

Regeneration and Economic Development Department

APPLICATION NO: 21/00195/CLD

APPLICANT: MISS ABBIE MOORE

WARD AFFECTED: Cherryfield

DEVELOPMENT: CHANGE OF USE OF DWELLING TO CARE HOME FOR ONE CHILD

LOCATION OF SITE: 32 Roughdale Avenue, Southdene, Kirkby, Knowsley, L32 7QW,

KNOWSLEY LOCAL PLAN ALLOCATION –

Primary Residential Development - Primary Residential Development

RELEVANT POLICIES

NA

TECHNICAL CONSULTATIONS:

None Required

NEIGHBOUR NOTIFICATION:

NA

ARTICLE 35

NA

ISSUES AND ASSESSMENT:

PROPOSAL

The application for a Certificate of Lawfulness is to determine whether the use described in the application would be lawful if instituted or begun. The application for a certificate of lawfulness relates to 32 Roughdale Avenue, which is a two bedroom end-terraced property having lawful use as a dwellinghouse (Use Class C3). The application proposes the use of the dwelling as a children's home for one child / young person between 10 and 18 years of age. The property would have at least two members of staff on duty during the day shifts, and also a manager Monday- Friday (but who can be contacted at all times). There would also be two members of staff on duty at night. The property will be registered to provide care and accommodation for children with emotional or challenging behavioural difficulties and/or mild learning difficulties. The child or young person would have low to moderate mental health needs. Due to the needs of the children, specialists such as therapists may need to call at the property on an ad hoc basis.

POLICY CONSIDERATIONS

The application must be assessed on the basis of the Town and Country Planning (Use Classes) Order 1987 (as amended), together with amendments. Within the Order a dwellinghouse is classed as a C3 use whilst a children's home is classed as a C2 use as it is a residential institution. Amendments post March 2010 changed the description of Class C3 and included use as a dwellinghouse by "... (b) not more than six residents living together as a single household where care is provided for residents."

CLG Circular 08/2010 of November 2010 (which replaced Circular 05/2010 of March 2010) advises that Class C3 consists of three parts: Class C3(a) - those living together as a single household as defined by the Housing Act 2004 (basically a 'family'); C3(b) - those living together as a single household and receiving care; and C3(c) - those living together as a single household who do not fall within the C4 definition of a house in multiple occupation. Class C4 is a new category and relates to houses in

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multiple occupation (3- 6 occupants) and in broad terms covers small, shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities. Large houses in multiple occupation by more than 6 people sharing are sui generis and do not fall into a specific Use Class. The Circular states that C3(b) continues to make provision for supported housing schemes such as those for people with disabilities or mental health problems.

The first point in the consideration of the application is whether the proposal would involve a change of use from Class C3(a) to C2. Children need to be looked after and could not, on their own, be regarded as a household without the presence of a carer. Given that the carers will not be resident the children and carers cannot be regarded as living together in a household. The Inspector in the Hinckley & Bosworth Borough Council appeal for a similar proposal to the current application albeit for 3 children with autism (ref: APP/K2420/X/11/2155849 - November 2011) stated that the concept of living together as a household means, in the context of Class 3(b) that a proper functioning household must exist. The Inspector considered in the Hinckley & Bosworth case that this was not to be the case, and for this reason, the proposed use was considered to fall into Class C2 and a change of use from Class C3 would take place. The current proposal will involve the change of use of the property from C3(a) to C2 as there would be two children and two carers, with the carers not residing at the property but working there in shifts on a two days on four days off basis.

The second point in the consideration is whether the change of use from C3 to C2 would result in a material change of use in this instance. The two key tests are whether there would be a change in the character of the use, and the effects of the change on the neighbouring uses and the locality.

With regard staffing there would be two care workers on the site at all times, with a manager also present weekdays. Due to the needs of the child, it is likely that there will be others calling at the site at intermittent times such as therapists.

The child / young person would be between 10 and 18 years of age, with emotional or behavioural difficulties and possibly with mild learning difficulties. The proposed use would provide an emotional safe haven for the child in which they can feel safe, cared for and have their emotional, social and developmental needs met.

The Hinckley & Bosworth case also had two carers per shift with shift changeovers. Staff numbers were cited by the Council as the sole cause for concern. The Inspector disagreed on the basis that the numbers involved were not materially different from what might be expected of a large family house and the typical comings and goings of a family with teenagers or young adults. The Inspector acknowledged the Council's stance that potential existed for greater staff numbers to be at the property to deal with particular difficulties. However, the Inspector regarded this as an exception rather than the typical day-to-day operation of the home. The Inspector found that the proposed C2 use would not amount to a material change of use from a C3 use as a dwellinghouse and that on this basis the change of use would not amount to development for which planning permission would be required.

The Inspector dismissed the arguments put forward by neighbouring residents who were of the view that a material change of use would occur. The Inspector concluded that on the available evidence the Council's refusal to grant a Certificate of Lawful Development Certificate in respect of the use of a dwellinghouse as a children's home was not well- founded and that the appeal should succeed. The Inspector granted a certificate which certified the change of use from Use Class C3 dwellinghouse to Use Class C2 residential institution is considered a lawful use and showed the terms under which the certificate was granted (attached conditions). An award of costs was granted to the appellant as the Inspector found that the Council had behaved unreasonably in refusing the certificate and reasonable planning grounds had not been shown for a decision taken contrary to officers' clear and repeated advice. The Inspector made a full award of costs against the Council.

While it is considered that the use of the property as a child's home rather than a dwellinghouse constitutes a change of use, taking into account the outcome of the Hinckley & Bosworth appeal and Inspectors comments and the proposed residency and staffing level it is considered that the proposal would not constitute a material change of use, and therefore the change of use will not amount to development for which planning permission will be required.

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DESIGN, ACCESS AND CRIME PREVENTION

Not relevant

HIGHWAYS

Not relevant

RESIDENTIAL AMENITY

Not relevant

OTHER ISSUES

None

RECOMMENDATION:

A Certificate of Lawful Use is issued as although a change of use from a use in Use Class C3 (dwellinghouse) to a Use Class C2 (residential institution) would occur, it does not amount to a material change of use provided that it is only for a C2 children's home for one child and for no other use including C2A secure residential institution use; no more than two adult carers are on duty at any one time except for the shift changeover times; no other staff would work or be on duty at the premises except for a manager on a regular basis Monday to Fridays; and any other professionals required on an ad hoc basis (e.g. therapist, psychologist, social worker) provided that there are no more than two such at any time; no development requiring planning permission would therefore take place in accordance with the Town and Country Planning (Use Classes) order 1987 (as amended).

SCHEDULE 1

Date Received	Ref. No	Version	Drawing/Document Title
11/06/2021	TQRQM2106613 0150996	-	Location Plan
07/06/2021	A101	-	Existing and Proposed Floor Plans
07/06/2021	-	-	Statement of Purpose 2021

Lee Osborne

6 August 2021

Alan Kilroe

6 August 2021

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