

DELEGATED REPORT

Report by Sam Summers	Date of report: 17/07/2024	Ref: 70782/LDCP
Registration: 22/05/2024	LDFC:	Expiry Date: 17/07/2024
Site Visit: 15/07/2024	Site Notice: N/A	Press Date: N/A
Objections: 28	Con Area:	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Lawful development certificate for proposed use of a (Class C3) dwelling as a children's home for up to three children, with up to three carers, two sleeping overnight working on a rota basis (Class C2)

Location: 11 Stokesay Close, Bury, BL9 8DB

Description

An application for a Certificate of Lawful Development under Section 192 for the proposed change of use of a dwellinghouse (Use Class C3(a)) to a children's care home (Class C2) for up to 3 children with emotional or behavioural difficulties (EBD) and up to three carers with two of those sleeping overnight. The care staff would work on a rota basis and would not be permanently resident. Six carers would work on a shift pattern of 48 hours on and 60 hours off. Except at changeover times, which last around ten minutes there will be no more than three carers on the premises at any time.

Relevant Planning History

None

Publicity

28 Objections received - Objections can be summarised as follows:

- Accord is a privately owned company owned by a man who is basically profiteering from vulnerable children.
- The care home will be unregulated because it is a private provider and not council run.
- Similar residential home in Bury has been shut down after 12 months by the police due to the amount of times they were called out to incidents there.
- The company that are wanting to do this are not from the area.
- Also, it would be putting people's homes at risk as nobody would buy a house near this.
- There are 2 schools that are in the vicinity of the house and local children would be put at risk walking past the house.
- Worry about behavioural issues & the safety of our community .
- The house is next to a dark footpath with no lighting what so ever.
- Limited parking available.
- Children play on the close and would be greatly concerning knowing vehicles which don't know the area entering and exiting with potential of an accident.
- They are not registered with Ofsted.
- A the fear of crime and also anti-social behavior
- Increase in noise
- Significant reduction in local policing to manage these situations may lead to escalation of problems.
- Residents in the surrounding estate who will be directly affected by this proposal should be consulted and have the opportunity to raise their concerns in a formal council meeting.
- These residences should be confined to areas without families and young children

present organically.

- Accord and Bury council should answer the question as to why they chose this quiet location.
- This is a new organisation which appears to have little or no experience in the care sector
- Could the council clarify if there is a limit on the number of properties an organisation like this can purchase in the borough, as the longer-term impact of multiple purchases of this nature reduces the amount of affordable family homes available within the property market in this area.
- Currently there is a safety element as the current occupiers of this property do not use their drive and continue to park additional cars within the turning circle which obstruct the ability to turn around at the end of the close. It is already impossible for bin lorries, visitors, delivery vehicles and emergency vehicles to turn around as the turning circle is often already obstructed by their cars. Any additional vehicles would be dangerous and obstructive to residents and pedestrians who need access to the pedestrian walkway adjacent to the garden.
- The local primary and high school are already oversubscribed and the impact on pupil places of three children care home is not the same as the property being purchased by a family because of the repeat demands that would be placed on the system each time a new child moves in/out
- My late father was a neighbour to a similar care home and he suffered increased noise levels which meant he could not enjoy sitting in his garden peacefully. The children brought unwelcomed noise and disruption with many visitors to the house and at that time my father had his house broken into and his car was stolen. He had lived on Croft Lane for 50 years and whilst that incident cannot be directly attributed to the care home, it was noted by residents that the care home had indeed brought a negative impact and unwelcome behaviour to the local community.
- The care home will accept children nationally and this does not support the local children in the care system here in local boroughs, which surely must be a priority for Bury council.
- They do in fact accept short term emergency referrals to a different care home and this is contrary to their application and in breach of what they have claimed to local residents and the council.
- No permanent adult resident is also a worry for all.
- The stress that this potential care home has already impacted on our mental health as we are consumed with fear if this proposal goes ahead.
- The company has only been established since May 2022 and we are concerned about the pedigree of this company because the director has previously had a tax rebate firm that collapsed. The "values" of Accord Care Homes stated on their website still refer to the previous tax rebate company.
- Where this dwelling is situated, the River Roch is only 30 meters away, with a small footbridge. In previous years this has been a focus for anti social behaviour. I would suggest that such persons with behavioural needs could present a hazard to their health and attract persons of a similar ilk
- If there is a possibility the children could be left alone there is a risk to their safety, but we don't currently know the age of the children who would be resident at the home. Are they young children.? Are they teenagers?
- If they are teenagers and have no supervision I would be very concerned what they would get up to both inside the house and also outside of the house
- I do believe that children should be offered the best care in their lives and do understand there is a need for this kind of housing, however, I also believe that there are areas better placed to house them and deal with any issues that may arise from them
- A tiny culdesac with an elderly population is most certainly not where this type of housing should be established
- A Planning application has been submitted to extend the house and also for an outside staircase (fire escape)
- The intention of Delta properties is unlawful as they intend to breach their Lease

covenant by allowing Accord Care Homes Ltd to turn this residential property into the business of a children's care home.

- We contest the belief 'there will be no undue disturbance to any neighbours as there is history of a lack of control or safeguarding of children at a current 'care home' operated by the company on Sandown Road.
- We also contest the belief that 'comings and goings will be no more than occur at present'. Note the previous residents used one car and one motorcycle.

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Development Plan and Policies

Issues and Analysis

Applications for lawful development must be determined by planning law, fact and any other relevant judicial authority. In this case the planning law is the Town and Country Planning Act 1990 and the Use Classes Order 1987. The relevant judicial authority in this case is the judgement in North Devon District Council v. First Secretary of State [2003] EWHC 157 (Admin).

Use class confirmation

The first thing to consider for this application is whether a change of use would take place and what the proposed use class would be.

In the case that was subject of the appeal (North Devon) S Ltd used a house to provide residential care for two children. The house comprised a small downstairs office, individual bedrooms, and the usual kitchen and bathroom facilities. Two non-resident staff were on duty at all times and the house was under the supervision of a team of six or seven adult carers, who attended on a rota basis. A question arose over whether the use required planning permission, and S Ltd applied, under section 191 of the Town and Country Planning Act 1990, for a certificate of lawful use. This was refused by the local council. On appeal, the inspector concluded that S Ltd was entitled to a certificate of lawful use because no material change of use had occurred. The council appealed that decision. In issue was the meaning of Classes C2 and C3 of the Use Classes Order 1987.

In North Devon it was ruled that for up to 6 persons living as a single household where care is provided caring staff must be permanently resident. It says:

"The concept of living together as a household presupposes a proper functioning household. In the context of a case such as this, that requires the children and a carer to reside in the premises, otherwise the use clearly falls within Class C2. It is apparent that the size of the institution is irrelevant for the purposes of C2, but if it falls within that definition, it is not to be regarded as a dwellinghouse. The inspector had been wrong to regard the use in this case as falling within C3(b) rather than C2. Class C3 does require at least one carer, together with those being cared for, to reside at the premises. The inspector had correctly decided that no material change of use had taken place. The use for a maximum of two children, with care provided by up to two non-resident staff at these premises, and only at these premises, was, in the circumstances, a lawful use".

In this application for lawful development the proposal for carers to be non-resident, in accordance with regard to the judicial authority, places the proposed use within Use Class C2 - Care Homes.

Material Change of Use

The second question in this application is whether or not the change of use constitutes a material change of use within the meaning of Section 55 of The Town and Country Planning Act 1990.

The applicant seeks consent for a Lawful Development Certificate as a proposed residential home, it is for the LPA to consider the nature of the proposed use (three adult carers and three children) and whether this is 'materially' different to the use of the property as a typical Use Class C3 (a) dwellinghouse.

It is important to consider whether a 'material' change of use will occur in accordance with the principles established in the North Devon judgment. Supporting this approach, an inspector issued an LDC for the use of a house in Leicestershire as a children's home (appeal reference APP/K2420/X/11/2155849), finding that although the proposal would involve a change from C3 to C2 use, no material change of use was involved. The parties agreed that the lawful use was as a dwelling house in Use Class C3 of the Use Classes Order. It was proposed to operate it as a care home for children and young people between the ages of 9 and 17 with learning disabilities. The home would provide care for up to three children, administered by non-resident care staff working in shifts. The Inspector noted that the North Devon judgment provided the authority with the view that use as a care home for children, where carers were non-resident, fell within Use Class C2. He then considered whether the change of use was material. In refusing an LDC staff numbers were cited by the Council as the sole cause for concern in this judgment. However, having looked at the numbers involved; the Inspector concluded that they were not materially different from what might be expected of a large family house. On this basis he concluded that the proposed use would not, as a use within Use Class C2, amount to a material change of use from Use Class C3 as a dwelling house. The change of use would not require planning permission and the Council's decision to refuse to grant an LDC was not well-founded.

In light of the case law detailed above, each application should be determined on its own merits to decide whether there is a material change of use from that of a dwelling house (Use Class C3) to that of a residential institution Use Class C2. If it is decided that a change of use had taken place, it is important to establish if this is material.

The judgement reiterated that case law had established that whether or not a material change of use had taken place was a question of fact and degree. The residing of up to 3 children aged 8-18 with emotional or behavioural difficulties (EBD) with up to 3 carers two sleeping overnight on a rota basis, no more than 6 people in total, is considered not to constitute a material change of use after taking into account the following factors. The size of the household of 3, 8-18 year olds and 3 adults would not go beyond what would be expected of a large family unit in a two storey detached dwellinghouse. Facilities such as the bathroom/wc, kitchen and living rooms would be communal. There would not be any frequent visits by other care staff or clinicians. If meetings with other care staff or clinicians are required they would take place away from the home. The movements of the occupiers of the property would not go beyond what would be expected of a typical family home. There is a drive at the front of the property which offers multiple parking spaces and there is on street parking available in nearby streets. No external changes are required to the property. Any family visits will take place away from the home. Visits from friends may take place as would be expected from a typical household.

Therefore whilst the proposal would result in a change of use from Use Class C3 to Use Class C2, it is considered that there would be no material change of use in this case for the reasons detailed above and as such planning permission is not required.

Response to neighbours

- The company running the care home being privately run is not relevant when assessing the lawfulness of the application.
- The care home is not unregulated, it will be regulated by Ofsted as all care homes of this kind are required to be.
- The company not being from the local area is not a consideration for whether the proposal requires planning permission.
- Impact on house prices are not a planning consideration so cannot be considered as part of this application.
- The property having two schools nearby would not affect the lawfulness of the proposal.
- The proposed use cannot be assumed to cause any more crime or anti social behaviour than any other family that could move into the property and a fear of crime would not cause the proposal to constitute a material change of use.
- Given the numbers of comings and goings and visits to the home, there is no evidence that the use would be likely to result in significantly greater levels of noise than the existing residential use.
- The numbers of local police are not relevant to the lawfulness of the proposal.
- Residents were not notified of the proposals as the application is a lawful development certificate and so is determined by planning law, fact and any other relevant judicial authority not the comments of neighbours.
- The property having other families living on the same street does not make the change of use from C3 to C2 material.
- The planning department does not select the locations where applications are submitted but are obliged to determine the applications received.
- The experience of the company opening the care home is not a relevant consideration when determining the lawfulness of the proposal.
- There is no limit to the number of properties like the proposed care home in certain areas.
- The local schools being oversubscribed would not mean the proposals would constitute a material change of use, indeed the number of children proposed would be commensurate with a large family who could live at the property.
- Each application must be looked at on its own merits so any issues with other care homes would not be considered as part of this application.
- The children being either local or not would not be relevant when looking at whether the use of the property is lawful or not.
- The applicant has stated they do not allow short term emergency referrals, if this does occur it would be a matter for planning enforcement to look into.
- It is established that carers do not need to be permanently resident for this use to exist nor would the carers not being permanently resident mean the change of use to C2 is material.
- Existing anti social behaviour issues in the area do not affect the lawfulness of this proposal.
- The applicant is proposing two carers to be at the property at all times, the proposal does not involve any children being left alone in the house without supervision.
- The age of the local neighbours is not a relevant consideration on this lawful development certificate.
- There is no planning application currently with the local authority at this site.
- Each site must be looked at on its own merits and any issues at another site cannot be taken into account when determining this application.
- The personal circumstances of nearby neighbours cannot be taken into account when assessing the lawfulness of this specific proposal.
- Whilst the previous residents may only have had one car this assessment takes into account the possible numbers of cars from a residential home so the proposal is assessed against what could be expected from a large family home, in this case the differences in comings and goings is not significant enough to change the character of the property.
- The concerns surrounding the parking at the site and the existing turning circle have been raised a number of times. Given the number of spaces available on the driveway of the property and the amount of on street parking available on both this street and

other nearby streets there is no evidence that this proposal would cause any additional traffic problems than those already present or that could occur if the house remained in use as a large family home.

- Private restrictive covenants that affect land and property are not matters for the Council or Local Planning Authority to consider and as such any issues involving covenants cannot be taken into account as part of this assessment.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) as the proposed change of use of 11 Stokesay Close, Bury, BL9 8DB to a residential children's home for up to 3 children with up to 3 staff with 2 of those staying overnight working on a rota basis (Class C2) and operating in full accordance with the details set out within the supporting statement submitted 22nd May 2024, would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
SS - 17/07/2024		DM - 17/07/2024	