Development Management - Delegated Officer Report

Application Number: AWDM/1216/23 **Recommendation – Grant Certificate**

Site: **72 Sedbury Road, Sompting, BN15 0LN**

Proposal: **Application for a Lawful Development Certificate for a change of use from a Class C3(a) dwelling to a Class C2 use for the provision of a residential accommodation and care to children in need of care, for a maximum of two children, with up to three carers, two of whom will sleep overnight, working on a rota basis.**

Date of site visit: 26.10.2023

Neighbours checked: Y

Additional neighbour notifications: N

Site and Surroundings:

No 72 Sedbury Road is on a hill rise and is a semi-detached bungalow situated on a corner plot, the north side (front) of the property facing Howard Road, and the west side facing Sedbury Road, and is situated lower than the pavement. The property has a flat roof side extension. It has an on-site car parking space on the front and garage with a car parking area to the front of the garage, on the Howard Road frontage. The site currently has hedging to its boundaries.

The street scene is characterized by predominantly semi-detached bungalows, many with roof dormers, and most with rear extensions.

The site is not a Listed Building or within a Conservation Area.

Relevant Planning History:

AWDM/1009/23 Application for a Lawful Development Certificate for proposed use of a C3a dwelling as a children's home for a maximum of two children, with up to three carers, two of whom will sleep overnight, working on a rota basis (Class C2) **Withdrawn 24.08.2023**

AWDM/1212/23 Single storey side extension **Approved 31.10.2023**

Proposal:

A Certificate of Lawfulness is sought for a change of use of the bungalow from C3(a) use (Use as a dwellinghouse by a single person or by people to be regarded as

forming a single household) to Class C2 (Use for the provision of residential accommodation and care to people in need of care).

Class C3 Dwellinghouses – is formed of 3 parts

- 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

Use 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.

Use Class C2 (residential institutions) can benefit from limited permitted development opportunities to change use without requiring a full planning application. There may be conditions and limitations to such a change however, and further detailed information about this can be found on the Planning Portal website. This website also details other restrictions to permitted development that may be in place, such as planning conditions or Article 4 Directions, and it is recommended you get confirmation from the local planning authority about changes of use proposed using permitted development rights.

If a C2 premises does not benefit from permitted development rights, planning permission may be sought to change it to another use.

Consultation:

Legal Services:

- Agree this is a change of use from Class C3(a) to C2
- Agree with applicants quoted case law within their planning statement

- Assess whether material change of use requiring planning by such things as look and character of a dwelling when use takes place
- Also will there be a rise in level of disturbance or amenity effects from the proposal
- The applicants cover these points in their planning statement at 3.7 onwards
- Given that the property is a small site and the use will be for maximum of two children and three carers, their assessment seems reasonable to conclude no material change of use
- They will have to register with Ofsted
- Planning needs to consider
    - i)if there is sufficient factual info/evidence to decide the application
    - ii)does the application describe precisely what is applied for and the land to which it relates
    - iii)is any further information required
- Considers that enough evidence has been supplied and no further information is needed
- Suggest amending description to change of use from Class C3(a) dwelling to a Class C2 use for the provision of residential accommodation and care to children in need of care, for a maximum of two children, with up to three carers, two of whom will sleep overnight, working on a rota basis.

Supporting Information:

Submitted Planning Statement for Children's Home

This is a 17 page document which highlights the proposed use, how it will be used and case law and interpretation etc., the property, staff, risk assessments, traffic movements, etc.

Submitted Management Plan for Children's Home

- Accommodation for 2 children or young people with a staff ratio required being 1 : 1 basis, unless the needs of the children or young people change which will be identified and shared with other professionals prior to a decision being made.

- The likely level of need of the children accommodated will be Emotional and/or Behavioural Difficulties (EBD), and there will not be a sole focus on complex needs, however, needs will be identified on admission planning.

- Staff will usually work on a 48 hour on, 60 hour off, shift. There would be only one change a day of one of these staff to ensure continuity of care. Shift changes will usually take place in the mornings around 09.30. A manager will also visit the site most weekdays, arriving around 09.00 and leaving around 18.00.

- Social Workers would visit every 6 weeks, this is not always adhered too, this will not always be to the home, or it may also be out in the community.

- Family Contact will depend on the care section the child or young person is on. This can also be in the community away from the home.

- Visits would be scheduled within the home's diary, and it will be ensured that not all parties are visiting at the same time, to avoid disruption to the neighbours.

- If a child or a young person was not in a school setting at the time of arrival, on-line home tutoring would be arranged. These plans would be made prior to arrival. Education would be outside of the home, whether t the local library or within an educational setting identified. No tutors would visit the home.

- Any therapeutic care would be external to the home.

- Case review will take place online.

- Visits by friends and relatives, if they occur, would take place away from the home.

- The home will be Ofsted registered.

- Children are not left alone at the property.

- Children can leave the property to visit family, for education, to attend meetings, for activities, holidays etc., Children or young people will often be supported by staff if they were to leave the home.

- Staff members would be informed/be aware if a child was to leave the home.

- There will be a curfew due to the nature of the home, and if breached this would be further discussed with a social worker.

Existing & Proposed Accommodation:

The originally submitted floorplan of the property has been amended as the property has recently been surveyed for a planning application (AWDM/1212/23 refers), to amend the layout, by the provision of a small side extension together with the removal of the detached garage and a lean-to. This application has been approved, and the agent has confirmed in an email dated 15.11.2023 that the clients intend to implement the consent for the house extension before the care home starts to operate.

Planning Assessment

The relevant consideration 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 applications for Certificates of Lawfulness 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. The onus is upon the applicant to demonstrate proof.

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.

Materiality:

The key to whether the proposed use versus the existing use is materially different use, would be such things as number of people within the property; visitors; traffic movements.

- The proposal states that there will be up to 2no. children or young people and up to 3no. staff, these numbers will be within the numbers associated with dwellinghouses.

- Visitors would generally be the daily carers; social workers would only be approx. every 6 weeks; and visiting daily managers.

- The traffic movements for the use will be the above named visitors, which are off and on numbers and would be similar to a family with car drivers, older children and friends. The Planning Statement has submitted number of car movements through the week and an estimation of proposed car movements. These numbers are very similar, and the LPA have no reason to believe these are unreasonable figures.

Will the change of use from C3 to C2 constitute a material change of use?

It is important to consider the current function and use of the Property and compare this to the proposed use. If there is no material difference in activity between the current residential use and the proposed children's home use, we can conclude that there will be no material change of use.

The case of *SSETR v Waltham Forest LBC [2002] EWCA Civ 3300* confirmed that the correct comparison to be made is between the actual existing use and the

proposed use. The case confirmed that we are not to compare with a notional use, i.e. a typical or average way in which a four bedroom house is used, but with the way in which the Property is actually used.

The property is a modest sized 3no. bedroom bungalow, and the extension and demolition proposed will create an internal living area which is open plan and more appropriate to daily use as a family home.

The submitted planning statement informs that up to two children would live at the property, with two carers working on a rota basis sleeping overnight. Six carers would operate on a shift pattern of 24 hours on, 48 hours off. Except at changeover times, which last around ten minutes, there will be no more than three carers on the premises at any one time. The changeover of the overnight care staff per day, usually 09.45 each morning. A manager, also a carer, would visit the site most days between 0900 and 1700.

The proposal is to register the property as a registered children's home for a maximum of two children aged from 8 to 18 years.

From the information available, together with Planning Case Law and the Councils own legal response, it is concluded that on the balance of probability, the proposed use (C2), will not be dissimilar to a family living at the property, and thereby there will be no material change in the way the property is used from that of a C3(a) use.

Conclusion:

The onus of proof rests on the Applicant to provide evidence that demonstrates (on the balance of probabilities) that there will not be a material change of use, the size and layout of the property, the use as a children's home for up to 2no children with 3no. full time carers, used as indicated within the submission and supporting information, would not constitute a material change of use.

RECOMMENDATION:

Issue Certificate

REASON FOR RECOMMENDATION:

It has been accepted that on the balance of probability that the proposed use would constitute a change of use from Use Class C3(a) dwellinghouses to C2 Residential Institutions, however it does not amount to a material change of use and no 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 72 Sedbury Road as outlined in red on the submitted site plan received on the 30th August 2023 and the layout plan received on the 15th November 2023 and the precise use referred to below and within the supporting information:

The use of a dwellinghouse as a children's home for up to 2 children or young

persons (aged 8-18) with 3no. 24 hour carers

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: Eve Hearsey Date: 15.11.2023

Authorised by: Peter Barnett Date: 15 November 2023