

Officer's Report

Application Number	HGY/2023/1027
Type	Lawful development: Proposed use
Location	30 Nursery Street, Tottenham, London, N17 8AP
Proposal	Certificate of Lawfulness for the proposed change of use from C3 to C3(b) (use as a dwelling house by not more than six residents living together as a single household, (including a household where care is provided for residents)).
Case Officer	Laina Levassor
Valid Date	13/04/2023
Applicant	Mr Aitch Henry-Doswell
Agent	Humphreys and Sons

RECOMMENDATION

Permitted Development

RELEVANT LEGISLATION

The application has been made under section 192 of the Town and Country Planning Act 1990 and relevant amendments. This not a planning application but instead the applicant seeks confirmation that the proposed development is lawful.

The Town and Country Planning (Use Classes) (Amendment) Order 2005 (amended further in 2010) distinguishes a range of uses of buildings and specifically permits changes of use from one use to another within individual classes.

CONSIDERATIONS RELEVANT TO THE USE OF A PROPERTY AS C3(B)

Use Class C3 Dwellinghouses, is formed of three parts - C3(b) reading as:
Use as a dwelling house (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.

Several interpretations of Use Class C3(b) have been heard at appeal since the division of the C3 Use Class however, it is generally held that whether a change of use is material or not, is a matter of fact and degree for the assessing planning authority to determine, having considered the individual facts of a case.

On this basis, the assertion of the Council is that in order to be considered as falling within the definition of Use Class C3(b), any such proposal should meet the following criteria:

- i. The carrying out of operations in order to facilitate C3(b) use, must not amount to a material change of use;
- ii. The operation of the premises should offer and afford to occupiers, the functionality of the councils definition of a 'single household';
- iii. The proposed use would include care provision (for not more than six residents), within this criterion.

In addition to the above, where any such proposed use as C3(b) is to involve and/or include the care of children, the Council assert findings from 'North Devon District Council v The First Secretary of State and Southern Childcare QBD 30.1.03 Collins J [2003] JPL 1191' to establish and assess:

i. whether the care provided is by a permanent occupant of the dwelling whose role would be considered adjacent to an adult functioning within a single household.

or

ii. whether care is provided on a shift basis as opposed to 'full-time' where the operations are aligned with C2 use, as opposed to C3b as the function differs to that of a single household.

Whether use as C3(b) dwelling would constitute or amount to a material change of use:

The change of use of land or buildings will require planning permission where it is considered the change would constitute a material change of use. There is no statutory definition of a 'material change of use' however, considerations are given to the significance of proposed changes and the resulting impact on the use of the building. Such considerations as to whether a material change of use is proposed, is determined on the individual merits of a case.

Consideration is given as to whether in order to be used as C3(b) works associated with such use are required which would externally alter the appearance of the building and whether the operation of the premises would differ to that of a dwelling, by means of increased coming and goings and disturbance not typically associated with a residential dwelling, as well as meeting the criteria for care provision for not more than 6 residents.

Floorplans provided show that the building would not change the form of its current layout – offering access to living spaces typical to that of a normal family home (living room, dining room, kitchen). No external changes are proposed which would materially affect or alter the appearance of the building as existing.

The use is described as offering care provision for 2 children, with a 'live-in' member of staff as opposed to staff working on a shift basis – it would therefore be expected that this would not necessarily give rise to disturbance as detailed above which could be considered different to a dwelling.

Taking this into consideration, as described the use is not considered to amount to a material change of use.

Whether the operation of the premises as C3(b) offers the functionality of a 'single household':

The key element in the use of a dwelling house for 'non-family' purposes is the concept of a single household. It is considered that a premises can properly be regarded as being used a single dwelling house where they are used as a dwelling by a single person, a family or more than one person living together like a family, as a single household.

It is asserted within 'North Devon District Council v The First Secretary of State and Southern Childcare QBD 30.1.03 Collins J [2003] JPL 1191' that children cannot be considered as having the means to function alone as a single household without the presence of a permanent adult resident. Where care provisions are detailed as being carried out on a shift basis, even where there is an adult present at all times – the premises cannot be considered a permanent residence for any adult, it is therefore considered that children alone cannot form a 'single household'.

In this instance, a 'live-in' adult (carer) is to reside in the property as a permanent resident, forming the role of a guardian to child occupants. It is considered that this form of living situation represents family household attributes in that a family home is to be occupied by an adult, lending care to two children.

Whether the provision of residential care and requirement of residential care can be considered within the criteria for C3(b):

In assessing whether the provision of residential care would meet this criteria, consideration is given to the operational possibilities, necessary function of care provisions and whether the level of care required differs to that of Use Class C2.

It is held within Appeal Decision APP/C4235/X/10/2132351 that non-resident carers, could not constitute a household for the purpose of Class C3(b) and the absence of a full-time live-in carer would fail to meet the criteria of a single household, therefore falling within Use Class C2.

It is held within Appeal Decision APP/C4235/X/20/3244329 (see summary) that if the property in question is used as a main residence by an adult occupant, it is understood that this occupant would not be expected to provide full-time care to resident children for means of practicality and respite. Where a permanent adult resident would reside in the property full-time, the addition of a shift-worker providing care in this resident's place, is not considered to amount to a use outside of C3(b).

'North Devon District Council v The First Secretary of State and Southern Childcare QBD 30.1.03 Collins J [2003] JPL 1191' states 'what is required is indeed residential care with a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household'. Therefore, where this adult resident may not be working on shift, they would still be considered as a guardian responsible for the running of a household.

It is considered that where it is deemed suitable for a single live-in carer, the provision of care is likely to be low-level and not amounting to the level of care provision typical of a C2 Residential Institution. In addition to this, where the proposal would not amount to a material change of use and meets the criteria for function as a single family dwelling, the use can be considered as C3(b).

RELEVANT APPEAL DECISIONS / CASE LAW

Appeal Decisions

APP/C4235/X/10/2132351

APP/C4235/X/20/3244329

Case Law

North Devon District Council v The First Secretary of State and Southern Childcare QBD 30.1.03 Collins J [2003] JPL 1191'

CONCLUSION

The use as described is considered to fit the criteria of C3(b) therefore, in accordance with The Town and Country Planning (Use Classes) (Amendment) Order 2005 (amended further in 2010), proposed changes fall within the same use class and can be undertaken as permitted development.