

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
Case officer recommendation:	AL	18/09/2023
Planning Manager / Team Leader authorisation:	JJ	20/09/2023
Planning Technician final checks and despatch:	JJ	21/09/2023

Application: 23/00949/LUPROP **Town / Parish:** Clacton Non Parished

Applicant: Mr Rachael and Neeraj Kumar - EpicUK Ltd

Address: 28 Croft Road Clacton On Sea Essex

Development: Proposed residential accommodation for up to three young people in care, aged under 18 with 24-hour onsite staff living together as a single household (Use Class C3 (b)).

1. Town / Parish Council

Clacton – non parished / no comments required for LUPROP applications.

2. Consultation Responses

Not applicable.

3. Planning History

None relevant.

4. Relevant Policies / Government Guidance

- The National Planning Policy Framework 2023 (NPPF)
- The National Planning Policy Practice Guidance (NPPG)
- Town and Country Planning Act 1990 (as amended) - Section 192
- Town and Country Planning (General Permitted Development) (England) Order 2015
- Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Status of the Local Plan

Planning law requires that decisions on applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework (the Framework). The 'development plan' for Tendring comprises, in part, Sections 1 and 2 of the Tendring District Council 2013-33 and Beyond Local Plan (adopted January 2021 and January 2022, respectively), supported by our suite of evidence base core documents (<https://www.tendringdc.uk/content/evidence-base>) together with any neighbourhood plans that have been brought into force.

5. Officer Appraisal (including Site Description and Proposal)

Site Description

The application relates to number 28 Croft Road, Clacton.

The site is located on the eastern side of Croft Road, within the Settlement Development Boundary of Clacton-on-Sea and comprises of a two storey, end terrace dwelling currently used a single-family dwelling (Use Class C3(a)). There is hardstanding to the property frontage providing 2 parking spaces. The character of the area is residential.

Description of Development

The application seeks confirmation that 'a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990'.

Specifically, the certificate seeks confirmation that the property at 28 Croft Road can lawfully change to a home for up to three young people in care aged under 18, with 24-hour onsite staff.

The accompanying application form explains that the current use is Use Class C3 (a) a single person or single household and wishes to change to Use Class C3 (b) a single householder of not more than 6 residents where care is provided.

Following the submission of further information and consideration of how the use will operate, the description of the application has been amended to better reflect the intended use. This has been agreed by the applicant via email received on 20 September 2023 and scanned to the planning file.

Assessment

The main consideration in this instance is, whether the proposal constitutes a change of use from Class C3(a) to Class C3(b) and no material change of use would occur, therefore planning permission is not required.

1. Applicant's Description

"Our current usage is dwelling house. We will be using the property in the following way:

As a small children's home for up to three young people in care aged under 18 with staff onsite 24 hours, living in a family environment. We are fully qualified social workers, and systemic practitioners and are experienced in management. We are very mindful in our work not to cause any disruption to neighbours and to all intent and purposes the house would not stand out as being anything different that a family home with a family environment. The service would be regulated by OFSTED."

Officers sought additional information from the applicant to ensure that the requirements of the NPPG were met, as follows:

Paragraph: 005 (Reference ID: 17c-005-20140306) of the National Planning Policy Guidance (NPPG) outlines what information must accompany an application for a lawful development certificate. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. There is a different application form for each type of certificate, but either type must be accompanied by sufficient factual information / evidence for a local planning authority (LPA) to decide the application, along with the relevant application fee. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a LPA may be justified in refusing a certificate. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

Additional information and floor plans were received via email on 14 September 2023 from the applicant (scanned to the planning application file) and summarised below:

- Areas for sole use are the bedrooms.
- The communal areas will be hallways/lounge/dining area/kitchen/landing/stairs/garden.
- The occupants will be placed by the local authority to live in the placement which will run like a family with children.

- The approval from OFSTED will be for 3 young people aged 11-18, for each young person we will be required to complete a comprehensive matching assessment - to look at the risks and characteristics of each young person - we would not be able to place a 17 year old with an 11 year old because that would not be considered good practice. When we match we have to look at a range of factors and risks which we have to then discuss with each young persons social worker to ensure the safety of each young person.
- As per OFSTED requirements each bedroom will have a lock so the young person can store their belongings securely if they wish. The locks would be for their purpose - but the young people will not be independent adults and therefore we will have staff on site 24 hours a day (like parents) who will cook food, do activities, do homework with them, help them get to and from school etc.
- The staff x 2 will rotate on a shift pattern - 2 in the day and 2 in the night. At first, we will be using the small bedroom as the office leaving 2 rooms for young people and later on, we will be making an application to convert the garage into a staff office where staff can also sleep if a sleep shift is in place. If sleep shifts are not in place, they would be awake night and work throughout the night, this would depend on the needs of the children.

2. Relevant Legislation and Guidance

C3 Dwellinghouses

This class is formed of three 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 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.
- 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.

Definition of Development

Section 55 2(f) of the Town and Country Planning Act (TCPA) (1990) states:

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.

Therefore, Section 55 2 (f), confirms that changes of use within each Use Class do not constitute development and therefore would not need planning permission.

Definition of a single household

There is no statutory definition of a “single household” for the purposes of Class C3(b), however the Court of Appeal decision *R(Hossack) v Kettering BC* [2002] EWCA Civ.886 made two important

points. Firstly, that in the Use Class Order, Class C3 is intended to include small community care homes consisting of up to 6 residents (including resident staff) “living together under arrangements for providing care and support within the community”. The second point is that by setting C3(b) limit to 6 residents it is more likely they are living together as a single household than if there were more than six.

High Court Judgement

- Crawley BC vs SSETR [2004] EWHC 160 (Admin)

This concerned the use of a house for 4 adults with learning disabilities. There were carers present 24 hours a day on a shift based system. The carers did not reside at the property permanently. The Judge considered that whether a use falls within C3(b) depends on the specifics of the case and that it ‘was possible for residents receiving care to constitute a single household even if that care was full time’. The Judge rejected the assertion that the carers had to permanently reside in the home for C3 to apply. This case highlighted that both the level of care and the living arrangements (single household or not) are relevant to C3(b).

Relevant Appeal decisions

- Appeal Ref: APP/C4235/X/17/3170427

This case involved a 5 bedroomed property with a maximum of 4 residents aged between 16 and 25 receiving low level care to assist in recovery from a variety of mental health issues, but no medical procedures or personal care was involved, beyond normal first aid. The residents were considered to be no risk to the community and would normally stay about 2 years. They could take care of themselves and the carers were there to provide support to help with skills useful after leaving the home. The facilities proposed were communal, with 24 hour non-resident support staff providing low level care help with cooking, washing and budgeting. The Inspector concluded, that for the low level care proposed here and the ability of the residents to look after themselves, the use should as a matter of fact and degree be considered as coming within Use Class C3(b).

- Appeal Ref: APP/Z5060/C/18/3214506

In this case the Inspector did not know the ages of the residents, but as they were described as looked-after young people needing assistance to live independently, considered them to be young adults. It was noted that the property was laid out as one would expect for a family home, with bedrooms and shared communal areas with one room dedicated as an office for support workers. The residents lived communally sharing shopping and cooking.

The Inspector concluded that there was no evidence to suggest that the needs of the young adults residing at the property are such that they are not capable of running a household themselves albeit with some support and did not agree with the Council that the level of care had the characteristics of a C2 use but was more accurately described on the evidence presented as supported living and found as a matter of fact and degree that the care provided to the residents falls within the meaning of use class C3(b).

3. Council's View

To satisfy C3(b) the residents would need to live as a single household so on a communal basis sharing the living room, bathroom facilities, kitchen etc. and sharing the costs of utility bills, food perhaps, a single door bell, all of which are evidence of a single household. The court has held that the mere coming together of persons because of a common need for ‘accommodation, support and resettlement’ was not necessarily determinative of their status. The description provided in this application points to the use of the property as a single household certainly in terms of physical layout and shared facilities.

4. Conclusion

Initially, officers had some doubt over the full extent of the use and it falling within Use Class C3(b) or Class C2 (Residential Institutions). However, having due regard to relevant case law and appeal decisions and the submission of additional information, it is considered that the proposal falls within the Class C3(b) category. Therefore based on the information submitted with the application as well as the facts of the case as outlined in this report, it would be possible for the future residents to live together as a single household, and based on the facts of the case and the specific assessment above, the LPA is satisfied that no material change of use to the dwelling would occur as long as the residential accommodation is provided in accordance with the evidence and information as submitted with the application. It is important to note that any deviation from the submitted operation of the dwelling may result in material change of use and enforcement action may be taken if it is established that a material change of use has occurred without the necessary planning consent being obtained. Express planning permission for the proposal as detailed in the supporting information submitted with the application is not required and a Lawful Development Certificate for a proposed use is granted.

6. **Recommendation**

Grant Lawful Development Certificate for a proposed use.

7. **Decision**

Having regard to the provisions of the Town and Country Planning Act 1990: Section 192 and The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010, the proposed development would constitute a change of use within Use Class C3 from C3(a) to C3(b) and does not require express planning permission.

Informative - Use Class C3(b) only

Please note that any deviation from the operation as described within this application may result in a material change of use. Enforcement action may be taken if it is established that a material change of use has occurred without the necessary planning consent being obtained.

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO