbance. Differences in terms of noise and disturbance could be relevant in considering whether a change amounted to a material change to the character of the use. However, the appellant has not made their case on the basis that the change in use was not a material change of use and insufficient information has been provided for me to conclude that the change was not material.
34. I find the evidence is not sufficiently precise and unambiguous and does not show, on the balance of probabilities, that, at the time of the application, the use as a care home facility which provides care and supported living for up to three vulnerable adults with one full time member of staff who is resident and a non-resident part time member of staff was lawful.
35. As made clear in the PPG, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Conclusion

36. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a care home facility which provides care and supported living for up to three vulnerable adults living together as a single household with one full time member of staff who is resident and a non-resident part time member of staff 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 Savage

INSPECTOR