

Delegated Report

Lawful Development Certificate

Planning Application No: 20240535

Location: 56 St James Avenue Gravesend Kent DA11 0EY

Description: Application for a Lawful Development Certificate in respect of the change of Use From Residential C3 To Children's Home Care Centre C3(b).

Applicant: Miss Stembisio

Submitted Documents/Plans

Application Form
Site Location Plan
NOV/A1/01 – Existing Floor Plan
NOV/A1/02 – Proposed Floor Plan
NOV/A1/04 – Proposed Block Plan
Design and Access Statement

Superseded:

~~Application Form~~
~~Design and Access Statement~~

Relevant Planning History

No relevant planning history.

Material Consideration

- Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- The Town and Country Planning act 1990 (as amended); and
- The Use Classes Order 1987 (as amended) 2020.

Relevant Planning History

No relevant planning history.

Relevant Case Law

Court Cases:

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

Consultations, Publicity and Representations

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 this, comments have been received from and have been included below for transparency.

Kent Police Designing Out Crime Team

We have reviewed this application in regard to Crime Prevention Through Environmental Design (CPTED) and in accordance with the National Planning Policy Framework (NPPF).

Applicants/agents should consult us as Designing out Crime Officers (DOCO's) to address CPTED and incorporate Secured By Design (SBD) as appropriate. We use details of the site, relevant crime levels/type and intelligence information to help design out the opportunity for Crime, Fear of Crime, Anti-Social Behaviour (ASB), Nuisance and Conflict.

There is a carbon cost for crime and new developments give an opportunity to address it. Using CPTED along with attaining an SBD award using SBD guidance, policies and academic research would be evidence of the applicants' efforts to design out the opportunity for crime.

We recommend SBD guidance is utilised to address designing out crime to show a clear audit trail for Designing Out Crime, Crime Prevention and Community Safety and to meet our Local Authority statutory duties under Section 17 of the Crime and Disorder Act 1998. The points below identify my recommendations for the layout and design of this scheme.

1. Due to the proposed use of the site, we would recommend the applicant review current site security and boundary treatments. We advise boundary treatments to be a minimum of 1.8m in height with support beams facing inwards, any gates to a rear/ side access must also be securely lockable from both sides. It is essential that there is no unauthorised access to the rear of the site either via the side access route or via neighbouring premises.
2. We recommend CCTV be installed at the main entrance doors to monitor the movements of the occupiers. In some circumstances, it can be advisable for staff carry personal attack alarms and in some instances BWV cameras for safety purposes.
3. We recommend lighting to cover entrances to aid in natural surveillance.
4. We strongly recommend external doors and windows meet PAS 24: 2022 UKAS certified standard, STS 201 or LPS 2081 Security Rating B+. Existing rear doors and windows that are not being replaced may require limiters/ restrictors to help maintain security.

If approved, site security is required for the construction phase. There is a duty for the principle contractor "to take reasonable steps to prevent access by unauthorised persons to the construction site" under the Construction (Design and Management) Regulations 2007. The site security should incorporate plant, machinery, supplies, tools and other vehicles and be site specific to geography and site requirements.

We welcome a discussion with the applicant/agent about site specific designing out crime.

Comment from member of the public

The planning statement which accompanied the application appears to have largely been taken from another application previously presented to a different local authority.

This suggests that a lazy approach to application 20240535 has been taken by the applicant.

Point 6.3 of the Planning statement refers to 'the London space standards'.

Point 7.1 states that 'St James Avenue there is plenty of off street parking available at all times of the day with no restrictions'. That is not correct: there are single yellow line parking restrictions along much of St James Avenue including directly outside the application property. The photograph at point 11 suggests that there is off street parking. The off street parking belongs to the next door property no. 58. There would not

be enough room at the front of no. 56 to install off street parking.

Point 8.0 states that 'There are frequent buses that run along the adjacent road, Shooter Hill Road throughout the day'. That is clearly incorrect which if the applicant had checked they would have known.

Point 8.3 I'm not sure which 'leisure centre' the applicant is thinking of. Both I can think of, Cascades or Cygnets are significant bus rides away.

Point 9.0 'Similar Children Homes' - in the planning statement it states 'There are no other care homes the same...within a two mile radius'. I have checked the planning applications for children's care homes on the Gravesham Council website and without really trying have managed to find seven similar applications that have been granted in the past two years:- 20240597, 20230837, 20240195, 20230865, 20221045, 20220437 and 20220086

In Point 10.0 the applicant appears to contradict themselves by stating, 'As there are very few care homes...'

Officer's Analysis

Permitted Developments Rights Restrictions

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

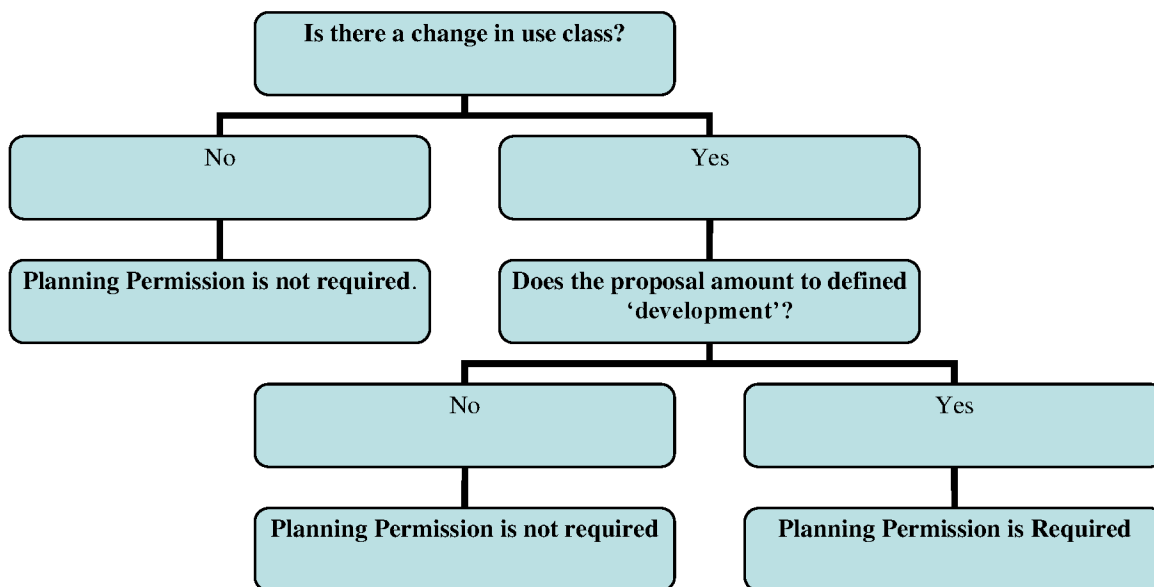
This application is for a Lawful Development Certificate (LDC) and not for an application for planning permission. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009). <https://www.gov.uk/guidance/lawful-development-certificates> As per paragraph 009 a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter would be lawful. Planning merits are not relevant at any stage in this particular application.

This proposal to use the existing dwellinghouse under use class C3, as a children's home for the occupation of up to 2 children at a time aged between 10 and 14 and 2 staff members, 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

As stated at present the use of the premises as a single dwellinghouse falls within Class C3a with the proposed use as a single household of not more than 6 residents where care is provided being C3b. A change from one to the other does not constitute development and therefore there is no requirement to obtain planning permission for such a change of use. In assessing whether the proposed change from residential dwelling house (C3a) to Use Class C3b - a Home not exceeding six people living together as a single household and where care is provided it needs to be ascertained that the proposed use does fall within use class C3b.

Definition of household

This is in regard as to the definition of 'household' and whether or not a care-worker should be living within the premises in order for it to be considered as a household.

Single household is not defined in planning legislation. Therefore guidance is sought from High Court cases

in order to establish what will constitute a household in any given case. There are two judgements that are relevant to this. In *R. v Bromley LBC Ex p. Sinclair* [1991] 3 P.L.R. 60, the High Court 'confirmed that the Class does not require that the staff providing care for residents need themselves to be resident'. However, in the more recent judgement in *North Devon District Council v The First Secretary of State* [2003] J.P.L.1191, the judge held that 'the concept of living together as a household means that, as I have put it, a proper functioning household must exist and, in the context of a case such as this, that must mean that the children and a carer must reside at the premises.

The applicant has confirmed in this case that the property would be occupied by up to 2 children. It would be attended by 2 members of staff at any one time, on a morning/afternoon/night shift pattern. The planning statement confirms that there are only 2no. single occupancy rooms available, for the 2 children residing at the property. Staff members will have an office space, but all members of staff will be working on a shift pattern, which would not involve residing at the property themselves.

Number of people forming a household

A second point to consider is the number of people forming the "household". It is established in case law (a judgement by the Court of Appeal in *R (Hossack) v Kettering BC* [2002] EWCA Civ 886) that the limit in Class C3 to no more than six persons is an important consideration as, with no more than that number, it would be likely that persons would be living as a single household than if there were significantly more than six; the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy would be likely to be and the more likely they are to be regarded as forming a single household.

In an appeal decision in *Enfield (Land at 11 Osbourne Road, Enfield – APP/Q5300/X06/2006017)* the Inspector argued that whilst a care worker might not reside in a care home, he or she should still be counted as a household member whilst on site.

The Inspector noted that:

"the proposal is for a maximum of four residents and it is clear from the plans attached to the application that they are to have communal areas, namely; the lounge, kitchen/diner, bathrooms and toilet as well as individual bedrooms, totalling four as shown on the plans. For the proposal to be consistent with the concept of a single household I consider that the member of staying overnight would need to have use of the fourth bedroom. That would rule out more than three residents, each having individual bedrooms, with 1 on duty member of staff occupying the fourth bedroom where staying overnight, would as a matter of fact and degree, form part of a single household comprised in the proposed use of the site."

In the Bournemouth appeal referred to above the issue of the number of people forming the household did not arise as the premises in question was a modest three bedroom bungalow. However, that Inspector rejected "the suggestion that in a case where care is needed for those with a disability, Class C3 can only apply if the carers are in residence in the same property as those for whom they are caring".

On balance it is considered that what is clear is that carers, whether resident or not, must be included in the total number of people forming the household. Where, as in the Enfield case, the carer sleeps on the premises overnight, the number of bedrooms available to residents did not have to be so reduced.

The household therefore made up of residents and those carers providing care, must not exceed a total number of 6 persons in the premises at any one time. In this case there would be a maximum of 2 residents at any one time with 2 carers, on a shift pattern. With up to 2 residents being cared for and 2 carers this makes 4 people in total and the maximum number of 6 persons forming the household would therefore not be exceeded.

There is some differing views within the caselaw, as to whether there needs to be a permanent residing staff member on site, for the occupiers to be considered as forming a 'household'. A balanced judgement should therefore be applied, in cases such as this where there would be no permanent residence of a staff member. In this case, the total number of staff members and residents at the property would never exceed

the maximum of 6, even when staff members are changing shifts. It is also reasonable to consider different types of households. There are many different types of family, other than the nuclear, two parent family, living together. Some families, live together in multi-generational households, extended families, blended-families, single parent families etc... where caregiving is not extended to only the parents of the children. In some instances, parents will work away, or work night shifts and so care will shift to other trusted individuals. It would seem unreasonable therefore, to prevent the care of children for planning reasons alone, simply for not meeting the standard of a 'nuclear' family, when considering the definition of a 'household'.

In this case, the children (only 2), would have 24/7 care, as expected of a single household and, given the limited number of children and staff members in this case, the balanced judgement in this instance, is that the users of the building would form a household.

Level of care

A further consideration in this type of proposal is with regard to the "level of care" provided in such establishments.

From the information submitted it is considered the care provided would be a low level of care as opposed to an intensive level of care such as 'round the clock' nursing care for example. In this case the care provided would be looking after children with mental health issues. It is therefore considered that this is a level of care that would be able to take place from this dwellinghouse without the need for a set-up of equipment etc that would be needed in the case of more intensive physical care such as with nursing care for example.

Noise/Anti-social Behaviour

A further consideration in this type of proposal is with regard to the impact of noise/anti-social behaviour

In an appeal decision in Bromley (Foxhill Lodge, 51 Fox Hill, SE19 – APP/ G5180/A/94/238594/P5) the Inspector stated that the frequency of behaviour would be difficult to predict and would depend on individual children and the supervision they received, and these are personal matters not of concern with the use of the property.

In an appeal decision in Medway (20 Patterns Lane, Rochester - APP/ A2280/W/19/3222409) the Inspector stated:

Concerns are raised about the likely behaviour of a children's home's 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 than any other children. I recognise that the facility would be for unruly children or ones with behavioural difficulties although such children can and do live in traditional family dwellings.

It is noted that 24-hour supervision of the children will take place with 2 members of staff on the property at all times.

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 has no off-road parking provision. The proposed use would consist of a permanent residence for 2 residents and 2 staff members on a rota shift. The property as existing is a 3 bedroom dwelling and under the proposal it would be reduced to a 2 bedroom property.

It is considered that the use of this property as a dwelling providing care 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 existing dwellinghouse and there would be no material intensification.

Conclusion

In assessing all of the issues with regards the proposed use, it is considered that residents and their carers would together constitute a single household. Moreover, it is clear that residents of the premises would be provided with care. The number of people forming a household would also not exceed 6 persons (maximum of two residents and two carers).

Having regard to the information submitted, relevant legislation and relevant case law and appeal decisions it is considered that the use described in the application description falls within Class C3 (b) of the Town and Country Planning (Use Classes) Order 1987 (as amended). The existing use of the premises falls within Class C3 (a). Both uses are therefore in the same Use Class C3, as such, a change of use from one use to the other would not constitute development in accordance with section 55(2)(f) of the Town and Country Planning Act 1990.

Recommendation

Accordingly planning permission is not required for the proposed use and a lawful development certificate should therefore be granted.

(For detailed conditions and informatives, see draft Decision)

Case Officer:	Mrs Lisa Fisher	Team Leader:	Richard Hart
Signed:		Signed:	
Dated:	16 th December 2024	Dated:	16th December 2024