



Appeal Decision

by **S A Hanson BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 August 2021

Appeal Ref: APP/P4605/X/21/3272050

106 Church Road, Erdington, Birmingham B24 9BD

- 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 Mr Richard Galea against the decision of Birmingham City Council.
 - The application Ref 2020/08401/PA, dated 20 October 2020, was refused by notice dated 19 March 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which an LDC is sought is for a proposed change of use from class C3(a) to class C3(b)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers¹.
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

¹ The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

Main Issue

5. This is whether the Council's decision to refuse to grant an LDC was well-founded. In this case that turns on whether the proposed use is would fall within Class C3(b)² of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO), and hence would be excluded from the definition of development by virtue of section 55(2)(f) of the 1990 Act.

Reasons

6. 106 Church Road is an end of terrace, two-storey dwelling and there is no disagreement between the parties that the property falls within Class C3(a)³, as established by the UCO. The appellant outlines that the accommodation within the property would provide: a manager's office, living room, kitchen and WC on the ground floor; 3 bedrooms (2 with en-suites) and a bathroom on the first floor; and a bathroom, staff room, kitchen and a staff bedroom on the second floor. There is a small garden to the front of the property and a private garden to the rear with a garage, bike shed and an outbuilding. There is no off-street parking to the front of the property, but on-street parking is available on Church Road and there is a double garage to accommodate 2 cars.
7. The appellant's statement describes the proposed use as "accommodation for not more than 6 people over the age of 18, living together as a single household whilst receiving care and support with learning disabilities and/or mental health problems. The residents would be actively involved in life learning skill programmes and would receive care and support by staff both within the home and during mobility trips in the community." The appellant argues that in these circumstances the property would fall within Class C3(b) of the UCO rather than C2⁴.
8. There is reference to 24/7 care but no indication whether this would operate by staff living-in or on a rolling shift pattern. The appellant provides that carers would work within the proposed office or stay in the upstairs "staff" bedroom and would form part of the household. However, there is conflicting information within the application and appeal documents concerning the number of residents. The appellant's statement which formed part of the application says there would be 3 residents⁵, whereas the appeal statement says that there would be 4 residents⁶ at the property. Although Class C3(b) provides for up to 6 residents, the layout as indicated on the plans and by the appellant, shows that the property has 4 bedrooms. If there were 4 residents there would be no bedroom available for staff. Furthermore, if only 3 residents occupied the property, this could allow the second floor to be occupied separately from the rest of the property with the facilities to provide independent living.
9. Notwithstanding this, the question that needs to be determined is the proposed use of the property, and it is the nature of the occupation that is relevant. The available information leads me to question what care or support would be

² 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.

³ Use as a dwellinghouse (whether or not as a sole or main residence) by: (a) a single person or by people to be regarded as forming a single household.

⁴ 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.

⁵ Para 4.1

⁶ Para 4.7

provided to the residents. The appellant states that Class C3(b) expressly envisages that "...care is provided for residents" and that the definition of care in Article 2 of the UCO⁷ does not make any distinction based on the extent to which care is provided. Whilst the application and appeal submissions from the appellant say that the residents would receive care and support with "learning disabilities and/or mental health problems", a further statement summarises how New Hope Supported Living provides "accommodation to vulnerable adults who would benefit from emotional health and wellbeing support to build up their confidence, budget management, cooking/meal planning, becoming 'job ready' and or need sign posting to other community resources etc."

10. The Council questioned the level of care required to assist the future residents with their daily lives. It considered that the support provided, would be in the form of help and guidance rather than personal care. This may be the case, but the appellant's evidence remains unclear on this matter. There is limited information to explain whether staff would be resident or if they would mainly assist residents in day-to-day tasks rather than undertaking such tasks on their behalf. There is also no suggestion about how the future residents or care/support staff would interact together as a single household. Even though I would not consider it a necessity for staff to live-in for the proposal to fall under use Class C3, what is necessary is to focus on those in occupation and ask whether they form a single household as a matter of fact and degree.
11. Overall, the totality of the evidence presented in support of the appellant's case is not precise or unambiguous. In the absence of the appellant being more specific about the change of use he is seeking it is not possible for me with any certainty to determine the appeal in favour of the appellant. In an appeal such as this, the onus of proof rests with the appellant and the level of proof is on the balance of probability. In this case the appellant has not shown clearly that the proposed change of use would not be development that requires planning permission

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of change of use from Class C3(a) to Class C3(b) was 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.

S A Hanson

INSPECTOR

⁷ "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."