The Planning Inspectorate

Appeal Decision

Inquiry held on 4 September 2012

Site visit made on 4 September 2012

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 September 2012

Appeal Ref: APP/U1105/X/12/2173513
Chessington, 50 Marlpit Lane, Seaton, Devon EX12 2HN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Jon Higgins against the decision of East Devon District Council.
- The application Ref 11/2487/CPE, dated 3 November 2011, was refused by notice dated 13 March 2012**.**
- The application was made under section 191(1) (a) of the Act.
- The use for which an LDC was sought is use as a dwelling house (Class C3).
- The evidence given by the Appellant was taken on oath at the Council's request but it was agreed that the evidence of other witnesses did not need to be given on oath.

Decision

1. The appeal is allowed and an LDC is issued, in the terms set out therein, for use of Chessington, 50 Marlpit Lane, Seaton as a dwelling house (Class C3). A plan that defines the land concerned edged red is attached to the LDC.

Procedural matter

2. At the start of the Inquiry the Council drew attention to advice in Annex 8 of Circular 10/97 "*Enforcing planning control: legislative provisions and procedural requirements*" and suggested that a more precise description was required. It suggested: "*Use of Chessington as a dwelling house under Class C3 (b) for the care of 2 adults with learning disabilities*". The Appellant raised an objection to this proposal suggesting it would be otiose. Relevant advice is to be found in paragraph 8.16 of Annex 8. It says that it is important for an LDC to state the limits of the use at a particular date: "*unless the use falls within one of the "use classes" specified in the UCO current at the time*". It seems to me that is precisely what is being sought here. Accordingly since the terms of the LDC sought would be by reference to Class C3 there is no need to define it further.

Main issue

3. The application relates to an existing use and section 10 of the application form says that the use as a dwelling house started "approx 1960-1970". I have no reason to doubt these dates or that the building was designed and later used as a dwelling house, but that is not the reason for this appeal. The issue, as set out in paragraph 2.3 of the Statement of Common Ground [SoCG], is whether the use to which Chessington was put on the date of the application[1], being 3 November 2011, was within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (As Amended) [hereinafter "the Order"]. At the

[1] See section 191 (5)(d) of the Act.

Inquiry a secondary issue emerged, which is that in the event of a finding that the use is not within Class C3, whether a material change of use has occurred.

Reasons

(i) Background

4. Chessington is a 2-storey semi-detached house with a total of 4 bedrooms, one of which is fitted with a single bed for overnight staff accommodation and is used as an office and secure storage for residents' possessions. At the time of my inspection, in contrast to what is agreed in paragraph 1.1 of the SoCG, the ground floor bedroom was used by one of the residents and one of the first floor bedrooms was vacant. The SoCG records that there is nothing about the external appearance of the property or internal layout that distinguishes it from a dwelling house use or from its neighbours; I agree.

5. Paragraph 2.2 of the SoCG says that the property provides residential accommodation for adults in need of care. The Appellant accepted during cross examination that the residents can do very little on their own and need help with everything that they do. He said they have a mental age of pre teens or younger. Neither resident can communicate through speech and one local resident, rightly or wrongly, describes the noise emanating from the property to include "*constant shouting*" and "*extreme & very disturbing screams & wailing*"[2]. Although the residents have some physical impairment the Appellant made clear that they have no requirement for nursing care. The Appellant confirmed that there are carers at the property 24/7 and whilst there are currently 9 carers the Inquiry was told that there have been as many as 14.

(ii) Statutory Instrument and associated guidance

6. Class C3 of the Order classifies use of a property "*…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*". The term "care" is defined in Article 2 of the Order as "*…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*" (*my emphasis*). In contrast Class C2 of the Order concerns residential institutions and comprises: "*Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses))*".

7. Paragraph 4 of DCLG Circular 08/2010 "*Changes to planning regulations for dwellinghouses and houses in multiple occupation*" says: "*The guidance replaces guidance set out in circular 05/2010, and the guidance in paragraphs 66-77 of the circular 03/2005*". Both parties referred to the latter but since it has been cancelled I decline to take it into account. Advice in Circular 08/2010 includes paragraph 7, which defines C3 (b) as "*…those living together as a single household and receiving care*". Paragraph 4 of Annex A says: "*C3 (b) continues to make provision for supported housing schemes, such as those for people with disabilities or mental health problems*". Paragraph 5 continues: "*It remains the case that in small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class (Class C2), regardless of the size of the home. Local planning authorities should include any resident care staff in their calculation of the number of people accommodated*".

[2] Source of quotes: letter to The Planning Inspectorate received on 22 June 2012.

(iii) Judicial authority

8. The parties have referred me to a number of legal authorities, including: (i) *R v Bromley London Borough Council, ex parte Sinclair* [1991] 3 PLR 60; (ii) *North Devon District Council v First Secretary of State* [2003] EWHC 157 (Admin); (iii) *R (oao Crawley Borough Council) v Secretary of State for Transport and the Regions* [2004] EWHC 160 (Admin); (iv) *R (oao Hossack) v Kettering Borough Council and English Churches Housing Group* [2002] EWCA Civ 886; (v) *R (oao Hossack) v Kettering Borough Council and another* (No 2) [2003] EWHC 1929 (Admin) (vi) *Simmon v Pizzey* [1977] AC 37 (HL); (vii) *Barnes v Sheffield City Council* (1995) 27 HLR 719; and, (viii) *Rogers v Islington BC* (2000) 32 HLR 138. At the Inquiry the Council also provided a transcript of *Colchester Estates (Cardiff) v Carlton Industries plc* [1984] 2 All ER 601, which sets out the approach to where there are conflicting High Court judgements.

9. Dealing with this last point first, in *North Devon* Collins J was concerned with a house where care was provided for two children and expressly disagreed with the reasoning in the earlier case of *Sinclair*. In paragraph 16 he held: "*You have to consider whether the bodies are capable of being regarded in the true sense as a household. The same would apply to those who suffer, for example, from physical or mental disability and who need care in the community. They, if they are not capable of looking after themselves, would not be regarded as a household, hence the need for the carer, hence the need for that addition to make it a household…*". My colleague in the 4 Pembroke Road appeal [Ref. APP/U5930/C/11/2151319] was concerned with a children's home and I have no reason to doubt his finding that *North Devon* "*…provides authority for the view that children cannot, as a matter of law, form a household*". *North Devon* is arguably the leading case in respect of children but the issue is whether it is of wider applicability, for example to the facts at issue in this appeal?

10. The short answer is to be found in paragraph 29 of *Crawley*, where Richards J held "*…what is said by Collins J in respect of children does not govern this case*". *Crawley* was concerned with 4 adults with learning difficulties and I accept that it is "*a very similar case to that of this appeal*"[3], albeit that the application in *Crawley* was for a proposed use under section 192. Moreover Richards J, in paragraph 30 of *Crawley*, held: "*I would be very reluctant to read* [the observations at the end of paragraph 16 of *North Devon*] *as purporting to lay down a principle that those who suffer from disability and who need care in the community can never by themselves constitute a household, that is to say that the reasoning applied to children necessarily and invariably applies to them too. If the observations are intended to lay down such a principle, they are obiter, I do not need to follow them and I would decline to follow them*".

11. In paragraph 31 of *Crawley*, Richards J went on to say: "*There may indeed be cases where, having regard to the nature of the disability suffered and the degree of care required, persons resident in a house cannot sensibly be said to constitute a household. But there will be other cases, and in my judgement this is one of them, where persons resident in a house can sensibly be said to constitute a household notwithstanding that they have some disability and need care. <u>That is so even if the need is for full-time care. I would reject any suggestion that in a case where care is needed for those under a disability, Class C3 can apply only if the carers are in residence in the same property as those for whom they are caring</u>. That would seem to me to run counter to the language of Class C3 itself and to the underlying policy*" (<u>*my emphasis*</u>).

[3] Source of quote: paragraph 10.1 of the proof of evidence of John Watts.

12. In the Micawber House appeal [Ref APP/E5330/X/06/2024472] the Inspector observes "…*that Hossack was not cited in North Devon despite being a decision of a superior court and predating North Devon*" (*original*). For all these reasons, applying the principles of *Colchester Estates*, I attach very limited weight to the obiter comments of Collins J at the end of paragraph 16 in *North Devon*. In saying this I appreciate that the Council relied on *Colchester Estates* in order to deal with the Appellant's reliance on *Sinclair*. However I note that in paragraph 33 of *Crawley*, Richards J said "*What I have said seems to me to be in line with the approach adopted in ex. p Sinclair…*". So this might be said to be a "…*rare case where a third judge is convinced that the second judge was wrong not to follow the first (as where some binding or persuasive authority was not cited in either of the first two cases)*" [as per summary of *Colchester Estates*].

13. In closing it was submitted for the Appellant that what Collins J was saying in the last sentence of paragraph 16 was that adults who are not capable of looking after themselves do fall within Class C3 (b). It is said that the phrase "*the need for that addition to make it a household*" is a reference to the words in parenthesis (including a household where care is provided for residents), in the version of the Order at issue at that time. I can see the argument but with respect it is not one with which I am able to agree. It seems to run counter to the whole thrust of what precedes it. It is not the way in which Richards J read his comments [see paragraph 30 of *Crawley*]. It might well link back to what appears to be a summary of the submission at the end of paragraph 15[4], to the scenario of a resident carer, but that is not the basis on which the Appellant's case has been put here. No case is advanced that because one of the carers would normally sleep on duty that they would form part of this household[5].

14. In my view the leading case that deals with the concept of what is meant by "single household", is *Hossack*. Firstly it is a decision of the Court of Appeal. Secondly it expressly takes account of the legal authorities relied upon by the Council, i.e. *Pizzey*, *Barnes* and *Rogers*. Thirdly it was also concerned with a Class C3 (b) case, although I acknowledge that the Court of Appeal held that authorities under the Housing Act applied equally. Brown LJ, who gave the leading judgement, did however quote with approval Lord Hailsham in *Pizzey* that in determining whether or not a single household exists, there are "…*no certain indicia the presence or absence of any of which is by itself conclusive*". It is quintessentially a question of fact and degree for the decision maker.

15. In *Barnes* Sir Thomas Bingham identified 9 factors to be *helpful considerations* in assessing what constituted a single household. The Council has assessed each in turn and found many are not met. However I accept the submission that the objective of C3 (b), to make provision for supported housing schemes, would be undermined by a rigid application of some of these factors. Examples include: i) the origin of the tenancy and whether residents arrived in a group or were independently recruited; iii) whether occupants are responsible for the whole house or just their particular rooms; v) the responsibility for filling vacancies; and vi) the allocation of rooms. Those with mental health problems cannot in my view be expected to enter into a tenancy of their own volition and it is to be expected that social services would enter into that contract on behalf of those residents. Similarly it is inevitable that the operator, in this case Voyagers Ltd, would be responsible for cleaning and otherwise maintaining the

[4] At paragraph 15 Collins J, apparently summarising the submission on behalf of the Treasury Solicitor, says: "…if any of the carers were resident, then they would have to be brought into account, but there would be no problem because obviously a resident carer would be properly regarded as part of the household".
[5] Confirmed at paragraph 5.45 of the closing submissions on behalf of the Appellant [Document 8].

house, filling vacancies and allocating rooms having regard to the needs of the residents. The latter is exemplified by the change I noted during my visit.

16. Nevertheless I do not go so far as to suggest, as was said in closing for the Appellant, that these "*factors are not relevant*" in circumstances where care is provided. My view is consistent with the case of *Hossack* (No 2) where those criteria were applied to the same houses at issue before the Court of Appeal. I acknowledge that Nourse LJ, who gave the leading judgement in *Rogers*, said the Barnes factors were said to have "*caused serious problems*", but I do not read the judgement as expressly disapproving of these considerations. He did however set out a good working test for students and this explicitly recognises that they "…*may not all have known each other beforehand and that they may pay rent individually*". There needed to be a relationship between the occupiers "…*which provides a particular reason for their living in the same house*".

17. In Hossack, Brown LJ held the judge at first instance had gone too far and was too prescriptive in his approach that people coming to a house with "*a common need for accommodation, support and resettlement*" necessarily fail to enjoy a relationship which enables them to be regarded as living in a single household. He held "...*the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy is likely to be and the more apt, therefore, to describe it as a single household*". However Brown LJ did agree with Thomas LJ in *Rogers* that it would "*more difficult*" to establish a single household where the residents did not come and go as a separate group.

(iv) Application of legal principles to the facts of this case

18. My starting point is that it is clear that the property is a dwelling house in the sense that it is a building that ordinarily affords the facilities required for day to day private existence [as per paragraph 8 of Annex A to Circular 08/2010]. It is clear that the 2 residents live in the property as their sole or main residence. The Appellant does not argue that the carers who stay in the upstairs bedroom form part of the household and I have no reason to take a different view. It follows that on the date the application was made that there were just two residents, which is plainly "not more than six residents living" at the property.

19. Class C3 (b) expressly envisages that "…*care is <u>provided for</u> residents*" (*<u>my emphasis</u>*). The definition of care in Article 2 of the Order does not make any distinction based on the extent to which care is provided. There is nothing in Circular 08/2010 that would lead me to find that just because care is provided 24/7 that would take the use out of Class C3 (b). Neither do I consider the fact there is more than one carer to be a relevant consideration. I consider that the corollary of care being provided, as opposed to being offered or available, is that it is needed by the residents because they cannot manage without it. This is in line with *<u>my emphasis</u>* of what Richards J said in paragraph 31 of *Crawley*.

20. Accordingly I cannot accept that the fact that these residents would be unable to look after themselves and need carers to do the most basic of tasks, such as preparing meals and bathing, is in itself a reason to find that they can never comprise a single household. The carers support the residents and allow them to live as independently as is possible. In reaching this finding I have given reasons why I attach very limited weight to what Collins J said in *North Devon*. I do not lightly decline to follow a High Court judge but his comments were obiter and I am emboldened in doing so by what Richards J held in *Crawley*.

21. My view in this matter is confirmed by the Appellant's submissions in closing as to the consequences of a contrary finding. An assessment as to whether the

Council could take enforcement action might depend on medical advice as to whether the residents fell the right side of some arbitrary threshold. I cannot accept that those who drafted this Statutory Instrument envisaged that such a criterion would come into play. Thus whilst I acknowledge that Richards J in *Crawley* thought there may be cases where residents could not sensibly be said to constitute a household, I am not persuaded that this is one of them merely on the basis that the residents require the level of care that they do. These residents are not in need of nursing care which, having regard to the definition of care in Article 2, might be said to tip the balance towards Class C2. My view on this last point is confirmed by the analysis of the definition of care by Collins J in paragraph 8 of *North Devon*, albeit in the context of children.

22. In consideration of whether the residents live together as a single household I attach significant weight to the small size of the establishment; short of a single person household one could not get a household smaller than this. The Appellant's unchallenged evidence is that when either of the present residents goes out on an individual outing, the other becomes restless without her for company. Similarly, if one becomes ill, then the other will become depressed and agitated. I have no reason to doubt that the residents go out together for day trips to local places of interest "*each day*" or otherwise go shopping or to local restaurants. Thus whilst the Appellant acknowledged that the residents did not know each other before moving to Chessington there would now appear to be a strong emotional bond between them. Mrs Gardner confirmed that the residents are emotionally the same as us. This emotional link between the two residents strongly suggests to me that, although they have come to the house at separate times, they have now achieved a degree of close familiarity and friendship that suggests to me that they do comprise a single household.

23. I find it illuminating to compare these factors with those in *Hossack* (No 2), in which the Court upheld the Council's approach and its investigation that had led it to find that the use was within Class C3. Paragraph 21 recites the findings of the Council's Monitoring Officer; specifically in (b) he examined the nature of the relationship between residents. The evidence accepted by the Council was that the residents were of similar age, background and life problems such that their common life experiences and backgrounds were the basis of a relationship between them. This was a common thread which brought about a unifying relationship. On the evidence before me I think the same could be said here.

24. In (c) the Monitoring Officer went on to consider whether residents lived as a single household. During his inspection he found clear indications of communal living, e.g. "…*sharing of costs, meals, cleaning, socialising, and the communal use of bathrooms, kitchens and house equipment*". Again I consider that much the same can be said of Chessington. My inspection confirmed the Appellant's unchallenged claim that the residents share the bathroom, where they keep their personal toiletries, and downstairs wc. The residents share most facilities in the house, including the kitchen and the lounge. I have no reason to doubt that the majority of food and household materials are purchased in family sized amounts as this is economic or that finances are paid by contribution from each resident (albeit via the social services department that placed them in care).

25. The Council submitted in closing that the facilities at Chessington are not truly shared because the residents need help to use them and that this contrasts with a *group of students who would be living together*. However I consider that the latter scenario would not be a Class C3 (b) use but one within Class C3 (c), i.e. "*not more than six residents living together as a single household where no care is provided to residents*" unless it otherwise fell within Class C4.

I consider that the use subsisting can be distinguished from a care home both on the basis of the degree to which the facilities are shared, e.g. the bathroom, and on the close emotional relationship between these long term residents.

26. The residents have lived together for almost 4 years and unless moved on as a result of the planning process the Appellant's expectation is that they would stay at Chessington for the foreseeable future, if not for the rest of their lives. On this basis I consider it would remain a highly stable "group", to use the language of *Barnes*. Thus whilst it was submitted for the Appellant that this factor was not relevant I consider, to the contrary, it is not only relevant but strongly supports a view that these ladies do constitute a single household.

27. I appreciate that the stability of the group depends upon a number of third parties, including Voyagers Ltd, social services, social workers and Issue Based Advocates such as Miss Wrigley. However her evidence to the Inquiry was that Chessington was the best place for the residents to be, which reflects the views of both residents' sisters that were read to the Inquiry [one at Document 2.3]. In a situation such as this, these residents cannot instruct such an Advocate orally but I do not doubt that there are other signs of contentment. The Inquiry was advised that one resident no longer had a mark on her head from banging it and that she had calmed significantly since being there. Just as in *Barnes* there is, and is intended to be, a stable group occupying the house.

28. My view on this point is affirmed by reference to the Planning Contravention Notice (PCN). Question 4 asked: *What part did either of the residents play in the choice to move into Chessington*? To which the reply, of 4 June 2011, was: *Individually approving Chessington as their place of residence*. If a resident is able to communicate feelings, e.g. by becoming restless without her companion for company, then I have no reason to consider that they could not similarly express a view on something as fundamental as where they lived. Accordingly I think it is wrong to claim it is not a decision, at least in part, for the residents.

29. As I noted at my inspection all of the bedroom doors have locks, including that used by staff where confidential files and the residents' important possessions, such as birth certificates, are kept in a safe. I have no reason to doubt that the locks are available to residents "…*so they are not disturbed when they do not want to be* [and that] *leaving their door open when they are in the room is a signal that they are happy for company*". Although there is limited evidence as to the extent to which residents do lock their doors I am not persuaded this is a factor that weighs against the Appellant's claim. His unchallenged evidence is that "…*the residents commonly go about the house in their dressing gowns*", which strongly points to a high degree of communality rather than an isolated and independent regime in which residents lead separate lives. The bedrooms are the only non-shared space and everyone wants some privacy sometimes.

30. The Council rely on advice in paragraph 5 of Annex A to Circular 08/2010. In my view the second sentence explains the first. The paragraph is therefore concerned with a situation where staff are resident at the home, in which case they are likely to lead separate lives even though they work at the premises. In that scenario they would probably not live as a single household unless, exceptionally, the staff shared bathrooms and meals etc with those who were being cared for. Since no staff reside at Chessington this advice is not relevant. To find to the contrary would fatally undermine the purpose of Class C3 (b). My view on this point is confirmed by reference to extant advice in paragraph 63 of Circular 03/2005. It says: "…*the characteristic of the uses contained in* [Class C2] *that sets them apart from* [Class C3] *is…that the residents and staff do not*

form a single household". Paragraph 5 of Annex A to Circular 08/2010 is in my view making basically the same point but from the perspective of Class C3.

(v) Other matters

31. The Council rely on a total of 3 appeal decisions. I have already referred to the 4 Pembroke Road appeal and in my view it can be clearly distinguished on the basis that it concerns children rather than adults. The second, at 31 Amberley Road [Ref. APP/Q5300/A/04/1166773] is a section 78 appeal. The Inspector was appointed to determine the merits of the development. Arguably he had no jurisdiction to express a view on whether planning permission was or was not required in the absence of the appropriate application and appeal having been made. In the circumstances I attach very limited weight to his view that the use fell outside Class C3, not least because the respective arguments would not have been fully rehearsed before him for example by reference to case law.

32. The third at 7 Holtwhite's Hill [Ref. APP/Q5300/X/03/1129276] was a "*very finely balanced*" case. Key factors that led the Inspector to dismiss the appeal included that (i) all 5 bedrooms had en-suite facilities; and (ii) the communal bathroom was associated with a Manager's Office intended for use by a full time manager who would be present from 0900 to 1700 hours, 5-days a week. The Inspector was also concerned that the onus of proof, in what was a s 192 application, had not been discharged to show that the 5 residents would live together as a single household. This contrasts with the factual matrix that I have established to exist in this case, specifically in respect of the communal bathroom, which leads me to distinguish it as a matter of fact and degree.

33. Mr Watts agreed in cross-examination that paragraph 3 of Annex A to Circular 08/2010 does make a distinction between a foster parent and carer; the former is seen to fall with Class C3 (a) but I am concerned with C3 (b). Accordingly I accept that the Delegated Report was entitled to draw out this distinction. However I am not convinced this actually takes my analysis further forward.

34. There have clearly been noise issues and although the Appellant has installed noise insulation it is clear from Mr Page's personal testimony that there is still an issue with regard to staff changeover at 0730 and 1930 hours. Moreover the Inquiry was advised that the nearest neighbour has moved house because the soundproofing has not worked. Although these issues go to the merits of the development it might be in the Appellant's own interest to take notice of Mr Page's view that some disruption could be reduced with regular management.

35. I appreciate that in correspondence dated 27 October 2010 the Appellant told the Council "…*that the property in question is a residential care home; it is not a private home. It is also not, as you state, a residential house in a residential area. We are a properly registered and regulated care home*". It was registered under the Care Standards Act 2000 as a "*Care Home*" on 2 December 2004. Moreover I have no reason to doubt that the company has a Food Premises Registration as a *Residential Home* dating back to 2004 and that as recently as April 2012 the Appellant described the premises as a *Residential Care Home*.

36. Although I entirely understand why the use of such terminology might lead the Council to the finding that it did, in my view such labels, perhaps arising from different legislative regimes, are unhelpful. The judgement involves a fact and degree assessment and it seems to me that must go beyond how a particular individual or body, in the case of the Commission for Social Care Inspection, chooses to describe the use. The Appellant is not a Planner and I note that he maintained in cross examination that Chessington is a small community care home rather than a residential house in a residential area. To me, as a Planner,

that could be said to directly contradict the basis on which this appeal has been advanced. However in the context of my fact and degree assessment it is not a consideration to which I attach significant weight. The Appellant's description is doubtless informed by his background, including familiarity with legislation and regulations outlined in section 6 of his proof. It is not therefore something that weighs heavily against the conclusion to which I am drawn.

(vi) Overall findings on the main issue

37. This is far from being a straightforward case. I can understand why Counsel decided not to make an application for costs, despite having given an intention to do so and having circulated a written costs submission during the course of the Inquiry. I do not find the principles of law to be as clearly established as has at times been claimed. As Mr Watts wrote[6]: "*The Appellant's case that no planning permission is required turns on submissions to be made on a complex series of cases and the correct interpretation of judgements in those cases. One of the authorities crucially relied upon by the LPA's Officer's Delegated Report either conflicts with or is impossible to reconcile with the others*".

38. At the heart of this case is the question as to whether adults, who need help with everything that they do, can ever form a household. One of the country's leading planning judges has said that if people are not capable of looking after themselves that they would not be regarded as a household. The Appellant admits that they have a mental age of pre-teens or younger and this was manifestly illustrated during my site inspection by one of the residents walking around the house clutching a soft toy. It would be very easy to compare them to children and to apply *North Devon*, as the Council would wish me to do.

39. Nevertheless I am ultimately persuaded that this is the type of use which Class C3 (b) was designed to embrace. The factors that lead me to this conclusion include the small number of residents, the stability of the group, the extent to which facilities are shared and the mode of living. I am strongly influenced by the emotional link between the residents, which leads me to find that they are an "*intimate, integrated and cohesive*" pairing, which is at a much deeper level than merely "*a common need for accommodation, support and resettlement*". The residents live with each other and this leads me to find, as a matter of fact and degree, that together they do comprise a single household, albeit one where care is provided for the residents.

40. For all of these reasons, on the main issue I conclude that the Appellant has, on the balance of probability, shown that the use subsisting on 3 November 2011 was within Class C3 of the Order. Given this finding there is no need for me to go further to consider whether a material change of use has occurred.

Conclusion

41. For the above reasons, having regard to all other matters raised, including all other documentation placed before the Council when it made its decision, I am satisfied that the Council's refusal to grant an LDC for use as a dwelling house (Class C3) was not well founded. The appeal will succeed and I shall exercise the powers transferred to me in section 195 (2) of the Act.

Pete Drew
INSPECTOR

[6] Source of quote: E-mail from Mr Watts to The Planning Inspectorate dated 19 June 2012 [11:44 hours].

APPEARANCES

FOR THE APPELLANT:

Sebastian Head	Counsel.
He called:	
Jon Higgins	Appellant.
John Watts	Managing Director of Olorun Planning Partnership Ltd, Honiton.

FOR THE LOCAL PLANNING AUTHORITY:

Gary Soloman	Partner, Burges Salmon, Solicitors, Bristol.
He called:	
Charles McCullough BA (Hons), PGCE, MA, MRTPI	Senior Planning Officer, East Devon District Council.
Janet Wallace BSc (Hons), Dip EH	Environmental Health Officer, East Devon District Council.

INTERESTED PARTIES:

David Page	Local resident.
Wendy Gardner	Community Advisor, Mencap.
Kirsty Wrigley	Issue Based Advocate, Devon Link-Up.

DOCUMENTS

Document	1	List of Appearances for the Council.
Documents	2.1-2.3	Bundle of letters submitted at the Inquiry by the Appellant, including [2.1] a letter from Neil Parish MP; and, [2.3] a letter from one resident's sister.
Documents	3.1-3.3	Bundle of letters submitted at the Inquiry by the Council, comprising (i) E-mail dated 12 December 2011; (ii) *Colchester Estates (Cardiff) v Carlton Industries plc*; and (iii) Appeal decision APP/U5930/C/11/2151319.
Document	4	Excerpt from "*Housing, fulfilling lives and employment*", published by the Department for Health [2001], and submitted at the Inquiry by the Appellant.
Documents	5.1-5.6	Bundle of letters that were submitted at application stage, provided at my request by the Council.
Documents	6.1-6.3	Transcript of cases referred to at section 4.3 of the Statement of Common Ground.
Document	7	Closing submissions on behalf of the Council.
Document	8	Closing submissions on behalf of the Appellant.

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 3 November 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this Certificate, was lawful within the meaning of section 191(2) of the Act, for the following reason:

1. The use is within Class C3 (b) of the Town and Country Planning (Use Classes) Order 1987 (As Amended).

Signed

Pete Drew
Inspector

Date: 13 September 2012

Reference: APP/U1105/X/12/2173513

First Schedule

Use as a dwelling house (Class C3).

Second Schedule

Chessington, 50 Marlpit Lane, Seaton, Devon EX12 2HN

NOTES

This certificate is issued solely for the purpose of Section 191 of the Act.

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 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 Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 September 2012

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

Land at: Chessington, 50 Marlpit Lane, Seaton, Devon EX12 2HN

Appeal Ref: APP/U1105/X/12/2173513

Scale: Do not scale as original plan has been scanned which might cause variations.

