

<u>APPLICATION NO:</u>	26/00356/CLD	<u>CASE OFFICER:</u>	Maxine Wishart
<u>WARD:</u>	Cherryfield	<u>PARISH:</u>	
<u>LOCATION:</u>	31 Clare Walk, Field Lane Estate, Knowsley		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR RESIDENTIAL DWELLING (USE CLASS C3) TO CHILDREN'S CARE HOME (USE CLASS C2) FOR A MAXIMUM OF 1 NO. CHILD		

Site Description

The application site is a two-storey terraced dwelling located at 31 Clare Walk, Fazakerley. The property is located in an established residential area.

The application property is located to the westernmost end of the terrace which is formed by 18 dwellings. Field Lane Park sits approx. 22m to the west of the property and Amenda Road, one of the residential estate's main spine roads is located to the east, at the end of the pedestrian footpath fronting the property. The application site is surrounded by other dwellings to the north, south, east and west.

At ground floor level the property comprises a front porch; lounge and kitchen with first floor accommodation comprising 2 bedrooms and a family bathroom. There is garden to the front and a garage and yard to the rear.

Proposal

The proposal is for a certificate of lawfulness for the proposed use of residential dwelling (C3) as a residential care home (C2) for 1 no child. The supporting Statement of Purpose indicates that it is proposed to provide medium and long-term placement for young people suffering social, emotional and behavioural difficulties, providing therapeutic care.

- There would be a maximum of 1 child between up to 18 years old.
- Care would be delivered on a continuous 48 hour rotation.
- There would be up to 2 carers present during the day and overnight
- Shift changeovers would occur once per day.
- One care worker would be on shift at any given time to provide 1:1 ratio.
- A Registered Manager would attend the property 1-2 times a week Monday - Friday.
- Professional visits would be limited to once per month.
- Certified clinical therapists or counsellors would visit the property or another venue for sessions (limited to once a month).
- Multi-agency meetings or higher frequency meetings would be held off-site.
- The young person would be expected to attend an established educational setting or specialist local school.
- If temporary home tuition is legally required it would be on a tightly structured daytime schedule.
- The young person would leave the home to attend education, social activities, family contact etc. in line with a care plan and organised risk assessment.

- Curfews would be in place which would be tailored to the young person's age, care plan etc.

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

Children's Services (Commissioning Manager) – Advises that the applicant is an experienced provider who made contact with them during the application process. Knowsley currently has an over-supply of children's homes.

Merseyside Police - No observations 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

N/A

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 Town and Country Planning (Use Classes) Order 1987 (as amended) 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 11 and 18. 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:

"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...

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 and the use of No. 31 Clare Walk 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.

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 the proposed children's home would be for solo occupancy catering for developmental age range between 11 – 17. Registration will be sought under the following Ofsted criteria:

- Children with emotional or behavioural difficulties (EBD).
- Children with learning disabilities.
- Children with mental disorders (excluding distinct learning disabilities).
- Children with sensory impairments.

Carers

One young person would be looked after by up to 2 no. carers. There would be 2 no. carers per day doing a day and night shift with a shift pattern of continuous 48 hour rotation.

Staffing would utilise a combination of waking and sleep in staff as required.

For the majority of time there would be a maximum of three persons present on the premises; one young person and two carers.

Residential Manager

A Residential Manager would visit the property 1 to 2 times a week on Mon - Friday during daytime hours.

Sleeping Accommodation

The property is a 2-bedroomed dwelling. One of those bedrooms would be used as a children's bedroom and the other as a staff bedroom / office.

Educational Provision

The application indicates that the aim is for the child / young person to attend a school unless temporary tuition is legally required.

Visitors

The application states that carers would be directly responsible for the care and welfare of the young person. Any additional visits from social workers and other professionals, would take place during normal working hours and would be likely to be no more than once per month. Higher frequency multi-agency meeting would be hosted off-site.

Parking

There is no vehicular access to the front of the application property or its neighbouring properties as a pedestrianised walkway runs to the front of the house.

The property has access to vehicle parking to the rear of the premises in the form of garage and on-street parking. There is also a parking lay-by and a number of

additional communal parking bays located along Amanda Road which are within a short walking distance of the application premisses which serve the surrounding residential estate.

Due to the staffing levels the parking demand generated by the proposal could be higher than what would be typical for a 2-bedroom dwelling. However, given the above pattern of activity that would be involved, it is not considered that the increase would be materially significant and given where available parking is located, it would not be likely to result in disruption to neighbours.

There are no parking restrictions in the immediate surrounding roads; and in the same way as the host property, houses opposite the site are served by garages to the rear and as such there is not on-street parking demand immediately in the vicinity of the site. In addition, the area is well served by public transport. On balance, it is considered that this would not result in a material impact on the surrounding area.

Physical Change to Premises

The supporting information 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 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 Residential Manager and other typical occasional visits from other professionals. However, overall, it is considered that, 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 as a matter of fact and degree, sufficient information has been provided to satisfy them that the proposed development would not constitute a material change of use from Class C3a to Class C2 of the UCO 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 proposed change of use of the dwelling from Use Class C3a of Part C of Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 to a use within Class C2 of Part C of Schedule 1 of the Order, for a maximum of one child with up to 2 carers would not constitute a material change of use. The proposed change of use, therefore, does not require planning permission as it does not amount to development by virtue of Section 55 of the Town and Country Planning Act 1990 (as amended).

Signed Case Officer¹: **M Wishart**

Signed Authorising **Jo Sheridan**
Officer²: _____

Date: **05/10/2026**

Informatives

- 1) For the avoidance of doubt, the certificate relates strictly to Use Class C2 use only and excludes Use Class C2A (Secure Residential Institution).

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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