Expiry Date - 02/09/2025

Development Management – Delegated Officer Report

Application Number: AWDM/0608/25 **Recommendation – APPROVE**

Site: **27 Stone Lane Worthing West Sussex**

Proposal: **Application for a Lawful Development Certificate for Proposed use of a dwelling (Class C4) as a children's residential home for a maximum of five children with four carers, two of whom will sleep overnight working on a rota basis (Class C2)**

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 a detached 2-storey dwelling occupying a corner plot on the west side of Stone Lane at its junction with Salvington Gardens within an established residential suburb of the town.

The dwelling is apparently in use as a small HMO (Class C4).

The submitted floors plans show 5 bedrooms (3no on the GF and 2no on the FF), each with an en-suite. There is a communal kitchen within a single-storey addition to the rear.

To the rear is a garden with hardstanding at the end and vehicle access onto Salvington Gardens.

The site is not in a conservation area and is not listed. There are no TPO trees on the site.

Proposal

A Certificate of Lawfulness is sought under S192 of the Act for the proposed use of the dwelling (C4) as a children’s home for a maximum of 5 children with up to four carers, two sleeping overnight on a rota basis (Class C2).

The proposed floor plans show 4no bedroom would be occupied by the children and one on the GF wold provide the carers overnight sleeping accommodation.

No external alterations are proposed.

The applicant's agent has provided a Planning Statement to accompany the application the key points of which are summarised below:

- *The applicant has had a number of discussions with the Social Services Department, and they have confirmed there is a need for children's care homes.*
- *Under Section 22G of the Children Act 1989, local authorities have a statutory responsibility to take steps, as reasonably practicable, that ensure children in care are provided with accommodation that (a) is within the authority's area; and (b) meets the needs of those children.*
- *The proposal is to register the property as a registered children's home for a maximum of five children aged from 8 to 18 years. They would be looked after by four carers, two of whom will sleep overnight, working on a rota basis.*
- *The proposed children's home seeks to replicate as closely as is possible a normal family home environment. This type of provision, which government policy is promoting, is to help children who, through no fault of their own, have not had good parenting in their early years. These are not children with special needs, who would come under Use Class C2a.*
- *Under the requirements of OFSTED, such care homes must be run as far as is possible like a typical family household; while accepting staff are employed on a rota basis to provide the parental support to the children so many have missed in their early years. The only physical requirements specified by OFSTED are security cameras (although not essential and not materially different from a system found in many households), emergency lighting (no external visual distinction from normal lighting) and locks on bedroom doors for the privacy of each child (not a material issue for planning). 27 Stone Lane already has emergency lighting and fire detection systems in place, fire doors and locks on bedroom doors in order to comply with the House in Multiple Occupation requirements.*
- *The purpose of the home would be to support the children to build their confidence; help them to develop life skills and prepare them for life when they leave the home at 18.*
- *During the day the children would engage in various activities and attend a mainstream school. However, in some cases, the child may receive some home schooling while they settle in and this is no different from a family choosing to have home tutoring. . It is often the case that when young people come into care, they have missed an extensive proportion of their school education or are affected in a way that they could not work effectively in a large classroom environment, and they would then be tutored from home initially. This is all achieved online without any tutors having to come to the house. Eventually the child may go to a specialist unit with smaller class sizes and then progress into mainstream education., This is no different from a family that choose to have their child educated at home with a home tutor. It does not make a difference to the planning status of the proposed use.*

- *The proposed use of 27 Stone Lane is to provide a stable home environment for the children as their main and only residence and that the length of stay is more than temporary or passing.*

Relevant Planning History:

Planning permission was granted under AWDM/1149/22 for the change of use of the property from commercial, business and service (Use Class E) to form residential unit (Use Class C3) and insertion of window at ground floor level on north side of the building. A condition of planning permission removed 'permitted development' entitlements for extensions and incidental buildings over 5 cubic metres in volume, but not for changes of use.

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.

Use Class C3(b) allows for 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;

However, it has been accepted that where care is provided at a property that is not the main residence of the carers, the use falls within Class C2 and not C3(b).

Case law has further established that if the carers work on a rota basis and that it is not their permanent residence, the use must be regarded as C2 and not C3(b). 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 in but who provide, not necessarily through the same person, 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.

Consequently a children's home must fall within Class C2 (residential institutions).

Materiality

That said, 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.

The provisions of the GDPO Part 3, Class L allows for the change of use of a building from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation) – and visa versa.

There are no formal planning records relating to the current Class C4 use of the property, but post-decision correspondence with the Applicant following the issue of planning permission AWDM/1149/22 confirmed that planning permission would not be required to use the property as a small HMO (Class C4). LLPG Addressing identifies address points for Rooms 1-5 at 27 Stone Lane, which is consistent with a Class C4 use.

The Applicant has provided very little information about the current HMO use other than to state that the adult tenants have their own cars. The current tenants may (or may not) have social interactions with each other; but they are likely to do their own shopping, prepare meals by themselves, do their own laundry, look after their own rooms etc.

It is argued that the proposed use would operate in a way that is very similar to a normal family home. The property would provide the young people 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 residents would be taken to and brought home from school each day (if not home-schooled) 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 would be the same as if the residents were children living in a family home.

It is stated the comings and goings would not be significantly different from those associated with the current (HMO) use. The home manager, also a carer, would arrive most weekday mornings and leave each evening, representing two car movements. In terms of the other two staff on the premises, they would normally work on a 24-hour shift basis, which would involve two change overs each day. The changeover of the overnight care staff per day would usually be around 9.00 am each morning. A manager,

also a carer, would visit the site daily 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.

It is stated the children would not require regular visits from social workers and clinicians, with most of these meetings, if they are required, taking place away from the home. Due to the background of the children, family visits are rare and, would take place away from the home to avoid upsetting the other children.

The main difference compared to the existing use is the age of the residents and that there would be on rota staff present during the day and overnight.

However, it is argued that activity at the property and associated comings and goings would not be *materially* different to those of the existing small HMO with the associated comings and goings of 5 adults, within no substantially greater or different impacts on the amenity of neighbouring residents.

With regard to any concern that the proposed use would result in more noise or possible anti-social behaviour owing to the age or background of the cared-for children, consideration should be given to the scope of the lawful use of a dwelling house within Class C3 (or similar) and the broad range of associated levels of activity, ancillary use or vehicle movement. The submission seeks to demonstrate that the prevailing character of the proposed use would in essence be that of a small group of children living together and using the property in a way similar to that of a family home where they would be cared for a supervised by adult guardians. Whilst there might be identifiable differences between the existing and proposed uses it is argued that these would not be material or easily measurable or quantifiable against the scope and flexible characteristics and impacts of a ‘dwelling house’, or in this case, the current Class C4 HMO.

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

Based on information provided and relevant case law 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 C4 ‘houses in multiple occupation’ 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).

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This Certificate relates only to 27 Stone Lane as outlined in red on the submitted Site Plan & Location Plan as Proposed AL(0-) 13A, the precise use referred to below and the evidence set out in the submitted Planning Statement: The use of a dwelling (Class C4) as a children's residential home for a maximum of 5 children with up to four carers, two sleeping overnight working on a rota basis (Class C2).

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: 04.09.2025

Authorised by: Stephen Cantwell Date: 5th September 2025