Development Management – Delegated Officer Report

Application Number: AWDM/0790/24 Recommendation: Issue Certificate

Site: 6 Freshbrook Road, Lancing, West Sussex

Proposal: Application for a Lawful Development Certificate for proposed use of a Class 3a dwellinghouse as a Class C2 children's home for a maximum of 3 children, with up to three carers, two of whom will sleep overnight, working on a rota basis.

Date of Site visit: - Use of Google Maps

Proposal, Site and Surroundings

The application site is a two storey semi detached dwelling house with four bedrooms within a street of residential properties, to the south of the railway line in Lancing Town Centre. There is off street parking to the rear and garden space to the front and rear.

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

This 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 three children with up to three carers, two of whom will sleep overnight, working on a rota basis.

The principle is that the children and carers living at the dwelling house will function as a household with the carers who sleep overnight at the site changing on a rota system. It is argued by the applicant's agent in a supporting statement that there is little material difference between the current and proposed use and therefore planning permission is not required. They also state the following: -

"Section 55(1) of The Act defines the meaning of the term 'development' as including the making of any material change in the use of any buildings. Section 55(2)(f) essentially states that in the case of buildings which are used for a purpose of any class specified by the Secretary of State, the use of the building for any purpose within the same class shall not be taken for the purposes of The Act as amounƟng to development. Section 57(1) of The Act provides that planning permission is required for the carrying out of any development of land and Section 336(1) defines 'land' as including a building. Section 192 of The Act (as amended) makes provision for an application to be made to the local planning authority to ascertain whether any proposed use of a building would be lawful and which is the purpose of this

application. In a ministerial statement from Rachel Maclean (Minister of State(Department for Levelling up, Housing and Communities in March 2023)) she stated: ‘The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children’s communiƟes. These need to be the right homes, in the right places with access to good schools and community support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love’.”

The applicant’s agent states that the home will provide a smooth transition for children who come to live there. It will primarily serve medium to long term placements in order to minimise disruption to residents.

There are no changes proposed to the external appearance of the building or surrounding land. As existing there are four bedrooms on the first floor and one bedroom on the ground floor. Two of the first floor bedrooms will be joined to make a single large bedroom so there will be four bedrooms in total proposed. There are no other internal changes.

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 living at the house.

Similar proposals have been submitted and the Certificate of Lawfulness issued in November 2023 for 72 Sedbury Road Sompting AWDM/1216/23. This was for 2 no. children and 3 no. carers.

Normandy House, Old Shoreham Road, Lancing AWDM/1687/23 2 no. children and 3 no. carers.

On the basis of the submissions and supporting information these would not constitute a material change of use.

In this current application the proposal is for 3 no. children all other matters remain the same as the previously approved cases.

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: -

The proposed use is not dissimilar to the family residing at the address with 3 children and based on the supporting information in relation to school, appointments, comings and goings there would be no material change to the premises. On the balance of probabilities the proposed use will not give rise to a greater level of disturbance or amenity effects than could be generated by the use of it as a dwelling.

Enough information has been provided to decide the application, the application describes precisely what is being applied for and the land to which it relates. It is not considered that any further information is required in this case.

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 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 3 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 once every 6 weeks; and Ofsted inspectors annually.

- The traffic movements for the use will be the above named visitors 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.

There are normally no family visits - these take place away from the home. Children would have visits from their friends when deemed appropriate which would be in accordance with their care plan and would therefore be no different to a typical household.

The supporting statement states refers to many supporting appeal cases and states the following: -

“Visually, the property would look no different to the adjacent houses. During the day, there could be three members of staff in the property at any one time, but this would have no impact on the amenity of the area.

In terms of the nature of the proposed use, Paragraph 25 of Circular 05/2010 is relevant. It states that the criteria for determining whether the use of particular premises should be classified within the C3 use class (or similar) includes both the manner of the use and the physical condition of the premises. The circular states that the premises can properly be regarded as being used as a single dwelling house where they are:

-a single, self-contained unit of occupation which can be regarded as being a separate ‘planning unit’ distinct from any other part of the building containing them.

- designed or adapted for residential purposes containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house.”

Conclusion

The onus of proof rests on the applicant to provide evidence that demonstrates (on 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 3 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 6 Freshbrook Road, Lancing as outlined in red on the submitted site plan received on the 16th July 2024 and the floor plan received on the 16th July 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 3 children or young persons 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: 9th September 2024

Authorised by: Peter Barnett Date: 10 September 2024