

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/00172/CPL	Aimee Bovaird	15 March 2023

Address: 173 Wood Street Middleton Rochdale M24 4FJ

Proposal: Certificate of lawfulness for proposed change of use of dwelling-house C3a dwelling as a children's home for a maximum of two children, with two carers, with one sleeping overnight, working on a rota basis (C2)

PUBLICITY	Weekly list expired?	N/A	Site notice expired?	N/A
	Neighbour letters expired?	N/A	Press Notice expired?	N/A

DELEGATION	Significant departure from local plan?	N/A	Contrary to national policy?	N/A
	Applicant a Council Member or officer?	N/A	Contrary to previous decision?	N/A
	Major with 10 or more objections and recommending approval?	N/A	Called in or Planning Panel objection?	N/A

COMMENTS	Planning Panel comments received?	N/A
	Neighbour comments received?	N/A

EIA	Screening opinion completed and saved to Onbase?	N/A
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CONDITIONS	Pre-commencement conditions proposed?	N/A
	Pre-commencement conditions agreed (or notification period expired)?	N/A

RECOMMENDATION	GRANT
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CHECKED AND SIGNED OFF BY: LA

DATE: 26.04.23

SITE

This application relates to 173 Wood Street Middleton, a two storey terraced dwelling with 3 bedrooms, one bathroom and a kitchen/diner. The property has a rear yard and a small hard surfaced area at the front of the house. This is in a residential area. To the rear of the dwelling is an electricity distribution site and directly opposite the dwelling are car parking spaces for the houses in the cul-de-sac. These spaces are not designated to the house, they are for communal use.

This is within the Defined Urban Area and within Langley Physical Regeneration Area.

PROPOSAL

The application seeks a certificate of lawfulness for the proposed use of the existing dwelling-house (C3a dwelling) as a children's home for a maximum of two children, with two carers, with one sleeping overnight, working on a rota basis (C2).

RELEVANT PLANNING POLICY

The Town and Country Planning Act (1990) - S.192

The Town and Country (Use Classes) Order (1987) (as amended)

National Guidance

National Planning Practice Guidance (NPPG)

RELEVANT SITE HISTORY

No relevant site history.

CONSULTATION RESPONSES

N/A

REPRESENTATIONS

In accordance with the Council's Code of Publicity for Planning Applications, this application has not been publicised.

ANALYSIS

S.55 of the Town and Country Planning Act 1990 sets out:

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "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

In respect of changes of use, Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 sets out "Where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land."

In assessing this application, it is necessary to understand the existing lawful use of the unit proposed to change use and the use class of the proposed use. Where the existing and proposed use do not fall within the same use class, it is necessary to consider whether the proposed use would have a materially different impact on the environment and local amenities.

For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be 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.

Additionally, it is noted that in paragraph 006 of the NPPG (Reference ID: 17c-006-20140306), states that 'in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.'

The applicant has stated that the building would be used as the residence for up to 2 children, receiving care by 2 carers who would work on a shift bases (night shifts and day shifts).

Use Class C2 defines this use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)); use as a hospital or nursing home; or use as a residential school, college or training centre. Care is defined in Article 2 of the UCO as meaning:

"personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment."

Established case law provided for by the *North Devon District Council v First Secretary of State [2004]* judgement in respect of a house used to care for children is applicable to the circumstances of lawful development certificate application. In that, the Court said that 2 children aged between 10 and 17, supported by non-resident carers, could not constitute a household for the purposes of Class C3(b).

In the *North Devon* case, the property was being used as a home for two children and two non-resident staff were on duty at all times with a shift system operated by 6 to 7 carers to maintain the requisite cover. The application was based on the premise that the children by themselves would constitute a single household with the use falling within Class C3(b).

Crucially, the judge set out that a household needed more than just children, as children: "need 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 Court therefore held that the concept of living together as a household means that a proper functioning household must exist and thus, for the use to fall within Class C3(b), the children and carers must reside in the premises. Otherwise, the use falls within Class C2.

As such, in light of above and having regard to the supplied supporting statement, it is accepted that the proposed use falls within Use Class C2, which would comprise a change of use within the context of the 1987 Act given it would comprise a change between Classes C2 and C3, however, as S.55 of The 1990 Act sets out, for a change of use to comprise development, it must be material, and in determining this application, this must be assessed.

The applicant considers the use of the property to be unlikely to be perceptibly different to that of a normal dwellinghouse, where the use remains residential and would be

reflective of a traditional household, with traffic movements being akin to a 'normal dwellinghouse'.

The applicant has stated a minimum of 2 staff members on a rota during the day and one member of staff at night. A normal shift pattern will be a flexible rota between 8am and 10pm. Night shift will start at 10pm until 8am. Between each shift there will be a detailed handover to improve consistency and to ensure there are no shortfalls in the running of the home. During the day the children will attend mainstream school.

The proposal is not considered to have a negative effect on the surrounding character of the area as the proposal will operate as a normal residential dwelling, there is no external works proposed. The house will fit into the surrounding area.

It is also not considered to increase the risk of crime and anti-social behaviour in the surrounding area as there is no evidence crime would be increased by the presence of this home and its occupiers.

The goal of the house is to provide a stable environment and the length of stay for the children is considered more than temporary

The existing house has three bedrooms and the proposal with two children and two staff members is not an intensive increase in number of people at the property.

There is communal parking provisions on Wood Street and the maximum number of cars would be two as there are two members of staff, and this is not considered an intensification of use from a normal family dwelling.

As established both within article 3 of *The Use Classes Order*, and s.55(2)(f) of *The 1990 Act*, the use of the buildings or other land or of any part of the buildings or the other land, for any other purpose of the same class shall not be taken to involve development of the land and it is therefore recommended that a certificate be granted.

RECOMMENDATION

GRANT UNCONDITIONALLY

1. The proposed use of the building for two children, two carers, with one sleeping overnight living together and receiving care would be a change of use from C3 to C2 however the change is not considered to be material, and therefore does not comprise development within the meaning set out within section 55 of the Town and Country Planning Act (1990) and would not require planning permission.

Notes for Applicant:

For the avoidance of doubt, this decision relates to the following list of plans:

Location Plan

Floor Plans

Supporting Statement