APPLICATION NUMBER: 19/00470/CPL

DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
19/00470/CPL	Rachel Carney	26 June 2019

Address: 8 Smithy Bridge Road Littleborough OL15 8QF

Proposal: Application for a certificate of lawfulness for a proposed change of use from a Use Class C3(a) dwellinghouse to a Use Class C3(b) 3 bedroom children's care facility

PUBLICITY	**Weekly list expired?**	y	**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	**Contrary to previous decision?**	n
	Major with 10 or more objections and recommending approval?	n	**Called in or Planning Panel objection?**	n

COMMENTS	**Planning Panel comments received?**	n
	Neighbour comments received?	n

EIA	**Screening opinion completed and saved to Onbase?**	n/a

CONDITIONS	**Pre-commencement conditions proposed?**	n/a
	Pre-commencement conditions agreed (or notification period expired)?	n/a

RECOMMENDATION	REFUSE

CHECKED AND SIGNED OFF BY: AT **DATE: 04.07.2019**

SITE

8 Smithy Bridge Road is an attractive, stone built detached residential property that is set on the corner of Smithy Bridge Road and Eafield Road. The property benefits from private residential curtilage that is predominantly sited to the side (north) and rear (west) of the property and there is also a detached single garage to the rear which is accessed via Eafield Road. The front of the house, onto Smithy Bridge Road, is bounded by an attractive stone wall and gate piers and a privet hedge. The main boundary treatment to Eafield Road is timber gate and fence of approximately 2m in height.

The predominant use of the surrounding area is residential with the properties comprising a number of house types. The site is also close to Cleland McIver, an industrial site

PROPOSAL

The application is a certificate of lawful development for the change of use of the existing residential dwellinghouse (Use Class C3(a) to a children's care facility (Use Class C3(b).

RELEVANT PLANNING POLICY

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

RELEVANT SITE HISTORY

N/A

CONSULTATION RESPONSES

N/A

REPRESENTATIONS

Applications for Lawful Development Certificates are not publicised as their determination is based on planning regulations and facts rather than opinions.

ANALYSIS

In order to assess the certificate application, it is first useful to clarify the key elements of what represents a C3(b) use.

Use Class C3(b) is defined as not more than six persons living together as a single household and receiving care, and makes provision for supported housing schemes, such as those for people with disabilities or mental health problems.

It is clear from the particulars submitted that the intended use as a care facility is intended for children.

In the well-known case of *North Devon District Council v The First Secretary of State and Southern Childcare* QBD [2003] JPL 1191 the Court said that two children (aged between 10 and 17), supported by non-resident carers, could not constitute a household for the purposes of Use Class C3(b). Collins J said a household needed

more than just children, as children "needed to be looked after and they cannot run a house. They could not 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 to make sure that a household operates as it should."

The applicant considers that the development would fall within Class C3(b), explaining that the property would be occupied by three children who would live under the supervision of two support staff who would act in a co-parenting role. The application claims that the "…*staff would work with the young people, in their own space, helping them development positive outcomes and move on to full independence in the longer term*." The application also states that "…*the model involves no intensive or regular personal, medical or physical care of any kind and is therefore a less intensive supported use than is actually permissible under Use Class C3(b)."*

Information submitted with the application has also confirmed that care staff at the site would works on a 24-hour system (10am – 10pm) and that there are two staff that stay at the home over the 24 hour shift. Occasionally, during the day an additional staff member may be required for support purposes depending on the needs of the young person(s) residing at the home. It is also confirmed that the home would have a Registered Manager who is based at Head Office, but would visit the home during the working week between the hours of 9am and 5pm. There would be 7-10 staff members working in pairs at the house, on a monthly rota system with a maximum of two care staff sleeping over on any given night.

All categories of Class C3 require the occupiers to be living together as a single household. It is necessary to focus first on those in occupation and ask whether they themselves form a single household, as a matter of fact and degree. It is considered a group of children cannot reasonably be regarded as being capable of living together as a single household. There would be no adult carer(s) residing permanently on the site who would themselves form part of the household.

In the North Devon case there were carers on the property at all times but they came and went. They were not residents of the house and lived elsewhere. The North Devon case indicated that carers who provided 24 hour care, but were not resident, could not be regarded as living together in a household. Similarly, in this case, there would be adult carers present at all times but they would not be living permanently at the property as part of the household; rather carers would operate on a shift basis.

Another case of relevance is the Rochdale planning application 18/00035/CPL which was a similar certificate of lawful use application to change a C3(a) dwelling house to a C3(b) children's care facility. The application was refused as it was considered the development would result in a material change of use of the property and a subsequent appeal (ref: APP/P4225//X/18/3198973) was dismissed. In that application, it was confirmed at appeal stage that one member of staff would permanently reside at the property (this would not occur under the application now under consideration). Nevertheless, the Inspector concluded that it is unlikely that the resident carer would be on duty at all times and they would be entitled to days off each week as well as annual holidays, as such meaning that cover would be required. It was also unclear under the appeal how the second carer would operate and whether this would be a designated individual or whether cover would be provided on a shift basis. The Inspector considered there was a lack of clear and precise information to shown how the occupants of the property would function and live as a single household and additionally, there would be sporadic visitors by other professionals associated with the use that would likely result in more activity than associated with the use of a single household. The Inspector therefore concluded that the use would not fall within Class C3(b) and the appeal was dismissed.

Following this appeal a further application for the same use was refused under application 18/00356/CPL where it was still considered that the development would comprise a material change of use. Finally a full application for planning permission (application 18/01126/FUL) was submitted and approved.

Article 2 of the Use Classes Order interprets “care” 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”. The interpretation clearly distinguishes between Class C3 and C2 insofar as it relates to children.

It is therefore considered that the proposed development would not, as a matter of fact and degree, involve persons living together as a household and would not therefore fall within Use Class C3.

Whilst it is considered that the proposed development would not fall within Use Class C3, it is nevertheless necessary to consider whether the change of use would, as a matter of fact and degree in the circumstances of this individual case be material.

The proposal would, as the applicant asserts within the Planning Statement submitted, operate like a normal family home with domestic living areas. It is accepted that the proposed dwelling can accommodate a large family with the comings and goings associated with a large family. It is not doubted that the communal spaces and bedrooms would be used by the young people in a manner comparable to a dwellinghouse. However, there would be the daily exchange of care staff operating in a shift pattern. In addition, there would be other professionals coming and going to the property to provide education and therapy as necessary.

It is therefore considered that the increased level of activity that would occur on a daily basis associated with the proposed use would be more intensive and constant than might reasonably be expected to be generated by even a large dwellinghouse, such that the overall character of the use would materially differ to that of a dwellinghouse.

RECOMMENDATION **REFUSE**

The proposed use would fall within Use Class C2 and as such, there would be a material change of use of the property from Use Class C3. The development would not therefore have been lawful and accordingly, the certificate is hereby refused.

Notes for Applicant:

INFORMATIVE:
For the avoidance of doubt, this Decision Notice relates to the following drawings :-

Site Location Plan
Site Plan
Proposed Floor Plans

Report Author Rachel Carney