

DELEGATED DECISION REPORT

HPK/2023/0324
Valid 10/08/2023

2A, PENNINE ROAD,
SIMMONDLEY, GLOSSOP,
DERBYSHIRE, SK13 6NN

CERTIFICATE OF
LAWFULNESS FOR THE
PROPOSED USE OF THE
PROPERTY FOR UP TO 3
RESIDENTS LIVING
TOGETHER WITH CARE
PROVIDED

(CERTIFICATE OF
LAWFULNESS - PROPOSED)

MAIN ISSUES

If any person wishes to ascertain whether any proposed use of a building would be lawful, they may make an application for the purpose to the local planning authority. If the authority is satisfied, on the information provided, that the use would be lawful they shall issue a certificate to that effect.

The proposed use of a property would be lawful and not require planning permission in circumstances where either:

- there would be a change between two uses within a class of the Use Classes Order 1987; or
- there would be a change that is not 'material change' and so not development that is subject to the controls of the planning system.

DESCRIPTION OF SITE

The application site comprises a two-storey, detached dwellinghouse constructed of brick and tile materials. The property is modern and extended. The site is opposite a school, medical centre, and parade of shops.



The application site is located within a residential area.

PROPOSAL

The application seeks a Lawful Development Certificate for the use of the property for up to 3 residents living together with care provided.

There will be reconfiguration internally. The existing property is four bedrooms with a bathroom and ensuite, it is proposed to create a second ensuite off one of the bedrooms.

The fourth bedroom will be used by a resting night carer.

SITE HISTORY

HPK/0003/9350 Two storey side extension of house with conversion of ex police office to garage (attached) – Approved 03/10/2000

PROPOSAL

This home aims to provide 3 children with an environment as close as possible to that of a traditional family home. The use of the property would not fall within Class C3 as there would not be any resident adults living at the property as their main place of residence. Care workers would work on a shift basis and, as No 2A Pennine Road would not be their home, the property would not be occupied by a “single household”. The proposed use would therefore, whilst not being materially different to a Class C3 use, fall within Class C2.

Up to 3 children between the ages of 9 and 17 years would live at the property as their principal residence. The children who would live at the home, will have been taken into care and are not old enough to live independently. They would be expected to leave the home on maturity to live independent lives.

At the proposed care home, day-to-day living facilities, including bathroom, kitchen, dining and sitting rooms would be shared. Each child would have their own bedroom.

The preparation of meals would be principally undertaken by the carers; however, the children would be encouraged to assist. Both carers and children would eat their meals together at the dining table and children would socialise together. Children would usually attend a local school.

Staff would work shifts to provide 24/7 cover. Two staff will be on duty for 25hrs or 48hrs (staff have the choice). Shift changes take place between 10-10:30am, so there will be a brief cross over with that time for the handover.

Not all staff would be present on the site, at all times. During the day there would be 2 carers present to provide oversight to meet the needs of children and the staff team as and when required. During the night 2 care staff would be present to provide care and/or support for the children should they wake during the night.

In addition to carers, there would be short and infrequent visits from social workers and other support professionals.

Vehicles trips for day to day living activities such as shopping, school runs and social outings for the children would be undertaken by the carers and, as with any family dwelling, shopping can also be ordered online for delivery.

OFFICER COMMENTS

The Town and Country (Use Classes) Order 1987 ("UCO 1987") groups and specifies different uses within broad categories of classification. By s55(2)(f) of the Town and Country Planning Act 1990 ("the Act"), where a use falls within a particular designated class, then no planning permission is needed for any change which falls within the same class. One of those classification categories is Class C3 'Dwellinghouses' which specifically includes the use of any dwellinghouse by either, a single person or family (Class C3a); up to six people living together as a household and receiving care (Class C3b); or groups of up to six people living together as a household, not receiving care (Class C3c). Additionally, by the exception at s55(2)(d) of "the Act", the dwelling and its curtilage can, without planning permission, be used for any purpose that is incidental to the enjoyment of the dwellinghouse.

The building in this case is a family dwellinghouse. The applicant proposes to provide a home for up to three unrelated children who would live together and be cared for by non-resident staff, it is clear that these residents would not be a family and therefore, not included at Class C3a.

Turning to whether this proposed use would then remain with Class C3 but fall within Class C3b instead, we have the benefit of the judgement of Mr. Justice Collins in *North Devon District Council v First Secretary of State* [2003]. Collins J 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 6 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. Taking all of this on board it seems clear that, applying Mr Justice Collins precepts from *North Devon*, the proposed use would not fall within Class C3(b).

However, it is well established by the courts that, notwithstanding whether the use might fall within Class C3, a different use class, or no class at all, planning permission will not be required, if the change of use would not be a 'material change' of use. The local planning authority must then consider whether the change of use proposed 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.

The determination therefore, rests with whether the differing use as set out and proposed by the applicant would be 'materially' different to that of a dwellinghouse and result in development requiring planning permission. "The Act" does not define 'material change of use' and in general therefore, it is necessary to exercise some considered judgement in individual cases, and this is regarded by the courts as being primarily a matter of fact and degree for the Local Planning Authority.

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 a use.

As a starting point, the previous and lawful uses of the property, against which the materiality of the applicant's proposed change must be measured, provide the base line for comparison. The property was last used as that of a detached family home with the garage being used as a police office. There is no limit on the size of 'family' that can occupy a dwellinghouse and obviously a sizeable property with ample grounds is likely to be occupied by a relatively large family, most probably with children.

Included, within the same C3 use class, the property might also be used and occupied by up to 6 people, who are not related as a family, but live together as a single household, and this could include an arrangement where the residents are provided with care.

The task then is to compare against that 'baseline' the character of the land use proposed by the applicant. 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 able to take shared meals prepared for them or make their own food or drink. The residents will be taken to and brought home from school each day and while their carers would not be resident, while in attendance, 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 get ready on a daily basis to attend school. The home seeks to foster lifestyles which would be the same as if the residents were normal teenage children living in a family home.

It is acknowledged that the home would be provided by a commercial organisation and that the carers would be employees attending the home as their place of work. However, these are perhaps more coincidental factors which actually have little effect on the character and way in which the property would be used on a day to day basis. The conduct, activity and interaction between residents and staff would in all likelihood be very similar to that of a family unit. If for example, the care staff use an office provided within the property, this is not obviously different in character and impact to the resident of a dwellinghouse normally using a home office or study.

The applicant's evidence is 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. It might also be noted that interior preparations might include the installation of an office, fire alarms, fire doors and en-suites. However, these are not facilities that are uncommon within any other dwellinghouse and are not in themselves obvious indicators that the proposed use would be materially different.

The home would provide care for young people. The residents would not be detained offenders or have any medical or clinical condition requiring secured facility or hands on attention, and more extreme behaviours are unlikely to define the prevailing

character of the resident's conduct or the land use. The impact and character of a use needs to be considered in the context of the planning unit on which it takes place. In this case the planning unit is that of a large dwelling within ample grounds enclosed by mature garden; it is set back from the road with a driveway.

In this context, predicted externalities and amenity impacts are not obvious indicators that there would be 'material change'.

The house would have just three residents, none of whom drive or own a car. This would be in contrast to most family households, where it is likely that at least two adult members, often more where there are adult children, own and use a car; and, in the case of a house share, it is possible that all six members of the household could all use their own car, with all of the comings and goings associated with a household.

Whilst the residents themselves would not drive, there will of course be some vehicle movements associated with the proposed use. On the applicant's evidence submitted with the application, the limited number of staff (who provide supervision on a shift basis) would come and go over a 24-hour period, there would be trips taking the residents to and from school and social activities, shopping, visits from resident's different family and friends, and cleaners. When considered together, that cumulative level of activity, traffic movement and requirement for parking, is unlikely to be any greater than any of those 'dwellinghouse' uses, where many or all of the residents make journeys to and from work, school, shops, and services and can take any number of deliveries and visits from friends, family, cleaners, maintenance tradesman etc.

The application site has off-road parking and outdoor amenity space for the proposed use. The application site has off-road parking and outdoor amenity space for the proposed use. Typically, there would be approximately 2 cars on the site during the day which can easily be accommodated within the site.

CONCLUSION / PLANNING BALANCE

The lawful use of a dwellinghouse, included at Class C3 of "the UCO 1987", is broad in scope and could in association bring with it considerable activity, associated and ancillary use, or vehicle movement. The prevailing character of the proposed use would be that of just three 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 dwellinghouse.

OFFICER RECOMMENDATION: Issue a POSITIVE Certificate

Case Officer: Pet Twigg

Recommendation Date: 29.09.2023

X *B.S. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council