The Planning Inspectorate

Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/C5690/X/22/3299351
9 Whitburn Road, LONDON, SE13 7UQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Nigel Kennedy, Kennedy Elliott Partnership against the decision of London Borough of Lewisham.
- The application ref DC/22/126014, dated 17 March 2022, was refused by notice dated 19 May 2022.
- 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 use of premised as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Preliminary Matter

2. A site visit was not necessary in this case as it would not aid the decision-making process, and the parties were informed of this before the appeal was determined.

Main Issue

3. The main issue is whether the Council's decision to refuse the LDC application was well-founded. It is agreed that the proposed use as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight constitutes a change from the current lawful use as a Use Class C3 dwellinghouse. I accept that, because the carers work on a rota basis and the property is not their primary residence, the proposed use would fall within Use Class C2 as a residential care home.

4. It is a question of fact and degree in each case as to whether a change from a use falling within one class to a use falling within a different class amounts to a material change of use. It is for the appellant to prove on the balance of probabilities that there is no material difference between the current and proposed uses, and therefore no development which would require planning permission

Reasons

5. The property comprises of a large kitchen/dining room, a lounge and 4 bedrooms. Three children or young people would live at the house, with two carers working on a rota basis sleeping overnight. Six carers would operate on

a rota of 48 hours on and 48 hours off, or 60 hours on and 60 hours off. A manager would be on site during weekdays from 9 am to 5pm. The manager's role would be as a third carer, together with administrative work relating to the home. Locks would be included on the bedroom doors and fire doors would be located at the kitchen.

6. The Council refused the application on the basis that the proposed development would result in a material change to the use and character of the property. The factors they identified which they say will change the character of the use are the increased comings and goings, the increase in level of disturbance and refuse arising from an increase in the number of people at the property, the use of a room as an office by someone who does not live at the property and the provision of locks on the bedroom doors.

7. In particular the Council disputes the levels of comings and goings of the previous and proposed use provided by the appellant. The Council say that the increase in total movements including the carers arriving and departing on a shift basis, the manager coming to the site during the working week, specialist care counselling and teaching required onsite and parental visits are highly likely to lead to a material increase in comings and goings which will have a cumulative material impact on the character of the property.

8. The appellant argues that the property would be operated in a way that is very similar to a typical family home. Up to three children would live at the house, with two carers working on a rota basis sleeping overnight. Other than changeover times, there would be no more than three carers on the premises at any one time. There would be one changeover of the overnight care staff per day, usually 8am each morning, lasting for around ten minutes. A manager, also a carer, would usually visit the site at some point during the working day.

9. Any home schooling would take place online and there would not be specialist staff visiting the premises, as the carers will provide for all of the residents' needs, and parental visits will take place away from the property. Social Services and Ofsted will need to visit the property but this is only several times each year. The Council have not provided conclusive evidence as to why or whether specialist or clinical staff will need to visit (to contradict the appellant's case), and indeed most households are likely to have a variety of visitors from time to time, if not frequently.

10. The next door property (7 Whitburn Road) was granted an LDC in 2019 for a C3 use with a carer living in the property as his main residence. There is disagreement in the information before me as to how this property is now being used but this is not directly relevant to the appeal in this case.

11. Taking the Council's case at its highest, there could be up to 7 people at the property during a week day (if all of the children were being home-schooled) which is not an unexpectedly large number of people to be found in a 4 bedroomed family house. Whilst there would be one staff changeover a day this is not in itself enough to materially change the character of the property. The use of the office by the manager to deal with matters associated with the running of the property is also not materially different in terms of impact on the character of the house to the use of a room in a C3 dwellinghouse as a home office. Locks are not typically found in a C3 dwellinghouse but this will

not alter the external appearance of the property, or change the character of the property in the locality in a way which is material.

12. Whilst there will be some additional comings and goings associated with the use as a residential care home, there is no evidence before me to dispute the appellant's case that the use will not give rise to a greater level of disturbance than could be generated by the lawful use as a C3 dwellinghouse. The additional comings and goings identified by the appellant and Council are at a sufficiently low level so as to remain within the parameters of what could be usually expected of a family home and not therefore materially different so as to change the character of the property. Similarly the number of people who will be typically present at the property, and therefore the associated waste generated, is not significantly higher than could be expected with its current lawful use.

13. I have considered the previous appeal decisions provided to me by the parties but as each case turns on its own facts these are of limited assistance in assessing whether there would be a material change of use here. The appellant has provided sufficient information to show that on balance there would not be a significant difference in the character of activities at the appeal property from what has gone on previously.

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Zoë Franks

INSPECTOR

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 17 March 2022 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:

There would not be a material change of use.

Signed

Zoë Franks

Inspector

Date: [27 January 2023]

Reference: APP/C5690/X/22/3299351

First Schedule

Use of premised as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight.

Second Schedule

Land at 9 Whitburn Road, LONDON, SE13 7UQ

IMPORTANT NOTES − SEE OVER

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 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 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 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.

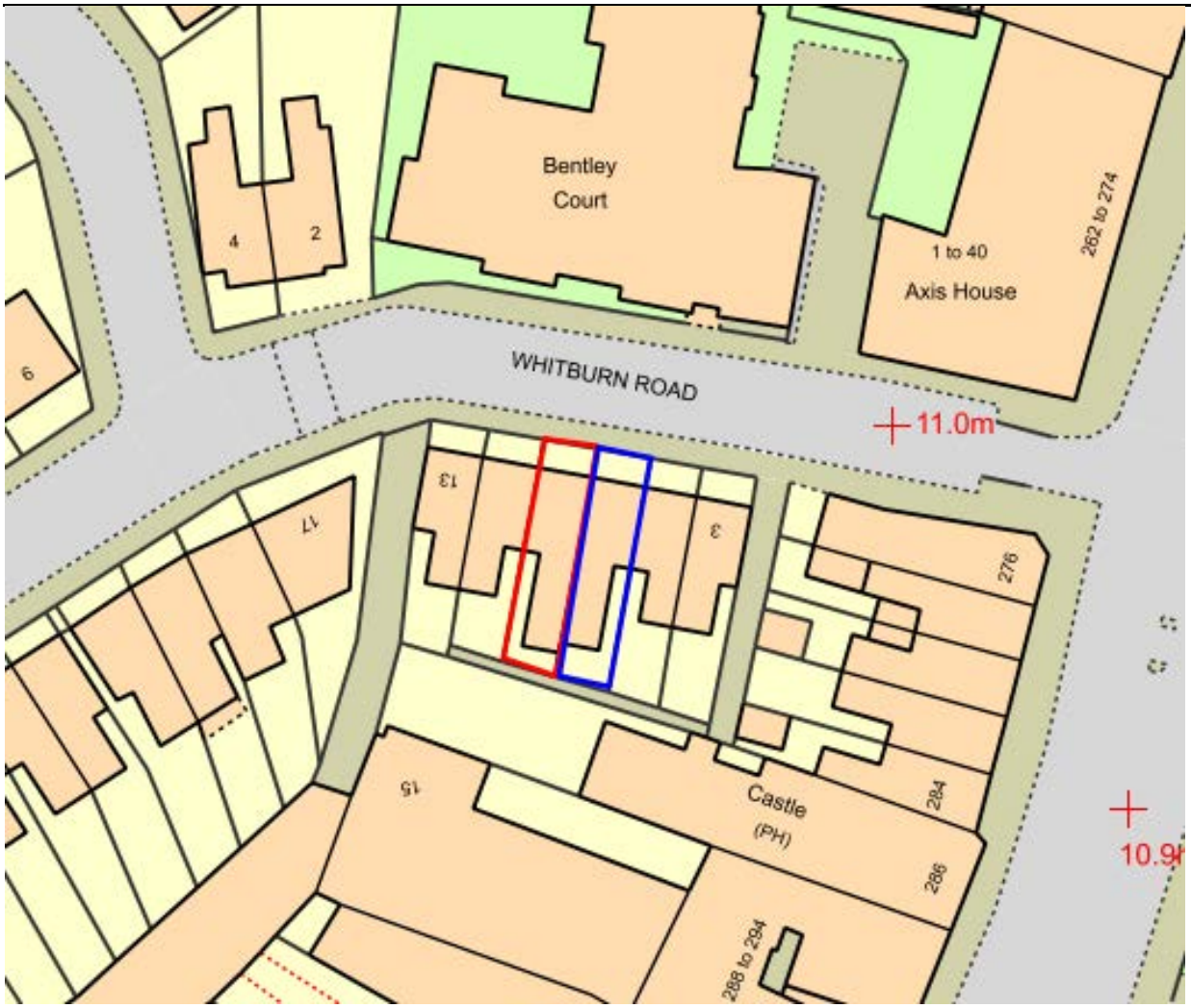
The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [27 January 2023]

by Zoë Franks Solicitor

Land at: 9 Whitburn Road, LONDON, SE13 7UQ

Reference: APP/C5690/X/22/3299351

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