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Section 192 of the Town and Country Planning Act 1990

Planning Statement

To accompany an application for a

Lawful Development Certificate for the

Proposed

"change the use of the garage to a habitable room and the change of the garage door to a regular door and window"

At

11 Treeside Close

UB7 7HH,

By

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Eade Planning Ltd

September 2022

Contents

Introduction

1. This is an application for a Lawful Development Certificate under Section 192 of the Town and Country Planning Act 1990 for the operations proposed to be carried out on land at 11 Treeside Close UB7 7HH.

2. The proposal is lawful pursuant to s.55 of the Town and Country Planing Act 1990 and Class A of Part 1 of Schedule 2 to the GPDO which allows for *the enlargement, improvement or other alteration of a dwellinghouse.*

3. Section 192 of the Town and Country Planning Act 1990 provides that,

(1)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, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2)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.

(3)A certificate under this section shall—

(a)specify the land to which it relates;

(b)describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c)give the reasons for determining the use or operations to be lawful; and

(d)specify the date of the application for the certificate.

(4)The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

The land

4. The land is at 11 Treeside Close UB7 7HH.
5. The property is one a set of semi-detached bungalows, and in fact, at the end of terrace at the end of a cul-de-sac.
6. The site is not located a Conservation Area and is therefore, not in Article 2(3) land with respect to the GPDO, nor is it a Statutory Listed Building.
7. The site is in use as 5-room small HMO (Use Class C4). This appears to have come about by a change of use pursuant of Class L of Part 3 of the GPDO.

The Operations

8. The proposal is for the 'change the use of the garage to a habitable room and the change of the garage door to a regular door and window'.

The Legislative Framework and Relevant Case Law

The Town and Country Planning Act 1990 (as amended)

9. By Section 55 of The Town and Country Planning Act 1990, planning permission is required for the carrying out of any development of land.
10. By Section 55, some operations or uses of land are not taken to involve 'development'. These include the carrying out for the maintenance, improvement or other alteration of any building of works which—(i)affect only the interior of the building, or (ii)do not materially affect the external appearance of the building, and (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.

11. Section 60 – Permission granted by development order, states,

> *(1)Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.*

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

12. The Town and Country Planning (General Permitted Development) (England) Order 2015 is such an Order.

    Article 3 of the 2015 Order provides inter alia that:

> *"(1) Subject to the provisions of this Order….., planning permission is hereby granted for the classes of development described as permitted development in Schedule 2 .*
>
> *(2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2 ."*

13. Article 2 of the Order provides the necessary interpretations. It states:

> *"dwellinghouse", except in Part 3 (changes of use), Class B (demolition of buildings) of Part 11 (heritage and demolition), Part 12A (development by local authorities and health service bodies) and Part 20 (construction of new dwellinghouses) of Schedule 2 to this Order, does not include a building containing one or more flats, or a flat contained within such a building;*
> *"flat", except in Part 20 (construction of new dwellinghouses) of Schedule 2 to this Order or in the expression "flat roof", means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally;*

14. Planning permission is granted under Class A in Part 1 of Schedule 2 of the GPDO for *"enlargement, improvement or other alteration of a dwellinghouse"*. However, by virtue of condition A.1, such development is not permitted inter alia if-

> *(a)permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);*
>
> *(b)as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);*

(c)the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

15. Condition A.3 states that development is permitted by Class A subject to inter alia the following condition—

(a)the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

The Town and Country Planning (Use Classes) Order 1987

16. The Use Classes Order was made in exercise of the Secretary of State's powers under the predecessor provision to what is now section 55(2)(f) of the 1990 Act, and has been amended since.

17. In its current form, it defines Classes C3 and C4 as follows:

Class C3. Dwellinghouses

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

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).

Interpretation of Class C3

For the purposes of Class C3(a) "single household" is to be construed in accordance with section 258 of the Housing Act 2004.

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

Interpretation of Class C4

For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.

18. The Use Classes Order does not provide any definition of "dwellinghouse". As to the definitions of "single household" and "house in multiple occupation" in the Housing Act 2004 to which Use Classes C3 and C4 respectively refer.

The Housing Act 2004

19. Section 254 of the housing Act 2004 provides the meaning of "house in multiple occupation" as follows,

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

(a)it meets the conditions in subsection (2) ("the standard test");

(b)it meets the conditions in subsection (3) ("the self-contained flat test");

(c)it meets the conditions in subsection (4) ("the converted building test");

(d)an HMO declaration is in force in respect of it under section 255; or

(e)it is a converted block of flats to which section 257 applies.

20. Although a converted block of flats falls within the meaning a "house in multiple occupation" it is expressly excluded from Use Class C4.

21. As to the definitions of "single household" and "house in multiple occupation" the Act provides as follows:

i) Section 258(2) of the Housing Act 2004 provides that persons are to be regarded as not forming a single household unless (a) they are all members of the same family, or (b) their circumstances are of a description specified in regulations. No such regulations have been made.

ii) Section 254 of the Housing Act 2004 defines a house in multiple occupation by reference to a number of alternative tests. The "standard test", set out in section 254(2), provides that a building or part of a building meets that test if:

"(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it … ;

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

(iii) Alternative tests for an HMO apply to self-contained flats (section 258(3), which applies section 258(2)(b)-(f) to self-contained flats), and converted buildings. A converted building is a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed: section 258(8). It will meet the "converted building test" for an HMO if it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats), and the same conditions as are set out at section 258(2)(b)-(e): see section 258(4).

22. In the recent judgement the London Borough of Brent v SSLHC and Rothchild [2022] EWHC 2051 (Admin). The Court considered the interpretation of 'dwellinghouse' for the purposes of the GPDO. At Para.68 the judge, Mr Robert Palmer QC (as he then was) siting as a deputy judge said:

> *68. To the contrary, as I have explained above, a "dwellinghouse" may remain as such while being put to a number of different uses. Use Category C3 is not exhaustive of the uses to which a dwellinghouse may be put, as Holgate J made clear in Rectory Homes when rejecting a submission to the contrary at [54]-[57]:*
>
> *"54. The Claimant's argument depends upon an assertion that anything which is a dwelling or dwelling-house must fall within the C3 Use Class. In other words, that Use Class exhaustively defines what may be considered to be a "dwelling" and therefore a unit of residential accommodation falling within Class C2 cannot include a "dwelling".*
>
> *55. The Claimant rightly accepted before the Inspector that a property cannot fall within the C3 Use Class unless it has the physical characteristics of a "dwelling" as defined in Gravesham and is used in a manner falling within that Class (see [30] above). It follows that a property might properly be described as a "dwelling" in accordance with the physical criteria given in Gravesham without being used within the parameters of Class C3. Indeed, Class C3 demonstrates this point, both in the form in which it was originally enacted and in the version substituted (in England, but not Wales) by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (SI 2010 No. 653).*

23. At Para.71 the judge said (emboldened emphasis added):

> *My conclusion is also consistent with the Planning Inspectorate's guidance note, set out at paragraph 22 above. It accurately records that an HMO may have the benefit of the permitted development rights attaching to dwellinghouses, if it is itself a dwellinghouse. Its terms reflect the fact that some HMOs as defined by section 254 of the Housing Act 2004 are not "dwellinghouses" as defined in the GPDO – such as those which are self-contained flats, or which are "converted buildings" which contain a flat. The guidance also reflects the fact that an HMO may be a dwellinghouse even if is not in C4 use (as C4 use requires no more than 6 residents to using the dwellinghouse). It confirms that the Gravesham test must be applied to any*

HMO to determine whether it is in fact a dwellinghouse. But the guidance note provides no support for the view that a "dwellinghouse" must be occupied in a manner akin to a single household before it can be considered to be such for the purposes of the GPDO, nor for the view that a dwellinghouse in use as an HMO within Use Class C4 is not a necessarily a dwellinghouse for the purposes of the GPDO.

24. It is, therefore, clear that an HMO is a dwellinghouse for the purposes of the GPDO.

The reasons for determining the operations to be lawful

Dwellinghouse

25. There can be no doubt that the subject is a building that affords to those who use it the facilities required for day-to-day private domestic existence. It is therefore, squarely a dwellinghouse for the purposes of the GPDO to which the Classes within Part 1 apply.

26. Turning now to address the developments proposed.

Alteration to Front Facade

27. The proposed changes fall squarely with the alterations allowed by Class A of Part 1 of the GPDO. There will be no extension in front of the front elevation.

28. The materials to be used for the external finishes will be of similar appearance to those used in the construction of the exterior of the existing house.

Internal change to a Habitable Room

29. The internal change of use of the ancillary C3 garage use to a habitable room is not 'development' at all given that s.55 of the TCPA excludes from development the use of any part of a building or other land for any other purpose of the same class.

Date of the application for the certificate

21. This application is made on 21 September 2022.

Conclusion

30. This application provides information that satisfies the claim that the operations described in the application would be lawful if instituted or begun at the time of the application.