

DELEGATED REPORT

Report by Sam Summers	Date of report: 17/09/2024	Ref: 71112/LDCP
Registration: 27/08/2024	LDFC:	Expiry Date: 22/10/2024
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections: 1	Con Area: N/A	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 dwelling (Use Class C3a) as a children's home for three children, with a manager and three carers, two of whom would sleep or be awake overnight, working on a rota basis (Use Class C2)

Location: 967 Manchester Road, Bury, BL9 8DN

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 1 manager 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. There will rarely be more than four staff on the premises at any time.

Relevant Planning History

None

Publicity

1 objection recieved - The view of the local community close to this property having taken property and legal opinion is the proposed development would significantly affect Property prices in the surrounding area. We would all therefore claim compensation from Bury Council if our objection is not upheld.

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Development Plan and Policies - not applicable

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 (one manager, 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 1 manager and up to 3 carers with two sleeping overnight on a rota basis, no more than 7 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 4 adults (two staying overnight) would not go beyond what would be expected of a large family unit in a two storey 5 bedroom 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. There may be occasional visits from local social services but these would not exceed around 1 visit a week. 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 side streets. No external changes are required to the property. Visits from friends or family 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

Changes to property values are not a material planning consideration so cannot be considered as part of this application.

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 967 Manchester Road, Bury, BL9 8DN to a residential children’s home for up to 3 children with up to 4 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 revised supporting statement submitted 16th September 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	17/09/2024	DM -	17/09/2024