

<u>APPLICATION NO:</u>	23/02711/CLD	<u>CASE OFFICER:</u>	Lee Osborne
<u>WARD:</u>	Roby	<u>PARISH:</u>	
<u>LOCATION:</u>	2 Birkdale Close, Roby, Knowsley		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OF RESIDENTIAL DWELLING AS A CHILDRENS HOME FOR A MAXIMUM OF 4 NO. CHILDREN WITH TWO STAFF.		

Site Description

The application relates to a 5 bedroomed detached house with associated garden space and curtilage on Birkdale Close, a small cul-de-sac. The house is sited adjacent the turning head.

It is noted that the applicant has stated within the section of the application form titled Interest in the Land that the applicant is the owner of the property. It should be stated that it appears that this may be an incorrect assertion as there was a For Sale sign in the front garden area of the property on 28 November 2023.

Proposal

The application is an application for a lawful development certificate for the proposed use of the residential dwelling as a children's home, for 3 children between the ages of 8 and 18 of all genders and with social, emotional, and behavioural issues, revised from a maximum of 4 children.

The application states that there would be 2 staff there at all times on 12-hour shifts; shift changes would be twice a day at 8am and 8pm. However, it is also noted that if additional staff were required at night, they would attend as 'waking' staff. There would also be a manager and deputy manager attending Monday to Friday 9am to Friday 9am to 5pm. Other professionals who would attend the site would be social workers, therapists and other such professionals involved in each child's support teams.

The proposed floor layout includes making the dwelling 6 bedrooms, with a ground floor room being made into a bedroom and the lounge made an office. As such communal space for the children and attending staff would be in the dining room and conservatory, as indicated on the proposed floor plan.

The children would ordinarily attend mainstream schools and would be taken there by an appropriate vehicle.

The Town and Country Planning (Use Classes) Order 1987 as amended:

The key questions are whether the proposal would:

- Fall within Class C3 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO).
- If required whether the changes would constitute a material change of use.

Class C3

Use Class C3 of the UCO is sub-divided into 3 parts: C3(a) use by a single person or by people to be regarded as forming a single household; C3(b) use as a dwellinghouse where care is provided for residents; and C3(c) use by not more than six residents living together as a single household where no care is provided to residents.

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 property would house children and young persons with social, emotional and behavioural challenges between the ages of 8 and 18 years old. The house would provide accommodation for 3 young persons at a time. The house would have two members of staff on 24 hours a day, with a shift change twice a day. Night staff would sleep and if additional staff were required to attend through the night they would be ‘waking’ staff.

As the carers would not live at the premises, the use falls under the C2 use class in accordance with the North Devon District Council judgement.

Consultations

NA

Representations

Whilst no publicity has been carried out due to the type of application nonetheless 7 letters of objection have been received from residents.

The objections are on the use having a detrimental impact on the amenities of residents and the area, that the close has young families and elderly people living there and the property is not suitable for such a use in the location it is, the traffic that the use would generate together with lack of suitable parking, and impact on house prices. Some of the comments have expressed that it is considered that there would be a material change of use from a house to a children’s home and that therefore the application should be refused.

As the application is to determine whether planning permission is required for the proposed use, and if so whether that change of use is a material change of use the Local Planning Authority cannot take into account any objections which do not relate to whether or not the use requires planning permission under planning law.

Relevant Policy

As the application is to determine whether or not the use proposed requires planning permission under planning law planning policies are not relevant in this instance, as they are applicable when considering the merits of a planning application.

Assessment

Material Change of Use

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"

In relation to whether the application constitutes a material change of use, the applicant states that there would be two shift changes a day (8am and 8pm) with two staff for each shift, and 3 young persons of all genders 8-18 years of age living at the premises. The young people proposed to live at the premises would have social, emotional, and behavioural issues/challenges. There would be a manager and deputy manager attending the premises 9am – 5pm Monday to Friday, with the living room being converted to a large office. If additional staff are required through the night the staff attending would be 'waking' staff, whilst the night shift staff themselves would be sleeping staff. Furthermore, other professionals would attend the site such as social workers, therapists and other such professionals involved in each child's support teams.

The attendance and presence of a non-resident manager and non-resident deputy manager, who would work at the property in addition to the carers would intensify its use and bring about a material change in the character of the use. The manager and deputy manager would be at the premises between 0900 and 1700, Monday to Friday. In view of this, and the appellant's expectation that the children would attend school, there would not appear to be many opportunities for either manager to interact with the children for much of the year and accordingly it has not been demonstrated that either manager's role would be entirely focused on the provision of care to children living at the premises. Furthermore, the presence of non-residents working at the house as if at an office throughout the working week is not something normally associated with a typical dwellinghouse. It would therefore appear to introduce a material change in the character of the use.

The Local Planning Authority contends that 3 children with social, emotional, and behavioural issues would require social workers, therapists and other such professionals to attend the premises on a regular basis and sometimes in a coordinated manner of multi-attendees. The professionals attending the premises for the wellbeing of the children, and the number of times that such professionals would be attending, would be significantly higher than for children in a typical family home because of the social, emotional and behavioural issues that the all three children would have. In such case this would be an intensification of use and a change to the character of the dwelling.

It is also understood that children when first taken into care are often home tutored before attending mainstream school, if they do then attend school later. In such

circumstances, while the extent of any home tutoring would depend upon the needs of the individual child, this would mean that teaching, possibly a significant proportion, could occur at the premises. This, with the associated comings and goings of those involved, would differ from home schooling provided by a household member and is something that could alter the character of the use.

As such it is considered that the likely movements associated with this proposal due to the number of children and the social, emotional, and behavioural issues that they have, and the professionals attending to each child due to the child's needs and as part of the child's support team, together with the manager and deputy manager attending weekdays 9am to 5pm, plus the carers themselves and any additional cares needed such as 'waking' staff, would constitute a material change of use of the property from C3 to C2. It is certainly the case that the applicant/agent has not demonstrated that on the balance of probabilities the proposal would not constitute a material change of use,

Recommendation

It is recommended that the application be refused for the following reason:

"Due to the number of children and their social, behavioural, and emotional needs resulting in each child's support team of professionals such as social workers and therapists attending the premises on a regular basis, plus the attendance of a manager and deputy manager attending a designated office within the dwelling weekdays 9am to 5pm, and that some home schooling by attending tutor(s) could take place particularly for children newly in care, together with staff attending as needed though the night as 'waking' staff, the proposal constitutes a material change of use of the property from C3 (dwelling house) to C2 (provision of residential accommodation and care to people in need of care) for which planning permission is required"

Signed Case Officer¹: **Lee Osborne**

Signed Authorising Officer²: **Alan Kilroe**

Date: **15 December 2023**

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

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