

**WELWYN HATFIELD BOROUGH COUNCIL
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

DELEGATED APPLICATION

Application No: 6/2022/1136/LAWP
Location: 64 Walker Grove Hatfield Hertfordshire AL10 9PL
Proposal: Change of use from Use Class C3(a) (dwellinghouse) to Use Class C3(b) (up to six people living together as a single household and receiving care)
Officer: Ms Kirsty Shirley

Recommendation: Refused

6/2022/1136/LAWP

Context	
Application Description	Change of use from Use Class C3(a) (dwellinghouse) to Use Class C3(b) (up to six people living together as a single household and receiving care).
Relevant planning History	<p>Application Number: S6/1999/1064/OP Decision: Approval Subject to s106 Decision Date: 29 December 2000 Proposal: DEMOLITION OF EXISTING (UNLISTED) BUILDINGS, REMOVAL OF RUNWAY AND OTHER HARD STANDING AREAS AND REDEVELOPMENT FOR THE FOLLOWING PURPOSES: AS A BUSINESS PARK COMPRISING USES WITHIN USE CLASS B1, B2, B8 AND SUI GENERIS USE; HOUSING; NEW UNIVERSITY CAMPUS (USE CLASS D1 AND D2) TO INCLUDE REPLACEMENT OF HAVILLAND SPORTS AND SOCIAL CLUB AND ASSOCIATED PLAYING FIELDS; TWO HOTELS; PRIMARY SCHOOL AND ASSOCIATED FACILITIES; DISTRICT CENTRE; WORKS OF CONVERSION TO ENABLE RECREATION USE OF EXISTING LISTED HANGAR; AVIATION HERITAGE CENTRE. TOGETHER WITH ASSOCIATED HIGHWAY, TRANSPORT AND SERVICE INFRASTRUCTURE (INCLUDING A STRATEGIC TRANSPORT CORRIDOR), LANDSCAPING AND OPEN SPACE, DIVERSION OF ELLENBROOK. MEANS OF ACCESS TO BE DETERMINED</p> <p>Application Number: S6/2003/0957/DE Decision: Granted Decision Date: 12 November 2003 Proposal: RESIDENTIAL DEVELOPMENT OF 322 DWELLINGS AND ASSOCIATED INFRASTRUCTURE. (WORKS PURSUANT TO OUTLINE APPROVAL S6/1999/1064/OP)</p> <p>Application Number: S6/2004/0220/DE Decision: Granted Decision Date: 21 May 2004 Proposal: ERECTION OF 60 DWELLINGS INCLUDING 18 AFFORDABLE HOUSING DWELLINGS WITH ASSOCIATED PARKING, DRIVES, ROAD ACCESS (RESERVED MATTERS FOLLOWING OUTLINE PERMISSION S6/1999/1064/OP)</p>

	<p>The main issues are:</p> <p>Whether the proposed change of use is lawful for the purposes of paragraph 192 of the Town and Country Planning Act 1990 (as amended).</p> <p>Discussion</p> <p>The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended – (GPDO) allows for development consisting of a change of use of a building within its curtilage from a use falling within Class C3(a) (dwellinghouses for use by single person or a family, an employer, certain domestic employees, a carer and the person receiving the care and a foster parent and foster child) of the Schedule to the Use Classes Order, to use falling within Class C3(b) (covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems) of that Schedule.</p> <p>A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter would be lawful. An application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.</p> <p>The application includes the following supporting information/evidence:</p> <ul style="list-style-type: none"> - Application form - Cover letter <p>The cover letter submitted with this application states the application site is comprised of a detached two storey, 5 bedroom dwelling with integral garage and rear amenity area. The applicant wishes to establish supported living accommodation for three residents, with two bedrooms in use for two full-time carers, who will support three persons between 16 and 65.</p> <p>Planning history at this site identifies that the application site is within a residential area, formerly part of the Hatfield Aerodrome site. The Local Planning Authority have no evidence to dispute the existing use of the building as a Class C3(a) dwellinghouse.</p> <p>A change of use to the building to Class C3(b) dwellinghouse would cover up to six people living together as a single household and receiving care. The only information regarding the potential future occupiers submitted describes the occupants as two full-time carers caring for three persons between 16 and 65. The submitted cover letter submitted describes the three persons as ‘adults’. However, until the age of 18, services for children and young people with long term health conditions are provided by child health and social care services. Therefore a person under the age of 18 is considered as a child in regards to health and social care services.</p> <p>In the case of <i>North Devon District Council v The First Secretary of State and Southern Childcare</i> QBD [2003] JPL 1191, the Court said that two children (aged between 10 and 17), supported by two resident carers, could not constitute a household for the purposes of Use Class C3(b). Collins J said: a household needed more than just children, as children “<i>needed to be looked after and they cannot run a house. They could not be expected to deal with all the matters that go to running a home. Children are regarded as needing full-time care from an adult to make sure that a household operates as it should</i>”.</p> <p>While it is noted that a bedroom each would be provided for the two full-time carers, no information has been submitted regarding whether these carers would reside in the home, either consecutively together or on a respective shift pattern, or whether the carers would reside elsewhere. As an employee, it is unlikely that the carers would be on duty at all times as they would be entitled to do</p>
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off each week in addition to annual holidays. While two carers are identified, it is not clear how the care will be provided and due to the lack of clear information, the details of the operation are not precise and are ambiguous.

In the North Devon case there were carers on the property at all times but they came and went. They were not residents of the house and lived elsewhere. The North Devon case indicated that carers who provided 24-hour care, but were not resident, could not be regarded as living together in a household. Furthermore, in *R v Bromley London Borough Council ex parte Sinclair [1991] 3 PLR* case, the question arose as to whether carers who do not live on the premises but who, between them, provide 24-hour care can be regarded as living together as part of the household. The court held that the concept of living together as a household means that a properly functioning household must exist and thus the children and carer(s) must reside in the premises. Otherwise the use clearly falls within Class C2 (Residential Institution).

All categories of Class C3 require the occupiers to be living together as a single household. It is necessary to focus on those in occupation and ask whether they themselves form a single household, as a matter of fact and degree. While it is acknowledged the residents requiring care at the site would vary in age between 16 and 65 years, it is feasible that all three residents requiring care could be 16 or 17, and thus children. It is considered a group of children cannot reasonably be regarded as being capable of living together as a single household, particularly if there would be no carer(s) residing permanently on the site who would themselves form part of the household.

Article 2 of the Use Classes Order interprets "care" as meaning "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". The interpretation clearly distinguishes between Class C3 and C2 insofar as it relates to children.

The proposal would, as the applicant states within the submitted cover letter, operate like a normal family home with domestic living areas. It is accepted that the proposed dwelling can accommodate a family with the comings and goings associated with a family. It is not doubted that the communal spaces and bedrooms would be used by the residents in a manner comparable to a dwellinghouse. However, information has not been submitted to establish whether there would be an exchange of care staff operating in a shift pattern, and there is also insufficient information as to whether there would be any other professionals coming and going to the property to provide further care as required by residents, particularly if the residents are children, such as education, therapy, etc. Such movements may result in an increased level of activity associated with the proposed use, which would be more intensive and constant than might reasonably be expected to be generated by even a large dwellinghouse, such that the overall character of the use would materially differ to that of a dwellinghouse.

Consequently, there is a lack of clear and precise evidence showing how the occupants would actually function and live as a single household, and the evidence submitted does not clearly demonstrate that the proposal would fall within class use C3(b).

Conclusion

Insufficient information has been submitted to clearly demonstrate that the proposed development would be lawful and accordingly, the certificate is hereby refused.

Reasons for Refusal:

1. Insufficient information has been submitted to clearly demonstrate that the proposed development would be lawful and accordingly, the certificate is hereby refused.

REFUSED DRAWING NUMBERS

2.

Plan Number	Revision Number	Details	Received Date
		Site location plan	17 May 2022

1. POSITIVE AND PROACTIVE STATEMENT

The decision has been made taking into account, where practicable and appropriate the requirements of paragraph 38 of the National Planning Policy Framework and material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be viewed on the Council's website or inspected at these offices).

Determined By:

Ms Becky Rousell
11 July 2022