
Appeal Decision

Site visit made on 6 January 2015

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 12 February 2015

Appeal Ref: APP/L5240/X/14/2216851

31 Canterbury Road, Croydon CR0 3PY

- The appeal is made by Mrs Y P Wilson under section 195 of the Town and Country Planning Act 1990 against a refusal by the Council of the London Borough of Croydon to grant a lawful development certificate.
 - The application Ref: 13/03098/LP, dated 6 August 2013, was refused by notice dated 15 November 2013.
 - The application was made under section 192(1)(a).
 - The use for which the certificate is sought is "The building will be used by up to 6 people with learning difficulties living together as a single household and receiving care (C3(b))".
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Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the use described in the application, which I consider would be lawful if instituted at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the proposed use would be lawful if instituted at the time of the application. The planning merits of the use are not relevant and there is no planning application before me.
 3. 31 Canterbury Road is a dwellinghouse within the meaning of Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended. The appellant maintains that the proposed use will be within Class C3(b) and will therefore not constitute development for the purposes of the legislation. The Council maintain that planning permission is required because the proposed use will be within Class C2 (residential institutions).
 4. The proposal is that five residents with learning difficulties will live together in the house. They will each have an en-suite bedroom and will share a kitchen, a lounge and a dining and utility area. The appellant has not specifically stated that the five residents will be adults, but I have assumed this to be the case. The residents will be assisted by staff whose duties will mainly be to assist with their welfare and with some of their domestic activities. The staff will attend on a rota basis, one at a time, and will not be resident in the house. A study will be provided for staff use should it be necessary.
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5. The Council's case includes the following assertions: "If staff work on shift patterns throughout the day and night the property would not operate as a single household and it would be a C2 use (regardless of size). C3(b) use can include staff but these staff must live in on site (notwithstanding the requirement to have time off). C3(b) use can also be up to six persons without permanent live-in support. However, care workers must not work at the premises for regular/sustained periods."
6. Class C2 includes "Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))". Class C3(b) applies to "Use as a dwellinghouse (whether or not as a sole or main residence) by ... not more than six residents living together as a single household where care is provided for residents". Article 2 of the Order states 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". There is no dispute in this appeal that the proposal includes the provision of care within the meaning of Article 2.
7. Neither party has referred to any case law. There have been several judicial decisions over the years that are relevant to the issues arising in this appeal. They have been summarised in at least two appeal decisions – see, for example, APP/U5930/X/07/2061987 and APP/G1250/X/08/2089670.
8. Paragraph 3B-979 of the *Encyclopedia of Planning* includes the following statements: (a) "Class C3 is intended and apt to include small community care homes consisting of up to six people, "living together under arrangements for providing care and support within the community""; (b) "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"; (c) "Where the household is one where care is provided for residents it remains in this class (provided the limitations are met) rather than class C2 (residential institutions)"; (d) "The Secretary of State does not accept that the distinction depends upon the extent of the care provided"; and (e) "the High Court has confirmed that the Class does not require that the staff providing care for residents need themselves be resident (*R. v Bromley LBC Ex p. Sinclair* [1991] 3 P.L.R. 60)".
9. The *Encyclopedia* does not refer specifically to the case of *Crawley Borough Council, R (on the application of) v Helberg (t/a The Evesleigh Group)* [2004] EWHC 160 (Admin). The facts in that case were similar to those in the current appeal. The house was to be occupied by four adults with learning difficulties, who would have had carers there at all times. The carers would not have lived in the house, but a shift system would have operated so that there were always two carers on site, even at night. The Court dismissed a challenge to the Inspector's finding that the proposed use was within Class C3(b), and not in Class 2.
10. The following are extracts from the judgment in *Crawley*:
 - "31. In my judgment, the correct position is that, in every case, the judgment to be made in the application of the criteria in Class C3 depends upon the specific facts of the individual case. There may indeed be cases where,

other residents, constitute a single household. But if they are not resident, there remains a perfectly sensible question whether those who are resident, that is to say those who are in receipt of care, themselves constitute a single household. That is a question essentially to be answered on the facts. It was a question considered on the facts of this case by the inspector and answered affirmatively by him."

11. Having due regard to everything I have referred to above, I have no reason to disagree with the Council when they indicate in their appeal statement that the question requires factors such as the manner of use, the physical condition of the premises, the daily operation of the accommodation and the working arrangement of staff to be taken into account. It seems to me, however, that the unequivocal views of the Council set out in paragraph 5 above are not correct. As a matter of fact and degree, the proposed use, as described in paragraph 4 above, will in my view result in five residents living together as a single household with care being provided for them. It will therefore be within Class C3(b), and not Class C2, and an application for planning permission is not required. Should the actual use turn out to be materially different to that described, the position could be re-assessed and a different conclusion might be reached.
12. I am therefore satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR

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 judgment 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. 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. That would seem to me to run counter to the language of Class C3 itself and to the underlying policy.

32. If the carers are resident, the question is whether they, together with the other residents, constitute a single household. But if they are not resident