

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

DELEGATED APPLICATION

Application No: 6/2023/1889/LAWP
Location: 182 Dragon Road Hatfield AL10 9NZ
Proposal: Certificate of lawfulness for the change of use from C3 dwellinghouse to C2 residential institution (childrens home)
Officer: Ms Ashley Ransome

Recommendation: Refused

6/2023/1889/LAWP

Context	
Application Description	The applicant seeks a certificate of lawfulness for the change of use of the property at No.182 Dragon Road from C3 dwellinghouse to C2 residential institution (childrens home).
Relevant Planning History	<p>Application Number: S6/2010/2067/LU Decision: Granted Decision Date: 12 October 2010 Proposal: Certificate of Lawfulness for a proposed single storey rear extension</p> <p>Application Number: S6/2011/0131/LU Decision: Granted Decision Date: 14 February 2011 Proposal: Certificate of Lawfulness for a proposed single storey rear extension</p> <p>Application Number: 6/2019/2681/PA Decision: Refused Decision Date: 19 December 2019 Proposal: Conversion of dwellinghouse to 4 self-contained flats</p> <p>Application Number: 6/2020/0287/FULL Decision: Refused Decision Date: 22 April 2020 Proposal: Retention of converted garage as a self-contained residential unit</p>
The main issues are:	
Whether the proposed change of use is lawful for the purposes of paragraph 192 of the Town and Country Planning Act 1990 (as amended)	
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 a 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
- Location Plan

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 application does however not provide any detail with regards to the number of children, their age, needs etc, nor how many carers will be on site at any one time, or how they will operate. Insufficient information has therefore been submitted to enable the Council to

assess the proposed use class of the property. In the absence of the necessary information required, the Council can therefore not full assess whether the proposed use of the property would fall under Class C3 or Class C2.

Notwithstanding the above, of relevance is the definition of “care”, since a childrens home would involve the care of children. 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 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. With this in mind, whilst insufficient information has been submitted with regards to the details of the proposed childrens home, it is however considered that as the proposal relates to the care of children, then the use of the property would fall under Class C2.

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 judgements 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 Council 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.

Notwithstanding the insufficient information submitted, 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 to that of a family dwelling. 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.

No plans have been provided so as to indicate the proposed layout of the property, thus the Council cannot determine whether the property would be laid out in a broadly consistent plan to that of a standard family dwelling. Details such as the number of bedrooms for children, whether there would be sleeping facilities for carers, a space for schooling and a staff office would be provided, are lacking from the application. In the absence of this information, the Council cannot fully assess the proposed likely use of the property. Notwithstanding, the above assessments still stand.

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 the likelihood that no adults would be resident at the property preventing the formation of a household; the level of care that would be required; 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 is considered to form a C2 Residential Institution use, with the further consideration that this would 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	22 September 2023

Determined By:

Mr Mark Peacock
22 November 2023