

Officer's Report

Application Number	HGY/2023/0604
Type	Lawful development: Proposed use
Location	9 Bruce Castle Road, Tottenham, London, N17 8NL
Proposal	Certificate of lawfulness for a change of use from C3 to use Class C3(c)
Case Officer	Sarah Madondo
Valid Date	24/04/2023
Applicant	Mrs Jackie Salmon
Agent	

RECOMMENDATION

Permitted Development

DETAILS OF PROPOSAL

This is an application for a certificate of lawfulness for proposed change of use from a dwelling house to supported living accommodation for up to 6 people C3(B).

RELEVANT PLANNING 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. As such, the impact of the proposed development of the neighbour's amenities or the character of the area cannot be taken into consideration for this submission.

ANALYSIS/ASSESSMENT OF THE APPLICATION

As per s.192 (1) of the Town and Country Planning Act 1990 (as amended), if any person wishes to ascertain whether; a. any proposed use of buildings or other land; or

b. any operations proposed to be carried out in, on, over or under land, Would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question. It is reminded that, as per s.192(2) of the Town and Country Planning Act 1990 (as amended), the onus is firmly upon the Applicant to demonstrate to the satisfaction of the Council that the use or operations described in the application would be lawful if instituted or begun at the time of the application. The courts have held that the relevant test of the evidence on such matters is on the 'balance of probability'.

The application site is a two-storey end of terrace single family dwellinghouse situated on the southern side of Daleview Road, close to the junction with Eastbourne Road.

Use Class

S.192 of the Town and Country Planning Act 1990 (as amended) provides: (1) If any person wishes to ascertain whether--

(a) any proposed use of buildings or other land ... would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(b) If on an application under this section the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.'

A proposed use will be lawful if, among other things, it does not amount to 'development' within the meaning of section 55 of the 1990 Act, since in those circumstances permission will not be required it by virtue of section 57 of the Act.

Section 55(2) of the Act provides: 'The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land ...

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class;'

The relevant order is the Town and Country Planning (Use Classes) Order 1987 (as amended).

Article 3(1) of the Use Class Order provides that;

Subject to the provisions of this Order, 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 other land for any other purpose of the same class shall not be taken to involve development of the land. The schedule goes on to set out a number of use classes. Specifically relevant to this case, those outlined under Class C3 being;

Use as a dwellinghouse (whether or not as a sole or main residence) —

(a) by a single person or by people living together as a family, or;

(b) by not more than 6 residents living together as a single household (including a household where care is provided for residents).

The application site is currently a single dwellinghouse as such it is not disputed that the current use of the site falls within Class C3(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended.) Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) is defined as the use of a dwellinghouse (whether or not as a sole or main residence)- by not more than 6 residents living together as a single household (including a household where care is provided for residents).

A Certificate of Lawfulness is sought for a change of use from residential use Class C3 (a) to Class C3 (b) occupying 3 residents and the permanent occupants of the dwelling). The planning statement notes that 'The use of the home for 3 residents living together as a single household where care is provided for the children. The children are looked after by a permanent occupants of the dwelling. This gives a total no more than 6 residents (children) on site (including permanent occupants of dwelling). Existing use as a single - family dwelling house and the proposed use for 3 residents living together as a single household, with care provided throughout the day and night by a permanent occupants of the dwelling. The permanent occupants of the dwelling would also share the communal facilities as part of the single household and would participate in domestic and leisure activities with the residents'. The applicant has confirmed that the 1 carer will sleep in the fourth room and the three children will be in the remaining 3 rooms. As such, the property will have no more than 3 residents living together as a single household which includes 1 member of staff who will be present on site at all times providing 24 hour care to the residents. Therefore, the proposed use is considered to fall within Class C3(b) of the Town and Country Planning (Use

Classes) Order 1987 (as amended) as the proposal would not result in more than 6 residents living together as a single household (including a household where care is provided for residents. Hence, it is evident that the proposed change of use this application seeks permission for would be permitted by a use class order as such it would be lawful at this site.

Material Change of Use

s.55 (1) of the Town and Country Planning Act 1990 (as amended) provides; Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. In establishing if proposed uses and operations will constitute a material change of use of a site, the Council considers the facts on a case by case basis having regard to the former and succeeding uses. The Council maintain that as per s.192(2) of the Town and Country Planning Act 1990 (as amended) that the onus is firmly upon the applicant to demonstrate to the satisfaction of the Council that the use or operations described in the application would be lawful if instituted or begun at the time of the application.

This application seeks permission for the change of use of a property from C3(a) to C3(b) to provide care for 3 residents and one permanent member of staff. The applicant states in the Planning Statement that 'existing use as a single - family dwelling house and the proposed use for 3 residents living together as a single household, with care provided throughout the day and night by a permanent occupants of the dwelling. The permanent occupants of the dwelling would also share the communal facilities as part of the single household and would participate in domestic and leisure activities with the residents'.

As such it is evident that residents will be living as a single household whereby care will be provided and residents will live together. This is also evidenced within the proposed drawings where it is clear there are 3 bedrooms for residents and office in the ground floor for care worker. No amendments are proposed for the internal or external appearance of the building.

Officers therefore do not consider the proposal to result in more comings and goings or general disturbances than a single dwellinghouse as given the level of independence residents will have and the presence of continuous on site care residents it is likely residents will meet friends offsite and visitors to the property will be kept to a minimum. Overall, officers conclude that the use of the site as a C3(b) dwelling will have an acceptable impact on neighbouring amenity than the use of the site as a C3(a) dwelling, as such, it does not represent a material change of use and therefore would not represent 'development' as defined by s.55(1) of the Town and Country Planning Act 1990 (as amended).

SUMMARY AND CONCLUSION

It has been demonstrated to the satisfaction of the Local Planning Authority that the use, operations or other matter described in the application would be lawful within the meaning of S192 of the Town and Country Planning Act 1990 (as amended) if instituted or begun at the time of the application.

RECOMMENDATION

Grant Certificate

