



PLANNING STATEMENT

Application for a Lawful Development Certificate re: use of a (C3a) dwelling for a residential children's home (C2) for a maximum of three children, with five carers working on a rota basis

**3 Sandown Road,
Bury,
BL9 8HN**

1. The Proposal

1.1. I am writing on behalf of my client, Accord Care Homes Ltd, who is seeking confirmation to use 3 Sandown Road, a C3a use, as a Children's Residential Care Home (as defined in the Care Standards Act 2000) falling within use class C2 of the Use Classes Order. Accord Care Homes Ltd is seeking to rent the property from the landlord on a long-term lease, and confirmation is required before the tenancy is agreed.

1.2. It is accepted that the proposed use falls within Use Class C2 and hence the change of use from C3a is not an automatic permitted change. However, it is nevertheless argued that there is little material difference between the current and proposed use, meaning that planning permission is not required.

1.3. Accord Care Homes partners with Local Authorities to provide high-quality accommodation and services for young people who require care. The proposed use of this location is perfect for providing a home for the young people in our care. It offers a lifestyle that promotes independence while also providing necessary care. The development is designed to meet the current and future needs of young people. We believe it will help create a diverse and balanced community.

1.4. There will be no external alterations to the building or its surroundings. From the outside, there will be no change in the appearance or character of the dwelling.

1.5. Under the requirements of OFSTED, such care homes must be run as closely as possible to a typical family household, while accepting staff are

employed on a rota basis to provide parental support to the children so many have missed in their early years. The only physical requirements specified by OFSTED are emergency lighting (no external visual distinction from normal lighting) and locks on bedroom doors for the privacy of each child (not a material issue for planning).

1.6. In terms of fire regulations for care homes, the only physical requirement is to have fire doors on those leading to escape corridors. The physical appearance of such doors is not materially different from normal doors and has no material impact on the character of the property.

1.7. The application is to ensure that the property acquired will meet planning requirements, necessary to achieve Ofsted registration.

1.8. The property is a five bedroomed semi-detached house, currently used as a dwelling under C3. There will be provision for three off-street car parking spaces to the front. It is the company policy to encourage staff to car share, to use public transport and not to allow on street parking.

1.9. Up to three children would live at the house, with two carers working on a rota basis and sleeping overnight. Six carers would operate 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. There would be one changeover of the overnight care staff per day. Usually, 10 am each morning. A manager and carer would visit the site daily from 9 am to 5 pm. These comings and goings are set out in the table below.

1.10. The purpose of the home would be to support the children to build their confidence, help them develop life skills and prepare them for life when

they leave the home to fend for themselves. This type of support has been found to be most effective in helping these children to have normal lives and not experience problems in later life.

1.11. With regard to schooling, it is often the case that when young people come into care, they have missed an extensive proportion of their education or are affected in a way that they could not work effectively in a large classroom environment. Given this, they could be tutored from home initially. This is all achieved online without any tutors having to come to the house. They may then progress to a specialist unit (smaller class sizes) then hopefully onto mainstream. In cases where children may have a home tutor, this is no different from an ordinary family who chooses to have their children educated at home. It makes no difference to the planning status of the use.

1.12. The applicant has confirmed that the proposed use is to provide a stable home environment for the occupants as their main and sole residence and that the length of stay is generally more than temporary or passing. It would not be a 'half way' house or provide overnight emergency lodgings for example.

1.13. The applicant undertakes a SAAR (Safe Area Assessment of Risk). This is submitted to Ofsted with its registration application and provides details of the crime in the area and any comments from police, local authority etc. This has not been completed and would only be completed after the granting of the LDC. This allows the purchase to be completed and the Ofsted application to be commenced.

1.14. There will be an impact risk assessments for any child where a referral has been made. This impact assessment considers all the child's needs and

looks at the compatibility with the young people already within the home. For example, if young people were known to each other

1.15. Unless they are approved by a local authority social services department, children will not be placed in the home. They are also able to confirm the urgent need for this type of facility.

1.16. Under Section 22G of the Children Act 1989, local authorities have a statutory responsibility to take steps, as reasonably practicable, that ensure children in care are provided with accommodation that '(a) is within the authority's area; and (b) meets the needs of those children.' Three reports were published in 2020 by the Children's Commissioner: 'The Children who no-one knows what to do with'; 'Private provision in children's social care' and 'Stability index 2020', which point out the failings of local government to meet this responsibility.

1.17. The papers summarise the findings of three years of work by the Children's Commissioner's Office and explain the failure of both national and local government to adequately meet the needs of these children. The report (page 15) states: *'Local authorities are highly reliant on the independent sector, particularly for children's residential care. Costs are increasing but it's unclear why. Given this reliance, it is imperative the market works well and that commissioning and procurement are improved to ensure no child is placed in unsuitable care settings. Recommendations: The Government should consider the barriers to creating more residential care placements to increase supply'*.

1.18. The company's business model aims to provide accommodation for mix-gender children, aged 8-18, with a range of emotional difficulties or other needs and challenges.

1.19. The proposed children's home seeks to replicate as closely as possible a normal family environment. This type of provision, which government policy is promoting, is to help children who often, through no fault of their own, have not had good parenting in their early years. These are not children with special needs, who would come under Use Class C2a.

1.20. The children's home model is to create a warm and nurturing family style environment for the medium to long-term care of a small number of children. This type of provision is operated in the same manner as a regular family home with two primary carers, to provide consistency and stability to the children who live there (similar to a fostering model).

1.21. Care is provided in small sized family units where residential carers help to develop the social and life skills needed when the children no longer live within an institution. Without such homes and positive interventions, these children when they leave the controlled environment of care homes will often end up in adult institutions, suffering from long term health problems.

2. Planning Assessment

2.1. It is accepted that where care is provided and this is not the main residence of the carers, the use falls within C2 and not C3b.

2.2. There is some case law which establishes that if the carers work on a rota basis and that it is not their permanent residence, the use must be regarded as C2 and not C3b. In the judgement of Mr. Justice Collins in *North Devon District Council v First Secretary of State* [2003]. J. Collins was clear on

the facts of that particular case, that carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care cannot be regarded as living together and that, whilst there would be less than six residents, the children, without at least one adult living with them at the premises, would not be capable of being regarded in the true sense as a household.

2.3. Whether the change of use would be material is also well established by the courts. Notwithstanding whether the use is considered to be within Class C2, rather than Class C3b, planning permission would not be required if the change would not be a 'material change' of use. It is still necessary to consider, therefore, whether that change of use would be 'material'. It is a matter of fact and degree, in the circumstances of an individual case, as to whether a change of use will be 'material'.

2.4. By way of a guide, differences which might be considered 'material' are those which are measurable or quantifiable as resulting in a significant or substantial change or step up in the character or impact of use.

Comings and goings

2.5. In terms of comings and goings, there would be little difference from the current use as a large family house to influence its character. These movements are considered further below. There will not be frequent visits by any other care staff or clinicians. The local Social Services would normally send one or two officers each six months to inspect the premises, plus one or two inspectors from Ofsted annually.

2.6. The task must be to compare against that 'baseline' the character of the current land use with what is now proposed. In so many respects the use



would operate in a way that is very similar to a normal family home. The property would provide the young people with their sole and main residence, with free and shared access to living, dining, and kitchen facilities, an ability to take shared meals prepared for them or make their own food or drink.

2.7. The residents would be taken to and brought home from school each day and with their carers they would interact with the property and the residence in a way that is very similar to an adult resident, parent or guardian. The residents would eat together and carry out domestic chores. The home would seek to foster lifestyles which would be the same as if the residents were children living in a family home.

2.8. The comings and goings are not considered to be significantly different from those associated with the current use as a family dwelling. The home manager, also a carer, would arrive each weekday morning and leave each evening, representing two car movements. In terms of the other two staff on the premises, they would normally work on a 48-hour shift basis, so there would be no more than one change each day.

2.9. All household chores such as cleaning, cooking and gardening involve the children and no additional staff are employed at the premises.

2.10. These children do not require regular visits from social workers and clinicians, with most of these meetings, if they are required, taking place away from the home. Due to the background of the children, family visits are rare and in any case, would take place away from the home.

2.11. The current use of the property is by a family with two children. In any case a large family house could typically have two parents with their own cars and possibly two or three children with their own cars. This would generate potentially more movements than indicated in the following schedule.

2.12. The current occupants have provided an estimate of their average number of comings and goings. This is compared below with the expected number of car movements from the proposed use, based upon other similar homes. There will not be a material difference. See schedule below (represent single movements either in or out) which represents the number of car movements in a typical week.

Schedule 1- Current Use (based upon assessment of current occupants)

Activity	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Travelling to and from work		2	2	2	2	2	
School run		4	4	4	4	4	
Shopping/ Social/recreational outings	4	2	2	2	2	2	4
Other visitors	2			2			2
Total Movements (in and out)	6	8	8	10	8	8	6

Schedule 2 – Proposed use (based upon experience of similar homes)

[illegible]

2.13. On this basis it is maintained that the proposed use as detailed in this supporting statement would not be materially different from a typical household. This is supported by the Egerton Appeal (Appendix 2: App/E/2205/x/16/3161037) where the Inspector concluded a similar use would not result in significantly more movements to give rise to planning concerns.

2.14. A similar conclusion is drawn in the Dale Road appeal (Appendix 3: APP/P1045/x/20/3263178) : *‘The number of these movements is unlikely to be significantly more than the number that would be undertaken by a family and certainly not enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. There is insufficient evidence before me to show that the use would be likely to result in greater levels of noise and disturbance than the existing authorised residential use.’*

Impact of the presence of staff

2.15. Visually, the property would look no different to the adjacent houses. During the day, there could be three members of staff in the property at any one time, but this would have no impact on the amenity of the area. A family with children and parents working from home could have the same impact.

2.16. In terms of the nature of the proposed use, paragraph 25 of Circular 05/2010 is relevant. It states that the criteria for determining whether the use of particular premises should be classified within the C3 use class (or similar) include both the manner of the use and the physical condition of the premises. The circular states that the premises can properly be regarded as being used as a single dwelling house where they are:

- *a single, self-contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them.*
- *designed or adapted for residential purposes containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house.*

2.17. In an appeal in Stockport (Appendix 1 APP/C4235/A/11/2162636) an Inspector noted that although the building would be fitted with an office [and fire alarm], this was not uncommon in many dwelling houses around the country and would not materially alter its basic character as a dwelling house. There are no major modifications required to this property.

Fear of Crime

2.18. The fear of crime and anti-social behaviour is a material planning consideration which might weigh against the granting of planning permission. The application is not an application for planning permission, however, and given that this is a matter of planning merit and in the absence of any basis to conclude that crime and anti-social behaviour are an inherent part of the character of the proposed use, such a fear is not relevant to the determination of this application for a Lawful Development Certificate.

2.19. There can be concern that the use would result in more noise and possibly anti-social behaviour due to the background of the children. The best answer to this concern is contained in appeal decision (Appendix 1: APP/C4235/A/11/2162636-):

11. The fear of crime is a material consideration in the determination of the appeal. However, the weight that can be attributed to it depends



on whether or not the evidence shows that the potential risk of crime is shown or expected to be high and the consequences for the community and individuals are serious. Whilst it is acknowledged that the incidents cited by the local residents would cause upset, they are not altogether unusual occurrences in modern society. Some of the incidents raised issues relating to the running of the home which have the potential to be overcome by changes to the management of the site. None of the evidence suggests that the potential risk from crime is shown or expected to be high or that the consequences for local residents are serious.

12. The evidence therefore leads me to conclude that the effect of the development on the living conditions of the occupiers of neighbouring dwellings regarding risk of crime would be low and carries insufficient weight to warrant dismissing the appeal on these grounds.

2.20. The nature of the children is not therefore material to the determination of this application.

3. Conclusion

3.1. It is maintained that there is no material difference in planning terms between the proposed use and the current dwelling. The carers, working on a rota basis, would effectively live at the dwelling house to provide 24-hour care, as a single household. Facilities such as the bathroom/wc, kitchen and living rooms would be shared and the living mode would be communal. The comings and goings associated with the use would not be materially different from a typical residential household.

3.2. The proposed use is to provide a stable home environment for the occupants as their main and sole residence and that the length of

stay is generally more than temporary or passing. It would not be a 'half way' house or provide overnight emergency lodgings for example. However, in any event, the courts have provided some assistance in determining the significance of there being a commercial factor to a residential use or an arrangement where the occupants have generally only a limited period of stay.

3.3. Following *Gravesham BC v Secretary of State for the Environment* [1982], the court accepted that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons, or if it was under commercial management.

3.4. The lawful use of a dwelling house, included in Class C3 of 'the UCO 1987', is broad in scope and could in association bring with it considerable activity, associated and ancillary use, or vehicular movement. The prevailing character of the proposed use would be that of a small group of children living together and using the property in a way similar to that of a family home where they would be supervised and cared for by adult guardians. While there might be identifiable differences, between proposed and existing uses, these would not be 'material' or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwelling house.

3.5. It is maintained that the nature of the use is not materially different from the current use as a family dwelling. Comings and goings would be no greater than occur at present, hence there would be no undue disturbance to any neighbours.



3.6. The local authority is therefore respectfully requested to support the application to allow this much needed facility to be established.

Appendix

1. Appeal Decision

by Kay Sheffield BA(Hons) Dip TP MRTPI an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 February 2012

Appeal Ref: APP/C4235/A/11/2162636

73 The Crescent, Davenport, Stockport, Cheshire, SK3 8SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Choices Homes for Children against the decision of Stockport Metropolitan Borough Council.
- The application Ref DC046099, dated 2 December 2010, was refused by notice dated 19 April 2011.
- The development proposed is change of use from residential property to children's home.

Procedural matter

1. In refusing planning permission the Council cited saved Policies HC1.4 and CDH1 of the Stockport Unitary Development Plan Review, 2006 (UDP). However, it is understood that subsequent to the determination of the application the Council has adopted the Stockport Local Development Framework: Core Strategy Development Plan Document (DPD) and as a consequence Policy CDH1 of the UDP has been superseded by Policies CS8, SIE-1 and SIE-3 of the DPD. Regard has therefore been had to these policies in the determination of the appeal.

Decision

2. The appeal is allowed and planning permission is granted for change of use from residential property to children's home at 73 The Crescent, Davenport, Stockport, Cheshire, SK3 8SL in accordance with the terms of the application, Ref DC046099, dated 2 December 2010, subject to the conditions set out in Annex A to the decision.

Main Issues

3. The main issues are the effect of the development on the living conditions of the occupiers of neighbouring dwellings regarding risk of crime and the effect of the



proliferation of such uses on the character and appearance of the Egerton Road and Frewland Avenue Conservation Area.

Reasons

4. The appeal site lies in a residential area within the Egerton Road and Frewland Avenue Conservation Area. The appeal property is a large detached dwelling with living accommodation over three floors. Space for parking is provided to the front of the property and there is a private garden to the rear. The use which is the subject of the appeal has commenced.

5. The proposed use would provide accommodation for a maximum of four children. There would also be two carers on site at any time, although they would not be permanently resident in the property. The property is sufficiently large to cater for this level of occupation, which would be out of character in a residential area. Evidence that the property is not in use as a single family home includes the use of one ground floor room as an office safety notices in the kitchen, locks on the office and bedroom doors, a fire alarm and alarms on external doors. Whilst safety notices and locks on internal doors are not usual features of family homes, the use of one room as an office for a member of the household to be able to work from home is becoming more common and the alarms were not dissimilar to those fitted in some modern homes. Overall there was little evidence in the fabric of the building to differentiate it from a home in single family occupation.

6. It is evident from the submitted documentation and observations on site that the home is run to emulate a single family home. The children, aged between 8 and 17 years, would attend school and outside activities as well as being encouraged in social pursuits. The level of supervision from the carers is dictated by the age of the children and their individual circumstances but shares a common theme with family homes where there is a growing need to foster a child's growing independence and ability to cope in the modern world.

7. It is understood that there are two other similar uses in the area, a home for the autistic on The Crescent and a children's home on Egerton Road. No details of the former use have been provided, but it is understood that the latter has 8 beds and caters for children aged 16 years and above.

8. Local residents have expressed a fear of crime related to the use of the property as a children's home. Incidents of a missing child and anti-social behaviour have been referred to and the disturbance these have caused to local residents. The Safer Stockport Partnership (SSP) has suggested that the fear of crime and anti-social behaviour in the area may be influenced by the perception of the behaviour of the residents of the home in Egerton Road which has been the subject of complaints from local residents over the years.



9. There is no definitive evidence that the incidents cited by the local residents related to children resident at the appeal site or whether those responsible were residents elsewhere in the area. However, the observations submitted by SSP indicate that the police have been contacted regarding the appeal property on 23 occasions between March 2008 and February 2011. It is understood that 90% of these instances related to a child who absconded on a number of occasions and such matters generate a visit from the police each time. The appellant has indicated that this situation has been resolved. In comparison it has been stated that the home in Egerton Road generated 228 incidents over the same time period.

10. Whilst none of the children have been clients of the Youth Offending Team, the SSP report indicates that there was one reported crime during the two years ending February 2011, although no details have been provided. The report concludes that the impact on the community of the residents of the appeal property has been slight and that the use represents a low to medium risk in terms of crime and anti-social behaviour.

11. The fear of crime is a material consideration in the determination of the appeal. However, the weight that can be attributed to it depends on whether or not the evidence shows that the potential risk of crime is shown or expected to be high and the consequences for the community and individuals are serious. Whilst it is acknowledged that the incidents cited by the local residents would cause upset, they are not altogether unusual occurrences in modern society. Some of the incidents raised issues relating to the running of the home which have the potential to be overcome by changes to the management of the site. None of the evidence suggests that the potential risk from crime is shown or expected to be high or that the consequences for local residents are serious.

12. The evidence therefore leads me to conclude that the effect of the development on the living conditions of the occupiers of neighbouring dwellings regarding risk of crime would be low and carries insufficient weight to warrant dismissing the appeal on these grounds.

13. The area in the vicinity of the site contains a mix of Victorian, Edwardian and inter-war dwellings with a scattering of some more modern properties. The maintenance of the character of the area is important and depends on the control of new development. The change of use of the appeal site from residential to a children's home would not necessitate any external alterations to the property or its grounds. The site has parking space for at least four vehicles which should be sufficient to cater for the traffic generated by the site without a heavy reliance on on-street parking. Whilst the number of vehicles parked on the road during my site visit exceeded the level observed generally in the neighbourhood, it was ascertained that none of the vehicles were associated with the appeal site.



14. It is acknowledged that at staff changeover times there would be the potential for noise and disturbance from vehicles manoeuvring, but as these changes take place every two days and occur during the daytime there is no indication that these events would be disturbing to local residents. There is no evidence to suggest that the movements to and from the site at any other times would be significantly different from those generated by a single family household and they would therefore not result in an intensification of use which would harm the residential character of the area.

15. Visually, therefore, there would be no significant difference between the use of the property as a children's home and other properties in the area in residential use. In respect of the similar uses in the area, on inspection during my site visit, neither their external appearance or the comings and goings in association with them highlighted their use. This leads me to conclude that the development on its own or in combination with the other two similar uses in the area would not have a harmful effect and would therefore preserve the character or appearance of the Conservation Area.

16. Reference has been made to an appeal¹ in respect of a Certificate of Lawful Use which sought to confirm whether the use of the appeal property as a dwelling for not more than six persons living as a family unit constituted a material change of use which required planning permission. The matter before the Inspector was therefore whether planning permission was required and not, as in the case before me, whether the use of the property as a children's home would be acceptable.

17. It is accepted that many of the issues considered by the previous Inspector were similar to those raised in the current appeal and although his conclusion that the development would constitute a material change of use was based on his observations that there would be the potential for more comings and goings than might be expected to be generated by a dwelling; that troubled children could cause more disturbance than most family homes; and that the reference to police visits would suggest that the nature of the use is not that of a normal domestic use, there is no conclusive evidence before me that such a use is not suitable within a residential area, that the level of comings and goings would be significantly different from a single family home or that the appeal proposal would create a potential risk from crime which is shown or expected to be high or that the consequences for local residents are serious.

18. On balance I conclude that the effect of the development on local residents with regard to fear of crime would be low and the character or appearance of the Conservation Area would be preserved, in accordance with saved policy HC1.4 of the UDP and Policies CS8, SIE-1 and SIE-3 of the DPD.

19. In the light of Circular 11/95 The Use of Conditions in Planning Permissions I have had regard to the conditions suggested by the Council. As the use has already commenced there is no need for the standard time limit condition although, for the avoidance of doubt and in the interests of proper planning, I have confirmed the drawing on which I have based my decision. In order to ensure that the property could not be used for another institutional use without planning permission and that no intensification of use beyond that proposed in the application can take place I have confirmed the number of children and staff who can be in the property and I have restricted the use to that of a children's home operated by the appellant only.

20. For the reasons given above and having had regard to all other matters raised, the appeal is therefore allowed.

Kay Sheffield INSPECTOR



2. Appeal Decision

Site visit made on 17 February 2017

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28th February 2017

Appeal Ref: APP/E2205/X/16/3161037

The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).

The appeal is made by Parkview Care against the decision of Ashford Borough Council.

The application Ref 16/01000/AS, dated 1 July 2016, was refused by notice dated 24 August 2016.

The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.

The use for which a certificate of lawful use or development is sought is as a C3(b) private dwelling.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the matter constituting a proposed use which is considered to be lawful.

Procedural matters

2. At the time the application was considered, the Planning Statement submitted with the application form noted that the house was intended for use by 4 young people, between the ages of 8 and 17, and their carers. However, the appellants' Appeal Statement refers to a maximum of 3 children and 2 adult carers and their submissions justifying the proposed use are based on this number. As this is the latest information submitted in support of the appeal, I have considered the merits of the case on this basis.

3. The appellants now appear to agree that this scenario would not constitute a 'household' as set out in Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and as defined in Government Circular 8/2010. This Class is defined as not more than 6 residents living together as a single household where care is provided for residents.
4. A similar scenario to the appeal proposal was considered in the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C.R. 38* which determined that children alone cannot form a 'household' and that if their carers do not live permanently at the property, the use would fall within Class C2 of the UCO. This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use. Examples given are as a hospital, nursing home, residential school, college or training centre.
5. Nevertheless, a change to a new use class only requires planning permission to authorise it if it is material in planning terms. The appellants consider that, in this instance, a change from Class C3(a) to C2 would not be material and planning permission is not therefore required for the proposed use. I have considered the appeal on this basis.

Main Issue

6. I therefore consider the main issue in this case is whether the proposed use is a material change from the lawful use as a single dwellinghouse falling within Class C3(a).

Site and surroundings

7. The appeal site is a detached house with a generous garden in an enclave of other properties on the outskirts of the village of Egerton. At present it has 2 living rooms, a kitchen and a cloakroom on the ground floor and 4 bedrooms and 2 bathrooms on the first floor. An entrance drive leads to a garage and off street parking.

Reasons

8. As noted above, the proposal is for the use of the property for a maximum of 3 young people between the ages of 8 and 17 who would live in the house under the care of 2 adults at all times, although the identity of the carers would change and the carers would not have the property as their main residence.
9. The Council relies on the report of the Officer who determined the application and this report concludes that the proposed use falls within in Class C2 and,



given the findings of the judgement set out above, I concur with this view. However there is no assessment made in the report as to whether a change of use between Class 3(a) and Class 2 as described in this case would be material. To establish this, a comparison between the existing and proposed uses needs to be considered.

10. A house of this size could easily accommodate a typical family with 2, 3 or more children and 2 adults and it seems to me that the use of the house as a home for a maximum of 3 young people and their carers would not be materially different from the authorised use as a 4 bedroom family home. It is likely that there would be vehicle movements created by the carers coming to and leaving the site on a daily basis as they start and leave their shifts and journeys undertaken by the children when being taken to and from school. Nevertheless, I do not consider that the number of such movements is likely to be significantly more than those undertaken by a family and certainly not enough to result in an intensification of use that would give rise to planning concerns.
11. I have noted the village location and the lack of facilities available for young people in the immediate area, but again, there would be nothing to stop the property being occupied by a family, to whom the same concerns would apply.
12. The appellants will be required to comply with all relevant rules governing the accommodation for children in care and their full time supervision and, if the property can meet these regulations and the appellants can meet the staffing requirements, I see no reason why the use proposed would have any planning impacts that would cause it to be considered as a material change of use.
13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property for a class C2 use for 3 children and 2 adults was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Katie Peerless

Inspector



3. Appeal Decision

Site visit made on 9 March 2021
by A A Phillips BA(Hons) DipTP MTP MRTPI
an Inspector appointed by the Secretary of State
Decision date: 15 March 2021

Appeal Ref: APP/P1045/X/20/3263178
214 Dale Road, Matlock Bath DE4 3PT

The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).

The application Ref 20/00902/CLPUD, dated 14 August 2020, was refused by notice dated 13 November 2020.

The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.

The use for which a certificate of lawful use or development is sought is described on the application form as C2 – _residential institution.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded. In this case that turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3.



Reasons

3. The appeal property is a detached two storey dwellinghouse situated on the main road (A6) between Matlock Bath and Matlock. It is situated adjacent to a row of terraced houses and is separated from the main road by a small front garden with a path leading to the front door. It has a small rear garden that backs onto a steep cliff and there is on-site parking immediately adjacent to the house. The proposed use is as a home for up to three children or young people with care provided on a rota basis. A member of staff would sleep on the premises to provide 24 hour care and a carer would attend during the day. Therefore, the carers would not live permanently at the property but rather would operate on a shift basis.
4. A similar scenario to this case was considered in the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C. R. 38* which determined that children cannot form a household and that if their carers do not live permanently at the property, the use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use.
5. As previously set out in this decision, the property would be occupied by up to three children or young people who would live in the house under the care of two carers working on a rota basis sleeping overnight (two days on and two days off). A manager would be on site during weekdays between 0900 and 1700 and there may be occasional visits from a social worker or clinician. The property would not be the main residence of the carers. Consequently, the Council states that the main consideration in this case is that the carers would not be full time residents, but would work in shifts, consistent with a C2 use. The Council goes on to argue that there is no permitted change from C3 to C2 under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and the proposed use cannot therefore be considered to be permitted development.
6. However, a change of use to a different use class only requires planning permission if it is material in planning terms. In this case, the appellant accepts that the proposed use is within Class C2 but contends that the nature of the use as detailed in the application would not be materially different than a typical household in Class C3. That is the basis on which I have determined this appeal and in order to establish whether or not there would be a material difference a comparison between the existing and proposed uses must be carefully considered.
7. The property currently comprises of a sitting room, living room, dining room, kitchen, WC and hall at ground floor level with four bedrooms, an additional bedroom/dressing room, WC and bathroom on the first floor. The house could

quite easily accommodate a family with two adults and three or more children and therefore the proposed use for up to three children or young people and their carers would not be materially different from the authorised use as a single four or five bedroom family dwellinghouse. There would be some vehicle movements associated with carers coming to and going from the site on a daily basis in accordance with their shift patterns and there would be additional journeys linked to taking children and young people to school or college and taking them to other activities or appointments. The number of these movements is unlikely to be significantly more than the number that would be undertaken by a family and certainly not enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. There is insufficient evidence before me to show that the use would be likely to result in greater levels of noise and disturbance than the existing authorised residential use.

8. It is my understanding that the appellant will be required to comply with a range of regulations and rules governing the operation of the accommodation for children and young people in care, including their supervision. Should these regulations be adhered to and the appellants meet the necessary staffing and management requirements, I do not find there to be any reason why the use proposed would have planning impacts that would result in it being considered to be a material change of use.

Conclusion

9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the property for C2 - residential institution purposes was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A A Phillips - INSPECTOR