Expiry Date - 21/03/2025

Development Control – Delegated Officer Report

Application Number: AWDM/0079/25 **Recommendation – APPROVE**

Site: **2 Wordsworth Road Worthing West Sussex BN11 3NH**

Proposal: **Application for Certificate of Lawfulness for proposed use of a (C3) dwelling as a children's home for a maximum of 4 children with up to three carers, two sleeping overnight on a rota basis**

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 an end-of-terrace house over 3 floors fronting the east side of Wordsworth Road behind a shallow walled front garden. Brunswick Road adjoins the south side of the property. A walled courtyard garden lies to the rear of the dwelling with access from Milton Road which adjoins the rear site boundary.

The property is not located within a conservation area, but properties to south and east in Milton Road and Brunswick Road are in the Marine Parade and Hinterland Conservation Area.

Proposal

A Certificate of Lawfulness is sought under S192 of the Act for the proposed use of the C3 dwelling as a children's home for a maximum of 4 children with up to three carers, two sleeping overnight 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 and regulated by Ofsted (as a children's home).

The children will undergo a risk assessment to ensure they integrate with the local community. This considers the home, the environment, the community, plus peer groups, and assesses each child as an individual prior to admission. It is hoped the children will live at the property long-term for many years.

No changes are proposed to the external appearance of the building or surrounding land and there will be no changes to the internal layout. A

submitted (as is) floor plan shows an entrance hall with communal living room, dining room, kitchen, utility room and shower room/WC on the ground floor, stairs and landing leading to 4no bedrooms (one with en-suite shower room) plus shared bathroom on the first floor, and 2no further bedrooms (one with en-suite shower room) plus shared bathroom on the second floor.

The Statement goes on to outline the need for children's homes nationally and gives examples of precedent cases in nearby Adur District where it has been decided (and CLPUDs issued) determining that uses similar to that proposed here did not constitute a material change of use.

Case Law in the judgement of Mr Justice Collins in North Devon District Council v First Secretary of State (2003) has determined the use of a property as a children's home where carers do not reside at the property but provide continuous 24 hours care would constitute a residential institution (Class C2). The Applicant's Statement seeks to demonstrate that a material change of use would not occur in this instance as there would be no material difference between the current and proposed use of the property. As such, it is argued that the proposed use would not constitute 'development' under Section 55 of the Act.

The Applicant's Agent has since confirmed that the children would not live at the home beyond the age of 18yrs. The typical age range of the children resident would be 10-17yrs. The proposed use is described as not dissimilar to any family residing at the address with 4 children and comings and goings are not materially different in the proposed use and would not give rise to greater disturbance or amenity effects than could be generated by use as a dwelling.

The property would provide the young people with their sole and main residence. They would interact with their carers in a way that would be similar as if they were living in a family home. The residents would eat together and carry out domestic chores. The home would seek to foster lifestyles which could be same as if the residents were living in a family home.

In terms of comings and goings, the residents would be taken to and brought home from school every day. Visitors would generally be daily carers, social workers once every 6 weeks and Ofsted Inspectors annually. The residents would have visits from their friends when deemed appropriate and in accordance with their Care Plan.

The property would look no different to the neighbouring house in the street.

Relevant Planning History:

There are no formal planning records relating to the property**.**

Building Control records indicate that a single-storey extension was added and rooms in the roof of the main frontage component of the building were formed in 2023 apparently undertaken as 'permitted development'.

Planning Assessment

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

The planning merits of the proposal (including the 'need' for such accommodation) 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.

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 subcategory C2A for 'secure residential institutions' including prisons, detention centres, custody centre, secure hospital or secure local authority accommodation.

<u>Materiality</u>

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 relevant test is whether, on the balance of probabilities, the Applicant has proven that there is no material difference between the current and proposed use. The onus is upon the Applicant to demonstrate proof.

There are no formal planning records relating to this property, but the Council's Private Sector Housing team has confirmed that it is on the Public Register of HMOs licensed for up to 6 people plus staff room since August 2023.

The Applicant's Agent has subsequently provided more information about the current use of the property. It has been under contract with Cranmead (the current Applicant) since 2023 for West Sussex County Council Children's Services to accommodate six young people aged 16-18yrs in education with one member of staff present 24/7 on a rota basis. It is explained that the staff member provides the young people with guidance and support (such as arranging day-to-day school matters, forming filling, 'life admin') but not 'care' as such. The young people have some degree of autonomy. For example, they are provided within a budget by WSCC to do their own shopping and mostly prepare meals by themselves but may sometime share a meal together. They do their own laundry, look after their own rooms and share in cleaning and chores in the kitchen. Social activities are typically undertaken together coordinated by staff, such as playing board games, going to a gym. It is explained that activities are similar to those of any household with 16-18yr olds.

The young people currently occupy the 6no bedrooms. The staff member is present on-site 24/7. The overnight staff member may or may not 'sleep' at the property. If they do sleep, it is an informal arrangement using a fold-down bed.

On the balance of probability, the current use appears akin to a Class C3(c) use (more than say, a Class C4 use) but in either case would not have required an application for planning permission for a change of use from the former assumed Class C3(a) use.

The nature of the proposed use of the property for up to 4no children (typically aged between 10-17yrs) with up to three carers, two sleeping overnight on a rota basis would not be dissimilar to the current use. The main difference is that there would be fewer resident occupants, and they would be younger in age. There would be more staff on rota at the property than at present, providing more formal 'care' with two staff sleeping overnight (occupying two of the existing bedrooms).

It is expected that the overall amount and type of activity and comings and goings to and from the property would be very similar to the current situation if not less.

Based on information provided, relevant Case Law and advice from the Council's legal services officer, it is accepted that the proposed use would not

result in a material change to the intensity or character of activities at the property.

Recommendation: Issue Certificate

REASON FOR RECOMMENDATION

The proposed use would constitute a change of use from Use Class C3 ‘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 2 Wordsworth Road as outlined in red on the submitted Location Plan and Proposed Floor Plan BR.01 REV A received on the 25th January 2025, 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 maximum of 4 children 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: 19.03.2025
Authorised by:	Louise Prew	Date: 19/03/2025