

Committee Date	22.02.2024	
Address	243 Court Road Orpington BR6 9BY	
Application Number	22/04947/ELUD	Officer - Robin Evans
Ward	Orpington	
Proposal	Use of C3(a) dwellinghouse as C3(b) dwellinghouse. (RETROSPECTIVE). LAWFUL DEVELOPMENT CERTIFICATE (EXISTING)	
Applicant	Agent	
Mrs Norrma Goldsmith	Mr Clyde Bacchus	
380 Kingsland Road London N21 3NA	65 Ashley Road Kingswood Lodge Flat 3 Walton On Thames Surrey KT12 1HQ	
Reason for referral to committee	Call-In	Councillor call in Yes Cllr Tunncliffe – local residents concerns.

RECOMMENDATION	Existing Use/Development is Lawful
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KEY DESIGNATIONS Biggin Hill Safeguarding Area London City Airport Safeguarding Smoke Control SCA 31
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Land use Details		
	Use Class or Use description	Floor space (GIA SQM)
Existing	C3(a) dwellinghouse	125
Proposed	C3(b) dwellinghouse	125

Representation summary	Neighbour letters sent 11.05.2023 Site notices displayed 16.05.2023
Total number of responses	12
Number in support	0
Number of objections	12

UPDATE 22.02.2024

This Lawful Development Certificate application was returned to and considered by the Plans Sub Committee No. 3 at the meeting held on 21 December 2023.

Members resolved to defer the decision of this Lawful Development Certificate application to seek the submission of additional information including:

- dates of site visits/inspection of property by any Council Staff (Planning, Enforcement, Adult Social Care Teams) and reason that the enforcement case was closed,
- Tenancy Agreements for the period 02.03.2021 – 30.12.2022,
- Contracts with staff and the health authority (if applicable) for the period 02.03.2021 – 30.12.2022,
- Information from Adult Social Care Team about the use.

The Planning Enforcement Department received an allegation in September 2021 of the dwelling being used as a HMO and habitable living accommodation in an outbuilding.

A Planning Investigations Officer visited the site on 01.11.2021 although could not gain access to the property at that time.

A Planning Investigations Officer visited the site on 07.11.2023 and viewed the dwellinghouse and the outbuilding. The outbuilding is in use as a day-room for activities such as hobbies or television. It is not in use as a bedroom to accommodate a resident, nor as a separate independent unit of living accommodation. A planning application 22/03390/FULL2 and a LDC application 22/04947/ELUD had since been submitted and are pending determination. As such, the Planning Enforcement case enquiry was closed.

The Applicant has provided details of staff and tenants of the property and details of CCG Commissioning and contract with London Borough of Bromley Council which has been presented to the Members of the Plans Sub Committee No. 3 as a separate, confidential, document as it contains personal and sensitive information. In summary, the details include:

- Contracts of 12 employees with the Applicant's company from September 2016 to September 2022,
- Tenancy Agreements with 3 tenants of 243 Court Road from March 2022 to August 2023,
- Commissioning Contracts from the NHS CCG with the Applicant's company for April 2021-2022 and April 2022-2023,
- London Borough of Bromley template contract with the Applicant's company

The original report is repeated below and updated where necessary.

UPDATE 21.12.2023

This Lawful Development Certificate application was considered by Plans Sub Committee No. 3 at the meeting held on 26 October 2023.

Members resolved to defer the decision of this Lawful Development Certificate application to seek the submission of additional information of the existing use including the extent and nature of care provided and the completion of a Members Site Visit. The Planning Committee also queried the use of an outbuilding and the extent of planning investigations that had been carried out.

The Members Site Visit was carried out on 9 December 2023.

A Planning Investigations Officer has recently visited the site to examine the outbuilding and confirms that it is in use as a day-room for activities such as hobbies or television. It is not in use as a bedroom to accommodate a resident, nor as a separate independent unit of living accommodation.

The original report is repeated below, updated where necessary.

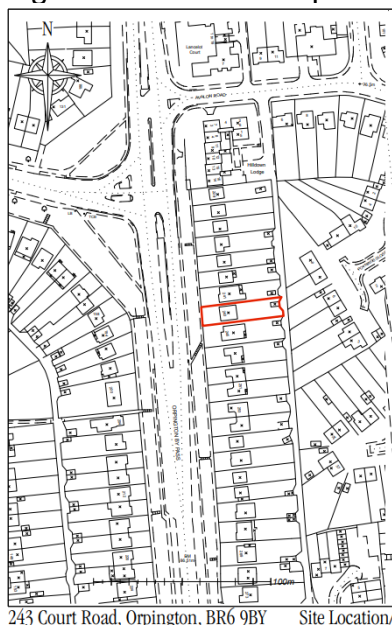
1. SUMMARY OF KEY REASONS FOR RECOMMENDATION

- The use of the property from C3(a) to C3(b) is lawful.

2. LOCATION

2.1 The application site is No. 243 Court Road, Orpington, a detached single storey bungalow located on the eastern side of the highway close to the junction with Spur Road. The dwelling has a single storey flat roofed rear extension. There are some outbuildings in the rear of the property although they are not included in this application and are not included in the assessment or decision.

2.1.2 Figure 1 Site location plan.



3. PROPOSAL

3.1 The proposal seeks formal confirmation from the Council that the use of the C3(a) dwellinghouse use by a single person or a family as C3(b) dwellinghouse is lawful.

3.2 For completeness and the avoidance of doubt:

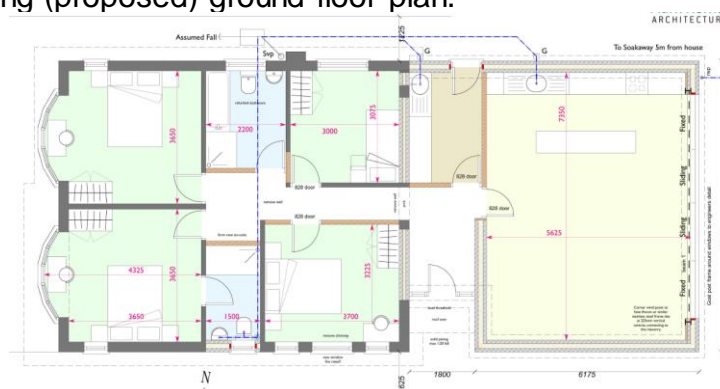
- C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child
- C3(b) covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.

3.3 The Applicant advises that Goldsmith Personnel Ltd is the Care and Support Provider and is registered with the Care Quality Commission holding individual contracts with the London Borough of Bromley and other Local Authorities. However, the Applicant advises that the service that is provided at 243 Court Road is not regulated as it does not involve Personal Care.

3.4 In relation to the nature of the care being provided the Applicant advises:

- staff arrangements: The staff are on duty 24/7 on a rota system with 2 members of care staff on-site at all times for the 3 residents, including some ad hoc staff that join for 1:1 intensive support as required by the client in their support plan. The staff work in partnership with the Community Multi-Disciplinary Team; including Social Workers, Community Psychiatric Nurses, Registered Consultants, GPs and other voluntary organisations like Mind, and local Drugs and Alcohol teams, and can liaise with the Community Mental Health Team as necessary according to the residents' needs.
- personal care: the site/staff do not provide personal care,
- medication: residents take their own medication under staff supervision,
- training and rehabilitation: having left institutional care some residents may need life training and rehabilitation to lead an independent life and this is provided by staff on a 1:1 basis.

3.5 Figure 2. Existing (proposed) ground floor plan.



4. RELEVANT PLANNING HISTORY

18/03307/HHPA - Single storey rear extension, extending beyond the rear wall of the house as existing by 7.95m (beyond the original rear wall by 7.95m), for which the maximum height would be 2.7m (maximum height of proposed and previous extensions 2.7m), and for which the height of the eaves would be 2.4m (maximum eaves height of proposed and previous extensions 2.4m) - (42 Day Notification for Householder Permitted Development Prior Approval) did not require prior approval.

18/04338/PLUD - Single storey rear extension for which prior approval was not required under ref. 18/03307/HHPA LAWFUL DEVELOPMENT CERTIFICATE (PROPOSED) was withdrawn and did not receive a formal decision.

18/05128/PLUD - Single storey rear extension for which prior approval was not required under ref. 18/03307/HHPA LAWFUL DEVELOPMENT CERTIFICATE (PROPOSED) was withdrawn and did not receive a formal decision.

19/00428/FULL6 - Single storey rear extension following demolition of conservatory and elevational alterations (RETROSPECTIVE) was approved on 19.03.2019.

21/00785/CHANGE - Alleged use of shed for accommodation and HMO in the house and the case was closed on 31.10.2022.

22/03390/FULL2 - Change of use from C3 dwellinghouse, to C3(b) dwellinghouse with supported care for up to three adults with on-site live-in staff, external access ramp to rear garden. (RETROSPECTIVE) is pending a decision.

5. CONSULTATION SUMMARY

A) Statutory

N/A

B) Local Groups

N/A

C) Adjoining Occupiers

Nearby owners/occupiers were notified of the application and representations were received, which can be summarised as follows:

- o unclear status of planning application 22/03390/FULL2 which is pending a decision,
- o the owner is an absentee landlord seeking to run a care home business from the dwellinghouse in breach of title deed/covenants on the property,
- o the application is made in the company name and not in the Applicant's name, and the property is a business/trade asset and is not privately owned,
- o business use is contrary to the Title Deeds,

- o the dwelling has been significantly extended, it is not clear whether the extensions were authorised, construction was taking place at the site from March 2020 for approximately 18-20 months,
- o the application details are incorrect; the description of existing Use/development should include the existing operational development as well as the Use,
- o the use of the outbuilding has not been properly investigated and should be included in the LDC application,
- o development is already taking place, application is submitted retrospectively with disregard for the proper planning system and benefitting from rent obtained in the meantime,
- o overdevelopment of a cramped space/site; impractical and unsuitable for multiple occupants,
- o C3(b) would potentially allow for up to 6 residents, doubling the current occupancy; exacerbating all the issues raised,
- o 2 existing parking spaces would be removed, and it is not clear what the land would be used for,
- o noise disturbance from the property including loud voices and music,
- o antisocial and violent behaviour from occupants of the property, exacerbated by their possible mental health issues, harmful to neighbouring residents' amenity and safety and with numerous recorded Police visits,
- o duty of care to neighbouring residents and to the occupants/patients of the property,
- o possible occupation of the in the garage building,
- o unsuitable access for the residents/occupants,
- o poor access for emergency services is a significant risk to the health and safety of the occupants and staff attending the property,
- o Applicant has poor overall knowledge and understanding of the layout, management and operation of the property,
- o poor supervision and welfare, with potential safeguarding issues, for occupants of the building,
- o insufficient household waste bins/collection leading to rodent/pest issues.
- o contrary to the Town and Country Planning Act 1990, the Health and Safety at Work Act 1974, and Article 8 of the Human Rights Act 1998,
- o the Council's decision may be challenged by local residents,
- o comments from planning application 22/03390/FULL2 should be transferred to the LDC application,
- o the antisocial behaviour/crime is affecting local house sales,
- o Applicant is required to provide more information to the Planning Committee on the nature of the household occupancy, staffing levels/arrangements, the care provided and the overall supervision and management of the property,
- o A site visit for Members is required,

Please note the above is a summary of objections received and full text is available on the Council's website.

6. POLICY CONTEXT AND GUIDANCE

The Town and Country Planning (Use Classes) Order 1987 (as amended).

Town and Country Planning Act (1990)

National Planning Practice Guidance (NPPG)

7. ASSESSMENT

7.1 Considerations

7.1.1 The current application seeks formal confirmation that the use of the C3(a) dwellinghouse as a C3(b) dwellinghouse is lawful and would not have required planning permission at the time the application was made.

7.1.2 The key consideration is whether the use of the C3(a) dwellinghouse as a C3(b) dwellinghouse comprises a material change of use of the land and therefore whether or not it comprises development as defined in Section 55 of the Town and Country Planning Act 1990 (as amended).

7.1.3 In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

7.2 Information and Evidence

7.2.1 Applicant's information/evidence

7.2.1.1 Application form and statements describing the use and operation of the building.

7.2.1.2 Previously existing and existing (proposed) floor plan drawings.

7.2.2 Council's information/evidence

7.2.2.1 Planning and Planning Enforcement records/history: investigating an alleged use of the dwellinghouse as a HMO and a shed for residential accommodation (21/00785/CHANGE), and subsequently planning application submitted seeking to regularise the change of Use from a C3(a) dwellinghouse to a C3(b) dwellinghouse with supported care for up to three adults with on-site live-in staff, external access ramp to rear garden (22/03390/FULL2),

7.2.3 Other information/evidence

7.2.3.1 The Town and Country Planning (Use Classes) Order 1987 (as amended) which states:

C3 Dwellinghouses - This class is formed of three parts

- o C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child,
- o C3(b) covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems,
- o C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.

7.3 Procedural matters

- 7.3.1 Notwithstanding third party comments an applicant is entitled to submit an application. The planning regulations allow for an application to be submitted retrospectively, such as in this case to confirm that an existing use or development is lawful, that it has deemed consent and does not require express planning consent. As such a retrospectively made application is assessed on its own merits and in relation to the relevant legislation and without prejudice to the fact that it has been submitted retrospectively.
- 7.3.2 The Council is mindful of the Government guidance that if it has no evidence itself, nor from any others, to contradict or otherwise make the Applicant's version of events less than probable, there would be no good reason to refuse the application.
- 7.3.3 Notwithstanding comments received, this is an application for a Lawful Development Certificate, in this case as the Applicant considers that it complies with the Use Classes Order, and as such the material planning considerations that might be relevant in assessing a planning application may not apply. As such the assessment is whether or not the stated Use, as described in the application, was lawful according to the terms of the Use Classes Order, on the date that the LDC application was made. The assessment is not whether the proposal would be suitable in this property or in this location, in planning terms, as may be relevant considerations in assessing a planning application. Planning history may comprise a material planning consideration however notwithstanding this, each case is procedurally individual/separate and is assessed on its own merits and comments received on one application cannot be transferred to another and they should be re-stated.
- 7.3.4 Notwithstanding comments received matters relating to any restrictions on title deeds/covenants are not a planning matter and they are a private/legal/civil matter to be addressed by the individual parties involved.
- 7.3.5 Notwithstanding comments received the Council's Waste Services Department notes the nature of the proposal and in the event that the property remains as a C3 dwellinghouse then the Council's refuse storage and collection arrangements would

not differ or change. Nonetheless, the Waste Services Department notes that if there were to be an accumulation of household waste; leading to waste escaping from control or it is being allowed to become litter and is causing a detriment to the environment, the Council may examine this through engagement with the occupiers and/or any other necessary mitigation through the Environmental Protection Act 1990.

- 7.3.6 Notwithstanding comments received, the Council has examined the use of the outbuilding. It is in use as a day-room for activities such as hobbies or television. It is not in use as a bedroom to accommodate a resident, nor as a separate independent unit of living accommodation. As such there is concluded to be no breach of planning control, and as it remains associated with the use of the dwelling it does not need to be included in the LDC application.

7.4 The Meaning of Development

- 7.4.1 According to section 55(1) of the Town and Country Planning Act 1990 "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".

7.5 Analysis

- 7.5.1 The provisions of the Use Classes Order are noted. With specific reference to Class C3 the relevant subcategories are:
- Class C3(a) a dwellinghouse for use by a single person or a family, and
 - Class C3(b) a dwellinghouse for use by up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
- 7.5.2 It is noted that the Use Classes Order allows for a change to take place within a Class e.g. from one sub-category to another sub-category within that same Class.
- 7.5.3 As mentioned in this report, the Council's Planning Enforcement Enquiry Team recorded and examined an alleged change of Use within the building and an outbuilding in September 2021 (21/00785/CHANGE). A planning application: seeking to regularise a retrospective change of Use from a C3(a) dwellinghouse for a single family to a C3(b) dwellinghouse for up to six people living together as a single household and receiving care, was received by the Council on 26.08.2022 (22/03390/FULL2). As such this indicates that the former C3(a) dwellinghouse use had already ceased by that point and that a different use, in this case the proposed/claimed C3(b) supported care use, had begun.
- 7.5.4 The Applicant has since chosen to submit an Existing Lawful Development Certificate (LDC) application (22/04947/ELUD) in the place of the planning application (22/03390/FULL2) and based on the previous history, observations, and claims, it is considered that on the balance of probabilities, the claimed C3(b) use had begun before the LDC application had been made and submitted to the Council.

7.5.5 According to the application details the dwellinghouse, formerly used as a C3(a) dwellinghouse for a single family is now in use as a C3(b) dwellinghouse for up to three adults with on-site live-in staff attending the site on a full-time rota system in partnership with the Community Multi-Disciplinary Team providing supported care including supervision of resident medication training and rehabilitation for transition into fully independent living and liaison with the Community Mental Health Team as necessary, and was in use on the date that the current LDC application 22/04947/ELUD was made.

7.5.6 On this basis the use of the property as described in the application comprises a change from one sub-category within Class C3 to another sub-category within Class C3, as permitted by the Use Classes Order, and it does not comprise a material change of use of the land/building,

7.6 Summary

7.6.1 The use of the building formerly used as a C3(a) dwellinghouse and now as a C3(b) dwellinghouse would not comprise a material change of use of the land/building.

8. CONCLUSION

8.1 Based on the submitted information and other information available the proposal would not comprise development of the land or a material change of use of the land, it would therefore be lawful under section 191 of the Town and Country Planning Act 1990, and it is recommended that a Lawful Development Certificate is granted.

8.2 Background papers referred to during production of this report comprise all correspondence on the file, excluding exempt information.

9. RECOMMENDATION:

CERTIFICATE BE GRANTED

Reason: The use of a C3(a) dwellinghouse as a C3(b) dwellinghouse would not comprise development of the land or a material change of use of the land/building according to Section 55 of the Town and Country Planning Act 1990. On the balance of probabilities, the use of the property for this purpose had begun prior to the submission of this application.