

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20230666
Location	2 Normans Close Gravesend Kent DA11 0EX
Proposal:	Application for a Lawful Development Certificate for the proposed change of use from existing use class C3(a) dwellinghouse to use class C3(b) young peoples care home.
Applicant:	Mr J Dhanoya, Hazlemont Social Care Ltd
Site Visit	N/A Desktop Assessment

Plans & Documents

Application Form
23/406/01 A – Existing Drawing
23/406/02 A – Existing Garage
23/406/03 – Proposed Drawing
23/406/04 B – Proposed Garage
Planning, Design and Access Statement

Superseded Plans:

~~23/406/04 A – Proposed Garage~~

Property Type

The property comprises a residential bungalow, under class C3 use, containing three bedrooms and a detached garage at the rear. It is located on a corner plot, adjoining Normans Close and St James Avenue.

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

Neighbour Comments

As confirmed in Para.008 Reference ID 17c-800-20140306 of the Government's Planning Practice Guidance, there is no statutory requirement to consult third parties on Lawful Development Certificate applications.

Despite no formal consultation being undertaken, it is noted that 26 comments have been submitted for this application. 24 objecting and 2 supporting.

However, this type of application assesses only whether the development would be lawful in terms of planning policy. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Relevant Planning History

Reference	Description	Decision	Decision Date
20130908	Erection of single storey side extensions to form bathroom/wc, additional bedroom, enlarged bedroom, ensuite shower room/wc and erection of a detached garage.	Permitted	20.11.2013
19750146	Erection of a single storey extension at side to form dining room	Permitted	23.06.1975

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]

APP/D4635/x/06/2013826 – WOLVERHAMPTON – 1 Craven Street, Parkfields, Wolverhampton, WV2 2EN [2006]

APP/D0515/C/00/1044895 – FENLAND – 27A Plough Road, Whittlesey [2000]

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

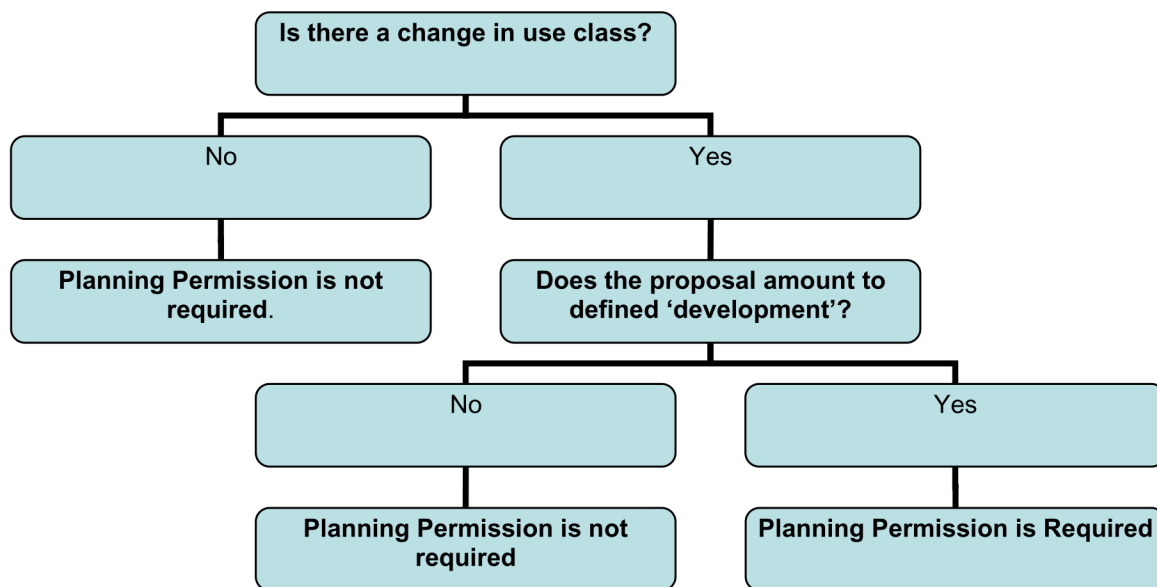
Article 2 (3) Land (AONB, Conservation Area)	N
Article 4 Direction	N
Permitted Development Rights Removed/Restricted	N

This proposal to use the existing dwellinghouse under use class C3, as a children's home for the occupation of three children at a time, between the ages of 8-18, 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 in its interpretation as including the personal care of children. This interpretation has not been amended by amendments to the order since 1987 and still applies.

Assessment of Use Class

The consideration as to whether the proposal falls within Use Class C3(b) is based upon whether the proposed children's residential home is materially different from a single family dwelling. 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 three children. It would be attended by 3/4 members of staff, depending on the child's needs. The staff members would attend the property on a shift pattern between 7am and 10:30pm.

In the appeal at Wolverhampton in 2006 (APP/D4635/x/06/2013826), the inspector stated that in the true sense of the definition the use of a detached dwelling to accommodate children with emotional and behavioural difficulties, would fall under Class C2. However, they stated that the use would not be materially different to the previous use of the building as a family dwellinghouse, and consent was granted in that case.

However, there is some contradiction to this view with other cases where dwellinghouses converted for care of children have been considered as falling under class C3(b), where carers are non-resident. One such example is the case of Fenland in 2000 (APP/D0515/C/00/1044895). In that case the inspector found that permanent residence of a carer is not required for the use to be considered as C3 where there would be no material difference from the previous C3 use. In that particular case the inspector focussed on the similar level of traffic movements from staff members as those living in a residential property.

In line with the above assessment, where the staff members would not permanently reside at the property and there would be no material change of use, the development would be considered to fall under Class C3(b), which, would not require planning consent as it would fall within the same use class as the existing use which is C3(a).

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 change to the building.

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. The proposed floor plans show that the internal layout of the dwellinghouse would remain unchanged.

It has 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 or whether bedroom doors would be lockable. However, it does state that each bedroom would have a lockable cabinet. Details of frequency of social visits have also not been provided however. It is noted that it is identified that children's homes *'cater for a variety of children and young people with a variety of difficulties, disabilities and disorders. These can result in emotional or behavioural difficulties, mental health problems, sensory impairment and learning 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. It can also be argued 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 particularly those in their teenage years, 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. Although again it is noted that this is not included as part of the application.

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, argument is made by 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 from use of the property as a single family dwelling.

Traffic and Parking Provision

The current property has off-road parking provision. There is a single drive facing St James Avenue, and a long drive from Normans Close leading to the existing garage. The drive is 21 metres long and could accommodate approximately 3 vehicles. The garage would also be retained, as required by planning condition on a previous planning decision, and would provide further parking provision. Assuming that all three staff member and the day manager who visits approximately once a day all drove cars, there would be adequate parking provision available. However, it is noted however that the property is located close to the centre of town. Approximately 8 minutes' walk from Gravesend train station. The dwellinghouse as per Class C3 could currently accommodate a household of up to 6 individuals. The proposed use would entail permanent residence of 3 children with between 3-4 staff members attending the property on a shift pattern. On a residential street, car movements at 7am and 10:30pm would not be wholly out of character with those for an individual occupying a dwellinghouse with a 9-5 job, or those who work night shifts. 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 is noted that there is little pressure on the available on-street parking spaces. It also appears based on the provided information, 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

The existing use of the property know as 2 Norman Close has been in residential use for more than four years and therefore falls within Use Class C3(a) of the Use Classes Order 1987 (as amended) and the proposal to change this to a children's home for occupation by three children and provision of 24hr care by staff members on a shift pattern falls within Use Class C3(b) of the same Order. Having had regard to all the facts, the proposed change does not amount to operational development or a material change of use as detailed by Section 55 of the Town and Country Planning Act 1990 (as amended) and would not be considered development under this legislation. The Council is therefore satisfied that the proposal would be lawful by virtue of Section 192 (2) of the Town and Country Planning Act 1990 (as amended) and a Certificate of Proposed Lawful Development can be issued.

Recommendation: Grant Lawful Development Certificate

Case Officer:	Ms Lisa Williams	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	24th August 2023	Dated:	25 August 2023