Expiry Date - 12/06/2024

Development Control – Delegated Officer Report

Application Number: AWDM/0496/24 Recommendation – APPROVE

Site: 15 Callon Close Worthing West Sussex BN13 3SP

Proposal: Application for a Lawful Development Certificate re: proposed use of a (3a) dwelling as a children's home for a single child, with up to three carers, two sleeping overnight working on a rota basis (C2)

Date of site visit: Desk-top assessment using Google imagery

Neighbours checked: N/A

Additional neighbour notifications: N/A

Site and Surroundings

The application relates to a modern, semi-detached 2-bedroom house located within a residential estate located within an outer residential suburb of the town. There is onsite parking on the open-plan site frontage for 1 vehicle and a modest garden to the rear which adjoins neighbouring gardens.

The property is not Listed or within a Conservation Area. There are no TPO trees on the site.

Proposal

A Certificate of Lawfulness is sought under S192 of the Act for the proposed use of the dwelling as a small specialist care home for a single child with emotional or behavioural difficulties looked after by up to 3 carers, 2 sleeping overnight working on a rota basis.

The applicant's agent has provided a Planning Statement to accompany the application. This states that the home will be registered with Ofsted as a single bedroomed children's home. The child would live at the property long-term. It would not be a half-way house or provide emergency housing for children. The Statement accepts the proposed use falls within Planning Use Class C2. There is no permitted change from Class C3 (dwelling house) to Class C2 (residential institution) within the Town and Country Planning (General Permitted Development) Order 2015 (as amended). However, the Statement seeks to demonstrate that a material change of use would not occur since there would be little material difference between the current and proposed use. It is argued that the use as described would not constitute 'development' under Section 55 of the Act. No external changes to the building are proposed.

The Statement outlines that a single child would live at the house with 2 carers working on a rota basis sleeping overnight (or waking night) and a further carer/manager attending during the daytime on most weekdays. Six carers would operate a shift pattern of 48 hours on, 60 hours off. Except at changeover times, which last approximately 10 minutes, there would be no more than three carers on the premises at any one time. The cared for child would not have special needs (coming under Use Class C2a)

The Statement sets out that it is intended that the children's home would replicate as closely as possible a normal family environment. The type of provision would be operated in the same manner as a regular family home with two primary carers, to provide consistency and stability to the child (similar to a fostering model). It is expected the child would attend a mainstream or special school, but would likely be tutored at home initially. Home tutoring would be online without tutors coming to the home.

The home would be registered with, regulated by, and regularly inspected by Ofsted with the relevant risk assessment being undertaken to determine the suitability of the area for a children's care home involving consultation with local police and social services. There would be an impact risk assessment for each child referred which considers the child's needs. Children will not be placed in the home unless approved by a local authority social services department.

Relevant Planning History: None

Planning Assessment

The relevant considerations are the facts of the case and the relevant planning law.

The planning merits of the proposal are not relevant matters here. The determination of an application for a Certificate of Lawfulness for a Proposed Use or Development is restricted to consideration of the lawfulness of the proposal. Effectively, the issue for consideration is whether the proposal needs planning permission by means of an application, or, alternatively may be carried out without any such need because it is not development or is permitted development or is 'de Minimis' or is not a material change of use or is immune from enforcement and so has achieved lawfulness. The, otherwise, planning merits or de-merits of a proposal are outside of the scope of the determination.

The relevant test for such an application is whether, on the balance of probabilities, the applicant has proven the proposed use is lawful in planning terms. The onus is upon the applicant to demonstrate proof.

Class C3 (Dwellinghouses) – is formed of 3 parts as follows:-

- C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of

the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child;

- 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;
- C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.

Class C2 (Residential Institutions) - relates to residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres. This use class also has a sub category C2A for 'secure residential institutions' including prisons, detention centres, custody centre, secure hospital or secure local authority accommodation.

There has been case law to show that the use of the property as a children's home would constitute a change of use from Class C3 (dwellinghouse) to C2 (residential institution). The property will not stay in the same use class i.e. C3, because of the fact that the carers will operate in a shift pattern and will not properly reside at the property. Case law demonstrates that it is essential that the carers live at the property in order for it to remain as a dwelling. In the Judgement of Mr. Justice Collins in North Devon District Council v First Secretary of State (2003), J Collins was clear on the facts of that particular case, that carers who do not live but who provide, a continuous 24 hour care cannot be regarded as living together and that, whilst there would be less than six residents, the children, without at least one adult living with them at the premises, would not be capable of being regarded in the true sense as a household.

Materiality

It is a matter of fact and degree in the circumstances of an individual case as to whether a change of use would be 'material' or not. The key issue is whether the proposed use versus the existing use is materially different. The task is to compare against the 'baseline' character of the current land use, that which is proposed. Differences which might be considered 'material' are those which are measurable or quantifiable resulting in a significant or substantial change in character or impact of a use.

The proposal states that there will be 1no resident child and two carers working on a rota basis sleeping overnight (or waking night) with a further carer/manager attending most weekdays. Except staff changeover times, lasting around 10 minutes, there would be no more than 3 carers present at any one time on the premises. The number of people at the property at any one time would clearly be consistent with that of a dwellinghouse (Class C3).

The property would provide the child with their sole and main residence and they would interact with the carers in a way that is similar to a parent or guardian. They would eat together and carry out domestic chores such as cleaning, cooking and gardening. Where attending school, the child would be brought to and from school each day. The home would seek to foster a lifestyle which would be the same as if the child was living at home.

In terms of comings and goings, the main traffic movements would be related to staff changeovers. It is stated that 6 carers would operate on a shift pattern of 48 hours on, 60 hours off. The changeover of overnight care staff is usually 9.30am. The above mentioned manager/carer would visit most days between 9am and 5pm. Other visitors to the property would typically include one visit by local social services (by one or two officers) every six weeks, an annual inspection by Ofsted (by two inspectors), and a Regulation 44 (Independent Monitoring) visit every 6 weeks. It is stated that all other professional or clinical appointments and meetings would take place away from the home. There would be no visits by family. Where these take place it would be away from home. Visits from friends, where deemed appropriate, would be in accordance with the child's care plan and it is stated would be no different to a child living within a typical household.

No external changes are proposed to the physical appearance of the house so visually the property would look no different to neighbouring properties.

Based on information provided by the current occupier of the dwelling, the Planning Statement compares the average number of existing car movements through the week with an estimation of proposed car movements based on other similar children's homes. At present there are typically 6 car movements per day compared to a likely 8 movements per day. It is not anticipated that an additional 2 vehicle movement per day would fall outside the parameters of what would reasonably be expected of a family home of this size and would not in itself amount to a more intensive use of the property. There is no evidence to suggest that a nominal increase in the number of vehicle movements per day would result in increased levels of noise and disturbance.

The Planning Statement identifies that fear of crime and anti-social behaviour is a material planning consideration. There can be concern that the proposed use would result in more noise and anti-social behaviour due to the background of the looked-after child. Reference is made to an appeal case [not this Borough] where the Inspector determined that the weight than can be attributed to fear of crime depends on whether or not evidence shows that the potential risk of crime is shown or expected to be high and the consequences for the community and individuals area serious. Bearing in mind that only one child will be resident at the home in this case; taking into consideration the number of carers present at any one time, it can reasonably be anticipated there will be a high level of supervision with no consequences for local residents.

Consequently there is no reason to believe in this case, that based on the information provided, relevant case law and advice from the Council's legal

services that the proposal would result in a change in the character of the property.

Conclusion

It is therefore concluded that on the balance of probability, the proposed use as a children's home for one child with up to three carers two sleeping overnight working on a rota basis (Class C2) will not be dissimilar to a family living at this property, and as such there would be no 'material' change in the way the property is used from the existing C3 (a) use.

Recommendation: Issue Certificate

REASON FOR RECOMMENDATION

The proposed use would constitute a change of use from Use Class C3(a) 'dwellinghouse' to Class C2 'residential institution'. However, it is accepted on the balance of probability that the proposed use would not amount to a material change of use and would not therefore involve 'development' requiring planning permission would therefore take place under Section 55(2) of The Town and Country Planning Act 1990 (as amended). This Certificate relates only to 15 Callon Close as outlined in red on the submitted Location Plan and Existing and Proposed Floor Plans received on the 17th April 2024, the precise use referred to below and the evidence set out in the submitted Planning Statement: The use of a dwellinghouse as a children's home for a single child with up to three carers, two sleeping overnight working on a rota basis.

The use is not liable to enforcement action under Section 172 of the Act. However, if any further development/intensification and change in circumstance is carried out subsequent to the issue of this certificate, it may be liable to formal enforcement action by the Local Planning Authority.

This Certificate only makes lawful the uses referred to above and does not provide immunity from enforcement for any other use.

Case Officer:	Jo Morin	Date: 29.05.2024
Authorised by:	Gary Peck	Date: 29 May 2024