Expiry Date - 02/09/2024

# Development Control – Delegated Officer Report

**Application Number: AWDM/0856/24 Recommendation – APPROVE**

**Site: 12 Chestnut Walk Worthing West Sussex BN13 3QL**

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

**Visited: N**

**Neighbours checked: n/a**

**Site and Surroundings**

The application site relates to a detached property located on the west side of Chestnut Walk. The applicants indicates that the property is currently a private residential property.

The supporting statement indicates that the property comprises a four bedroom detached house with three off street parking spaces. The property comprises an entrance hall, lounge, study, kitchen/dining room, utility, downstairs WC at ground floor with three bedrooms and separate bathroom at first floor.

The property has parking to the frontage and a garden to the rear

A proposed floor plan indicates no changes to the internal layout.

The site is within a residential area.

**Proposal**

The application is for a Lawful Development Certificate that seeks to establish that 12 Chestnut Walk has a lawful use and can be used as a small childrens 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.

Supporting Information (summary):

*The purpose of the home would be to support the children to build their confidence, regulate their behaviour and emotions, help them in developing life skills and prepare them for life when they leave the home to fend for themselves. This type of support has been found to be most effective in helping these children to have normal lives and not experience problems in later life.*

*During the day it is expected that the child would engage in various activities, plus attend a mainstream, special school or engage in a bespoke individual education plan.*

*The proposed children's home seeks to replicate as closely as possible a normal family environment. This type of provision, which government policy is promoting, is to help children who often, through no fault of their own, have not had good parenting in their early years or who have had adverse childhood experiences. These are not children with special or additional needs, who would come under Use Class C2a.*

*The children's home model is to create a warm and nurturing family style environment for the medium to long-term care of a small number of children. This type of provision is operated in the same manner as a regular family home with up to three primary carers, to provide consistency and stability to the children who live there (similar to a fostering model).*

*Care is provided in small sized family units where residential carers help to develop the social and life skills needed when the child no longer live within an institution. Without such homes and positive interventions, these children when they leave the controlled environment of care homes will often end up in adult institutions, suffering from long term emotional and mental health problems, experiencing homelessness, substance misuse and involvement in criminality*

*With regard to schooling, it is often the case that when young people come into care, they have missed an extensive proportion of their education or are affected in a way that they could not work effectively in a large classroom environment. Given this, they could be tutored from home initially.*
*This is all achieved online without any tutors having to come to the house. They may then progress to a specialist unit (smaller class sizes) then hopefully onto mainstream. In cases where children may have a home tutor, this is no different from an ordinary family who choose to have their children educated at home. It makes no difference to the planning status of the use.*

*This home would be registered with, regulated by, and regularly inspected by, Ofsted. Having the appropriate planning consent will not of itself enable a residential children's home to open at the property if it does not also meet the strict regulatory requirements set out by Ofsted. Indeed, Ofsted's regulatory powers would also extend to it having the option to close the home if it subsequently failed to meet all of the regulatory requirements.*

*In terms of comings and goings, there would be little difference from the current use as a dwelling to influence its character. These movements are considered further below. There will not be regular visits by any other care staff or clinicians. The local social services would normally send one or two officers each six weeks to inspect the premises, plus two inspectors from Ofsted annually.*

*The home manager and a carers, would arrive most weekday mornings and leave each evening, representing two car movements at most, depending on if they travel on public transport. In terms of the other two staff on the premises, they would normally work on a 48-hour shift basis, which would involve only one change each day.*

*Up to three children would live at the house, with two carers working on a rota basis sleeping overnight (or waking night) and a further carer and a manager will also attend most weekdays. Six carers would operate on a shift pattern of 48 hours on, 60 hours off. Except at changeover times, which last around fifteen to thirty minutes, there will usually be no more than three staff on the premises at any one time. The changeover of the overnight care staff is usually 10.00am in a morning. A manager or a third carer, would visit the site most days between 9am to 5pm.*

*All household chores such as cleaning, cooking and gardening involve the children and no additional staff are employed at the premises. There are normally no visits from family, to avoid upsetting the other children. Where these take place, they would normally be away from the home. There will be visits from friends when deemed appropriate, which would be in accordance with their care plan the homes policy and procedures for visitors. This would be no different from children in a typical household*

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

The applicant has provided appeal references and assessment.

**Planning history**

None

**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 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 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 a home manager and a carer arriving most weekday mornings and leave in the evening and other staff would operate on a 48 hour shift basis involving only one change a day.

The applicants have provided a comparison table with the most recent occupiers, (a family of two adults and five children) providing an estimate of the average number of comings and goings. This indicates that there is no material number of movements from the property.

There are no external changes and with four members of staff in the property at any one time, this would have no impact on 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 on the balance of probability in view of the former use of the property, the size and layout its use a childrens home

for up to 3 children with carers used as indicated with 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 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 12 Chestnut Walk as outlined in red on the submitted site plan and layout plan received on the 8th July 2024 and the precise use referred to below and within the supporting information:

**The use of a dwellinghouse as a childrens 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: Jackie Fox Date: 07.08.24

Authorised by: Louise Prew Date: 07/08/2024