

DELEGATED REPORT

Report by Sam Summers	Date of report: 18/04/2023	Ref: 69169/LDCP
Registration: 12/12/2022	LDFC:	Expiry Date: 06/02/2023
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area: N/A	Adv Type: N/A
Reason for Delay:		EIA: NA
N/A		Dec Level: DEL
		Stat Class: NREQ

Proposal: Lawful development certificate for proposed use of a (C3a) dwelling for a children's home for a maximum of three children with three carers of whom two sleep overnight working on a rota basis (C2)

Location: 3 Sandown Road, Bury, BL9 8HN

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 aged 8-18 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

None

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Unitary 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).

In North Devon the question was to look at was:

Use Classes Order; Dwellinghouse used as home for children in care; Care provided by staff on rota basis; Town and Country Planning (Use Classes) Order 1987; Whether residents living together as single household; Whether use falling within Class C2 or C3; Whether material change of use.

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.

The other 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 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 up to 3 carers on a rota basis, no more than 5 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 semi detached dwellinghouse. The movements of the occupiers of the property would not go beyond what would be expected of a family unit. There would not be any frequent visits by other care staff or clinicians. There will be three off-street car parking spaces at the front of the property and there is on street parking available in nearby side streets. No external or internal changes are required to the property.

As such the change of use would not alter the character of the immediate vicinity, either by alteration of the building or by any increase in noise or disturbance or have any more significant impact on the residential amenity of nearby occupiers. As such the change of use does fall into the different use class of C2 - care homes, but does not constitute a material change of use from residential occupation. Therefore the proposed change of use would be lawful.

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 3 Sandown Road, Bury, BL9 8HN to a children's home (Class C2) for up to 3 children with a maximum of 3 additional staff members with 2 of those staying overnight on a rota basis and operating in full accordance with the details set out within the applicants planning statement submitted 13th December 2022, 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	18/04/2023	DM	18/04/23