



Appeal Decision

Inquiry held on 3 April 2007

Site visit made on 5 April 2007

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor
(Non-practising)
an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date 27th April, 2007.

Appeal Ref: APP/E5330/X/06/2024472

Micawber House, Knee Hill, Abbey Wood, London, SE2 0YR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ethelbert Specialist Homes Ltd against the decision of the Council of the London Borough of Greenwich.
- The application Ref 06/1600, dated 9 June 2006, was refused by notice dated 9 August 2006.
- 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 a Children's Home Class C3.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

The site and surroundings

1. The appeal property is situated on the corner of Knee Hill, which is part of the A2041, with Federation Road. This is a predominantly residential area with very extensive recreational open space which provides, for example, recreation grounds and tennis courts together with numerous parkland pathways through the woods. Abbey Wood railway station is approximately 0.25km to the north of the appeal property and there is an extensive bus network in the area.
2. Micawber House is a substantial, detached 3-storey late Victorian property. The ground floor comprises a hallway, sitting room, games room, dining room/kitchen, conservatory and adjacent utility area and a bathroom. The first floor has 3 bedrooms, a study and a bathroom and shower room. The third storey is in the attic and there are 3 bedrooms and a w.c. There is a small front garden and large rear garden which includes a single garage, accessed off Federation Road.

Lawful use and application

3. A Certificate of Lawful Use or Development (LDC) was issued by the Council in respect of Micawber House on 20 December 2005 (Ref 05/2928). The lawful use of Micawber House is a children's home Class C3 for up to 4 children and 2 non-resident carers. The number of children and carers, together with the latter's non-resident status, is set out in the supporting statement which forms part of the LDC. The lawful use is therefore a dwellinghouse within Class C3 of Part C of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (the Use Classes Order).

4. The application in this appeal is similar in all respects to the previous application except that it is proposed that 5 children would reside in Micawber House.

Reasoning

5. As the lawful use of Micawber House is a children's home (Class C3) for 4 children and 2 non-resident carers, the proposed increase from 4 children to 5 would only require planning permission if it would result in a material change of use of the property.
6. As I noted on my visit, Micawber House is not yet occupied although it appeared nearly ready for occupation with only, for example, some additional furniture and curtains/blinds being needed. At the time of the appeal, the use of Micawber House as a children's home was therefore a proposed use. However, the Appellant Company has a number of children's homes which are all run along broadly similar lines and Micawber House would be no exception to this general rule. It was therefore possible to envisage with some certainty how Micawber House would operate as a children's home.
7. From the evidence I read and heard at the inquiry, the aim of the Appellant Company is that Micawber House, in common with its other children's homes, would resemble as close as possible a family home for the children who live there. There would be 6 carers who would work in pairs on 24/48 hour shifts so as to provide, as far as possible, a consistency of care. These carers would act in a parental role to the children providing support and advice. The children would, for example, with assistance as required from the carers, go to school, help around the house with domestic chores, help with shopping, sit down together for meals and go on trips out in the same way as a family would. The day to day living arrangements for the children would be the same whether there were 4 or 5 children.
8. I saw on my visit that the house could easily accommodate one more child as there would be 5 good sized individual bedrooms for the children and 2 bedrooms (one room described as a study on the first floor and one room in the attic space) for staff. There would be adequate living/dining/kitchen space on the ground floor for one additional child. As I also saw on my visit, the rear garden is relatively large and, in addition, there is a large area of recreational space in the vicinity of the property, for example, Abbey Woods.
9. It was accepted by the Council when it issued the LDC dated 20 December 2005 that 4 children and 2 non-resident carers living in Micawber House would be living there as a single household. The Council submit in this appeal that whereas 4 children would be living as a single household, 5 would not. But as the one additional child would be living in the same circumstances as the other 4, it seems to me, from the documents and evidence on behalf of the Appellant Company, as a matter of fact and degree, that the functioning of the home would be the same whether there were 4 or 5 children. If 4 children would be living together as a single household in these particular circumstances I can see no reason why 5 would not.
10. There would be a number of comings and goings that would not occur within a family situation such as, for example, visits by social workers and natural parents. But I do not consider that there would be any significant increase in activity occasioned by one additional child that would result in a material change of use. The activity around Micawber House as a children's home for 5 children would be, in my view, no more than that of a large family and, given the distance of Micawber House from the nearest

neighbours in Federation Road, I do not consider that such activity would be likely to result in any unacceptable harm to nearby residents.

11. There are parking restrictions on the streets near to Micawber House but it seems to me that these restrictions are primarily to deter commuter parking for the nearby station as they prevent parking during the middle of the day by non-residents. I was told that the mini-bus/people carrier belonging to Micawber House would have a resident's parking permit and that visitors would have to park on the street. Given my finding above that one additional child would not result in any significant increase in comings and goings, I consider that it would be unlikely that there would be any adverse effect on parking or general disturbance in the area resulting from one additional child.
12. The Council submitted that there had to be a threshold and that Class C3 (b) specified 6 residents which in the case of the proposed 5 children plus 2 care staff would be exceeded. The carers, whilst being part of a stable group, would not be resident at Micawber House, and the nominal 6 residents would not be exceeded. The Council also raised the possibility of 5 children being increased to 6 and 6 increasing 7 and so on, but this is not the application that is before me.
13. At the inquiry I heard lengthy legal argument about whether the proposed use was Class C2 or Class C3 and whether the 5 children would be living together as a single household. Reference was made to, for example, The Queen (on the application of Yvonne Hossack) v. Kettering Borough Council & Another v. English Churches Housing Group (Hossack) and North Devon District Council v the First Secretary of State (North Devon). I note, for example, that in Hossack it was stressed that there are no certain indicia, the presence of or absence of any of which is by itself conclusive of a single household and that Hossack was not cited in North Devon despite being a decision of a superior court and predating North Devon. I was also referred to a number of appeal decisions which all related to different types of homes and institutions and which are therefore different from this appeal. I, however, note in the Bostall House decision (APP/E5330/X/05/2002046) that the Inspector commented that a change in the use from 6 to 8 residents would not in itself involve a material change of use requiring planning permission and that in North Devon an increase of one child from 2 to 3 was also considered not to be a material change of use.
14. As I have stated, my view is that the proposed additional child would not alter the status of the children's home as Class C3 because the home would continue to be a dwellinghouse for a number of children living together as a single household. Even if I am wrong in that view and the children's home for 5 children as proposed in Micawber House would be a Class C2 use, which is the finding in North Devon, I am of the opinion that because there would be no material difference between the use applied for and the lawful use, planning permission would not be required.
15. I therefore conclude on the balance of probability and on the particular facts of this case that the use of Micawber House for 5 children would not be materially different from 4 children living together as a single household.

Conclusions

16. For the reasons given above and having regard to all other matters raised, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a Children's Home Class C3 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.

Formal Decision

17. I allow the appeal, and I attach to this decision a Certificate of Lawful Use or Development describing the proposed use which I consider to be lawful.

Gloria McFarlane

INSPECTOR

APPEARANCES

FOR THE APPELLANT COMPANY

Mr S Head, of Counsel Instructed by Olorun Planning Partnership Ltd

He called

Mr J Watts Olorun Planning Partnership Ltd, 107 High Street, Honiton.
Devon, EX14 1PE

Mrs J Hicks Ethelbert Specialist Homes Ltd, Cheesemans Farmhouse,
Alland Grange Lane, Manston, Kent, CT12 5BZ

FOR THE LOCAL PLANNING AUTHORITY

Mr D Daly, of Counsel Instructed by the London Borough of Greenwich

He called

Mr J McCool Appeals Officer, London Borough of Greenwich

DOCUMENTS SUBMITTED AT THE INQUIRY

- Document 1 - Transcript of The Queen (on the application of Yvonne Hossack) v. Kettering Borough Council & Another v. English Churches Housing Group – Court of Appeal, submitted by the Parties
- Document 2 - Transcript of The Queen (on the application of Yvonne Hossack) v. Kettering Borough Council & Another v. English Churches Housing Group – High Court (First application), submitted by the Parties
- Document 3 - Transcript of The Queen (on the application of Yvonne Hossack) v. Kettering Borough Council & Another v. English Churches Housing Group – High Court (Second application), submitted by the Parties
- Document 4 - Extract from Ethelbert Children's Services, Privacy and Confidentiality, submitted by the Appellant Company
- Document 5 - Pro forma Certificate of Lawful Use or Development, submitted by the Appellant Company



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 9 June 2006 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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:

The proposed use as a children's home Class C3 for up to 5 children and 2 carers does not constitute a material change of use from its authorised use as a children's care home for up to 4 children and 2 carers within Class C3 of Part C of the Schedule to the Town and Country (Use Classes) Order 1987 as amended.

Gloria McFarlane

Inspector

Date 27th April, 2007.

Reference: APP/E5330/X/2024472

First Schedule

Use of the premises as a Children's Home Class C3 in accordance with the supporting statement dated 8 June 2006 and drawings Nos. 213/P05 and 213/PO6.

Second Schedule

Land at Micawber House, Knee Hill, Abbey Wood, London, SE2 0YR

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 use /operations 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use /operations 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.
4. 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: 27th April, 2007.

by **Gloria McFarlane LLB(Hons) BA(Hons) Solicitor**
(Non-practising)

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London, SE2 0YR

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Scale:

