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| <b><u>APPLICATION NO:</u></b> | 23/00336/CLU                                                                                                                                                  | <b><u>CASE OFFICER:</u></b> | Kim Vo |
| <b><u>WARD:</u></b>           | Northwood                                                                                                                                                     | <b><u>PARISH:</u></b>       |        |
| <b><u>LOCATION:</u></b>       | 31 Blue Bell Close, Northwood, Kirkby                                                                                                                         |                             |        |
| <b><u>PROPOSAL:</u></b>       | CERTIFICATE OF LAWFULNESS FOR THE EXISTING USE OF THE PROPERTY TO OPERATE AS A RESIDENTIAL INSTITUTION WITH A MAXIMUM OF 3 NO. YOUNG RESIDENTS (USE CLASS C2) |                             |        |

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### **Site Description**

The application relates to a three-storey semi-detached property at no.31 Blue Bell Close. There is an existing detached garage and hard surfacing to the northwest, providing off-street parking provisions for 2no. vehicles. The application site is located within a Primarily Residential Area as defined by Saved Policy H5 of the Knowsley Replacement Unitary Development Plan (UDP) (Adopted June 2006).

### **Proposal**

The application seeks a Certificate of Lawfulness under Section 191 of the Town and Country Planning Act 1990 (as amended) to certify that the existing use of the property as a residential institution for 3no. young persons within Class C2 is not a material change in use that requires planning permission.

The application property was in previous use as a residential dwelling under Class C3 which was formed of 4no. bedrooms. The current residential institution use provides 3no. bedrooms for each young person, with 1no. bedroom used as a staff bedroom/office. No external alterations have been undertaken to facilitate the new use. The residential institution is for 3no. young persons aged 16-18 years old who are in 'supported accommodation', where support is provided to the young persons to prepare them for independent living. There is a total 3no. carers who work on a shift pattern of 48 hours on and 96 hours off, where there will be no more than 2no. carers at any one time which would normally be during the short handover period, with only 1no. carer present overnight. A home manager may be on site, but visits on an ad hoc basis (approximately once per week) during normal working hours.

### **Consultations**

N/A

### **Representations**

None received.

### **Planning History**

None relevant.

### **Relevant Legislation and Material Considerations**

Section 191 of the Town and Country Planning Act 1990 (as amended) states for Certificate of lawfulness of existing use or development:

- 1) If any person wishes to ascertain whether—
  - a. any existing use of buildings or other land is lawful;

- b. any operations which have been carried out in, on, over or under land are lawful; or
- c. any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

- 2) For the purposes of this Act uses and operations are lawful at any time if—
  - a. no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
  - b. they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Part C of The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories which include:

- C2 Residential institutions
- C3 Dwellinghouses - this class is formed of 3 parts:
  - C3(a) - use by a single person or a family, an employer and certain domestic employees, a carer and the person receiving the care and a foster parent and foster child.
  - C3(b): covers up to six people living together as a single household and receiving care.
  - C3(c) allows for groups of people (up to six) living together as a single household.

The North Devon District Council v the Secretary of State (2003) case considered whether a dwellinghouse, used as a residential home for two children, with care provided by two non-resident carers, falls within Class C2 or Class C3(b) of the Use Classes Order 1987. It found that staff must live permanently at the property in order to constitute as being part of the household, and that children cannot, as a matter of law, form a household themselves. Notwithstanding the above, the North Devon judgement concluded that the transition from one use class to another was not in itself enough to indicate that a material change of use had occurred. In particular, it was noted that *“a change is not material if it is ‘de minimis’ or merely a change in the person conducting the use. The correct approach... is to judge materiality in land use consequences”*. On this basis, a change of use must be material in order for planning permission to be required.

Paragraph: 011 Reference ID: 13-011-20140306 of the Planning Practice Guidance states that *“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.”*

### **Assessment**

The application seeks for a Certificate of Lawfulness for the existing use of the former dwellinghouse (Class C3(a)) to a residential institution (Class C2). The change of use to Class C2 does not necessarily result in a ‘material change of use’, however, the individual merits of this case will be considered below.

The submitted Design and Access Statement states that the site was previously used

as a dwellinghouse with 4no. bedrooms. It is currently being used as a residential institution under Class C2, which provides supported accommodation for up to 3no. young persons aged 16-18 years old. The purpose of the home is to support the young persons to build their confidence, help them in developing life skills and prepare them for life when they leave the home to live independently. Each of the young persons would have their own bedroom. During the day it is expected that the young people would engage in employment, training or education. The property would provide the young people with their sole and main residence, with free and shared access to living, dining, and kitchen facilities. The residents would make their own way to employment, training or education, they may also eat together and will carry out domestic chores.

There are 3no. total carers who operate on a shift pattern of 48 hours on, 96 hours off. Given the nature of the home as a 'supported accommodation' for older young persons, the number of staff in attendance is fewer than a children's residential home. As such, the number of carers present throughout majority of the day is usually 1no., with 1no. carer working on a rota basis staying overnight in a staff bedroom/office. However, there is no more than 2no. carers in the home at any one time and this would normally be during the handover periods only. Staff changeovers for 1no. staff occurs at 10:00am every 48 hours, with short handover periods of approximately 10/15 minutes. A manager may also be present at the home during weekdays. This would be on an ad hoc basis on average around once a week and may be in addition to the carer on shift or in place of the main support worker. Therefore, a maximum of 3no. staff members may be on site (2no. carers and a manager). However, this would only occur at daytime during the staff changeovers and if the manager is present. Therefore, the presence of up to 3no. staff is occasional and would only be for a very short period and it is more likely that 1no. carer will be present throughout most of the week. Visits by other agencies will also be infrequent, with Social Services typically sending 1/2no. officers every 6 months, plus 2no. Ofsted inspectors annually.

This level of activity and movement is not considered to be unusual and would be comparable to that of a family dwelling comprising of one/two parents and 3no. older teenage children who may be semi-independent but will still require some support. This type of family unit would have similar comings and goings, where the teenage children are in full/part time employment and/or education, with parents either staying at home, or having their own working schedules/shift patterns. Such a family dwelling may also have visiting guests, maintenance workers/contractors, health/medical home appointments etc. The residents and carers assigned to the property will help to create a sense of continuity and familiarity and as such, will assist in maintaining a residential character akin to a Class C3 use. The presence of up to 3no. carers/manager and 3no. young persons within the property at any one time is also not considered to be excessive for a four bedroomed dwelling. The application property also has an existing detached garage and hard surfaced areas providing off-street parking for 2no. vehicles. On-street parking to the side of the property is also possible for any additional vehicles. Moreover, no external alterations have been undertaken to facilitate the new use.

The proposed use is therefore, not considered to result in a material change to that of a conventional residential four bedroomed dwelling. The use of the property by 1/2no. carers supporting 3no. young persons would be similar to that of a traditional family household. The number of movements associated with the proposed use would also reflect that of a Class C3(b) use. Therefore, it is considered that no 'land use consequence' will occur, and for the reasons set out above, the proposal does not constitute a material change of use.

**Conclusion**

The existing use of the application site as a residential institution (Class C2) for 3no. young persons (16-18 years old) does not constitute a material change of use from the previous use as a dwellinghouse (Class C3(a)) that requires planning permission, and a Certificate of Lawfulness can be granted.

**Recommendation**

Grant the Certificate of Lawfulness.

**SCHEDULE 1**

| <b>Date Received</b> | <b>Ref. No</b>      | <b>Version</b> | <b>Drawing/Document Title</b> |
|----------------------|---------------------|----------------|-------------------------------|
| 13.04.2023           | TQRQM23102210416176 | -              | Location Plan                 |
| 13.04.2023           | 003                 | -              | Proposed Plans and Elevations |

**Signed Case Officer<sup>1</sup>:**      **Kim Vo**

**Signed Authorising Officer<sup>2</sup>:**      **K Foster**

**Date:**      **23 October 2024**

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<sup>1</sup> 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

<sup>2</sup> 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