DELEGATED DECISION CHECKLIST AND REPORT

APPLICATION NO.	CASE OFFICER	DATE
22/00747/CPL	Ryan Killeen	4 August 2022

Address: 33 Greenvale Rochdale Rochdale OL11 5QJ

Proposal: Application for a certificate of lawfulness for proposed use of dwellinghouse as children's home for up to 3 no. children

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

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

RECOMMENDATION	**REFUSE**

CHECKED AND SIGNED OFF BY: DR **DATE: 05/08/2022**

SITE

The application relates to no.33 Greenvale, a two-storey, detached, post-war dwelling set on a residential estate of dwellings of a similar age and architecture in the Bamford area of Rochdale. The dwelling faces south towards the highway, occupying a corner plot at the west side of the junction of Greenvale and Linnell Drive. The dwelling includes a front drive with a single parking space with the rear curtilage tapering aggressively to the northwest. The site sits adjacent to no.31 Greenvale to the west, with no.1 Linnell Drive immediately north. No.2 Linnell Drive and no. 50 Greenvale sit to the opposite side of the highway to the east and south respectively.

PROPOSAL

The application seeks a Certificate of Lawful Development for the use of the dwellinghouse as supported living accommodation (Use Class C3(b)) for 3 children receiving full-time care from up to 3 carers.

RELEVANT PLANNING LEGISLATION

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

N/A

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 building proposed to change use in addition to the use class which the proposed use would fall in to. Where the existing and proposed use do not fall within the same use class, it is necessary to subsequently 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 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.

On the balance of available evidence, the LPA is content consider the existing lawful use of the site as a C3(a) dwellinghouse.

The applicant has stated that the building would be used as the residence for up to 3 children receiving care by up to 3 carers who would work on a shift basis (working 2-3 days in a row). 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 this appeal. 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.

The applicant does consider the use to form a Class C3 use where there would be no difference in the shift patterns of the carers in this instance, from a situation where those adults were working elsewhere. However, in light of

the findings of *North Devon*, the proposed use cannot be taken to comprise a C3 use where the only permanent occupants of the building would be the children being cared for, despite the applicant's assertions that the use would be reflective of the functioning of a conventional domestic household.

As such, it is clear that the proposed use, based on the care of the children as stated, would comprise a change of use of the building from Class C3 to C2. The applicant has set out an alternative position, whereby they consider the use to be lawful on the basis that the change of use would not be material and therefore would not fall within the meaning of development under S.55(b) of the Town and Country Planning Act 1990.

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 supporting statement provides details on the use of the site setting out that the site would be occupied by 3 children requiring care, being cared for by 2-3 staff members working a 2-3 day rota. A site manager will also be present during business hours Monday-Friday. Further information has also been provided, with social workers visiting the site every 6 weeks.

The supporting statement sets out that the children can sometimes have emotional difficulties or have come out of foster care, however does not elaborate any further as to whether or not a child residing at the property would be receiving any additional 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.

It is noted that the applicant (Castle Care Homes) does have a website which summarises the service provided as "*Care for young people with complex emotional and behavioural difficulties between the ages of 10 and 18,*" and as set out above, for it to be considered necessary to remove the child from their familial setting for round-the-clock care, it is likely that the child would have specialist needs which would need to be tended to by relevant professionals.

Publicly available OFSTED reports for two other properties operated by the applicant each identify a history of missing child incidents, which it acknowledges had reduced (but it can be reasonably assumed still occur), in addition to confirming visiting therapeutic and psychological services and allowing the opportunity for parents to be welcomed into the home.

Given the general absence of any detail, it is considered that the applicant's version of events, with only a limited number of movements per day, are therefore less than probable, with paragraph 006 of NPPG setting out the need for an applicant *"to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved."*

Up to 4 carers (including a site manager) are likely to be present over the course of a day and travel to the site can reasonably assumed to be via private vehicle, in addition to any 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.

Therefore, taking into account the large presence of staff at the site, visits from professionals, visits from parents and family members, movements associated with up to three children each likely to have individual professional care requirements, in addition to a not insignificant police presence associated with missing child incidents, it is considered that the proposed use would reveal a use noticeably different to that expected in a normal residential dwelling at this location.

Summary

For the reasons above, it is considered that based on the evidence available, the proposed use of the building would result in a change of use from Use Class C3(a) to Use Class C2. In considering the characteristics of the use, as set out within the available evidence, on the balance of probabilities, the proposed use would constitute a material change of use. Accordingly, it is recommended that the application for Certificate of Lawful Development under S.191 of the 1990 Act be refused.

RECOMMENDATION

Refuse for the following reason:

1. The proposed use would result in the change of use of the building in the context of the Town and Country (Use Classes) Order (1987) (as amended) from Class C3(a) to Class C2. In considering the characteristics of the use, as set out within the available evidence and on the balance of probabilities, the proposed change of use would be material and would comprise development within the meaning set out under S.55 of the Town and Country Planning Act 1990 and would subsequently require planning permission.

Notes for Applicant:

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

- Location plan
- Supporting Statement – Dated 04/06/2022
- Planning Application Form

Report Author Ryan Killeen