Development Management – Delegated Officer Report

Application Number: AWDM/1580/24 Recommendation: Issue Certificate

Site: 9 Priory Close Sompting, West Sussex

Proposal: Application for a Lawful Development Certificate for Proposed Use of an existing dwelling (Use Class C3a) as a children's home (C2) for up to three children with carers.

Date of Site Visit: Use of google maps

Site and Surroundings

The application site is a detached dwelling within a cul de sac of similar properties in Sompting, currently a residential dwelling.

The submitted plans show a five bedroom property with four beds at first floor and an additional bedroom at ground floor. There is space for three cars to the property frontage and a rear garden. The supporting statement submitted with the application states that there are to be no changes to the internal layout of the building or any external changes.

Proposal

The application is for a Lawful Development Certificate that seeks to establish that 9 Priory Close has a lawful use and can be used as a small children's home, as this does not constitute a material change of use and a planning application is not required.

Notwithstanding the wording of the description of development as submitted, the proposal falls to be assessed under Class C under the Use Classes Order.

The applicant's agent has submitted a supporting statement which is summarised below: -

The proposed use of the property is as a supported living accommodation providing a long term home for up to three children aged 7 to 18 looked after by two carers. Supported and funded by the local authority's children's services. The children will live as a household sharing cooking, shopping and other domestic activities in the home, this would be their main place of residence. The family and carers would engage within the local community attending school and local services and amenities in the same way any family would therefore maintaining the character and

*appearance of the dwellin*g and its surroundings. Trips and visitors would also be consistent with such a use.

The applicant's agent states that the existing and proposed uses fall within Use Class C3.

Representations

Neighbours are not notified for applications of this type where a Lawful Development Certificate is sought for a proposed change of use.

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.

Determining the Appropriate Use Class

Children's homes can either fall within class C2 (residential institutions for people in need of care), or class C3(b) (dwellinghouses) of the UCO 1987. Class C3 (b) refers to *"use as a dwelling house by not more than six residents living together as a single household, (including a household where care is provided for residents)."*

The issue largely depends on whether or not the children are in themselves capable of living together as a single household and whether the care provided is on a permanent basis or on shift patterns.

If the children are being looked after by a permanent occupant of the dwelling, then the use would probably fall within class C3(b) (subject to the number restriction). However, when the care is based on shift patterns the situation can be different. In the case of *North Devon District Council v First Secretary of State [2003] EWHC 157 (Admin)*, Justice Collins made the point (in paragraph 16) that children "n*eed to be looked after. They cannot run a house. They cannot 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, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should."

The judgment confirms that it is unrealistic to expect children to look after themselves in a single household. It also clarified that carers who provided 24 hour care but were not resident could not be regarded as living together in a household.

In the supporting information the applicant confirms that *"The children will be cared for by carers operating on a shift basis.*

As the carers will be operating in shifts, they cannot be considered to be resident/living at the property. The concept of living together as a household means that a properly functioning household must exist and children and carer must reside in the premises. It therefore cannot be concluded that the Property will form a single household. It is therefore more appropriately classified as a Class C2 Use, i.e. a residential institution.

The next step is therefore to confirm whether the change of use from C3 to C2 amounts to a "material change of use" which requires planning permission.

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 Applicant has provided a floor plan which shows no changes to the layout of the property.

In terms of comings and goings, there would be little difference from the current use as a dwelling to impact on its character.

The property would provide the children with their sole and main residence, with free and shared access to living, dining, and kitchen facilities, an ability to take shared meals prepared for them or make their own food or drink.

The children would attend school as appropriate each day and with their carers they would interact with the property and the residence in a way that is very similar to an adult resident, parent or guardian.

The residents would eat together and carry out domestic chores in line with developing their semi-independence living skills. The home would seek to foster lifestyles which would be the same as if the child was living in a family home.

The comings and goings would involve carers arriving and leaving in a shift pattern with overnight supervision. It is not considered that there will be a material change to the movements to and from the property than would be the case with a residential property occupied by a family. There would be no impact upon the amenity of the area.

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 information provided, in view of the former use of the property, the size and layout that, on the balance of probability, its use as a children's home for up to 3 children with carers used as indicated within the submission and supporting information, would not constitute a material change of use.

Recommendation

Issue Certificate

Reasons for Recommendation

It has been accepted that, on the balance of probability, the proposed use would constitute a change of use from Use Class C3(a) dwellinghouses to C2 Residential Institution. 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 9 Priory Close as outlined in red on the submitted site plan and layout plan received on the 5th Dec 2024 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 three children with 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: Hannah Barker Date: 12th December 2024

Authorised by: Peter Barnett Date: 17 December 2024