

<u>APPLICATION NO:</u>	23/00071/CLD	<u>CASE OFFICER:</u>	Lee Osborne
<u>WARD:</u>	Shevington	<u>PARISH:</u>	
<u>LOCATION:</u>	1 Gardeners View, Tower Hill, Kirkby		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OF RESIDENTIAL DWELLING AS A CHILDRENS HOME FOR A MAXIMUM OF 2 NO. CHILDREN		

Site Description

The application relates to a semi-detached house on Gardeners View and associated garden space. The pair of houses face northwards with carriageway adjacent the gables of both houses.

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 children and young persons with social, emotional and behavioural challenges of all genders between the ages of 8 and 18 years old. The house would provide accommodation two young persons at a time. The house would have two members of staff on 24 hours a day, with a shift change twice a day. There would be a manager at the premises Monday to Friday 9am to 5pm. Some additional visitations by professionals would occur on an ad hoc basis.

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

NA

Representations

Whilst no publicity has been carried out due to the type of application nonetheless 14 letters of objection have been received from residents.

The objections are on the use having a detrimental impact on the amenities of residents and the area. As the application is to determine whether planning permission is required for the proposed use, and if so whether that change of use is a material change of use the Local Planning Authority cannot take into account any objections which do not relate to whether or not the use requires planning permission under planning law.

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.

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"

In relation to whether the application constitutes a material change of use, there would be one shift change a day, together with the manager operating Monday to Friday usual office hours. As such it is considered that the movements associated with this proposal and the number of children to reside at the property would not be materially greater than a family household. Furthermore, up to 6 individual persons could live at the property as a shared residence which would be within the deemed C3 Use and therefore without planning permission being required. Accordingly, it is considered that the use as proposed would not constitute a material change of use of the property.

Recommendation

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

SCHEDULE 1

Date Received	Ref. No	Version	Drawing/Document Title
14.03.2023	1931.103		LOCATION PLAN
14.03.2023			PLANNING STATEMENT

Signed Case Officer¹: Lee Osborne

Signed Authorising Officer²: K Foster

Date: 6 July 2023

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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