

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/01361/CPL	Hamish Rigg	31/01/2024

Address: 19 Fisherfield, Rochdale, OL12 7QW

Proposal: Certificate of lawfulness for proposed change of use from C3 (dwellinghouse) to C2 (Residential Institution) as a home for up to three looked-after young persons

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	REFUSE
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CHECKED AND SIGNED OFF BY: RK

DATE: 09/02/2024

SITE

The application relates to 19 Fisherfield, Rochdale, a modern two-storey detached dwelling on a residential estate comprising houses of a similar design and material palette. Fisherfield lies in a predominantly residential area of low density housing with plenty of green space, openness, and large driveways.

The applicant property sits on the junction of Fisherfield and Burdett Avenue, with its south east elevation overlooking the latter. The principle elevation faces north, overlooking the public highway and no. 24-26 Fisherfield. The adjacent property to the north west is no. 21 Fisherfield. The rear boundary of the curtilage faces south towards the side of no. 2 Burdett Avenue and its rear garden.

PROPOSAL

The application seeks a Certificate of Lawful Development for the use of the dwellinghouse as supported living accommodation (Use Class C2) for 3 children receiving full-time care from up to 3 carers. A minimum of two carers would be on site when all 3 children were in the property.

PROCEDURAL NOTE

In the application form, the applicant has not provided a description of the proposal. The description is taken from the existing and proposed uses set out in the application form and the description of the use set out in paragraph 1.1 of the supporting statement.

It is noted that the Acknowledgement Letter issued to the applicant on 22nd December 2023 included the description "Certificate of lawfulness for proposed change of use from C3 (residential) to C2," which following the progression of the application was felt did not accurately describe the use proposed and the description has been revised to that which is included on the decision notice accordingly.

It is not felt that any parties are prejudiced through the amended description as it more accurately reflects the use which is set out within the applicant's supporting statement.

RELEVANT PLANNING POLICY

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

- (1) If any person wishes to ascertain 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, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

- (3) A certificate under this section shall—
- (a) specify the land to which it relates;
 - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
 - (c) give the reasons for determining the use or operations to be lawful; and
 - (d) specify the date of the application for the certificate.
- (4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness

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

National Guidance

National Planning Practice Guidance (NPPG)

Burden of Proof

The applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability (PPG Paragraph: 006 Reference ID: 17c-006-20140306)

RELEVANT SITE HISTORY

None

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 applicant property, and the use class under its 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.

Whether Use Class C3(b) or C2

In light of the planning history of the site, the LPA is content to consider the existing lawful use of the site as a C3 dwellinghouse.

By comparison, 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."

However, a care home may fall under Use Class C3 if the total number of residents is fewer than 6, and the carers and cared-for live as a single household. Specifically, the Town and Country Planning (Uses Classes) Order 1987 as amended by the 2020 amendment regulations describes Class C3(b) as 'Up to six people living together as a single household and receiving care e.g., supported housing scheme such as those for people with learning disabilities or mental health problems'.

Notwithstanding, the concept of a 'household' would need to be satisfactorily met for a children's care home to fall within Class C3. 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 this application. The Court judged 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).

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.

Yet even where a proposed children's home does not strictly fall under Class C3, it is necessary to determine whether its proposed use would be considered a material change requiring planning permission. Where the proposed use falls within Class C2 but there is no material change to distinguish it from Class C3, the change of use

would not constitute 'development' as per S.55(b) of the Town and Country Planning Act 1990, and a certificate of lawfulness may be issued.

Whether materially different in use

The applicant has stated that the building would be used as the residence for 3 children aged 7-18 receiving care by up to 3 carers working on a shift rotation with two carers on site overnight. The applicant asserts that the property would be run as a household, and that the experience of the occupiers would be akin to that of a household, rather than that of a care home, and considers the proposed use to fall under use class C3.

The applicant concedes that the proposed use as a children's care home would qualify as Use Class C2, but that the nature of operation and development would not be materially different from Use Class C3, as a residential dwellinghouse, and that the proposed use would display many attributes of a family dwelling including typical daily activities and routines, as well as a permanent presence of staff providing a stable living environment for the children. Furthermore, the applicant claims that whilst there may be occasional visitors, there is no requirement for professional visitors and that family visits will take place off-site. In addition, it is noted that the application includes no external alterations to the property, thus in terms of its physical state, it will remain a dwellinghouse.

In appeal ref. APP/P4225/X/22/3299250 for a similar proposed use, the inspector set out that any assessment as to whether, as a matter of fact and degree, the proposed use would be materially different, requires an understanding of the form and character of the present or last use of the premises, as well as an understanding of the form and character of the proposed use.

The applicant has set out in their supporting statement that the nature of proposed use would be no different than if it were occupied by a class C3 use such as "a large family," (p. 5.7). Although the LPA is content that the present use of the property is a residential dwellinghouse (C3), no substantive information has been submitted as to the number of occupants and the character of its existing use. It is likely that a property of this size could accommodate 2 children and up to 2 adults, discounting use of the box room for an occupant due to its size. Yet, there is nothing in the evidence provided by the applicant to confirm any details in this regard. In the absence of such information, it is not possible to ascertain the character or activity of the present use to enable a comprehensive comparison with the proposed use.

Regarding the character of the activity generated by the proposed use, the speculative nature of the proposed use presents difficulties in discerning any specifics in terms of the children and staff, and any details of the type of care, as this would depend on the children entering the property and their circumstances. It is noted that the applicant does operate a number of homes around the country however no details have been provided on any existing operations which may assist in discerning the character of the proposed use.

Given the limitations in the evidence which has been provided by the applicant, a valid assessment of the proposed use is considered to be restricted. Without such information, the LPA is only able to speculate on whether the needs of the children and the provision of care in this setting would reflect those typically experienced when bringing up a child, and thus whether the property would operate within the bounds of a typical family dwellinghouse.

The applicant has provided a number of appeal decisions however no further details in respect of the level of detail of the evidence provided nor a comparison of the uses

proposed between the appeal decisions and this application, or a comparison of the physical characteristics of the site has been provided and therefore it is not possible to have regard to these decisions beyond the decision making processes set out which is largely reflected within this report.

It is noted that one appeal (appendix 5: Mansfield) does however relate to the use of a dwelling for 5 adults receiving care which would not be a comparable use to that proposed within this application and typically follows the provisions of the *North Devon* case. A number of decision notices from other Local Planning Authorities have also been provided, however in the absence of any details on the decision making taken, or details of the application, it is not possible to have regard to these decisions.

In light of the above, NPPG is clear that the burden of proof is on the applicant to satisfactorily prove that the house would operate in a way akin to those which fall in Use Class C3. 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 information submitted is considered to be insufficient to conclude that the proposed use would not be materially different from Class C3. The lack of detail gives rise to uncertainty and ambiguity regarding the proposed function and form, thus it is not possible to determine whether the change from use class C3 to C2 would be materially different for the purposes of Section 55 (1) of the 1990 Act.

RECOMMENDATION

Refuse for the following reason:

1. The evidence submitted in support of the application is deficient in that it is not sufficiently precise and unambiguous, giving rise to uncertainty in how the proposed use would function and thus any implications this may have for the character of the activities at the site. On this basis, it is not possible to determine whether the proposed change of use of the building between C3(a) and C2 would be material for the purposes of section 55(1) of the Town and Country Planning Act (1990) (as amended).

Notes for Applicant:

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

- Location plan: 98795
- 'Compass Children's Homes, 19 Fisherfield, Rochdale, Supporting Statement' (December 2023): JB/98795
- Proposed Ground Floor Layout: 1268.01
- Proposed First Floor Layout: 1268.02

Report Author Hamish Rigg