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# Appeal Decision

Site visit made on 21 July 2020

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14<sup>th</sup> August 2020

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**Appeal Ref: APP/G5750/C/19/3239475**

**11 Plaistow Park Road, Plaistow, London E13 0SA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Lee Salmon of Inclusive Care Support Ltd against an enforcement notice issued by the Council of the London Borough of Newham.
  - The enforcement notice was issued on 11 October 2019.
  - The breach of planning control as alleged in the notice is without planning permission the material change of use to supported living accommodation.
  - The requirements of the notice are:
    1. Cease the use of the property as supported living accommodation.
    2. Remove from the property all fixtures and fittings that solely facilitate the use of the property as supported living accommodation.
    3. Remove from the site all debris arising from compliance with steps 1 and 2.
  - The period for compliance with the requirements is 5 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) and (a) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. The appeal is allowed, and the enforcement notice is quashed.

## Preliminary matters

2. The appeal was lodged on ground (a) only. However, it is clear from the evidence that the appellant does not consider that the occupation of the dwelling by two residents constitutes a material change of use. The appellant and the Council were offered an opportunity to comment on whether this amounted to an appeal on ground (b). The appellant confirmed that ground (b) should be considered and the Council provided evidence as to why an appeal on ground (b) should not succeed. Injustice would not be caused as the appeal parties have had an opportunity to provide additional evidence.
3. Prior to the notice being issued the appellant had applied for full planning permission (ref: 19/01534/FUL) to use the property as a supported living unit for a maximum of 5 people (the 2019 PA). While no use class was referenced in the description of development, the Council's delegated report confirms that they considered the proposal to represent a material change of use from Use Class C3: Dwellings to Use Class C2: Residential Institutions. While additional amendments to the Use Classes Order<sup>1</sup> (the UCO) will come into effect on 1 September 2020, they will not affect the Council's opinion on this matter. The Council go on to advise that during a site visit, it was identified that there were

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<sup>1</sup> Town and Country Planning (Use Classes) Order 1987 as amended

two people, receiving care, living in the property. The application was refused permission and, as far as I am aware, that decision has not been appealed.

### **Ground (b)**

4. To succeed on this ground the appellant should show on the balance of probability that the matter identified in the notice has not changed the use of the dwelling to a residential use falling outside of Use Class C3 (C3).
5. The appellant's case is that the dwelling has not been physically altered in any way and that only two adults are in residence, living together as a single household and receiving care.
6. It is the Council's position that C3(b) applies to up to 6 people receiving care and living together as a single unit, such as where children are cared for by 1 or 2 adults, living together as a single-family unit. In the Council's opinion, "supported living", as applied for in the 2019 PA, falls within Use Class C2 (C2) as residents of the property would be placed as individual adults and would be provided with support and care to establish independent lives. As such, in this instance, a material change of use (MCU) from C3 to C2 would occur.
7. There is no dispute that prior to the occupation of the dwelling by the current residents, its use was as a dwellinghouse falling within C3. The UCO confirms that C3 is split into three distinct categories, (a) to (c). Class C3(b) makes provision for "use of 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". To determine whether a MCU has occurred it is necessary to consider what is meant by a 'single household', 'care' and 'supported living'.
8. Circular 13/87<sup>2</sup> confirmed that the single household concept, at C3(b), was intended to include small community care homes consisting of not more than 6 people (including resident staff) living together under arrangements for providing care and support within the community. While Circular 13/87 has been superseded, its intention in respect of small groups of people living together and receiving care remains relevant.
9. Kettering<sup>3</sup> confirms that there would be circumstances where people coming together not as a preformed group or for a predetermined period and only as a result of a "common need for accommodation, support and resettlement" would enjoy a relationship that enables them to be regarded as living in a single household. The placing of individuals, who are provided with support and care, to establish independent living, as in this case, would represent such a circumstance.
10. The appellant's statement of case advises that at the time the notice was issued the dwelling was occupied by 2 adults, and that the dwelling could accommodate a maximum of 5 people. The occupiers of the dwelling could have learning disabilities, autism, challenging behaviour or mental health needs. The 2 resident adults fall within these categories. The Council has provided no evidence to make the appellant's explanation of the property's use

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<sup>2</sup> Circular 13/87 Changes of Use of Buildings and Other Land: The Town and Country Planning (Use Classes) Order 1987

<sup>3</sup> *R(Hossack) v Kettering BC [2002]EWCA Civ 886*

less than credible. Government policy is to provide opportunities for such people to live in the community, rather than in institutions or hospitals.

11. While the Council concede that C3(b) allows people to live together and receive support and care, they suggest that residents would have to form the appearance of a traditional family unit, such as 1 or 2 adults and a number of children living together. Planning guidance confirms that there is no such requirement and it is quite plausible for not more than 6 people to live together as a single household. The smaller the number of residents, the more intimate, integrated and cohesive their occupancy is likely to be and the more apt, therefore, to describe it as a single household. In this case, I find occupation as a single household most likely as there are only 2 adult residents.
12. Within the UCO, excluding C2, care is defined 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 health disorder". From the evidence before me, the residents of this property are receiving personal care which falls within this definition. The level of care provided would not preclude the occupation of the dwelling falling within C3(b).
13. In this case, all the available evidence points to the likelihood that the property was occupied by individuals functioning as a single household, because there were only 2 resident adults occupying the dwelling during the period leading up to the issuing of the notice. Supported living is not a defined planning use and there is no readily recognised definition of 'supported living' that I am aware of. However, from the appellant's evidence, I find that the level of support and care provided to the 2 resident adults at No11 to allow them to live within the community, referred to as 'supported living', is so similar to the definition of 'care' for the purposes of Class C3(b) so as to be the same for all intents and purposes.
14. In addition, the property to all outward appearances looks like a dwelling. The ground floor accommodation includes kitchen, dining and lounge facilities along with built in storage and a WC. The upper floors provide a bathroom and 5 bedrooms. Given the shared nature of all the facilities, except the bedrooms, I find that the property's layout and arrangement retain all the inherent characteristics of a dwelling. I saw that there are locks on all the internal doors, but this does not necessarily or automatically show that the dwelling is not occupied by people forming a single household.
15. Prior to the matter alleged in the notice the dwelling had all the characteristics of a dwelling occupied and used as such by a single person or by people living together as a family (Class C3(a)). At the time the notice was issued, the evidence presented shows that No11 had all the characteristics of a dwelling occupied by not more than 6 residents living together as a single household (including a household where care is provided for residents) (Class C3(b)). Article 3(1) of the UCO states that "where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that land for any other purpose of the same class shall not be taken to be development of the land". In this instance, both uses fall within Class C3 and the change between the classes does not amount to development.
16. For the reasons given, I find that the alleged breach of planning control has not in fact occurred and ground (b) succeeds. Accordingly, the enforcement notice will be quashed. In this circumstance the appeal under ground (a) set out in

section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not need to be considered.

*M Madge*

INSPECTOR