The Planning Inspectorate

Appeal Decision

Hearing Held on 21 February 2018.

Site visit made on 21 February 2018.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 24 April 2018

Appeal Ref: APP/N2739/C/17/3180869
'Garmsway', Selby Road, Whitley, Goole DN14 0HY

- 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 Act).
- The appeal is by Brendan Kelly - Heathcotes Care Ltd - against an enforcement notice issued by Selby District Council.
- The enforcement notice, ref. ENF/2017/0085/ENF, was issued on 22 June 2017.
- The breach of planning control alleged in the notice is without planning permission the change of use of the residential property from C3(b) (dwellinghouse) to C2 (residential institution) and the creation of a self-contained flat.
- The requirements of the notice are to:
  1. Permanently cease the use of the property as a Class C2 residential institution.
  2. Permanently remove the self-contained element of the ground floor of the side extension, by ensuring that the door between the main house and the ground floor of the extension is accessible at all times, and not locked.
- The period for compliance with both requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Decision

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:

   DELETION of *60 days*; and,

   SUBSTITUTION of *6 months* as the period for compliance.

   I further direct that the enforcement notice be varied by:

   OMISSION of the words '*by ensuring that the door between the main house and the ground floor of the extension is accessible at all times, and not locked'* from Requirement 2 of the notice; and,

   SUBSTITUTION of the words *'by implementation of the ground floor extension layout approved as a non-material amendment (under Decision notice ref. 2016/1174/MAN, dated 24 October 2016) to the planning permission ref. 2014/0783/HPA, dated 17 October 2014, for a two-storey extension to the existing property'.*

Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. Originally a private dwelling house, in 2014 the appellant applied for a Lawful Development Certificate under s.192 of the Act for the proposed use of the appeal property under Use Class C3(b). The Council confirmed that this would not amount to a material change of use, and granted a certificate accordingly[1].

3. The Council have now raised the possibility that the LDC may be invalid. This is on the basis that the First Schedule to the decision notice states the application is for:

   'a lawful development certificate for the proposed use as a dwellinghouse',

   whereas the Second Schedule states that:

   'The operations proposed are granted general planning permission under the provisions of The Town and Country Planning (Use Classes) Order 1987 as amended. The existing C3(a) and proposed C3(b) occupation of the property would not amount to a material change of use which would require planning permission under the provisions of The Town and Country Planning (Use Classes) Order 1987 as amended'.

   The limitations on the certificate then set out the reasons why the change from the existing C3(a) use to the proposed C3(b) use would not require express planning permission, in very much the same terms as the Second Schedule.

   The Council consider it would not be apparent to a reader new to the case what the LDC was in fact declaring as lawful.

4. In my view there is no error in the First Schedule, in that the proposed use falls within the general category of 'dwellinghouses', which comprise all the specific uses in Class C3. The Second Schedule and limitations are then quite clear as to the specific category of the existing dwellinghouse, and proposed dwellinghouse as defined in the UCO. Any reader would need to take into account the entirety of the document, and I do not consider there is any ambiguity as to its meaning.

Background matters

5. The appeal property lies on the western side of Selby Road, on the northern outskirts of the village. It is a two storey building with rendered walls and a tiled roof. In October 2014- at the same time as the grant of the LDC - planning permission was granted for a two storey extension[2]. The proposal would have added a bedroom with en-suite shower, separate bathroom, and a quiet room on the ground floor, two bedrooms with en-suite shower rooms on the first floor, and a new staircase. Within the original envelope of the house were a lounge, dining room and kitchen on the ground floor, and three bedrooms with en-suite shower rooms on the first floor.

6. A non-material amendment to the 2014 permission was approved in 2016[3]. This amended layout would have had a kitchenette and bedroom with en-suite shower on the ground floor (labelled Bedroom 1), separately accessible through

[1] Decision notice ref. 2014/0869/CPP, dated 17 October 2014.
[2] Decision notice ref. 2014/0783/HPA, dated 17 October 2014.
[3] Decision notice ref. 2016/1174/MAN, dated 24 October 2016.

an internal lobby, and also a separate bathroom for communal use accessible from the main body of the house. The upper floor would have remained as previously approved. The kitchenette and bedroom are both shown with external doors to the garden.

7. In the event, neither the originally approved internal layout, nor the amended layout was built. As the building stands, the layout within the original envelope is essentially as approved, as is the first floor of the extension. However, on the ground floor, the bedroom within the extension is accessed directly through the kitchenette, and there is no intervening lobby.

8. The Town and Country Planning (Use Classes)Order 1987 as amended defines Use 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)';

   And Use Class C3(b) as:

   '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.'

9. Article 2 of the Use Classes Order sets out 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 also includes the personal care of children and medical care and treatment.

The appeal on ground (b)

10. This ground is that the alleged breach has not occurred as a matter of fact. The notice alleges that that there has been a material change of use from Use Class C3(b) to Use Class C2. Given the definitions in the UCO it follows that the principal question to be answered is whether the building is occupied by not more than six residents living together as a single household where care is provided.

11. The appellants say that the residents of the property live together as a single household, by the nature of the care provided together with the physical layout and characteristics of the property. The 6 residents occupy the six bedrooms and share facilities such as the kitchen, dining, and living rooms, as well as the garden area.

12. I understand that care is provided on a 24-hour basis, with staff on a rota. They provide general supervisory, non-medical care, and domestic support. Residents are there primarily for rehabilitation purposes with few requirements for acute health services. I understand there is a total of 15 staff covering 3 shifts, and there are between 4 and 6 members of staff on site on any day. None of the staff are resident, and night staff operate on a 'waking night' pattern – whereby they assist with various domestic tasks and paperwork, as well as providing passive supervision.

13. I understand that residents choose their own menus, shop for ingredients, share meals, and sometimes help to plan and cook them under supervision. They choose different activities, such as visiting local parks, the nearby shopping/leisure complex, and garden centres. One resident tends an allotment. On my visit I saw several residents in the main living room,

together with staff, watching television. The various activities – both shared and individual – gives a strong indication that the residents generally live together as a single household. While they may not cook for themselves all the time, it appears to me that the help and supervision provided constitute part of the care offered.

14. At the time the Council carried out their inspection Bedroom 1 was being used by a resident with particular behavioural problems, requiring some separation from the other residents. This required occasional locking of the internal door giving access to the kitchenette. I note also that the as-built plans provided by the appellant refer to the area of the 'flat' as being 27 square metres.

15. The premises were inspected by the Care Quality Commission (CQC) in July 2017. Their detailed findings included the information that one of the residents was very independent, accessed the community unaccompanied and at will, and occupied a self-contained flat, requiring minimum support with daily tasks and decisions. The Council's enforcement investigation was at around the same time as the CQC made their inspection, and gives a clear indication that Bedroom 1 and the kitchenette were being used as a separate unit of accommodation. I accept that this arrangement was helpful to the overall operation of the premises. Nevertheless, this effectively introduced a new one-person household into the building.

16. Given the above, I have come to the conclusion that the five bedrooms within the original house, and the first floor of the extension, together with the shared accommodation on the ground floor are occupied by 5 residents, who live together as a single household and receive care – that is a C3(b) use. The kitchenette, Bedroom 1 and shower room in the ground floor of the extension form a separate flat. This has been, and can continue to be, occupied by a single resident, who receives care.

17. One of the purposes of introducing Use Class C3(b) was to assist in promoting government aims to promote care in the community, enabling supported housing to be established without the need for planning permission, or differentiating such housing from the normal residential environment. To this end, an important element is that residents of C3(b) dwellinghouses live together as a single household. The circumstances in this case are that a different type of care was more suitable for a particular resident. While this may be a not uncommon situation, it nevertheless changes the nature of the use in terms of provision of care, which can no longer be considered as falling within Use Class C3(b), and is more akin to a Class C2 use, even if on a small scale.

18. The Council also argue that the office and laundry in the outbuilding at the rear of the main house suggest a level of management beyond what might be expected for a single household. However, the number of staff for providing the necessary care inevitably predicates some degree of administration and general housekeeping. The office and laundry facilities are compact and inconspicuous, and I do not consider exceed what is reasonably necessary.

19. Considering the question of whether a self-contained flat has been created, Section 55(3)(a) of the Act sets out that:

'*the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used'.*

Furthermore, regarding change of use of part of building or land, Article 4 of the UCO states that:

'In the case of a building used for a purpose within class C3 (dwellinghouses) in the Schedule, the use as a separate dwellinghouse of any part of the building or of any land occupied with and used for the same purposes as the building is not, by virtue of this Order, to be taken as not amounting to development'.

20. Looking at the layout of the building in detail, within the ground floor kitchenette the kitchen fixtures are arranged along one wall, and there is adequate space for a dining table and chairs, as well as for easy chairs. Indeed, at the time of my visit there was a sofa in the room. The door from the internal lobby is lockable, and there is also a separate external access. Bedroom 1 has an en-suite shower room, and I noted that there is a latch but no lock on the connecting door between the bedroom and the kitchenette. It appears to me that these rooms, have all the facilities required for day-to-day private domestic existence. They effectively form a suite, quite independent of the remainder of the building, and separable from it by a locked door. As a matter of fact and degree they should be considered as a separate flat.

21. Overall, the type of care provided takes the use of the building outside the quite limited parameters of Use Class C3(b). I consider on the balance of probabilities the residents do not live together as a single household, and the alleged material change of use has occurred as a matter of fact. Furthermore, again on the balance of probabilities, I consider that there has been operational development carried out in the form of a creation of a self-contained flat without the benefit of planning permission. The appeal on ground (b) therefore fails.

The appeal on ground (c)

22. This ground is that there has not been a breach of planning control.

23. The appellant argues that because he considers there has been no change of use as a matter of fact, there has equally been no breach of planning control. This is principally on the basis of the grant of the 2014 LDC, which it is claimed remains the lawful use of the property.

24. However, the government's Planning Practice Guidance relating to LDCs includes the advice that an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates[4]. Furthermore, in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved[5].

25. The Council argue that the provision of an administrator's office, and of en-suite shower/WC/ wash-hand basin facilities to each bedroom – as well as a communal bathroom and a WC – takes the building beyond the normal

[4] Planning Practice Guidance Paragraph: 005 Reference ID: 17c-005-20140306.
[5] Planning Practice Guidance Paragraph: 006 Reference ID: 17c-006-20140306.

provision for a single household. However, many recently constructed houses can have a similar provision of sanitary facilities, and the small office in the outbuilding is little different from the type of home office that is increasingly common. Furthermore, the scheme for which the 2014 LDC was granted had equivalent facilities, and I do not consider the present arrangement is any more elaborate.

26. In this case the LDC application for the proposed lawful use was fully and accurately described, and included plans of the proposed layout. This layout was not implemented as shown on the application drawings, nor indeed as on the plan submitted for the non-material amendment. The notable variation being the omission of the lobby that would have given separate access to Bedroom 1 and the kitchenette, with the result that the two principal rooms effectively form a separate unit of accommodation. I do not consider the building as arranged can be considered as compliant with the terms of the 2014 LDC. Furthermore, as I have found above, the use made of the premises has not been as a single Use Class C3(b) unit. No further approval has been obtained for these changes, and it follows there has been a breach of planning control. The appeal on ground (c) also fails.

The appeal on ground (g)

27. This ground is that the compliance period is too short. The appellant claims that a period of 18 months should be allowed for providing suitable alternative accommodation for the residents.

28. However, the works required to remove the self-contained accommodation would be relatively slight, contained within a discrete area of the ground floor. At the time of my visit, Bedroom 1 was in any case not being used, and this situation could be arranged while works were carried out. It would not be necessary to vacate the building entirely.

29. I accept that the period of 60 days stated in the notice may not be adequate to instruct a contractor and complete the alterations, but consider a period of 6 months would be reasonable. I therefore intend to vary the compliance period accordingly, and the appeal on ground (g) succeeds.

Other matters

30. From my observations I do not consider the proposed C3(b) use of the building established by the 2014 LDC was implemented. However the last lawful use was as a Class C3(a) dwellinghouse. Article 3(1) of the UCO includes the provision that where a building is used for a purpose of any class specified in the Schedule, the use of that building for any other purpose of the same class shall not be taken to involve development of the land. It follows that the building can lawfully be returned to Class C3(b) use.

31. I appreciate that local residents have concerns about the operation of Garmsway, particularly in terms of traffic generation and parking on nearby streets. However, despite the unlawful use, staff levels and resident numbers have not changed to a significant degree as compared with the lawful use within Use Class C3, and I do not consider these problems would have been exacerbated. While these problems may well exist, they need to be resolved by other means than through this enforcement action.

32. There was extensive discussion of whether removal of the self-contained element of the ground floor of the side extension would be properly achieved by the second part of Requirement 2 *'to ensure that the door between the main house and the ground floor of the extension is accessible at all times, and not locked'*. Such a requirement would be virtually impossible to monitor or enforce, and both main parties agreed that some physical alteration to the layout would be necessary in order to remove the potentiality for self-contained use of the flat.

33. Mr Kelly, the appellant, agreed that it would be reasonable for the notice to be varied to require implementation of the scheme for the non-material amendment to the 2014 planning permission for a two-storey extension. The Council concurred with this. I shall vary Requirement 2 of the enforcement notice accordingly, and do not consider significant prejudice would be caused to any party as a result.

Conclusions

34. For the reasons given above I consider that the appeal should not succeed, except to the limited extent on ground (g). I intend to uphold the enforcement notice with the variations noted above.

Stephen Brown

INSPECTOR

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APPEARANCES

FOR THE APPELLANT:

Philip Parker MRTPI	Chartered Town Planner.
Brendan Kelly	Appellant.
Dean Gregory BArch	Architectural Designer.

FOR THE LOCAL PLANNING AUTHORITY:

Paul Edwards BSc DipTP MRTPI	Chartered Town Planner Consultant Principal Planning Officer Selby District Council.

INTERESTED PERSONS:

Councillor John Watson	Whitley Parish Council.
Malcolm Walker	Local resident.

DOCUMENTS

1 Attendance list.
2 The Council's letters of notification of the appeal, dated 9 October 2017 and 7 February 2018.
3 Letters of representation.

PLANS

A Layout approved as part of 2014 LDC ref. 2014/0869/CPP.
B Layout approved under 2016 non-material amendment ref. 2016/1174/MAN.