

**WELWYN HATFIELD BOROUGH COUNCIL
ASSISTANT DIRECTOR (PLANNING)**

DELEGATED APPLICATION

Application No: 6/2022/2506/LAWP
Location: 48 The Runway Hatfield Hertfordshire AL10 9GL
Proposal: Certificate of lawfulness for the change of use from C3 dwellinghouse to C2 residential institution
Officer: Ms Ashley Ransome

Recommendation: Refused

6/2022/2506/LAWP

Context	
Application Description	The applicant seeks a certificate of lawfulness for the change of use of the property at No.48 The Runway from C3 dwellinghouse to C2 residential institution. The proposed use of the property would be as a registered children's home (use class C2) for a maximum of four children aged from 8 to 18 years.
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 de 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>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>	
Discussion	

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 C2 (residential institutions- residential accommodation and care to people in need of care, residential schools, colleges or training centres, hospitals, nursing homes) of that Schedule.

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.

The application includes the following supporting information/evidence:

- Application Form
- Marketing Brochure
- Planning Statement
- Location Plan
- Floor Plan

The submitted Planning Statement provides information with regards to the site and the proposal as follows:

“The property is a five bedroomed detached house, currently used as a dwelling under C3. There is provision for four of street parking spaces, three to the front and one in a garage. The proposal is to register the property as a registered children's home (use class C2) for a maximum of four children aged from 8 to 18 years. They would be looked after by three carers, two of whom would sleep overnight working on a rota basis. Six carers would operate on a shift pattern of 48 hours on, 60 hours off. Other than changeover times, there will be no more than three carers on the premises at any one time. There would be one changeover of the overnight care staff per day, usually 8am each morning, which lasts for around ten minutes. A manager, also a carer, would usually visit the site at some point each day between 9am and 6pm.”

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.

Use Class Order:

In the first instance, it is necessary to consider whether the proposal would fall 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). The correct use classification of a children's residential home has been the subject of caselaw and North Devon DC v SOS 31/01/03 remains a leading authority. In the case of North Devon District Council v The First Secretary of State and Southern Childcare QBD [2003] JPL 1191, the Court said that two children (aged between 10 and 17), supported by non 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 “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”.

In the North Devon case there were carers on the property at all times but they came and went. They were not permanent 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 PLR60 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 proper 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).

With regards to the above, 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. The submitted Planning Statement sets out that it is proposed for the children within the home at 48 The Runway to be looked after by three carers, two of whom would sleep overnight working on a rota basis. Six carers would operate on a shift pattern of 48 hours on, 60 hours off. Other than changeover times, there will be no more than three carers on the premises at any one time. Whilst it is noted that a bedroom would be provided for the two carers whom would sleep overnight, it is considered that they would not have permanent residence at this property, and as such, it would mimic the scenario considered in the North Devon case insofar as the proposal would not constitute a household. The use therefore clearly falls within Class C2 (Residential Institution).

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.

There are no provisions within the Town and Country Planning (General Permitted Development) Order 2015 (as amended) that would allow for a change of use from Class C3 to C2 without the need for planning permission.

Notwithstanding the above, the North Devon judgement concluded that the transition from one use class to another was not in itself enough to indicate that a material change of use had occurred. In particular, it was noted that “a change is not material if it is ‘de minimis’ or merely a change in the person conducting the use. The correct approach... is to judge materiality in land use consequences”. On this basis, a change of use must be material in order for planning permission to be required.

Materiality:

The basic tests of materiality derive from early Court decisions, notably East Barnet UDC v British Transport Commission (1962), in which it was found that “material” means “material for planning purposes”. Subsequent decisions and judgements¹ have concluded that in determining whether any change of use is material, it is relevant to consider:

- Change in the character of the use itself, including the land where it is located
- Effects of the change upon neighbouring uses and the locality

- The extent to which the existing use fulfils a legitimate or recognised planning purpose

Given this established case law, the key consideration is whether or not the care of the child as proposed would give rise to a material change in the character of the use of the property and/or a variation in off-site impacts from what could be typically expected from a C3 use.

The applicant considers that the change of use of the property from C3(a) to C2 is not material since there is little material difference between the current and proposed use. The applicant contends that the care home will be run as closely as possible to a typical family household, with staff employed on a rota basis providing the parental support to the children.

The Council, however, considers that the change of use of the property from C3(a) to C2 would be material. As discussed above, the proposed C2 use would not constitute a household and as such, there would be a material difference between the existing and proposed uses. This is set out in more detail below.

It is considered that there would be a change in the character of the use of the property as a result of increased day-to-day activity. The applicant's statement suggests that the comings and goings from the property would not be significantly different from those associated with the current use as a family dwelling, with a schedule of likely movements of the existing and proposed uses provided in a table format to form a comparison. However, the Council consider the movements described by the applicant to represent the best possible scenario rather than a realistic representation of how a care home for up to four children could operate, or indeed an assessment of the worst case scenario.

In 2014 it was found that more than half of all child placements last less than 3 months (Residential Care in England: Report of Sir Martin Narey's independent review of children's residential care – July 2016). This is a stark contrast to a typical family home.

It is reasonable to assume that the individual children residing at the care home would change on a regular basis. Each child would have differing needs and circumstances. This means that there is considerable uncertainty over how the care home would operate in the long term. For this reason, there is a high degree of uncertainty with regards to the comings and goings.

The impacts are likely to vary considerable over time, based on the needs of the children in care. Uncertainty therefore arises as to the impact of the proposal upon neighbouring occupants. To that end, it is considered that this is one aspect of consideration towards the proposed change of use being material, especially as such comings and goings would likely be able to be controlled if planning permission were to be granted under a Full Planning application.

There would also be a change in the character of the use with regards to the operation of the property. The Ofsted Guide to Children's Homes stipulates that all children's homes must have a children's guide. It advises that a cared-for child's bedroom should not generally be entered without their permission and that children should be provided with appropriate, lockable furniture to store their personal items, including any personal information. It also provides advice on the use of CCTV and monitoring equipment within the home. It stipulates at length the information, monitoring and record-keeping that a children's home must carry out and the procedures that it must have in place Ofsted will inspect a children's home regularly and an independent observer must assess the home at least once a month. A typical family home would not require such stringent and

regimented management or the establishment of formal child safeguards. Although these requirements may not in themselves be appreciable outside the home, they indicate that children's homes are different in character and day-to-day management and operation to typical domestic arrangements.

Whilst a floor plan has been provided, this is taken from the marketing brochure for the property. This is not considered to be sufficient to demonstrate the use for each room, especially given that the Planning Statement suggests that there will be up to four children, plus carers sleeping overnight, whilst the plans only show four bedrooms, thus denoting an under provision. Moreover, within the submitted Planning Statement, the applicant notes that initially when children arrive into care they require home schooling, which is likely to require specific space for such a use. Furthermore, it is likely in properties with such uses that an office would also be required for staff, to enable them to carry out their duties, as well as a place to hold meetings for instances such as inspections and visitors, however this has not been shown.

Whilst the layout plan provided is broadly consistent with that for a standard family home, there is important detail missing from this plan which represents insufficient information to enable a full assessment of the likely use of the property.

It is noted that in an appeal decision against a Certificate of Lawfulness for a children's home in Doncaster (Appeal ref. APP/Y2003/X/16/3142336 – The Old Barn, Epworth, Doncaster, DN9 1DB), the Inspector considered the provision of a therapy room and an activity/education room to contribute towards a layout that would be significantly different to that of a C3 dwelling. The physical alterations would therefore change the character of the use and contribute to the consideration that the change of use is material.

In light of the above, given that no adults would be resident at the property preventing the formation of a household; the level of care that would be provided; the necessarily regimented operation of the premises; the intended physical layout and the likely high turnover of occupants; the use proposed would fall within class C2 of the Use Classes Order and would be materially different in nature to a class C3 dwellinghouse.

It is important to note that within the grant of a Certificate of Lawfulness, it is not possible for a Local Planning Authority to impose conditions, therefore children's homes that are formed through a Certificate of Lawfulness are unregulated in planning terms. Upon assessing such applications, the LPA must therefore make a judgement about the likely impacts of the property being used as a children's home. It has been established that the children placed in such homes are frequently those with the most significant and complex needs who have exhausted other options. Whilst it is accepted that not all looked-after children will experience the challenges set out above, the lack of control means that the LPA must take precaution against the proposed use raising all of the issues identified as part of its assessment of materiality.

Conclusion

The proposed use of the property as a children's home (C2 Residential Institution) is considered to represent a material change of use from that of the existing C3(a) (dwellinghouse) for the reasons set out within the report. Planning permission is therefore required.

Reasons for Refusal:

1. The proposed use of the property as a children's home (C2 Residential Institution) is considered to represent a material change of use from that of the existing C3(a) (dwellinghouse) for the reasons set out within the report. Planning permission is therefore required.

REFUSED DRAWING NUMBERS

2.

Plan Number	Revision Number	Details	Received Date
		Location Plan	1 November 2022
		Floor plan	1 November 2022

Determined By:

Mr Mark Peacock
24 April 2023