



Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20221045
Location	2 Beaumont Drive Northfleet Gravesend Kent
Proposal:	Application for a Lawful Development Certificate in respect of the proposed change of use into a childrens home
Applicant:	Ms Diana Chipendo, DMC Consulting Services Ltd
Site Visit	24/10/22

Plans & Documents

Application Form
2BD/A3/03 – Site Map
2BD/A3/01 – Ground Floor Plan
2BD/A3/02 – First Floor Plan
Statement of Purpose
Email confirming staff rota received 25th October 2022

Property Type

The property comprises a two-storey, end of terrace dwellinghouse. It lies adjacent to an area of public facing green. The rear garden is bounded by close boarded fencing to this side and the rear. The rear and front garden have been recently hard surfaced.

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

The Town and Country Planning act 1990 (as amended)
 The Use Classes Order 1987
 The Children Act 1989

Relevant Planning History

None for this site.

Relevant Case Law

Court Cases:

North Devon District Council v First Secretary of State and Southern Childcare [2003]

Planning Appeals:

APP/A2280/W/19/3222409 – MEDWAY – 20 Pattens Lane, Rochester [2019]
 APP/P9502/X/13/2205394 - BRECON BEACONS N.PK - Ty Rhos Bach, Heol Senni, Brecon, Powys [2014]
 APP/H1033/A/11/2146395 – HIGH PEAK – The Coach House, Millbrook House Estate, Manchester Road, Tintwistle, Derbyshire, SK14 8LA [2011]
 T/APP/G5180/A/94/238594/P5 – BROMLEY – Foxhill Lodge, 51 Fox Hill, SE19 [1994]
 T/APP/Z2260/A/91/195927/P4 – THANET – 2 & 3 Ethelbert Terrace, Westgate-On-Sea [1992]

Officer Assessment

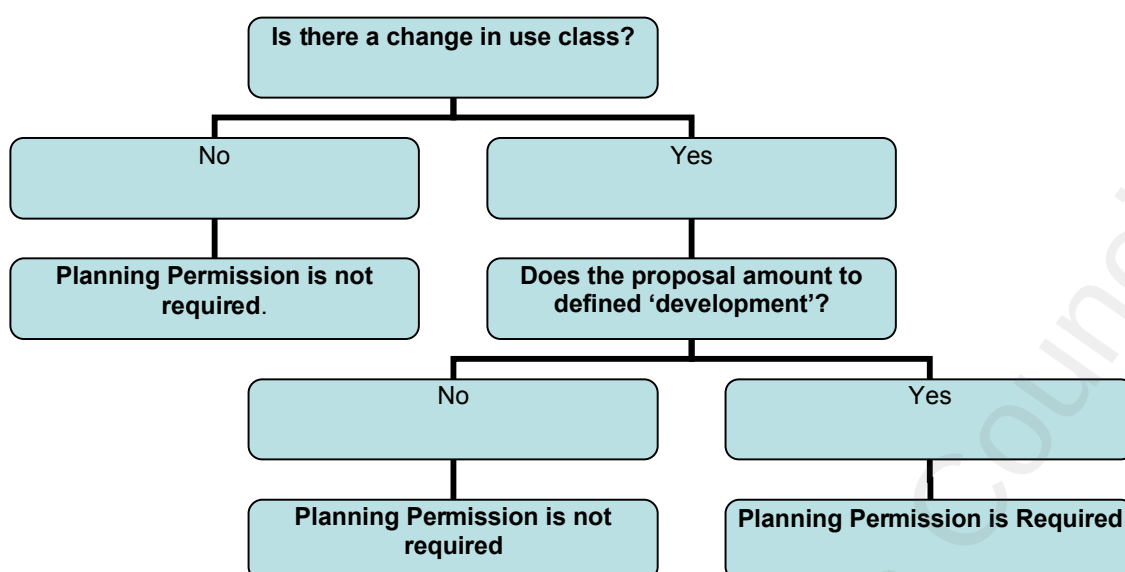
Permitted Developments Rights Restrictions

Article 2 (3) Land (AONB, Conservation Area)	N
Article 4 Direction	N
Permitted Development Rights Removed/Restricted	N

This proposal to use the existing dwellinghouse under use class C3, as a children's home for the occupation of one child at a time aged between 16-18, is determined by whether the new way of using the property would be considered development or not, under the definition applied by Section 55 of the Town and Country Planning Act 1990 (as amended). If the proposed use class is a material change of use and therefore falling within the definition of development, planning consent would be required as there are no existing permitted development rights for such a change of use. Whether the development would be considered to be 'Development', is a matter of fact and degree, a decision for the Local Planning Authority. However, this assessment is guided by the existing policy, definitions, and planning case law in order to achieve a consistent approach, whilst ensuring that planning legislation is applied in an appropriate way, reflective to the extent of the proposed change.

Therefore, there are two strands of assessment to be undertaken here. Firstly, does the proposed use result in a change of ascribed use class? If so, does the proposal result in a change which constitutes defined 'development'?

The below diagram explains the stepped process of this assessment.



Use Class C3 is described as:

Use as a dwellinghouse (whether or not as a sole or main residence) by—

- (a) a single person or by people to be regarded as forming a single household;*
- (b) not more than six residents living together as a single household where care is provided for residents; or*
- (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).*

Use Class C2 is described as:

Class C2. Residential institutions

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.

There is potential that such a use would fall under class C2 – Residential Institution. The use classes order 1987 specifically refers to Class C2 as including the personal care of children.

Assessment of Use Class

In the case *North Devon District Council v First Secretary of State and Southern Childcare* [2003], it was assessed that where carers did not reside in the property full time, it would not be considered to be a 'household' under the requirements of class C3(b) and the use class would then revert to Class C2. This judgement was applied independent of the size of the 'institution'.

The applicant has confirmed in this case that the property would be occupied by one child. It would be attended by 2/4 members of staff, depending on the child's needs. The staff members would attend the property on a shift pattern between 7AM to 7PM and 7PM to 7AM.

As per the aforementioned judgement, as the staff members would not be permanently residing within the property, it would not be considered to be a 'household'. Therefore, the proposal would constitute a change of use from Class C3 to Class C2. However, although the use class would change, whether permission is required is also dependant on whether the proposal would be considered 'development' under Section 55 of the Town and Country Planning Act 1990 (as amended).

Definition of Development:

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

The Town and Country Planning act 1990 (as amended), also provides definition of the relevant use classes (C3 and C2).

Operational Development:

The proposal does not include any structural or operational change to the building. It is noted that internal refurbishment has taken place and hard surfacing of the front and rear garden spaces. However, the applicant has indicated in their submission that the previous works were undertaken in accordance with existing permitted development rights for the existing dwellinghouse. Having visited the site it appears that the front garden has been hard surface with an approximate area of 35m. This does not appear to be a permeable surfacing and given that it fronts the principal elevation and the highway, this would not be permitted development. It should also be noted that this area is not serviced by a dropped kerb and so cannot be used to park vehicles. These works do not form part of this application for lawful development for proposed change of use and so any certificate granting consent would not therefore provide consent for these works. The applicant will need to either replace this hard surfacing with a permeable material or apply for planning consent for the hard surfacing. It is my opinion that such an application would be unsuccessful, and the former option is the most appropriate. Even with the use of permeable material this would not provide consent to use the area for vehicle parking and the applicant would need to apply to KCC highways to drop the kerb before it could be used for parking provision.

Material Change of Use

There is no statutory definition of a 'material change of use'. Whether a material change of use has occurred is a matter of fact and degree, a matter of judgement.

In making this assessment several factors could contribute to a change in the overall character of the use and how this would materially differ from its current function as a dwellinghouse. Some guidance as to the considerations can be found in appeals refs APP/P9502/X/13/2205394.

These considerations are (but not limited to):

- Presence of fire alarms
- Reinforce fire doors
- Property containing office
- Locks on doors
- Increased traffic and vehicular parking
- Intensification of daily activities
- Social Visits by friends and family
- Noise and disturbance

This particular property is currently a 3-bedroom dwellinghouse, with living facilities to the ground floor. The statement of purpose identified the dwellinghouse as a 2-bedroom property with one office room. It has also been identified that the bedroom doors would be lockable. Details have not been provided with regard to fire

safety measures such as reinforced door and fire alarms. Details of frequency of social visits have not been provided however, indications are that social visits are expected given that a visitor book would be provided. It is noted that it is identified that children occupying the home may have 'emotional, behavioural and social difficulties.

Fire Safety Measures, Office and Door Locks

The assessment of these considerations are a matter of fact and degree. However, some issues have been addressed in similar instances. For example, referring again to appeal ref APP/P9502/X/13/2205394, the use of an office would not be dissimilar to the increasing norm of 'home offices' in everyday homes. I would also argue that should an occupier of a residential dwellinghouse so wish, they could install reinforced doors and a greater number of fire alarms, and the residential character would not substantially change. In fact, many residential properties have a number of fire alarms as is an appropriate safety measure.

I would also argue that the use of locks on the child bedrooms, for use by the child aged between 16-18+, is also a prevalent occurrence in family households, particularly for those in such an age range where there is often a greater desire for privacy.

The internal alterations required for this proposed use would not be considered to be materially different from what can be found in the average dwellinghouse.

Noise/Anti-Social Behaviour

The impact of noise/anti-social behaviour is one that has been discussed in depth. As pointed out by the inspector in planning appeal ref T/APP/G5180/A/94/238594/P5, the frequency of behaviour would be difficult to predict and would depend on individual children and the supervision they received, and these are personal matter not of concern with the use of the property. In this case, I would agree with the inspector in planning appeal ref APP/A2280/W/19/3222409, who stated:

'Concerns are raised about the likely behaviour of a children's homes residents. However subject to appropriate management practices, I have seen nothing which convinces me that they are likely to be noisier or more badly behaved children or ones with behaviour difficulties although such children can and do live in traditional family dwellings.'

It is noted that 24-hour supervision of the child will take place in shifts and the children's home would be regulated by OFSTED.

Therefore, there is no evidence that the proposed use would result in a material change in terms of increased noise/ anti-social behaviour.

Traffic and Parking Provision

The current property holds no off-road parking provision. The alterations to the front drive require planning permission and without a KCC approved dropped kerb, it cannot be used for parking. It is noted however that the property is located close to the centre of town. Approximately 16 minutes' walk from Gravesend train station. The dwellinghouse as per Class C3 could currently accommodate a householder of 6 individuals. The proposed use would entail permanent residence of 1 child with between 2-4 staff members attending the property on a shift pattern. On a residential street, car movements at 7am and 7pm would not be wholly out of character with those for an individual occupying a dwellinghouse with a 9-5 job. Such as in allowed appeal ref APP/H1033/A/11/2146395, the use of this property as a children's care home under the circumstances laid out would be unlikely to generate a greater number of vehicle movements than the potential vehicle movements of the occupiers and visitors of the dwellinghouse.

Such as assessed by the inspector in appeal ref T/APP/Z2260/A/91/195927/P4 this road holds no on street parking provisions, and it was observed during the site visit that there is little pressure on the available on-

street parking spaces. It also appears to me that the parking needs of the property are likely to be similar in both C3 dwellinghouse use and C2 residential institution use for a care home providing for one child.

Therefore, in terms of traffic movement and parking provision there would be no material intensification or change.

Conclusion

This proposed development would require a change of use class from C3 dwellinghouse to C2 Residential Institution. However, the proposed development (with the exception of the front hard surfacing which does not form part of this application) does not involve Operational Change of Use and having balanced the facts is not considered to result in a material change of use as proposed. Therefore, planning permission is not required and it is recommended that this Lawful Development Certificate is granted.

Recommendation: Grant Lawful Development Certificate

Case Officer:	Ms Lisa Williams	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	26th October 2022	Dated:	31 October 2022