

<u>APPLICATION NO:</u>	24/00607/CLD	<u>CASE OFFICER:</u>	Maxine Wishart
<u>WARD:</u>	Halewood South	<u>PARISH:</u>	Halewood Town Council
<u>LOCATION:</u>	6 Sycamore Avenue, Halewood, Knowsley		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OF RESIDENTIAL DWELLING AS A CHILDREN'S HOME FOR A MAXIMUM OF 1 NO. CHILD / YOUNG PERSON		

Site Description

The premises are located at 6 Sycamore Avenue, Halewood and forms part of a pair of semi-detached dwellings with associated garden space and driveway. The application property is located within an established residential area characterised by semi-detached dwellings. The host property faces the back of the rear boundary with properties on New Hutte Lane.

The accommodation comprises ground floor lounge / dining room, kitchen, entrance hall and an attached garage with four bedrooms (one of which is used as a study), landing and bathroom above.

Proposal

The application seeks to establish whether the existing dwelling can be used for the care of one child / young person between the ages of 7 and 17, with 24-hour care supervision, without the need for planning permission to be granted, on the basis that the proposed use is lawful.

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 application is made under section 192 of the Act. S192(1) of the Town and Country Planning Act 1990 ("the 1990 Act") (as amended) provides that any person who wishes to ascertain whether any proposed use of a building would be lawful, may make an application for the purpose to the local planning authority, specifying the land and describing the use in question.

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: and in any other case they shall refuse the application.

It is not therefore 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 Practice Guidance (PPG) advises that the applicant is responsible for providing sufficient information to support an application. The onus of proof is therefore firmly upon the applicant with the relevant test of the evidence being the balance of probabilities.

As well as the accompanying application form, the application is supported by a Planning Statement, existing and proposed floor plans with additional information provided by the applicant's agent in relation to appeal decisions relating to other decisions for use of a dwellinghouse as a children's care homes, both within and outside of the Borough.

Consultations

Halewood Town Council - No Comments Received

Representations

No consultations are required to be carried out in relation to this type of application as the application is to determine whether the proposal is lawful and does not require planning permission.

Planning History

APP. NO:	03/00965/FUL
PROPOSAL:	ERECTION OF TWO STOREY EXTENSION TO SIDE OF DWELLING TO FORM FAMILY ROOM AND GARAGE/UTILITY ROOM WITH BEDROOM ABOVE
DECISION:	Granted
DECISION DATE:	25 February 2004

Assessment

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

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.

a) Class C3

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 Class C4).

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.

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

In case law, *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))*.”

However, the 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...*”

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.

The applicant indicates that it is intended to use the premises as a children’s home for one child / young person between the ages of 7 and 17. The submitted evidence indicates that the care to be provided to the child / young person 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.

Having regard to the above, it is considered that the use cannot be considered to fall within Class C3 use. The use of No. 6 Sycamore Avenue as a children's home would therefore fall within Class C2 of the Order (Residential Institutions). The main issue pertinent to the proposal is thus whether a material change of use would occur.

b) Material Change of Use

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.

Government Planning Practice Guidance

The Government's Planning Practice Guidance (PPG) 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]

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 and as a matter of fact and degree, it would result in such a change in the definable character of the use that it would amount to a material change of use.

In relation to whether the application constitutes a material change of use, the following set up, operations and staffing are proposed:

Residents

It is intended that there would be one child / young person between the ages of 7 – 17 residing at the site be. They would have emotional and behaviour issues.

Staffing

One young person would be looked after by 2 no. carers. There would be 2 no. carers per day doing a day and night shift (same staff members) with a shift pattern is as follows:

Day 1 - 10am -10pm - sleep

Day 2 - 7.30am - 10pm - sleep

Day 3 - 7.30 -10.30am (handover 10am -10.30am).

Carer's shifts would be 2 days on 4 days off with the same staff there consistently for two days. Handover would take place every 3rd day for a maximum of 30 mins between 10am - 10.30am. For the majority of time therefore there would be a maximum of three persons present on the premises; one young person and two

carers.

Manager

A manager would visit the property on an ad-hoc basis Mon - Friday during 9 - 5pm. The manager would visit the property as and when required, however this would likely only be a couple of times a week and only for a couple of hours.

Sleeping Accommodation

The property is a four bedroomed dwelling with one of those bedrooms used as a study. The layout plan submitted with the application indicates that one of the bedrooms would be used by the resident and two bedrooms would be used by the carers.

Educational Provision

The application indicates that the aim is to get the child / young person into a school however they may need to be home schooled in the interim until they are assigned a place.

Visitors

The application states that carers would be directly responsible for the care and welfare of the young person, supporting them in their daily routine. Any additional visits, such as social worker or other professionals, would take place during normal working hours and would be likely to be monthly not daily.

Parking

The property has off-street parking for approx. 3 no. vehicles. Due to the staffing shift pattern and change over and the need for additional visits to the premises by other professionals and the Manager, parking demand generated by the proposal would be likely to be higher than what would be typical for a four bedroom dwelling. However, given the above pattern of activity that would be involved, it is not considered that the increase would be materially significant.

There are no parking restrictions in the immediate surrounding roads; and houses opposite the site back onto the street and do not place any on-street parking demand in the vicinity of the site. In addition, the area is well served by public transport. On balance, it is not considered that this would result in material impact on the surrounding area.

Physical Change to Premises

The Planning Statement and the submitted floor plans indicate that there would be no physical changes to the property and as such the premises would retain the appearance of a family home.

Conclusion

The dwelling would be used as a children's home with one child / young person cared for by 2 non-resident carers which would place the use within Use Class C2 of the UCO.

There would inevitably be comings and goings to and from the premises related to activities such as school drop-offs and collections, during staff handover times and associated journeys for recreational and social activities off the premises. There would also be activity associated with the visiting Manager and other typical visits from other professionals.

However, overall, it is considered that, as a matter of fact and degree, the proposal would not reach the point where it would result in such materially different planning circumstances to an extent that it would result in a change in the definable character of the premises that would amount to a material change of use.

Officers consider that sufficient information has been provided to satisfy them that the use of the residential dwelling (Use Class C3) to a children's care home for one child / young person at No. 6 Sycamore Avenue, Halewood, would not constitute a material change of use that would require express planning permission and it would be lawful if instituted or begun at the time of the application and as such the issue of a certificate to that effect is recommended.

Recommendation

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

Signed Case Officer¹: M Wishart

Signed Authorising Officer²: K Foster

Date: 13 December 2024

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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