

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20251181
Location	41 Harman Avenue Gravesend Kent DA11 7RJ
Proposal:	Application for a Proposed Lawful Development Certificate; Change of use from a residential dwellinghouse to a children's home.
Applicant:	Devine Children Home
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form
Site location plan
Planning Statement
Design and Access Statement
Drawing no. Aug/601/01 (existing and proposed ground floor plans)
Drawing no. Aug/601/02 (existing and proposed first floor plans)
Drawing no. April/44/04 (block plans)

Property Type

The property comprises a detached chalet bungalow.

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.

Consultations

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 a third party, and have been included below for transparency.

13 letters of objection have been received raising the following concerns:

- The property is in a quiet residential area of family homes and a change of use to a care facility is a substantial departure from this/inappropriate
- The care home will require round-the-clock support staff and regular visits from professionals increasing traffic/parking
- Impact on highway safety and limited residential parking

- Undue noise and commotion/24 hour operation
- The property has been bought for business use only
- Concerns around the ages of the children and the staffing levels
- An application for this type of development has already been turned down
- Anti-social behaviour/safety concerns
- Impact on property values (not a material planning consideration)
- This application should be for a material change of use
- Will set an undesirable precedent
- Not a suitable location 2 miles out of town
- No facilities in the area
- Most of the residents are retired without children
- No open space near by
- The road is used as a cut through

The Kent Police Designing Out Crime Officer has also responded with the following:

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 request a condition for this site to follow SBD guidance 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.

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. If new external doors and windows are proposed, we recommend these to 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. If the points above are not addressed, they can affect the development and local policing.

This information is provided by Kent Police DOCO's and refers to situational crime prevention. This advice focuses on CPTED and Community Safety with regard to this specific planning application.

Relevant Planning History

20230585	Change of use from a C3 Dwellinghouse to accommodation as a C2 residential institution.	Application Refused	17.11.2023
19555001	Erection of private dwelling house and garage	Permitted	20.01.1955

Officer Assessment

Procedure note

The application is for a proposed Lawful Development Certificate for the change of use from a dwellinghouse (Use Class C3) to a children's residential care home (Use Class C3(b)) as stated on the submitted application form.

It is noted that the Design and Access Statement (D&A) included with the application has numerous errors. These include:

- The current use of the property stated as C2 (family assessment centre) (paragraphs 1.1, 5.1 and 6.1)
- Reference to London Space Standards which are not adopted in Kent
- Reference to Shooter Hill Road which is not in the Borough (paragraph 8.1)
- Reference to local shops and specific facilities within 10-15 mins walk where there are none (paragraphs 8.2 and 8.3)

The Planning Statement refers to the change of use to a 'proposed family assessment' and the Design and Access Statement calls it a 'care home'. The Planning Statement and D&A do not clarify the number of children. The Planning Statement says there are three bedrooms on the first floor and the smallest will be used as an office; two bedrooms are for the children. However the Design and Access Statement says there will be three bedrooms for children.

The block plan shows a different ground floor layout to the ground floor plan which shows a downstairs bedroom.

Assessment

A Lawful Development Certificate (LDC) is a legal document stating the lawfulness of past, present or future building use, operations, or other matters. If granted by the Local Planning Authority (LPA), the certificate signifies that enforcement action cannot be carried out against the development referred to in the certificate.

After receiving a valid application, the LPA will check whether the proposal being undertaken or that has been undertaken, meets the requirements of planning legislation. The LDC will then either be granted or refused.

An application for an LDC is not an application for planning permission. Its purpose is to enable the applicant and others to ascertain whether specific operations or activities would be lawful. The burden of proof is upon the applicant. The test of the evidence is one of balance of probability. The application concerns only the lawfulness of the matter for which the LDC is sought, not its planning merits. The decision is based solely on the facts of the case and relevant planning law and judicial authority.

Planning permission must still be acquired separately for any development or use which an LDC does not cover.

The application has been made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case, they shall refuse the application.

The LPA agrees that the existing use of the property is a dwellinghouse, Class C3 of Part C of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO).

Use Class C3 is described in the UCO 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).*

The LPA has to have 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 the 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.

The use for which a certificate of lawful use or development is sought is a dwelling for use as a C3(b) dwelling to be occupied by an unspecified amount of children (aged between 10-14) and two staff at any one time.

The two main issues for consideration are:

- Whether the proposed use falls within Class C3 of the UCO
- Whether the proposed use constitutes a material change of use

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'?

Whether the proposed use falls within Class C3 of the UCO

For the use of the property to fall within Class C3(b) it must: be a dwellinghouse; there be no more than six residents; those residents must live there as their sole or main residence; they must live together as a single household; and care is provided for the residents.

The UCO, states “care” means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.

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:

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses, used as sole or main residences)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

The main consideration here, is whether the proposal falls within the C3(b) use class or C2 use class, as there is potential that the proposed use would fall under class C2 – Residential Institution.

The applicant has provided a ‘Planning Statement’ and a ‘Design and Access Statement’ as part of their application. It is made clear that:

- the proposal will result in no external or internal structural changes to the property

The documents do not make clear:

- that the property will be utilised by less than six people at any one time (the number of children is not clear but would appear to be between two and three) and there will be two members of staff during the day and two on duty at night. Presumably there will be an element of overlap which could result in four members of staff on site and potentially three children equating to seven people.
- the total number of staff employed or their roles
- whether there will be a rotational shift system and how this would work
- whether there will be any enforced quiet hours with noise control measures
- whether there will be a contact for neighbour liaison
- how the parking will be managed
- how the home will be operated as a small family-style household

The applicant states that the use of the property would be no different from use as a family home but has not given a clear indication of the number of people staying overnight and whether this would be under six.

Relevant case law relating to cases such as this is North Devon District Council v FSS & Southern Childcare Ltd [2003] EWHC 157 (Admin); [2003] JPL 1191, which determined that children cannot form a household and

that if their carers do not live permanently at the property, the use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). This is defined as the use for the provision of residential accommodation and care, other than within a Class C3 use.

Case law (*R (on application of Crawley BC) v FSS & the Evesleigh Group* [2004] EWHC 160 (Admin)) also confirms that North Devon does not lay down a principle that those who may need care can never constitute a household. It is necessary to focus first on those in occupation and ask whether they form a single household as a matter of fact and degree. However, in this case, since the children or young people (aged between 10 and 14) cannot themselves be said to form a household, as established by North Devon, the proposed use would fall within C2 (residential institutions) of the UCO.

In addition, whilst the proposed level of care may be described as being low, there would be a requirement for 24-hour care by non-resident carers, who would not be allocated specific sleeping quarters, with only a bedroom/office provided for staff onsite. That would suggest that a waking night shift may operate through the night, in the absence of fuller information, the information provided indicates that the proposed support would go beyond the level of care that one would expect in a functioning single household. This is in addition to the fact that the children / young people themselves are incapable of forming a household, as they are not capable of undertaking tasks associated with running and living within a dwellinghouse.

Therefore, the proposed use would not appear, from the limited information submitted, to involve occupation by a single household, as required under Use Class C3. As a matter of fact and degree, the use of the property would be one that falls within Class C2 of Part C of Schedule 1 of the UCO, and not within Class C3(b) of the same Part. It does not, however, automatically follow that the proposed change from a use falling within Class C3(a) to a use falling within Class C2 would be a material change of use, such that it would fall within the definition of development set out in section 55(1) of the 1990 Act and require planning permission. Despite the proposed change from one use class to another, for a 'material' change of use to occur, there would have to be some definable change in the character of the use when compared to what has gone on previously.

Whether the proposed use constitutes a material change of use

Although there is no statutory definition of 'material change of use', to establish whether there is a material difference is linked to the significance of a change between the existing primary use and the resulting impact of the proposed use on land and buildings. Whether a material change of use would occur is a matter of fact and degree and this is determined on the merits of the proposal.

The property is a two-storey detached dwelling situated in a residential street, where houses are predominantly in single occupancy as dwellinghouses. The property is shown as having a kitchen, WC, back of garage area, living room, hall and bedroom at ground floor and two bedrooms, an office, loft room and bathroom at first floor. As discussed above, the proposed block plan shows a lounge at ground floor in place of the bedroom shown on the floor plans.

This is the existing arrangement, which the applicant is proposing to retain. As such there are no internal or external changes proposed.

To the front of the property is driveway with parking for one car leading to an attached garage. The remainder of the front garden is landscaped. The applicant is not proposing to make alterations to the external fabric of the dwelling, as such there would be nothing to visually differentiate any change between the existing and proposed use of the property.

The applicant states that in their view, there would be little difference between the use of the dwelling by a family and the proposed use. No information is provided related to shift patterns.

There are no guarantees that shifts would be staggered to allow for workers to leave and arrive at the premises at different times. It is assumed, but not stated, that care would be provided on a 24-hour basis, with support provided to the children to attend appointments, activities, etc. It is not suggested that the property would be the principal place of residence for any employee.

The potential activity that could arise on site is unclear, in the absence of a care plan or management plan, it is not entirely clear how the property would actually function, and insufficient information is provided in the statements provided as part of the application. The proposed change of use could therefore be material, and the use far more intensive than would be expected from a normal family use. For example, it is likely that whilst medical appointments would be off-site, one would expect regular visits from social workers and other professionals, as well as potential visits from family members. In addition to this, it is not clear how many children would reside at the property.

The proposal therefore has the potential to result in a significant change in the character of the existing use, by reason of associated noise and disturbance generated by factors such as shift patterns, changeovers and visitors. To conclude otherwise would require the provision of significantly more detail regarding how the proposed use would actually operate at the property.

As such it is considered that the proposal would amount to a material change of use from Use Class C3(a) to Use Class C2 for which planning permission would be required.

Conclusion

In assessing all of the issues with regard to the proposed use, it is considered that residents and their carers would not constitute a single household and that the proposal would fall within the C2 use class.

Consequently, having considered the information provided by the applicant, it is considered that the proposal would amount to a material change of use from Use Class C3(a) to Use Class C2 for which planning permission would be required.

Accordingly, the lawful development certificate should therefore be refused.

Recommendation: Refuse Lawful Development Certificate

Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	2 February 2026	Dated:	3rd February 2026