Development Management – Delegated Officer Report

Application Number: AWDM/1687/23 Recommendation: Issue Certificate

Site: Normandy House, Old Shoreham Road, Lancing, West Sussex

Proposal: Application for Certificate of Lawfulness 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 (C2)

Date of Site Visit: visited when considering former application AWDM/0766/23

Neighbours Checked: Y

Additional neighbour notification: N

Proposal, Site and Surroundings

The application site is an existing dwelling house to the north of Old Shoreham Road near Lancing Manor roundabout consisting of a detached, two storey building with rooms in the roof. It is set back from the highway on elevated ground level, with parking and turning space to the frontage and an enclosed rear garden. Consent was recently granted at the site for extensions and alterations to the dwelling under AWDM/1141/21 and AWDM/1217/21 for a loft conversion and first floor extension. Works have been completed and the outcome is a five bedroom detached house with annex internally linked, there is parking for six vehicles to the front, cycle and refuse storage. There is fencing to the front of the site with an open vehicular access onto the highway, the dual carriageway to the south.

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

Planning consent was sought and refused in December 2023 under AWDM/0766/23 for Change of use from residential dwelling (C3a) to a children's home (C2) for a maximum of five children with four carers. It was recommended for approval and committee members overturned the recommendation and the application was refused for the following reason: -

"The proposed location for the children's home is inappropriate in view of its proximity to the busy A27 and the lack of safe pedestrian access to local

services. Therefore contrary to Policy 15 of the Adur Local Plans and the NPPF."

Following this the current application has been submitted seeking a certificate of lawfulness for the 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 sleep overnight, working on a rota basis (C2)

A smaller number of children and carers than that originally proposed and refused however the same principle of children living at the dwelling house functioning as a household with the carers who sleep at the site and change over on a rota system.

The applicant's agent has provided a Planning Statement to accompany the application. The statement refers to the change between C3 and C2 not being a permitted change however it argues that there is no material change between the current and proposed use therefore planning permission is not required. No external changes to the building are proposed.

The supporting information states that two children would live at the house with two carers working on a rota basis sleeping overnight. Six carers would operate in total. At change over times there would be three carers on site at one time. A manager would visit the site most days.

Each day it is expected that children would attend school and the children's home would seek to replicate as closely as possible a normal family environment. The carers and children would function as a household doing shopping, cooking and household chores in the same way as a family living at the house.

A similar proposal was submitted in November 2023 for 72 Sedbury Road, Sompting AWDM/1216/23. This was for a similar proposal and the Certificate of lawfulness was issued. It was considered that there was no material change as a result of 2. no children and 3 no. carers and on the basis of the submission and supporting information would not constitute a material change of use.

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.

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

Consultations

Adur and Worthing Councils: Legal Services: -

Legal advice has been given which states that based on the information provided it should be considered if the change of use results in a material change of use. 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.’

The Statement at paragraph 3.9 onwards titled ‘Comings and Goings’ details trips to and from the property with a comparison of the current use. The property is currently occupied by a family of five (with three children). The home manager, also a carer, would arrive most weekday mornings and leave each evening, the other two carers who normally work on a 24 hour shift basis which would involve two change overs each day.

A table has been provided on page 12 of the Supporting Statement detailing movements of the current family and anticipated movements of the children’s

home, the total movements are very similar. Facilities such as the bathroom, kitchen and living rooms would be shared.

In determining an application for a prospective development under section 192, a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

The view is given that it seems reasonable to accept the information submitted and based on the proposed use then they have demonstrated no material change of use. There would be no change to the external appearance of the dwelling and no forecasted increase in the ‘comings and goings’ which are detailed within the Supporting Statement.

Representations: - Neighbours are not notified for applications of this type where a Lawful Development Certificate is sought for a proposed change of use. However an objection has been received making the following comments: -

- The change has already been rejected.
- Dangerous location, highway safety concerns
- Overlooking loss of privacy.
- Noise, disturbance and traffic.

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 and do not form any relevant impact to the issuing of the Lawful Development Certificate. The objection set out above and its contents also cannot be taken into account.

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. 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

The key issue here is whether the proposed use versus the existing use is materially different. Would the number of people at the property, activities and traffic movements be materially different?

- The proposal states that there will be up to 2 no. children or young people and up to 3 no. 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 property would provide the young people with their sole and main residence, with free and shared access to living, dining and kitchen facilities. The residents would be taken to and brought home from school 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. The home would seek to foster lifestyles which could be the same as if the residents were living in a family home.

The Planning Statement has submitted the number of car movements through the week and an estimation of proposed car movements. These numbers are very similar, and the LPA has no reason to believe these are

unreasonable figures. It is not considered that the change will result in an intensification of use of the site than that which would be the case of a residential use. Even if there are potentially more comings and goings these are at a sufficiently low level so as to remain within the parameters of what could be usually expected of a family home and not therefore materially different so as to change the character of the property or impact upon the amenity of the area. Similarly the number of people who will be typically present at the property, and therefore the associated waste generated, is not significantly higher than could be expected with its current lawful use.

It is not considered that the change of use from C3 to C2 constitutes a material change of use in this case based on the information provided, information available together with Planning Case Law and the Council's own advice from legal services. 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 balance of probabilities) that there will not be a materials change of use, the size and layout of the property, the use as a children's home for up to 2 no. children with 3 no. full time carers, used as indicated within the submission and supporting documentation, 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) dwellinghouse 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 Normandy House, Old Shoreham Road as outlined in red on the submitted site plan received on the 6th December 2023 and the floor plan received on the 6th December 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 up to 3 no. carers two of whom will sleep overnight.

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: 22nd January 2023

Authorised by: Peter Barnett Date: 25 January 2023