The Planning Inspectorate

Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 April 2020

Appeal Ref: APP/U5930/X/19/3229723
55 Cecil Road, Walthamstow, London E17 5DH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Lakhvindar Landa against the decision of the Council of the London Borough of Waltham Forest.
- The application Ref 183270, dated 24 September 2018, was refused by notice dated 29 November 2018.
- 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 sought is change of use from single dwelling house Use Class C3(a) to Use Class C3(b).

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed use which is found to be lawful.

Preliminary Matters

2. In order for an LDC to be granted under section 192 of the 1990 Act, the onus is firmly on the appellant to show that the proposal would be lawful at the time the application was made. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded.

Reasons

4. The proposal seeks confirmation that the proposed occupation of the appeal site would be classified as Use Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order) and would not constitute development.

5. It is the Council's case that the submitted information does not demonstrate that the proposed use can be considered as a single household under Class C3(b). Instead, they argue that the proposal should be classified as a Class C2 use (Residential Institutions), which would constitute development and therefore require planning permission.

6. The appeal site is a two-storey terraced dwelling house. The existing plans show three bedrooms and a bathroom at first floor level, and a lounge, dining room, kitchen and conservatory on the ground floor. The proposed plans show two bedrooms on the first floor, with the third room dedicated as a staff room. On the ground floor, the lounge would be converted into a bedroom, and the other rooms would remain as existing.

7. The house would be occupied by three adults with learning/mental disabilities. Two carers would be present during the day, and one during the night. The appellant has provided two supporting documents including a 'Statement of Purpose' and a 'Service Users Guide' relating to the premises at 17 Brian Road. The Statement of Purpose sets out the range of personal care services provided, which include: assistance with washing, bathing and showering; assistance with bed bathing; assistance with toileting, use of incontinence pads etc; assistance with dressing and undressing, getting up and going to bed; care of skin, hair, teeth and nails, where appropriate; assistance with medication; assistance with medical care where appropriate; night sleep or sitting service; and day sitting service.

8. Class C3(b) covers up to six people living together as a single household and receiving care, for example, supported housing schemes such as those for people with learning disabilities or mental health problems. The Council's Learning Disabilities Officer has assessed the proposal and advised that the described level of care is significant and so the proposed use would constitute a care home within Class C2.

9. The Order describes Class C2 as 'use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre'. It is therefore necessary to consider the extent to which the characteristics and use of the appeal site as a C3 dwellinghouse would be altered by the proposal.

10. The proposed internal changes would be minor, leaving a layout that would largely be expected of any family home, with a communal dining room, kitchen, bathroom and conservatory. These factors point to a sense of communal living, and a strong possibility that a single household would be formed. There would be no significant subdivision of the house, and there is no indication of separate units of accommodation.

11. The smallest bedroom on the first floor would become the staff room. In proportion to the scale of the building as a whole, the office would be small, and its presence would not be unexpected in a home where care is provided. There is nothing inherent within the scale or layout of the property that would suggest that the use would fall outside Use Class C3(b).

12. A fundamental question with regard to Class 3(b) is whether the residents would be able to form a single household. There are clearly levels of disability or mental health needs beyond which individuals would not be able to live communally and form bonds with each other within a single household.

13. The Service Users Guide gives some further details of the type of care facility envisaged. As part of the admission procedure, potential new residents would be able to spend some time in the property to see if they would like it, and to meet the other residents. Under the Values and Guiding Principles, residents

are to have the opportunity to develop their full potential, managing their lives as much as possible. Friendships and relationships will be encouraged, as will links with family and the community. On this basis, I am satisfied that such individuals would be entirely capable of forming bonds and relationships within their own home that would enable them to live as a single household.

14. Therefore, drawing all these factors together, I conclude, on the balance of probability, that the way in which the property would operate would fall within Use Class C3(b).

15. It is also necessary to consider whether the proposal would amount to a material change of use of the appeal site. The concept of material change of use is not defined in statute or statutory instrument. Again, it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities relating to the exiting use.

16. The Council give little detail as to how they expect the nature of the use of the site to change as a result of the proposal. In view of the type of care described, it seems to me that the three residents would perhaps be coming and going from the building on a less frequent basis. Conversely, the carers would be coming and going on a regular basis each day. However, this would be likely to be similar to the daily routines of, for example, shift workers travelling to and from a dwellinghouse falling within Use Class C3(a) or indeed C3(c). There is little to suggest, for example, that the use of the appeal site would be intensified to any significant degree, or substantially changed in any other way.

17. The planning officer's report makes reference to the 'CQC (Care Home Commissioner)'. From the documentation before me, this organisation appears to be the 'Care Quality Commission'. Although there is no dispute that the property would have to be registered with the Care Quality Commission, there is little detail before me as to the implications of such registration. Crucially, there is no clear evidence to show that only care homes within Use Class C2 require to be registered in this way, and so this factor in itself is not determinative.

Conclusion

18. For the reasons above, I conclude on the evidence available that the Council's refusal to grant an LDC in respect of the change of use from single dwelling house Use Class C3(a) to Use Class C3(b) was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elaine Gray

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 24 September 2018 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use would have been permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Elaine Gray

Inspector

Date
Reference: APP/U5930/X/19/3229723

First Schedule

Change of use from single dwelling house Use Class C3(a) to Use Class C3(b).

Second Schedule

Land at 55 Cecil Road, London E17 5DH

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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 effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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Plan

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

by Elaine Gray MA(Hons) MSc IHBC

Land at: 55 Cecil Road, London E17 5DH

Reference: APP/U5930/X/19/3229723

Scale: Not to scale

