



**Application for a Lawful Development
Certificate (Proposed) for Use of existing
dwelling for a children's home for up to four
young people, one live in carer and two part
time visiting support workers.**

49 Littledale Street, Rochdale, OL12 6SZ

Planning Statement

Application Site

The application site is an existing large recently approved and constructed five bedroom dwelling situated within a residential area. There are currently no other significant site constraints which are of relevance to this proposal.

This application is based upon proving that the proposed use as intended would not require any formal planning permission.

Site location:



Planning History:

07/D50107 | Erection Of One Dwelling - Resubmission D49617 | Land At The Side Of 47 Littledale Street, Rochdale APPROVED

The Proposal:

The site which is the subject of this application is seeking to formally establish that the legal proposed use of the property is lawful to use as a residential care home for young people. It seeks to ensure all aspects of the facility's operation are within compliance with the current legislation contained within the Town and Country Planning (Use Classes) Order 1987 (England) (As amended) and within the tolerances of permitted development that does not constitute a material change of use.

This is an innovative five-bedroom residential home that is dedicated to reshaping the lives of up to four looked-after children. The Applicants approach uniquely combines holistic

care, psychological support, and personal growth opportunities to enable children to build a life outside of the care system. Central to their mission is the creation of a warm family therapeutic home where children who have faced trauma can find a sense of family and friends.

It is proposed to have a 24-hour live-in carer who would be contracted to stay for 12 months minimum (permanent occupant) to create a family-like living space which is filled with continuous support and a sense of security. Complementing this arrangement is up to 2 part-time staff members that will provide additional support as needed. **Please note that at any given time, only 1 part-time staff member will be on-site during the day for a few hours to assist the live-in carer in their duties. This ensures the number of occupants is within permitted development requirements.**

This structure is created to support the live-in carer by enriching the young people's lives with various interactions and care approaches. The main focus and goal is to create a living environment that resembles a family household; this involves structuring the home to have a typical family home structure such as consistent and familiar caregivers being present throughout each day and over extended periods of time, there is the same live in carer waking the young people up for school or education, preparing and cooking breakfast, lunch and dinner, cleaning the house, washing the young person's clothes etc and acting as a parent figure. This approach ensures a stable, nurturing, and supportive environment for the well-being and development of the young people in their care.

The structure of the application site is to be carried out like a functional family home. The support workers who would be coming to the home daily to take the young people to education or place of work, food shopping, hobbies, out to do activities and support them within the house with tasks such as cooking, cleaning, finding space to explore the young person's day, playing games encouraging/ supporting the young person to complete homework/ course work or/and look for jobs. The activity of people coming and going would be no more than that of a normal functioning family with adults that drive. The aim is for the young people to become part of the community as it is essential for them to integrate into the area of their home.

No self-contained spaces are proposed within this home as it is intended to create a family home dynamic. The operational model aligns with child welfare regulations, ensuring the children's best interests are always prioritised.

All staff members are qualified and trained in line with regulatory requirements under the safer recruitment act.

As the model is to create a family home dynamic for the children, there will be the same support workers coming daily and the same live-in carer which means that relationships will be formed within the community and neighbourhood, the comings and goings from the home wouldn't be more than an average family as the children will be engaging in a routine similar to that of a normal family household as explained above.

As the live in carer and support workers are psychologically trained for managing the young people's challenges and difficulties, the children who will be coming into care would be assessed to ensure the home is suitable for them as it is acknowledged that some children require more support than others, therefore there will be no heightened noise than expected, as morals, boundaries and conversations are essential to supporting the young people in respecting their home and the carers who provide the care.

The Applicants are committed to providing a transformative experience for children in need of care and psychological support. Through this application for a Certificate of Lawfulness, they seek to establish a lawful and beneficial facility that will positively impact the lives of children and the wider community.

Planning Policies:

An application under S192(1) of the Town and Country Planning Act 1990 (as amended) (the 'Act') seeks to establish whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful.

Section 192(2) sets out that if on application under this section, the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect.

The Government's Planning Practice states that when considering an application for a lawful development certificate: "A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."

For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The onus is firmly on the applicants to make out their case, on the balance of probabilities. The decision is based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

The main issue based on the above is therefore whether the proposed use of the existing dwelling for use as a children's care home would be lawful.

Section 55(1) of the Act sets out that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(2) sets out that certain operations or uses of land shall not be taken for the purposes of the Act to involve development of the land, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which – (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.

The internal works would not amount to development under the provisions of s55(2)(a)(i) of the Act. The main factor is therefore on consideration of the use. Whether or not alterations to the exterior of a building fall within development will involve consideration of the change to the external appearance of the building as a whole and not a part in isolation. The degree of visibility by an observer outside the building; the nature of the building; and the nature of the alterations/works are all considerations.

Planning use/ Assessment and Key Considerations:

Under the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, and further amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015, C3(b) is defined as 'a single household of not more than 6 residents where care is provided'. This falls within the same use class C3, as C3(a), 'a single person or by people to be regarded as forming a single household.' As such, no change of use would take place and hence planning permission would not be required.

Another issue of relevance relates to the number of people forming the 'household'. It was established in case law (a judgment of the Court of Appeal in *R (Hossacks) v Kettering BC* (2002) EWCA Civ 886) that 'the limit in class C3 to no more than six persons is an important consideration as with no more than that number, it would be more likely that a person would be living as part of a single household than if it were significantly more than six; the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy would be likely to be and more likely they are to be regarded as a single household.'

The starting point is to first establish as a matter of fact and degree, whether such a use would constitute a change of use from C3 to C2. The issue largely centres on whether or not the children are in themselves capable of living together as a single household.

If the premises have the look and character of a conventional residential dwelling, and the use gives rise to no greater level of disturbance or amenity effects than could be generated by a C3 use, then no material change of use has occurred. Should the carers be living on the premises full-time, the likelihood is this may amount to a C3(b) use even where substantial internal adaptation of the building has taken place.

A key element in the use of a dwelling house for non-family purposes is the concept of a single household and a fundamental consideration here is that there would be one live-in carer and thus the carer and children would be living together as one single household. The premises is proposed to be laid out to provide a living room/dining room, office/ activities room, kitchen, WC, hall, patio area and garden at ground level and 4 children's bedrooms, one staff bedroom and a bathroom at first floor level. In an appeal at *Crewe & Nantwich* (24/4/06) an Inspector noted that although the building would be fitted with an office [and fire alarm], this was not uncommon in many dwelling houses around the country and decided it would not materially alter its basic character as a dwellinghouse.

Whether the change of use would be material is also well established by the courts. Notwithstanding whether the use is considered to be within Class C2, rather than Class C3, planning permission will not be required, if the change of use would not be a 'material change' of use. The local planning authority must still consider therefore whether that change of use would be 'material'. It is a matter of fact and degree, in the circumstances of an individual case, as to whether a change of use will be 'material'. The decision is whether the differing use as set out and proposed by the applicant would be 'materially' different to that of a dwelling house and result in development requiring planning permission.

"The Act" does not define 'material change of use' and in general therefore, it is necessary to exercise some considered judgement in individual cases and this is regarded by the courts as being primarily a matter of fact and degree for the local planning authority. By way of a guide, differences which might be considered 'material' are those which are measurable or quantifiable as resulting in a significant or substantial change or step up in the character or impact of a use. There is no limit on the size of 'family' that can occupy a dwellinghouse and it is likely that a sizeable property with ample grounds could be occupied by a relatively large family. Included, within the same C3 use class, the property might also be used and occupied by up to 6 people, who are not related as a family, but live together as a single household, and this could include an arrangement where the residents are provided with care.

The task must then be to compare against that 'baseline' the character of the land use proposed by the applicant. In so many respects the 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, able to take shared meals prepared for them or make their own food or drink. The residents will be taken to and brought home from school/ college or even work 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 get ready on a daily basis to attend school, college or even work. The home seeks to foster lifestyles which would be the same as if the residents were normal teenage children living in a family home.

The applicant's evidence is that the proposed use is to provide a stable home environment for the occupants as their main and sole residence and that the length of stay is generally more than temporary or passing. It would not be a 'half way' house or provide overnight emergency lodgings for example. However, in any event, the courts have provided some assistance in determining the significance of there being a commercial factor to a residential use or an arrangement where the occupants have generally only a limited period of stay. Cases such as *Blackpool BC v Secretary of State for the Environment* [1980] and *Moore v Secretary of State for the Environment* [1998] where houses were used for holiday lettings on a limited basis, established that a change to holiday lettings is not necessarily 'material', since the character of the use need not have changed. Following *Gravesend BC v Secretary of State for the Environment* [1982], the court accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-day private domestic existence. It did not lose that characteristic if it was occupied for only

part of the year, or at infrequent intervals, or by a series of different persons, or if it was under commercial management for holiday or other temporary lettings.

The lawful use of a dwelling house, included in Class C3, is broad in scope and could in association bring with it considerable activity, associated and ancillary use, or vehicle movement. The prevailing character of the proposed use would 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 supervised and cared for by adult guardians. While there might be identifiable differences, between proposed and existing uses, these would not be 'material' or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwellinghouse. In addition to the above, the comings and goings are not considered to be any different from that associated with many dwelling houses. The comings and goings associated with the use will not be materially different from a typical residential household.

In a ministerial statement from Rachel Maclean (Formerly the Minister of State (Department for Levelling up, Housing and Communities)) in March 2023 it stated: *'Today we use this joint statement to remind Local Planning Authorities that, as set out in paragraph 62 of the National Planning Policy Framework, local planning authorities should assess the size, type and tenure of housing needed for different groups in the community and reflect this in planning policies and decisions. Local planning authorities should consider whether it is appropriate to include accommodation for children in need of social services care as part of that assessment. Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country. It is important that prospective applicants talk to local planning authorities about whether their service is needed in that locality, using the location assessment (a regulatory requirement and part of the Ofsted registration process set out in paragraph 15.1 of the Guide to the Children's Homes Regulations) to demonstrate this. To support effective delivery, unitary authorities should work with commissioners to assess local need and closely engage to support applications, where appropriate, for accommodation for looked after children as part of the authority's statutory duties for looked after children. In two tier authorities, we expect local planning authorities to support these vital developments where appropriate, to ensure that children in need of accommodation are provided for in their communities. Planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate.'*

Whilst there is now a new Minister in place and some updates to planning policies, the above is still applicable here.

The planning history of the site as detailed above indicates that the property is all one single dwelling. The proposal does not include any significant external changes to the dwelling.

Conclusion

It is contended that the existing use of the property falls within C3a of the Use Classes Order and that the proposed use falls within C3b. This is clearly explained in the comments above and as a result in our view would not amount to development in accordance with section 55 of the Town and Country Planning Act.

Notwithstanding this, it is also maintained that in planning terms, there is no material difference between the proposed use and a typical C3a household. It is suggested that planning permission is accordingly not required for the proposed use which could lawfully take place within the subject premises and a Lawful Development Certificate should therefore be granted.

The proposed use would be akin to that of an ordinary residential use as explained above. Provided that the planning unit remains in use as detailed above, it would not, as a matter of fact and degree, result in a material change of use in the overall character of the use of the land. We, therefore, see no reason for the council to withhold our request for a Lawful Development Certificate and kindly request for a timely decision to be made, in line with guidance of the National Planning Policy Framework.

Should for whatever reason, the associated scheme not be deemed as Permitted Development, we would welcome the opportunity to discuss any issues with the designated case officer and be given an opportunity to submit a planning application prior to any decision notice. If any further information is required to assist in the council's decision on the proposed scheme and associated application, please do not hesitate to contact Studio Charrette directly who will be more than happy to accommodate any reasonable request.

Thank you,

Kind regards,

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