LONDON BOROUGH OF WALTHAM FOREST

Committee/Date: Planning – 31st March 2020
Application reference: 193908
Applicant: Mrs Omolara Ajibola
Location: 14 Abbotts Park Road, Leyton, London, E10 6HX
Proposed development: Lawful Development Certificate (Proposed) - Change of use from dwellinghouse (Class C3a) to dwellinghouse (Class C3b) for up to 6 occupiers.
Wards affected: Forest
Appendices: None.

1 RECOMMENDATION
1.1 A Lawful Development Certificate to be issued on the grounds that the works would fall within the provisions of permitted development, in accordance with the Town and Country (Planning General Permitted Development) (England) Order 2015 (as amended).

2 REASONS REFERRED TO COMMITTEE
2.1 The application has been referred to Planning Committee for determination by Cllr Lyons.

3 SITE AND SURROUNDINGS
3.1 The application property is a two storey mid-terraced dwelling house (Use Class C3-A) on a rectangular plot of land. The property has been extended by an L-shaped dormer roof extension. The house is newly refurbished but currently vacant.
3.2 The property is not located within a Conservation Area, is not listed and is not subject to an Article 4 direction other than the Borough-wide change of use from Class C3 to C4.

4 APPLICATION PROPOSAL
4.1 The current proposal seeks confirmation that the occupation of the application site by up to 5 unrelated people would be classified as use C3 (b) and would not constitute development by virtue of the Town and Country Planning (Use Classes) Order 1987 (as amended).
4.2 The proposed establishment would employ 5 members of staff working on shift patterns.
5 RELEVANT SITE HISTORY

A. Planning

5.1 180260-Lawful Development Certificate Proposed-Construction of dormer roof extension to main rear roof together with installation of two roof lights to the front roof. Granted 7th March 2018

5.2 182048-Lawful development certificate (Proposed) - Change of use from Class C3 (Dwelling Houses) to C4 (Houses in Multiple Occupation)- Refused on 14th September 2019

5.3 173600-Roof extension involving a rear dormer and three roof lights to front elevation.-Refused on 7th December 2017

5.4 191098- Change of use from single dwelling house (Class C3) to residential care facility for up to 5 adults with learning disabilities (Class C3b).- Withdrawn (Applicant incorrectly submitted application for full planning permission to use the building as supported living accommodation (C3b); officers advised that an application for Certificate of Lawfulness should be submitted to establish if the proposal is permitted development).

5.5 183999- (Retention) Change of use from single dwellinghouse (C3(a) Use) to residential care home (C2 Use).-Withdrawn (The site is not in use as a care home. As such, the application is not retrospective.)

B. Pre-Application

5.2 No Formal Pre-Application advice has been given; however, the proposal was informally discussed with planning officers who advised that Certificate of Lawfulness should be submitted for a formal confirmation that the proposed development does not require planning permission.

C. Enforcement

5.6 No Enforcement History.

D. Adjacent Site

5.7 No relevant history.

6 PUBLIC CONSULTATIONS

6.1 There is no statutory requirement to notify or consult residents or any other bodies in relation to an application for a Certificate of Lawful Development. No neighbour consultations were carried out; however, 5 objections have been received in relation to the proposed works. These objections relate to the following:

- Concerns with the use of the property as a House of Multiple Occupation (HMO).
- Concerns with the type of residents that may occupy the property.
- Concerns with noise and disturbance.
Concerns with antisocial behaviour.
Concerns with fire safety.
Inadequate internal and external amenity space.
Increased parking pressures.
No party wall notices in relation to previous building works.
Lack of information regarding Crownfield Support Limited and their proven track record of successful support for residents.
Lack of clarity with regards to the level of supervision provided on site.
Overconcentration of HMOs on one street.
No planning history with regards to building works in relation with conversion of the property into HMO.

6.2 Any views on the planning merits, or otherwise, of the proposal do not form part of the determination of a certificate of lawfulness application; such an application is a determination against the requirements set out within the relevant legislation.

7 RELEVANT CONSIDERATIONS- PERMITTED DEVELOPMENT REGULATIONS

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

7.1 The Order sets out changes between and within use classes of development that are permitted without the benefit for express planning permission, providing conditions attached to the individual classes are followed. This application is for ‘Certificate of Lawfulness’ to confirm that the proposal would fall within permitted development, therefore the application should be determined on the facts and the law rather than planning policies or planning merits.

7.2 The applicant is asking the Local Planning Authority to formally determine that planning permission is not required to change the use of this dwelling (currently a class C3a use) to a supported living residential home with a maximum six five adults who will live together as a single household (a class C3b use).

7.3 Section 55(1) of the Town and Country Planning Act 1990 (T&CP Act) defines the term “development” which includes the making of any change of use of any buildings.

7.4 Section 192 of the T&CP Act makes provision for an application to be made to the LPA by anyone who wishes to ascertain whether any proposed use of a building would be lawful. This is to be done by making an application for the purpose to the LPA specifying the land and describing the use in question.

7.5 The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories, including:

**C2 Residential institutions** - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.

**C2A Secure Residential Institution** - Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks.
**C3 Dwellinghouses** - this class is formed of 3 parts:

- 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 career and the person receiving the care and a foster parent and foster child.

- C3(b): 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.

- 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.

**C4 Houses in multiple occupation** - small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

7.6 The term “Care” is defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) as follows: In this Order, unless the context otherwise requires: “care” means 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”

**8 ASSESSMENT**

8.1 The main consideration in the determination of this application is whether the use falls within Class C3(b) as defined above.

**The number of people forming the household**

8.2 It is established case law (R Hossack v Kettering BC [2002] EWCA Civ 886) 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 they are to be regarded as forming a single household.

8.3 It should also be noted that in this proposal the household is made up of residents and those providing care and that combined amount must not exceed a total of six people in the premises at any one time. However, domestic workers and other casual visitors to the premises do not have to be included in the calculation.

8.4 The number of residents in this proposal to be residing at the property at any one point in time is 5, together with one support worker, 6no. in total which fall within the limit of 6 specified in C3(b).

**Living together as a single household**
8.5 With regard to the definition of a single household, the following court of appeal decision is relevant to the consideration of this Certificate of Lawful Development: “The Queen (On the Application of Yvonne Hossack) v Kettering Borough Council & Another v English Churches Housing Group 25 June 2002”. In this judgement, Lord Justice Simon Brown concluded that where a house is occupied by more than one person the occupants cannot be said to form a single household unless there is between them a relationship which provides a particular reason for their living in the same house.

8.6 In a single household there is also no requirement that the occupiers should come to the house as a preformed group or for a predetermined period or that homogeneity in a group of residents. Residents (not more than six) should have “a common need for accommodation, support and resettlement” to be considered as living as a single household.

8.7 In this proposal the residents of No.14 Abbots Park Avenue would have a common need for accommodation and support which is provided for by the applicant and therefore this common need and purpose together with the shared facilities is a factor in determining whether and how the residence operates, and whether the residents form a single household.

8.8 This judgement then goes on to state that it is necessary, whatever the origins of the group of people living together, to carry out a fact and degree assessment as to whether, in the circumstances of the property, the residents live together as a single household.

8.9 In this Court of Appeal judgement, another judgement was referred to (Barnes v. Sheffield City Council (1995)) in which a group of five students was held to form a single household. This judgement identified nine factors as being helpful considerations to bear in mind when determining whether a house is being occupied as a single household or not. These factors are as follows:

i. The origin of the tenancy; whether the residents arrived in a single group or were independently recruited by the landlord;

ii. The extent to which the facilities were shared;

iii. Whether the occupants were responsible for the whole house (including the common parts) or just their particular rooms;

iv. The extent to which residents can and do lock their doors;

v. The responsibilities for filling vacancies: whether that of the existing occupants or the landlord;

vi. The allocation of rooms: whether by the occupants or the landlord;

vii. The size of the establishment;

viii. The mode of living: to what extent communal and to what extent independent.

8.10 The applicant has provided a statement outlining the following information:

All residents would be referred to the programme. The applicant has confirmed the intention of the programme is to work directly with the Local Authority.

i. The premises have a kitchen/diner where meals are prepared and eaten, a communal lounge, toilet, a bathroom, 5 bedrooms; a study room for the support
worker and an office for managerial duties in relation with the type of care and supported provided on site. There is also a communal garden. None of the bedrooms have sinks or private bathrooms. Residents would be required to prepare their own meals.

II. Residents are responsible for their own rooms and all communal areas.

III. Rooms would have locks on the doors for privacy purposes.

IV. The applicant is responsible for filling vacancies.

V. The property has 5No. bedrooms, one for each of the five residents and an additional study room for the resident support worker.

VI. This property is used in the second stage of the programme and residents would normally be expected to stay until they are ready to move on and set up their own independent living.

VII. Residents have a high degree of living communally sharing household duties, activities, entertainment, meal preparation etc. Activities and educational programmes are arranged for the residents by the support workers.

8.11 In light of the above, it is considered that the residents of No.14 would be considered as living together as a single household.

**Provision of Care**

8.12 To fall within Use Class C3(b) care must be provided to the residents. In the Order, unless the context otherwise requires, “care” means “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…”

8.13 The applicant states that the use of the property is to provide help and support to residents to enable them to return to the community. This specifically involves providing help and support to residents in relation to their day to day lives. Providing support in relation to:

- pastoral support
- employment support
- advice and support in terms of financial matters
- arranging voluntary work and social activities.

8.14 Each resident will have an individual support plan tailored to their individual needs. It should be noted that the legislation provides only one definition for care, it is not possible to define a specific level of care when granting the certificate. Therefore, if the level of care provided falls within the definition in the Order then the requirements of the legislation have been met. From consideration of the information provided by the applicant it can be concluded that the care proposed to be provided falls within the definition provided in the Order.

9 **CONCLUSION**

9.1 From the information supplied by the applicant the Local Planning Authority is satisfied that on a balance of probability the proposed use of the property will fall within the C3(b) use “not more than six residents living together as a single household where care is provided for residents”.
9.2 It is therefore satisfied that the use of this property for a supported living home for up to five residents does not require express planning permission. It is therefore recommended that the Certificate of Lawful Development applied for is issued.

10 ADDITIONAL CONSIDERATIONS

Public Sector Equality Duty

10.1 In making your decision you must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

D. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

10.2 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149 is only one factor that needs to be considered, and may be balance against other relevant factors.

10.3 It is considered that the recommendation to refuse permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

10.4 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as the London Borough of Waltham Forest to act in a manner that is incompatible with the European Convention on Human Rights.

10.5 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation to refuse permission in this case interferes with local residents’ right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to refuse permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.
11 RECOMMENDATION

11.1 That the Planning Committee grant the Lawful Development Certificate on the basis of the information provided.

Informatives:

1. The applicant is advised that the application has been considered on the basis of drawing number(s)/documents: Crownfield Support Ltd doc, undated; Drawing 018/40, dated November 2018 (showing proposed room layout); Statement of Purpose, undated

2. The applicant is advised that no more than 6 people (including staff) can occupy the property at any time

12 BACKGROUND DOCUMENTS

12.1 Application file.