

<u>APPLICATION NO:</u>	23/02666/CLD	<u>CASE OFFICER:</u>	Maxine Wishart
<u>WARD:</u>	Prescot North	<u>PARISH:</u>	Prescot Town Council
<u>LOCATION:</u>	22 Hawthorne Road, Prescot, Knowsley		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OF RESIDENTIAL DWELLING AS A CHILDREN'S HOME FOR A MAXIMUM OF 2 NO. CHILDREN		

KNOWSLEY LOCAL PLAN ALLOCATION – Primarily Residential Area

Site Description

This application relates to a semi-detached two-storey dwelling located on the southern side of Hawthorn Road, Prescot. The property is located in an established residential area and is surrounded by other two-storey, mainly semi-detached dwellings.

Proposal

The application is for a Certificate of lawfulness for the proposed use of a dwellinghouse (Use Class C3) to a children's home (Use Class C2) for a maximum of 2 children.

The main issues in determining this application are whether or not the proposed use as a residential children's home for no more than 2 young people falls under Use Class C3 (b) of the Town and Country Planning Use Classes Order 1987 (as amended) and, if not, whether the proposed use would be a material change of use of the building.

Consultations

None Required.

Representations

There is no statutory requirement to consult third parties including parish councils or neighbours.

Planning History

APP. NO:	08/00348/FUL
PROPOSAL:	ERECTION OF SINGLE STOREY REAR EXTENSION
DECISION:	Granted
DECISION DATE:	26 June 2008

Relevant Policy

N/A

Article 35 Statement

N/A

LEGAL CONTEXT OF THE APPLICATION

The key statutory framework for lawful development certificates and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 (as amended).

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

The application is made under s192 of the Town and Country Planning Act 1990 (as amended). An application under s192 seeks to establish whether:

- a) Any proposed use of buildings or land; or
- b) Any operations to be carried out in, on, over or under land, would be lawful.

S192 (2) sets out that if on application under this section, the Local Planning Authority (LPA) are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

It is therefore not an application for planning permission. Instead, it is a legal determination based upon evidence and facts presented by the applicant as to whether the stated activity would be lawful. In such cases, the local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Issues such as the planning policies do not fall to be taken into consideration as the decision is based on fact and not on policy grounds and therefore planning merits are not relevant at any stage in this particular application process.

Essentially the application is asking for a formal determination from the local planning authority as to whether or not a use can proceed without the need for planning permission.

Planning Policy Guidance (PPG) advises that the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

As well as the accompanying application form, the application is supported by a Planning Statement with additional information / clarification provided by the applicant.

Assessment

The key questions are whether the proposal would:

- a. Fall within Class C3 b) of The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and
- b. If not, whether the changes would constitute a material change of use.

Use Classes C3 (Dwellinghouses) and Class C2 (Residential Institutions) of The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)

No. 22 Hawthorn Road comprises a two-storey semi-detached property with three bedrooms, vehicular access from Hawthorn Road with private amenity space to the rear. The lawful use of 22 Hawthorne Road is within Class C3 of the UCO.

Class C3 (Dwellinghouses)

Use Class C3 of the UCO is sub-divided into 3 parts:

C3(a) a single person or by people to be regarded as forming a single household;

C3(b) not more than six residents living together as a single household where care is provided for residents; or

C3(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within C4).

For the purposes of Class C3 (a) “single household” shall be construed in accordance with section 258 of the Housing Act 2004.

Care is defined in Article 2 of the UCO: *“care” means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.* The definition of care therefore excludes personal care of children from the definition of care, except in Class C2.

Where support staff come and go on shifts, the use cannot be considered to fall within Class C3(b). Use of No. 22 Hawthorne Road as a children’s home would fall within Class C2 of the Order (Residential institutions). This is acknowledged by the applicant in the application.

Use Class C2 (Residential Institutions)

Class C2 of the UCO reads as follows:

- Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).
- Use as a hospital or nursing home.
- Use as a residential school, college or training centre.

North Devon District Council v First Secretary of State [2003] EWHC 157

In *North Devon District Council v First Secretary of State*, the court held that the concept of living together as a household means that a proper functioning household must exist and thus, for the use to fall within Use Class C3(b), the children and

carer(s) must reside in the premises. Otherwise, the use clearly falls within Class C2 use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)).

In relation to the proposed use, the applicant indicates that it is intended to use the Site as a residential care home for up to two young people between the ages of 7 and 17, although the applicant provides care for young people of different ages. The applicant is registered with Ofsted and provides personalised care for young people with learning disabilities, helping support them and prepare them to return home or to live independently as an adult. The submitted evidence indicates that the care to be provided to the young people in this case, would include care defined by Article 2 of the UCO.

As such, the proposal would fall within Class C2 (*Residential institutions*) of the UCO which includes the “*Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses))*.”

Section 55 of the 1990 Town and Country Planning Act, states that a material change of use constitutes development. There is no provision in the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to permit a change from C3 to C2.

However, the *North Devon District Council v First Secretary of State* case found that even if the use falls within C2, a material change of use may not occur because ‘*carers will come and leave at the beginning and end of their shifts but otherwise the building is to all intents and purposes used as any other family house would be with two children there: shopping trips are needed; children have to be taken to school; the children assist to an extent in the preparation of meals and so on*’.

Material Change of Use

In relation to the proposed use, a judgement must therefore be made in relation to whether there would be a material change in the character of the use of the premises. This would be based on whether there would be a material difference in the activity at the premises from comings and goings beyond which would be expected from the normal residential use of the dwellinghouse.

The government’s Planning Practise Guidance states that whether a material change of use has taken place is a matter of fact and degree and based on the individual merits of the case:

“When does a change of use require planning permission?”

A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of ‘material change of use’; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.... Paragraph: 011 Reference ID: 13-011-20140306”

Residents

Whilst the applicant indicates that it is intended that the young people residing at the site would be between the ages of 7 - 17, the applicant provides care for other age groups. It is considered that the age group of the two young people to be cared for on the premises and their specific needs does not mean the way the property would run would change significantly depending on the age of young people residing at the

premises.

Staffing

The supporting information which accompanies the application indicates that the as well as the two young people there would be two full time members of staff working on a 48-hour shift pattern from 10am each shift change day. The staff would work on a rota basis, typically with three teams supporting the residents.

Further clarification submitted states that handovers would usually be staggered between 9.45 and 10.15 (10am indicated to demonstrate that they would take place at a sociable hour outside of peak travel to school / work). Handover would take no longer than 5 minutes. During the week the shift changes would occur when the residents are at school and as such may not take place at the property, i.e. one staff member may undertake a school drop off and then go to their home to complete paperwork etc and another may do the home's shopping before going to the house. At weekends this changeover could take place outside of the home in situations such as where the young people are being taken out for recreation activities etc. There would therefore be no more than 3 members of staff on site at any time unless the staff were car sharing at which time there may be 4 staff but this would be an infrequent occurrence.

Typically, the young people would attend a local school during the day - either walking there, being transported by the home's staff, or using public transport subject to needs and school location. Whilst at school the staff would undertake their administrative duties as well as household duties such as cleaning the property, food shopping, taking the residents to any appointments, or attending meetings on behalf of the residents such as looked after children's reviews, meeting with parents etc.

After school the residents would either be collected and transported home, or they would use public transport/walk to return. They would be encouraged to engage in extra curricula activities such as after school clubs and social/sporting clubs in the evenings and at weekends.

Manager

In addition to the staff members, the Registered Manager would be responsible for managing two services and would split their time accordingly across both Children's Homes. It is likely that the Manager would visit the service twice a week for an average time of 12 hours across the week. These visits would not coincide with staff changeover times or be in the evening. The Manager would have space to work within one of the Living Rooms, the Manager will not be providing direct Care or Support and would not be staying overnight at the property.

Sleeping Accommodation

The care staff would sleep on the premises during their shift. Generally, there would be two young people and two staff at the property. The property is a three bedroom dwelling. The applicant has indicated that one of the bedrooms would be used by staff and there would be a bed in one of the living rooms which would also accommodate an area for administration.

Educational Provision

The application indicates that typically the young people would attend a local school during the day. There would be no additional activities at the premises that would not normally be undertaken at a private home where a child living with or without learning disabilities resided with their own family. The young people would be in school unless they were of an age where they no longer attended school and were at

college or were in an apprenticeship or were younger than school age and either looked after in the home or attending nursery.

Visitors

The application state that the young people living at the premises would have learning disabilities and children in the care of a local authority could normally have multi-agency visitors to the premises in relation to each young person. In that regard the applicant has confirmed that *“the majority of appointments for Children who are Looked after take place off site. Appointments around Health and Education would be the main appointments and take place off site.*

Visits to the service would be infrequent – Likely there would be an average of 1 visitor to the property per week for e.g. Family Members/Social Worker. These visits would be during the working day or daytime hours at weekends, there would be no evening visits.”

As such, the proposed use and associated activity would be unlikely to cause a greater level of disturbance or detrimental harm to residential amenity than could be expected by the C3 use of the dwellinghouse.

Although the proposed use would not fall to be within Class C3 use, it is nonetheless considered that no material change of use would occur and the proposal would not constitute development.

Conclusion

It is considered that the proposed use would not constitute a material change of use. The use of a residential dwelling (Use Class C3) to a children's care home for up to 2 children at No. 22 Hawthorne Road, Prescott L34 2SZ would not constitute a material change of use that would require planning permission.

Recommendation

The proposal constitutes a lawful development for which planning permission is not required.

Signed Case Officer¹: **M Wishart**

Signed Authorising
Officer²: **K Foster**

Date: **30 January 2024**

Informatives

Not applicable.

¹ I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

² I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed