



Appeal Decision

Inquiry held on 25 and 26 September 2023

Site visit made on 26 September 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/Z4310/X/23/3316521

3 Measham Way, Liverpool L12 0NL

- 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 Robert Leung of LYC Services Ltd against the decision of Liverpool City Council.
 - The application ref 22LE/1726, dated 21 June 2022, was refused by notice dated 16 August 2022.
 - 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 C3(b) - occupation by two adult men with personal care needs living as a single household.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. An application for an LDC is not an application for planning permission. Its purpose is to enable the appellant and others to ascertain whether specific operations or activities would be lawful. The burden of proof is upon the appellant. The test of the evidence is one of balance of probability. The appeal concerns only the lawfulness of the matter for which the LDC is sought not its planning merits. The decision is based on the facts of the case and on relevant planning law and judicial authority.
3. With regard to s191(4) of the Act, the relevant date for ascertaining whether the existing development is lawful is the date of the LDC application. Although I heard evidence at the Inquiry relating to the occupants' living arrangements and personal care needs after this time, I have determined the appeal based on the information that was submitted with the LDC application.
4. The application submitted to and considered by the Council was made based on the description set out above. That is the appellant's primary case, which I shall refer to as such. In the alternative, should I not find in the appellant's favour on the primary case, their secondary case is based on a description which was agreed with the Council at the Inquiry. This reads "Use Class C2 - occupation by two adult men with personal care needs", hereafter referred to as the 'secondary case'.

Main Issues

5. The main issue is whether the Council's decision to refuse the application was well founded. Insofar as the primary case, this turns on whether the

appellant can show, on the balance of probability, that the use of the appeal property falls within Class C3(b) relating to up to six people living together as a single household and receiving care, and does not therefore involve development or require planning permission. With regard to the secondary case, this turns on whether there has been a material change of use.

Reasons

Primary case – Class C3(b)

6. For the use of the property to fall within Class C3(b) it must: be a dwellinghouse; there be no more than six residents; those residents must live there as their sole or main residence; they must live together as a single household; and care is provided for the residents.
7. The property is a detached single storey building in a residential area comprising single and two storey dwellings. The property has a front and rear garden and off-street parking provision to the front.
8. It is common ground that there are not more than six residents, care is provided to the two men who live at the property, and that they live at the property as their sole or main residence.
9. The planning definition of care¹ is set out in Article 2 of The Town and Country Planning (Use Classes) Order 1987 (as amended) ("the UCO"). There is a distinction within the sphere of adult social services between 'care' and 'support'. I will use the term 'support' when appropriate as that is how the evidence has been put to me insofar as the individuals concerned, but as the same distinction does not exist within planning or the UCO, my findings will be with regards to the planning definition of care.
10. Two areas of dispute remain. The first is whether the appeal property is a dwellinghouse; the second is whether the two men are living together as a single household.

Whether the property is a dwellinghouse

11. Neither the Act or the UCO defines the term 'dwelling' or 'dwellinghouse'. The UCO categorises the uses of land and buildings. A change of use can take place within the same use class or from one use class to another. Such changes which may otherwise be deemed to be material, are not considered to constitute 'development' under section 55(2)(f) of the Act.
12. The Council contend that the use of the appeal property is not a dwellinghouse due to the nature of the residency, including the degree of care provided and required, and as the residents are not a household. To support its proposition, the Council cite *Rectory Homes Ltd v SSHCLG & South Oxfordshire DC [2020] EWHC 2098 (Admin)*; [2021] JPL 234 and assert that the use of the property is not consistent with a dwellinghouse and as a result cannot fall within Class C3(b). This is due to on and off-site effects associated with the use such as comings and goings, car parking, noise and disturbance and internal changes to the property.
13. *Rectory Homes Ltd*, established that the terms 'dwelling' and 'dwellinghouse'

¹ 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

refer to a unit of residential accommodation that provides the facilities needed for day-to-day private domestic existence. The appeal property has all the necessary facilities for day-to-day private domestic existence and that it has the physical characteristics of a dwellinghouse, having regard to *Gravesham Borough Council v Secretary of State for the Environment (1984) 47 P & CR 142*. Case law therefore indicates that a dwelling or dwellinghouse could fall within either a Class C2 or C3 use. As these are the two classes within the UCO that the parties say that the use of the appeal property falls into, whether that be the primary or secondary cases, the appeal property is used in a manner consistent of a 'dwelling' and 'dwellinghouse'.

14. The last use of the appeal property was by a couple, but there is little evidence available explaining how they used the property or how they came and went from it for example. However, it is fair to say that the evidence indicates that this use fell squarely within Class C3(a). As such, the permissive regime of the UCO means that a change to Class C3(b) from Class C3(a) would not be development², and a determination as to whether a material change of use has occurred is not necessary. The Council's witness accepted that on and off-site effects are irrelevant to the consideration of whether the appeal property is a Class C3(b), despite the Council's closing submissions. The key is whether the requirements of Class C3(b) are met even if the character of the use is very different to its prior use, as there is no 'development'. This view is supported by *Carpet Décor (Guildford) Ltd v SSE & Guildford DC [1981] JPL 806*.

Single household

15. Class C3(b) envisages an element of care that can be provided by staff. Whether the occupants of the appeal property form a single household is a matter of judgement which rests upon the specific circumstances of the case. This point was outlined in *R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin)*. As in this case, a judgement needs to consider the nature of the disability and the degree of care needed, though as established in *Crawley*, the need for full-time care is not necessarily reason for the use to fall outside of Class C3(b). But there may also be cases where it does. It is a matter of fact and degree, though the circumstances are clearly different to the case of *North Devon District Council v First Secretary of State [2003] JPL 1191*, as the occupants here are adults.
16. The two unrelated adult men have occupied the appeal property since July 2021 having previously lived at another property with two other adult men from 2019 after residing together before becoming adults. Both occupants have an assured tenancy agreement with a registered social landlord who have a long-term lease with the owner of the property.
17. The property has two bedrooms, a lounge, kitchen, dining room, bathroom and a small store room. The bedrooms are not locked, but they are each occupant's personal space. The bedrooms contain a bed and bedroom furniture. All the remaining rooms are shared, and occupants can come and go between the rooms and use the facilities on offer without restriction. There is a small locked medicine cabinet in the storeroom which only support staff can access.

The occupants

18. Both men receive care throughout the day and night from non-resident

² S55(2)(f) of the Town and Country Planning Act 1990 (as amended)

personal assistants or support workers. Both men have been assessed as not having capacity under the Mental Capacity Act 2005. This means best interest assessments (BIA) are made with input from the men, their families and a variety of relevant professionals. BIAs were made before they moved to the appeal property at the same time.

19. One of the men is non-verbal but uses gestures and aids to help communicate. The other is verbal. Both have learning disabilities. The two men are friends and mix with one another at the property and in the community.

Support arrangements

20. A domiciliary care agency is responsible for the day to day support each man receives. Three support workers are at the property between the hours of 08:00 and 22:00. This reflects the ratio of support that each man requires. One support worker is present between the hours of 22:00 to 08:00 for the waking night shift. This level of support occurs every day of the year, but none of the support workers live at the property.
21. Rotas are organised by the agency to ensure each man is supported by a suitable number of support workers. They also consider whether staff members can drive, and whether they can use a vehicle for business purposes to ensure that the right level of cover and support is always in place for the men.

Whether a single household

22. There is no prescriptive definition of what a 'household' means, though in this case, the two occupants have a common need for accommodation, support and the location of accommodation within the community. The occupants undertake activities together and on their own whether that be at the appeal property or within the community. They have a relationship beyond that of a common need to live together as they dine together, share the kitchen, lounge and garden. The occupants also jointly seek to run the household. Doing so includes many things, but can include tasks such as paying any bills, cleaning and maintaining the home, ensuring its secure, purchasing food and preparing meals.
23. The presence of and support that staff provide does not automatically mean that the occupants cannot run the household. Each man carries out household chores with their own preferences. Limited or no support is provided for the majority of chores, save for when hot or sharp items are used. But those tasks are likely to involve a prompt rather than the support worker carrying out the task itself.
24. Owing to different morning routines, the men eat breakfast separately but do sit together at the dining table in the property each evening with staff on duty. One prefers to cook, the other prefers to wash and tidy up. They will often have the same meal, but this can at times vary. Both men, to different extents, can cook and feed themselves, albeit with some prompts. They both input into making the shopping list. They can also wash and dress themselves and carry out personal hygiene care, though they do need help shaving.
25. Each man has their own typical daily routine which works for them. That said, their routines co-exist and overlap, which shows that they operate together with the input of support workers. One man attended college three times a week when the LDC was submitted, though I note his course has now finished.
26. Managing money is problematic for both men, and support workers have

ensured that items and bills have been paid for and the men have received the correct change or receipt. That is not to say that they do not grasp the concept of paying for items or understand why or how a bill is paid. The evidence suggests that they do, and that they split any household bills and any other household purchases equally. It is just that their specific personal needs require additional input. The same principle applies to support workers locking the house or their cars.

27. The occupant's ability to manage money and secure the home may give rise to the view that the occupants do not form a single household. I also recognise that varying degrees of support is provided, yet in a household, duties associated with running a household will be unlikely shared equally between its occupants. But that doesn't mean that they don't form a single household. Standing back in this case, I consider that the occupants, while semi-reliant on others, were living together as a single household when the LDC was submitted. This is due to the level of the occupant's interaction, that interaction with the community, how the household operates, how the occupants live and the nature of the property and its facilities and how they are used. This must also be would in the context of their previous living arrangements together.
28. The men appear to have taken on greater responsibility, become more confident and gained more independence since the LDC was submitted. However, that is not determinative in this case, as my assessment is made based on the evidence when the application was submitted to the Council, but it does, given their living arrangements have not fundamentally changed, affirm my view that the use as applied for is within Class C3(b), and not Class C2 as suggested by the Council.
29. On this basis, it is unnecessary for me to go on and consider the secondary case and whether there has or has not been a material change of use.

Conclusion

30. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Killian Garvey

of Counsel

He called:

Philip Barton MCD, BA(Hons), MRTPI

Robert Leung

Leanne Harrison

Amanda Dodd

Samantha Burke

Independent Planning Consultant

Director, LYC Services Limited

Registered Manager, Glenelg Support Limited

Service Manager, Glenelg Support Limited

Team Leader, Glenelg Support Limited

FOR THE LOCAL PLANNING AUTHORITY:

Constanze Bell

of Counsel

She called:

Felicity Collins MCD, MRTPI

Principal Major Projects Officer, Liverpool City Council

INTERESTED PARTIES:

Mr Williams

INQUIRY DOCUMENTS

- 1 Email from Council concerning Data Protection
- 2 Appellant Opening Statement
- 3 Council Opening Statement
- 4 Record of incidents in 2022 and 2023
- 5 SSETR v Waltham Forest LBC [2002] EWCA Civ 330
- 6 Statement from Mr Williams
- 7 Rectory Homes Ltd v SSHCLG & South Oxfordshire DC [2020] EWHC 2098 (Admin); [2021] JPL 234
- 8 Council Closing Submissions
- 9 Appellant Closing Submissions

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 21 June 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use falls within Class C3(b) of The Town and Country Planning (Use Classes) Order 1987 (as amended).

Signed

Andrew McGlone

Inspector

Date: [23 November 2023]

Reference: APP/Z4310/X/23/3316521

First Schedule

C3(b) - occupation by two adult men with personal care needs living as a single household.

Second Schedule

Land at 3 Measham Way, Liverpool L12 0NL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

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 1990 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [23 November 2023]

by Andrew McGlone BSc MCD MRTPI

Land at: 3 Measham Way, Liverpool L12 0NL

Reference: APP/Z4310/X/23/3316521

Scale: Not to Scale

