

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
23/00286/CPL	Aimee Bovaird	3 May 2023

Address: 27 Traynor Close Middleton Rochdale M24 5DU

Proposal: Certificate of lawfulness for proposed use of dwelling-house C3a dwelling as a children's home for a maximum of two children, with three carers, with two 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: 19.06.23

SITE

This application relates to 27 Traynor Close Middleton, a two storey detached dwelling with three bedrooms, one bathroom, one lounge and a kitchen/diner area. The property has a side garden. The property has a designated driveway.

This property is within the Defined Urban Area and in a residential 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

RBC Children's Services:

"The response from the police was that they have concerns re the provision and how they manage young people."

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 a maximum of two children, with a maximum of three carers, with two sleeping overnight and up to three during the day working on a rota basis. 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(b).

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 (and not C3b), 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 has stated at any time there could be a maximum of five persons in the home during the day, this includes two children and two carers and one manager coming and going in the day. At night there would be a maximum of four, this includes two children and two carers.

A normal shift pattern would be a rota from 8am – 10pm and a night shift will be 10pm-8am. The manager will be present throughout the day at various points to assist the careers.

The applicant considered 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 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. No external works are proposed and as the dwelling is in a residential area the proposal will be compatible within the street scene.

The children will attend school during the day and make use of facilities in the surrounding area. No specific details regarding attending school have been provided, this is not considered to be different than a normal household.

A response from the Council's Children's Services team advises that the police have concerns regarding the proposed provision, and how they manage young people. Whilst crime and disorder are material planning considerations, in this case the question for consideration is whether the proposed C2 use is materially different from a C3 dwellinghouse. No further information has been provided to demonstrate why the proposed use would be more likely to result in crime and disorder than a C3 dwelling that is occupied by young people. It is considered that subject to appropriate management, the occupants of the property should not cause significantly greater impact than 'normal' C3 dwellings.

The house will provide care on a medium to long term basis for the children to integrate properly into the community.

The existing house has three bedrooms and one is proposed to be an office, this proposal with two children and up to three staff members is not an intensive increase in number of people at the property

There is no detail in the supporting statement as to why the children will be placed in this dwelling and does not state if any child would need further care (therapeutic, psychological, educational etc.), however where it has been deemed necessary to remove the child from their familial residence to provide round-the-clock care, it is considered that the needs of the child must be somewhat specialised.

The property has a designated driveway, the maximum number of cars would be three as there may be three members of staff, this is considered an intensification as one of the cars would need to park on the street. There may be additional cars if further necessary services are required by visiting professionals. There would also be a reasonable prospect of each child attending different schools or being educated outside a school setting to fulfil their needs, or due to their age. On balance this is considered acceptable as a normal household would have visitors on occasions.

Conclusion

Having regard to the matters above, on balance it is concluded that the proposed change of use from C3 to C2 is not a material change of use, meaning that the change does not constitute development, planning permission is not required, and a lawful development certificate can be granted.

RECOMMENDATION

GRANT UNCONDITIONALLY

1. The proposed use of the building for two children, three carers, with two present 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 plans and documents:

Location Plan
Block Plan
Proposed Floor Plans and Elevations

Report Author Aimee Bovaird