

<u>APPLICATION NO:</u>	24/00013/CLD	<u>CASE OFFICER:</u>	Lee Osborne
<u>WARD:</u>	Prescot North	<u>PARISH:</u>	Knowsley Parish Council
<u>LOCATION:</u>	35 Berryhill Avenue, Knowsley, 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.		

Site Description

The application relates to an end-terraced house on Berryhill Avenue and associated garden space, and the vicinity is residential in nature.

Proposal

The application is a lawful development certificate for the proposed use of residential dwelling as a children's home for a maximum of 2 residents.

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

The key questions are whether the proposal would:

- a. Fall within Class C3 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO).
- b. 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 dwelling house 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 one child, age has not been specified. The child may have special needs as on the application it states that it is envisaged that the child would attend school, appropriate to their needs and be either a mainstream school or a specialist form. The applicant also states on the form that there would two carers during the day and one staff member at the property on sleeping shifts. However additional information from the applicant states that

depending on the needs of the child, there would be a maximum of two carers with shifts starting at 10.00am and ending next day at 10.30am, with a shift changeover of 30 minutes. The applicant also notes that there would be a manager at the property 9:00am until 5:00pm Monday to Friday.

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

No consultations are carried out with regard this type of application as the application is to determine whether a proposal is lawful and does not require planning permission rather than the merits of a proposal which occurs with a planning application. However, Knowsley Parish Council are notified of all application through the planning list that they receive. With regard this application Knowsley Parish Council have not made any representations.

Representations

Publicity with regards the application was not undertaken as the application is to determine whether a proposal is lawful and does not require planning permission rather than the merits of a proposal which occurs with a planning application.

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.

Article 35 Statement

NA

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".

The question of lawfulness is distinct from the planning merits of the proposed use. Accordingly, therefore, the decision will rest on the facts of the case, on relevant planning law and judicial authority. The burden of proof is with the appellant and the appropriate test of the evidence is the balance of probability.

In relation to whether the application constitutes a material change of use, in the later information supplied by the applicant it states that there would be one shift changeover a day (10.00am – 10.30am) with up to two carers at any time for each shift, with 1 young person of non-specified age living at the property. It is not specified whether the child would have special needs, but it is noted that the child MAY attend specialist school or be home schooled. In the event of home schooling the educator/teacher would attend the property during school hours times Monday to Friday in term time. Additionally to the carers there would be a manager attending the premises 9am – 5pm Monday to Friday. Furthermore, other professionals would attend the site such as social workers, therapists and other such professionals involved in the child's support teams.

The attendance and presence of a non-resident 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 property. The manager would be at the premises between 0900 and 1700, Monday to Friday. In view of this, and the appellant's contention that the child would likely attend school, whether it be mainstream or specialist school, there would not appear to be many opportunities for the manager to interact with the child for much of the year and accordingly it has not been demonstrated that the manager's role would be entirely focused on the provision of care to the living at the premises. Furthermore, the presence of a non-resident working at the house as if at an office throughout the working week is not something normally associated with a typical dwelling. It would therefore appear to introduce a material change in the character of the use and has been determined as such in case law (Appeal Ref: APP/V4250/X/20/3262349 - 398 Ormskirk Road, Wigan WN5 9DD; Appeal Ref: APP/P4605/X/20/3260143 - 27 Camplin Crescent, Birmingham B20 1LS).

Conclusion

Considering the above it is considered that the proposal would cause a material change of use to occur, and the applicant has not provided evidence that demonstrates that it would not. As such it is recommended that a certificate of lawful use is not issued.

Recommendation

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

Due to a manager attending the dwelling weekdays 9am to 5pm as a place of work with similarities to a person attending an office, and that the manager is unlikely to have much interaction with the child residing at the property, with insufficient evidence to reasonably prove otherwise, it is considered that there would be a material change of use of the property from C3 (dwellinghouse) 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**

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

**Signed Authorising
Officer²:**

K Foster

Date:

4 March 2024

² 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

Appendix 1 – Site Photographs