

Delegated Report

Lawful Development Certificate Application (Proposed)

Planning Application No: 20240339

Location: 12 Old Road West Gravesend Kent DA11 0LJ

Description: Application for a lawful development certificate for the change of use from change from C3(a) to C3(b) for the use of the dwelling as a dwelling house providing care.

Applicant: Mr Deutch, Netpex Ltd.

Site Visit Date: 20 June 2024

Submitted Documents/Plans

Application form;
Rota System and Number of People on site;
Location Plan;
Drawing no. PLOS A4 – Location and site plan;
Drawing no. PL01 – Existing Floor Plans;
Drawing no. PL02 – Proposed Floor Plans;
Planning Statement;

Property Type

The property type comprises a semi-detached dwelling situated on the northern side of Old Road West.

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Town and Country Planning Act 1990 (as amended)
Use Classes Order 1987 (as amended)
Children Act 1989
Planning Practice Guidance

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 9 comments have been submitted for this application. 8 objecting and 1 supporting the comments of which can be summarised as follows:

Object

Use

- Would not meet local need as property would house children from Epping Forest and not local

residents;

- Providing care for the children of Epping Borough means it would have no impact on care facilities available to existing residents to Gravesham;
- There's a noticeable increase in number of properties in area being converted from family homes to care or HMO uses, a sensible limit should be applied;
- Is it providing care for local people or another Borough relocating vulnerable families?

Character of Area

- Impact on residential character of area – its character and integrity known for its stability and cohesion could be disrupted by a transient population associated with a property of this nature;

Amenity of occupiers

- Can surely not be the right property for the safety and well-being of a vulnerable child, the situation on the main road with parking restrictions compromises safety and well-being of child if they need to be reached
- Environs close to the site are known to afford opportunities for drug transactions, in recent years there has been a disturbing quantity of Nitrous Oxide capsules littering the streets which does not bode well for proposed use for troubled youngsters;
- Presence of local pub is concerning given the nature of the proposed facility and children it is aimed at;

Amenity of Neighbouring Properties

- Likelihood increases with a higher turnover of occupants and potentially more residents per household of more noise and disturbance. Will impact on the quality of life and well-being of residents;
- A house of unrelated people is likely to be noisy and potential to be anti-social;
- Transient nature of such a property can sometimes lead to less familiarity and trust among neighbours, the change in the demographic dynamic might affect the overall sense of security among residents;
- Safety – What care? What will people need? Mental health? Half way house for offenders, rehabilitation? Concerned over safety to them, their family and their neighbours.

Parking and highway safety

- Would likely increase the number of vehicles in the street exacerbating already challenging parking conditions;
- Many properties do not have off-street parking which leads to congestion and potential safety hazards for pedestrians;
- Road is already busy with extensive parking restrictions and residents struggle for parking in adjacent streets, allowing multiple unrelated people to live in one house will result in multiple cars fighting for already limited space, concerns parking restrictions would not be adhered to;
- This is a busy residential street, much better suited properties to allow for care to those who need it;
- Old Road West is in a parking control zone with strict time constraints with the traffic flow always heavy as a designated A road, parking and traffic flow are therefore an ongoing problem for residents and this is exacerbated by the pub at junction with Windmill Street and doctors practice at no. 30 Old Road West;
- Staff for the proposal would therefore add to the congestion and also a safety issue, vulnerable children deserve a quieter and safer environment;
- Severe restrictions on parking, 5 doors away from one of the busiest street intersections in Gravesend where B261 Old Road West crosses Windmill Street/Singlewell Road and continues as Old Road East;
- Property is right next to one of the busiest junctions in Gravesend where 3 roads meet and no

crossing for pedestrians to cross Windmill Street at the junction;

- No ability to park on this part of Old Road West at all Monday to Saturday and very limited parking outside those times requiring cars to mount the pavement;
- Parking zone for residents is not near the property and can only be found on roads like Devonshire, Singlewell or Woodfield Avenue and these are already overloaded at all times.
- Application is for one residential member of staff and several other rotating members of staff who will have nowhere to park and would impact on the local community;
- More adults will be required to regularly attend the property than a family home which will have to be done from the controlled parking zone if they manage to find a space;
- Given nature of use it needs its own dedicated parking or immediately adjacent;
- There are many other properties for sale in Gravesham for same price or less on quieter roads that come with off-street parking or adjacent street parking that is not prohibited in the way it is on Old Road West, if argument is there is local need there are other properties that are far more suitable;
- Parallels drawn to application 20230666 is disingenuous as that property is a bungalow with off-street parking and a garage, on a cul-de-sac that comes off a quiet residential road and there is little traffic passing the property. The precedent argument made the applicant is not reasonable given the clear material differences between the two properties;
- Applicant states that application ref. 20230666 is akin to this proposal but that property in Normans Close presents a much different proposition for the homing of vulnerable children in local authority care compared to a classified road like Old Road West – given that the children would as stated have social, emotional and potentially drug and alcohol issues concerned for their safety in and around a busy fast moving road and crossroads;
- Lack of street parking is an issue as nearest permit parking in side streets would be c. 100 plus metres away and have to compete with other properties who have no off-street parking;
- When on-street parking is allowed on Old Road West, cars have to park up partly on the pavement which impacts on both pedestrian and road safety which would potentially be an increased hazard/risk for a vulnerable child in an emotional state;
- Risk of an emergency situation may be greater than compared with other domestic situations, carers may therefore need to infringe the parking zone and yellow line restrictions thereby increasing risk to road users and pedestrians;
- Lack of parking should be considered a ground of refusal;
- Old Road West has no parking between 08:30 and 18:30 Monday- Saturday, when parking is available the driver has to mount the footpath so as not to impede traffic. Old Road West is very busy road with heavy traffic at all hours, parking for long periods as would be required by the staff both residing and working at the property daily, outside would not be possible;
- Parking for this property can be found in TC05 during control periods for residents, this covers the streets south of Old Road West, not the side of the street where no. 12 sits;
- Not clear where the staff who are not resident and would not qualify for a permit would park. Parking in TC05 is already oversubscribed and adding additional vehicles would cause additional strain;
- Given permanent daily need for multiple staff on site, parking must be considered a key provision;
- Application ref. 20210964 (a property on same street with similar traffic conditions) was rejected by the Council in 2021 on the basis of traffic concerns, there are strong similarities to this case;

Waste

- Potentially multiple occupants would generate more waste than a typical single family home, could lead to overflowing bins and littering impacting on cleanliness and appearance of street;

Other

- If this is permitted, no. 10 which has a sold sign could be converted too;
- No. 12 forms a single block with no. 12 which have both been sold at the same time by the same estate agent, concerned they may have been acquired by the same developer and that if no. 12 receives planning permission they will make the same proposal for no. 10. This would mean a

larger care establishment with 6 troubled juveniles and at least two adult staff compounding the problems raised;

- Photograph shows no. 14 Old Road West not no. 12, a careless and poor basic error for a planning team to make – **Officer note – The photograph is on the front of the Planning Statement which is an application document submitted by the applicant, it is not a document created by the Local Planning Authority;**
- The wrong photograph of no. 14 instead of no. 12 is worrying – if applicant can't manage to check basic information of this nature it's likely the proposed residents of the property and existing neighbours can expect to be treated with similar lack of attention, application lacks attention to detail and competence;
- Photograph on front of supplementary document displays no. 10 Old Road West, given that no. 10 & 12 are conjoined and both displayed as sold STC with the same estate agent, concerned a similar application for no. 10 will be lodged if approved; **Officer note – the photograph on the front of the Planning Statement submitted by the applicant incorrectly shows no. 14 Old Road West)**
- Application notes other cases but fails to clearly show how they apply to this application;
- References to similar applications are not comparable as there are significant material differences to the properties and use;

Non-material planning considerations

- Devalue their property – It's essentially an HMO, prospective buyers may not want that near them;
- Presence of such a property could lead to a decline in property values in the immediate vicinity as potential buyers could be put off by living next to such a property;
- Questions the credentials of the planning agent;

Support

- Use would meet the criteria of the use class order C3(b) and is lawful;
- There is a need for these types of homes in the local area, children get taken away from area as no such homes locally;
- Netpex are an Ofsted regulated health provider who would ensure all health and safety measures are met;
- No impact on parking as no parking on street

However, this type of application assesses only whether the development would be lawful in terms of planning legislation. Views expressed by third parties on the planning merits of the case are irrelevant when determining the application.

Relevant Planning History

Reference	Description	Decision	Decision Date
20100774	Formation of vehicular access on to a classified road and installation of a vehicle turntable in front garden.	Refused	19.10.2010
20090499	Formation of joint vehicular access on to a classified road and laying out of a hardstanding in the front gardens.	Refused	18.08.2009
20070755	Formation of a vehicular access on to a classified road and excavation of a parking bay at the front.	Refused	10.10.2007
19840698	Formation of joint vehicular access and use of the front gardens for car parking	Refused	28.09.1984

Officer Assessment

Procedural matters

It is important to note that there is no such thing as precedent in planning and each case is taken on its own merits.

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.

The application site consists of a two storey semi-detached terraced dwelling located in the urban area of Gravesend. The house provides activity room, dining room, kitchen and conservatory at ground floor level, three bedrooms, a bathroom and a wc. at first floor level and a bedroom at second floor level.

The use for which a certificate of lawful use or development is sought is the proposed change of use from a residential dwellinghouse (C3a) to a single household of not more than 6 residents where care is provided (C3b).

The proposed layout is an activity room, dining room, kitchen and conservatory at ground floor level, two bedrooms, a carers room, a bathroom and a wc. at first floor level and a bedroom at second floor level. It is therefore the same layout as existing and the only alteration is the change of existing bedroom 3 to a carers room at first floor level.

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.

The information submitted with the application provides the following information:

- Up to 3 children will receive care;
- Care given by adult staff members of whom at least one would reside at the premises and it would be their permanent house. The staff would be 1 adult staff member will live at the premises, and 1 adult staff member will be on a rota shift of 8 or 12 hours. Therefore 2 adults will be present at any given time;
- No more than 6 people would be residing at the property;
- Care would be for children with emotional and behavioural difficulties and or previous drug users from the Epping Borough;
- Care provider is Netpex Ltd who is said to be an experienced operator (over 25 years) and specialist in accommodating and supporting the needs of children and young people. They work with several Local Authorities and successfully manage several homes within the London M25 area.

Netpex's website states under the 'Who we are' section':

Netpex has been delivering Semi-Independent Living Support Services to Looked After Children and Young People since 1995.

At Netpex, we focus to create brighter futures for vulnerable children and young people aged 16 to 24 years. We provide safe supported accommodation, rehabilitation services, and assistance with employment, community integration and sustainable independent living.

Our services have expanded to include 24-hourly staffed accommodation, standalone accommodation and outreach services. We currently have 11 24-hourly staffed semi-independent provisions offering therapeutic and self-centred care and support.

We accept young people from all backgrounds and circumstances, believing that every person deserves a chance. For more information on our different services [click here](#).

Netpex's website states under the 'Services' section:

Netpex provides a flexible and personalised service for young people aged 16+ years, helping them to achieve a successful transition into independence and adulthood. We aim to enable our young people to develop and maintain respect, independence and self-care skills, and to make informed, age appropriate decisions concerning their present and future.

We are experienced in supporting young people with varying needs:

- Attention deficit disorder
- Attachment disorders
- Autistic spectrum disorder
- Challenging behaviour
- Criminal behaviour
- Drug and alcohol abuse
- Gang involvement
- Low level sexualised behaviour
- Mental health issues
- Moderate learning disabilities
- Post Traumatic Stress Disorder
- Self-harming behaviours

Individually Tailored Support

We understand that getting the right care is very important; therefore we offer personalised support, according to each individual's needs. Our core service includes on-site support, 24 hours per day, 7 days per week, 52 weeks per year. Friendly and professional staff provide positive role models for the young people we support. They develop warm relationships with each individual, guiding and encouraging towards increasing self-esteem, making positive changes and reaching goals.

- We Tailored, individualised support, on a 1:1 basis, based on background and circumstances.
- A formulated coaching and care plan, to help manage the transition to independence for the young person.
- Continual support through their education and career pathway including help with CV writing, searching for training courses and employment and links with job opportunities in the local community.
- Weekly 1:1 key work sessions focused around safety, building positive relationships, maintaining personal hygiene, health, education/employment/training, managing emotions, reflective sessions and preparing for independence.
- Weekly/Monthly goals set in collaboration with the young person.
- Setting clear boundaries and expectations in preparation for adulthood.
- Counselling support and a variety of therapies if necessary to overcome any difficulties experienced.

Netpex's website states under the 'Accommodation & Support Packages' page and under Low/Medium Level Support (24/7 staffed placement):

- Bedroom (shared bathroom and kitchen facilities)
- 24 hour staff on site
- Minimum 10 hours per week of 1:1 key support
- Assistance with job search/interviews
- Support towards independence
- Mentoring & progress reports
- Support with health appointments
- Support with educational attainment
- Attendance of professional meetings

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 Sectreary 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.

In this case there would be 1 adult staff member who would live at the premises, and 1 adult staff member who would be on a rota shift of 8 or 12 hours so that 2 adults would be present at any given time.

It is therefore considered that this proposed use which includes the provision of care to the residents by one staff member who would be permantly living at the property and another who would be on a shift pattern, would constitute a proper functioning household. Inndividuals who could not live independently in the dwelling without care would be provided with this care and one of the two carers would be resident in the property at all times.

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 bedroomns, 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 3 residents at any one time with two carers, one of whom would reside at the property as their permanent home and the other on a shift pattern. With up to 3 residents being cared for and two carers this makes 5 people in total and the maximum number of 6 persons forming the household would therefore not be exceeded.

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 emotional and behavioural difficulties. Netpex’s website advises that the care provided would be safe supported accommodation, rehabilitation services, and assistance with employment, community integration and sustainable independent living. 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 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 as one member of staff will reside at the property at all times as their permanent home and there will be another member of staff on a shift pattern of 8 or 12 hours. The care provider is Netpex Ltd whose website states that they have been delivering Semi-Independent Living Support Services to Looked After Children and Young People since 1995 and there is individual, tailored continual support, care plans, 1:1 key work sessions, counselling support etc.

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 3 residents and 1 carer permanently living at the property and 1 staff member on a rota shift of 8 or 12 hours. The property as existing is a four bedroom dwelling and under the proposal it would remain a four bedroom property.

There is a parking restriction on Old Road West outside the property with no parking Monday-Saturday 8am-6.30pm on this part of Old Road West.

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.

Other

A planning application has been referenced in representations received. Application ref. 20210964 at no. 2 Old Road East which was for an 'Application for a Lawful Development Certificate for the proposed change of use of C3 dwelling house to C2 residential institution for the provision of a children's home for a maximum of 4 resident children aged 8-17 years, with non-resident care staff for support'. The application was refused on 8 October 2021 as planning permission is required for the change of use from a C3 dwelling house to a C2 residential institution and so it the development was not lawful; essentially the wrong application procedure had been applied for. It was also stated that parking and traffic movements would need to be assessed. It should be noted that a revised planning application for 'Change of Use from dwellinghouse (C3) to children's care home (C2)' was subsequently submitted and approved under planning application ref. 20220437 for the property.

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

Recommendation: Grant Lawful Development Certificate

Case Officer:	Ms Rebecca Harrison	Team Leader:	Miss Faye Hobbs
Signed:	<i>Rebecca Harrison</i>	Signed:	
Dated:	25th June 2024	Dated:	26 June 2024