Appeal Decision

by John Parnell

A person appointed by the Secretary of State for Communities and Local Government

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Date: 11 JUL 2006

Appeal ref: APP/Q5300/X/06/2006017
Land at 11 Osborne Road, Enfield EN3 5RN

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is brought by Sanjeev Soobdhan against the London Borough of Enfield Council's refusal to grant a lawful development certificate (LDC).
- The Council's reference is LDC/05/0243
- The application was made under section 192(1)(a) of the 1990 Act, as amended.
- The application was registered on 17 June 2005.
- The proposed development for which a LDC is sought is the use of existing premises as a residential care home for a maximum of 4 individuals recovering from mental ill health and living together in a single household with a low level of care.

Summary of decision: The appeal is allowed and a Certificate of Lawfulness describing the proposed development which I consider to be lawful is attached to this decision.

Procedural matters

09/008177 AUG 2009 - SMD

1. According to the application form and accompanying letter of 15 June 2005 the LDC was sought for a maximum of four residents sharing a dwelling as a family home with some support and care. The Council's application refusal dated 11 August 2005 described the proposal as "use of existing premises as a residential care home for 3 individuals recovering from mental health" *(sic)*. The appeal was made for the use of the dwelling home as a residential care home for 4 persons recovering from mental ill health and living together as a single household with a low level of care. The Council's case officer in his recommendation for refusal described the proposal variously as "use of premises as residential care home for 3 individuals", "use of the premises as a residential care home for up to four people with learning difficulties due to autism" and "use of the premises as a residential care home for up to four people". Although the Council's notification letter to neighbouring residents also referred to "three people" most third parties saw, from the grounds of appeal that accompanied the notification letter, that the appellant was seeking an LDC for 4 individuals and responded on that basis. I consider that the use for which the LDC is sought is properly described above as: "the use of existing premises as a residential care home for a maximum of 4 individuals recovering from mental ill health and living together in a single household with a low level of care."

2. I have considered the written representations made in support of the appeal, together with those of the Council. Since all the representations have been made available to both parties, I do not intend to summarise them in detail. In LDC applications and appeals, the onus is entirely on the appellant to show that the

carrying-out of the proposal in question would have been lawful at the date of the application.

3. I have taken into account the letters from the next door neighbour, from local residents, the Osborne Road Association and Joan Ryan MP. However, while I can appreciate that these letters strongly oppose the application, the representations made are only relevant to the extent that they provide factual evidence about the property in question and address legal issues pertaining to the determination as to whether it would be lawful to use the appeal site for the use described in the application; the planning merits of the proposed use would not be matters that would determine such lawfulness and are not before me for consideration.

The background and main issue

4. The appeal site lies in a predominantly residential area with a sports ground, park, primary school and Brimsdown Railway Station all within the immediate neighbourhood. The appeal property is described by the Council as a two-storey semi-detached dwelling house. However, from the drawings that accompanied the application and appeal it is clear that a third storey has been created in the loft area. There is no dispute that the appeal property was last used as a single family dwelling house.

5. It is proposed to use the premises as a group home for the accommodation of four adults recovering from mental illness. The property will be registered with the CSCI[1] under the category 'Mental Illness excluding Dementia for people aged 18 to 65 years old.'

6. The intention would evidently be that residents would live a communal life as one household, enabling them to live as normal lives as possible in touch with the wider community. It would not be the case that any of the residents would need nursing or medical care or attention; they would only need a measure of support, as provided by a maximum of three staff on duty in a shift system, providing 24 hour cover with one of the three staff staying in the premises at any one time, and forming part of the household. The members of staff employed on the shift system would each have their own homes. The residents would share communal facilities such as the kitchen, living room, dining area, toilet and bathroom, and have individual bedrooms. This indicates that a substantial measure of interdependence would be a necessary prerequisite of day-to-day living, not just between the residents themselves, but also between the residents and staff. From the appellant's description of the intended use, the on-duty member of staff would share the communal facilities as part of a single household and participate in domestic and leisure activities with the residents.

7. Some uses of land are so similar, in planning land-use terms, that to require planning permission to change between them might be considered as overly burdensome. The 1990 Act[2] excludes from the definition of development any change of use where both the existing and proposed uses fall within the same class of use as defined by the Use Classes Order (UCO)[3]. By section 57(1) of the 1990 Act (as amended), planning permission is required for the carrying out of any development of land and by section 336(1) "land" includes a building. By section 55(1), "development" includes the making of any change in the use of any

[1] The Commission for Social Care Inspection which registers, inspects and reports on social care services in England.
[2] The Town and Country Planning Act 1990 as amended
[3] The Town and Country Planning (Use Classes) Order 1987 (as amended)

buildings. But by section 55(2)(f) in the case of buildings used for a purpose of any class specified by the Secretary of State, the use of any buildings for any other purpose within the same class shall not be taken for the purposes of the 1990 Act (as amended) as amounting to "development".

8. Class C3 of the Schedule to the UCO concerns dwellinghouses and embraces:-

> "Use as a dwelling house (whether or not as a sole or main residence) –
>
> (a) by a single person or by people living together as a single family, or
>
> (b) by not more than six residents living together as a single household (including a household where care is provided for residents)".

In addition, "care" is defined in Article 2 of the UCO as including:-

> "...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"

9. As noted above, it is the appellant's case that the intended residents would not need "care" in the terms of the definition contained in the UCO as related to a C2 Class Use. They would only need minimal support and supervision.

10. The Council argues that there would be a change of use from Class C3 "residential" as defined above to Class C2.

11. Class C2 of the Schedule to the UCO concerns residential institutions and embraces:-

> "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".

12. It is the Council's case that the indicated level of care (24 hours) for the intended residents would be more akin to a residential institution and the proposed use would therefore constitute a material change of use from Class C3 to Class C2 requiring formal planning permission.

Reasons

13. Relevant advice is found in paragraphs 63-73 of ODPM Circular 03/2005. The Circular explains that small group homes play a major role in the Government's community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community.

14. The Circular advises that the key issue in considering whether a proposal would constitute a change in land use from a dwelling house to a residential institution, as defined in the UCO, is whether or not the proposal would constitute a single household. The Circular also advises that Class C3 not only includes families, or people living together under arrangements for the provision of care, but also other groups of people, not necessarily related to each other, who chose to live together on a communal basis as a single household.

15. The Circular adds that in the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and therefore the use will fall into the residential institutions, regardless of the size of the home; any resident care staff should be included in the calculation of the number accommodated.

16. It is established in case law[4] that the limit in Class C3 to no more than six persons is an important consideration as, with no more than that number, it would be more likely that persons would be living as a single household than if there were significantly more than six; the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy would be likely to be and the more likely to be regarded as a single household.

17. The proposal is for a maximum of four residents and it is clear from the plans attached to the application that they are to have communal areas, namely: the lounge, kitchen/diner, bathrooms and toilet as well as individual bedrooms, totalling four as shown on the plans. For the proposal to be consistent with the concept of a single household I consider that the member of staff staying overnight would need to have use of the fourth bedroom. That would rule out more than three residents in addition to resident care staff operating a 24-hour shift. On this basis I conclude that 3 residents, each having individual bedrooms, with 1 on-duty member of staff occupying the fourth bedroom where staying overnight, would, as a matter of facts and degree, form part of a single household comprised in the proposed use of the site.

18. The Council consider the proposed provision of care over a period of 24 hours to be an indicator of the level of care provided. However, the proposal is for a low level of care, excluding nursing care and medical care and treatment; and it does not include care for children. Having regard to the definition of 'care' in the UCO, as outlined above, I conclude, on the balance of probabilities and as a matter of fact and degree, that overall the proposed use of the dwellinghouse falls within Class C3 of the Schedule to the UCO, consistent with the concept of a single household. I do not consider it necessary to draw any fine distinction between the description of the level of support or supervision that the appellant intends to employ and that which would be typical in the case of "care". That is because even if the proposed use, as a matter of fact and degree, would amount to the provision of "care" for residents, such a use is included in Class C3(b), as well as in Class C2.

18. For the reasons given above and having regards to all other matters raised, I conclude, on the evidence available to me, that the Council's refusal to grant a certificate of lawful use or development in this case was not well-founded and that the appeal should succeed, subject the limitation of residents to 3 in total.

Formal decision

19. For the reasons given above, in exercise of the power in section 195(2) of the 1990 Act, as amended, which has been transferred to me, I hereby allow the appeal and grant a lawful development certificate for the use of existing premises at 11 Osborne Road, Enfield EN3 7RN as a residential care home for 3 individuals recovering from mental ill health and living together in a single household with a low level of care provided by members of staff throughout the day and night on a shift basis. A certificate to this effect is attached to this letter.

[4] See Encyclopedia of Planning Law and Practice – 3B-979

Right of appeal against the decision

20. This decision is issued as the determination of the appeal before me. Particulars of the right of appeal against my decision to the High Court are enclosed for those concerned.

John Parnell

Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 15 June 2005 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

> the existing lawful use as a single family dwelling house and the proposed use for a residential care home for 3 individuals recovering from mental ill health and living together as a single household, with a low level of care provided throughout the day and night by a staff member on a shift basis, would both be uses that would fall within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) and, by virtue of the provisions of section 55(2)(f) of the Town and Country Planning Act 1990 (as amended), the proposed use would not amount to development within the meaning of section 55(1) of the same Act.

Signed: *John Parnell*

Date: 11 JUL 2006

Reference: APP/Q5300/X/06/2006017

First Schedule

Use of existing premises as a residential care home for 4 individuals recovering from mental ill health and living together in a single household with a low level of care within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Second Schedule

Land at 11 Osborne Road, Enfield, EN3 7RN.

IMPORTANT NOTES – SEE OVER

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

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Plan

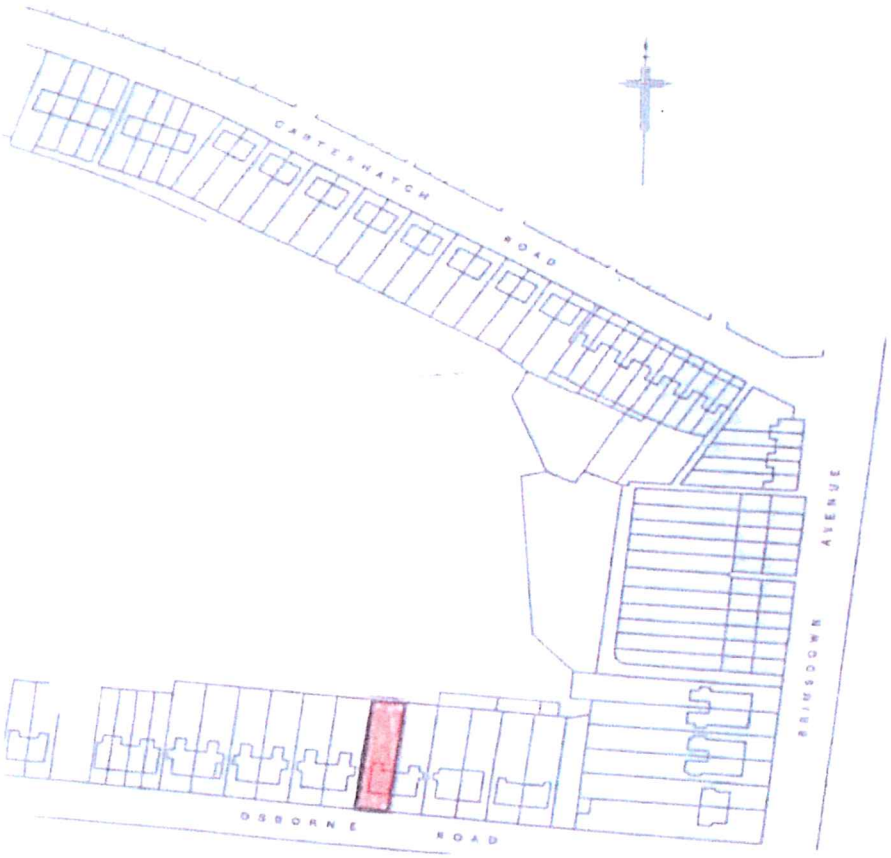
This is the plan referred to in the Lawful Development Certificate dated:

11 JUL 2006

John Parnell

Land at: **11 Osborne Road Enfield EN3 5 RN**

Reference: APP/Q5300/X/06/2006017



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