

Officer Report

Case Reference: PL/2026/0010
Location: 49 LITLEDALE STREET, ROCHDALE, OL12 6SZ
Proposal: Application for a Lawful Development Certificate (Proposed) for change of use of dwellinghouse (C3) to a children's home for a maximum of four children with one live in carer and other carers working on a rota basis (C2)
Recommendation: Permitted Development
Officer: Majid Mir

SITE

The application relates to no. 49 Littledale Street, a two-storey end of terrace dwelling located in a residential area. The surrounding area is predominantly residential, comprising high density, linear terraced housing.

The dwelling is a more recently constructed dwelling that faces east, fronting the pavement and overlooking the adopted highway. No. 49 is attached to no. 47 Littledale Street (dwelling) to the south. Immediately to the north, the application site is adjacent to an electric substation and garden of no. 88 Mitchell Street (dwelling). To the west, the rear of the property faces the rear of no. 84 Mitchell Street (dwelling). To the front, the property sits at angle to the terrace properties of Littledale Street.

Off street parking is available in the rear garden. The garden to the rear is modestly sized limited space to the front. The plans indicated that there are five bedrooms set over the first and second floor.

PROPOSAL

Certificate of lawfulness is sought the change of use of the host property from a dwellinghouse (Class C3(a)) to a children's care home (Class C2). The care home would provide one 24 hour live-in carer with up to two part time carers (staff members) providing additional support as needed. Only one part-time would staff member will be on-site at any given time. One carer (staff member) will be on site between 9pm and 9am to support the live-in carer whilst the live-in carer is either asleep or off duty. The application proposes a maximum of four children will be housed at the application property at any given time.

RELEVANT PLANNING POLICY

Town and Country Planning Act 1990 Section 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)

RELEVANT SITE HISTORY

25/00251/HOUS – Rear dormer extension to facilitate loft conversion – Retrospective. Decision: Approve subject to conditions.

24/01032/CPL – Application for a certificate of lawfulness for a proposed use as a residential childrens home for four young people one live in carer and two part time visiting support workers. Decision: Withdrawn.

15/00290/DOC – Submission of details to comply with condition 3 on planning permission 07/D50107. Decision: Request completed.

07/D50107 – Erection Of One Dwelling - Resubmission D49617. Decision: Approve with conditions.

07/D49617 – Erection Of One Dwelling. Decision: Refuse.

04/D43273 – Erection Of Attached Two Storey Dwelling. Decision: Approve with conditions.

CONSULTATION RESPONSES

Not applicable.

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.

With regard to the burden of proof, the NPPG notes that “the applicant is responsible for providing sufficient information to support an application... 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.” (Paragraph: 006 Reference ID: 17c-006-20140306)

Based on available evidence, the LPA is satisfied the existing lawful use as a dwellinghouse under Class C3(a).

The applicant's planning statement states they believe the application is suitable to be considered under a certificate of proposed lawfulness as the proposal does not result in a material change in planning terms, even where a change to class C2 is proposed. The applicant states the proposed C2 use will be consistent with a family dwelling, and thereby not materially different.

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."

It is widely accepted that the case of *North Devon District Council v The First Secretary of State* [2003] Judgement is the primary case law for such applications. In their judgement, Lord Justice Collins states that 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 fulltime 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 North Devon judgement confirms that children are incapable of forming a 'household' for the purpose of Use Class C3. It also clarified that carers who provided 24-hour care but were not residents could not be regarded as forming part of a household. The concept of living together as a household means that a proper functioning household must exist and that both children and carer(s) must reside in the premises. In such circumstances, the use cannot therefore be considered to fall within Class C3(b) and must be considered as Class C2.

Noting the above, the North Devon case whereby children solely cannot form a single household, and having regard to the supplied supporting statement, it is accepted that the proposed use falls within Use Class C2 (and not C3b). As such, 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. 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's case has set out their position, whereby they consider the proposed 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 information submitted sets out that there would be up to six people at home during the day and night, including four children, one live-in carer and one additional

carer. The live-in carer will there 24 hours a day and would be contracted to stay for 12 months at a minimum. The supporting statement stated that there will be up to 2 part-time staff members that will support the live-in carer during the day. There will one be 1 part-time staff member on-site during the day and 'for a few hours to assist the live-in carer in their duties'. During the hours of 9pm and 9am, a staff member will be working the night shift and will support the live-in carer when the live-in carer is off-duty or asleep. It is noted that the property is a five bedroom property and the application proposes a maximum of four children with the additional one live-in carer.

Noting all of the above, it is not considered that the movements of associated with the proposed use as described would be materially different to the movements that could be expected from a typical household, noting that a similarly sized family unit could be accommodated within the property.

The intention is for the children to attend school, college or work which would be commensurate with activities reasonably expected from the existing lawful use.

The alterations to the existing parking arrangements are proposed. Nevertheless, it is considered that there would be no material difference regarding highways impact when compared to a tradition five bedroom dwelling.

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: Permitted Development

Approval Reason(s) (1)

- 1 The proposed use of the building to provide care for up to four children, one live-in carer and other carers working on a rota basis, 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.

Informatives (1)

- 2 For the avoidance of doubt, this Decision Notice relates to the following subr plans and documents:
 - Location Plan
 - Proposed change of use existing floor plan. Drawing number: SC / 24 331 – 101. Rev: B
 - Proposed change of use Proposed floor plan. Drawing number: SC / : 331 – 201. Rev: B
 - Planning Statement

