

2021/0905

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Change of use from use a class C3(a) to C3(b) dwellinghouse (Lawful development certificate for a proposed use)

2 Wood Walk, Royston, Barnsley, S71 4FH

Site Description

The application relates to an extended, detached 2 storey dwelling located on the corner of Wood Walk and Monkton Way in Royston. The dwelling has a 2-storey side extension on the southern elevation approved under application 05/1421). It also has had a recent garage conversion carried out under permitted development rights. To the front of the property are an open plan garden area and driveway. To the rear is an enclosed private amenity space.

The dwelling sits within a residential development. There is an immediately adjacent detached dwelling to the North, detached dwellings opposite Wood Walk to the West and detached dwelling, at right angles to the application property, opposite Monkton Way to the South. Beyond the rear boundary, to the East, are open fields.



Proposal

This application is for a s192 Certificate of lawfulness of proposed use or development which is used for the following;

(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.

The applicant seeks confirmation for the change of use from **C3a** (covers use by a single person or a family (*a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other*), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child) to **C3b** (covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems) as Permitted Development.

The C2b use would consist a children's care home to provide accommodation until a permanent foster carer is found. The children would have mild emotional, learning, and physical disabilities and be aged between 7 and 17 years old. The dwelling would accommodate upto 4 children and 2 staff members living at the property.

Care will be provided 24 hours per day on a shift pattern (7am-3pm, 3pm-11pm and 11pm-7pm) with a maximum of 2 carers overnight undertaking a sleep-in from 11pm to 7am.

No external alterations to the dwelling are proposed. Internal works have already been provided a completion certificate by Building Control.

The applicants have stated the aim of the home is;

to provide care, education, and skills in a safe and homely environment to one day have our children living independently.

The children will actively be involved in further education and life skill programmes as any other family would encourage.

Children here would be able to maintain their education and training provisions, which is important for the continuity and stability of their futures. Along with this they will be able to maintain contact with significant family members, where appropriate.

Whilst children are at schools or at various daily programmes the carers will maintain upkeep of the property.

The proposal will offer a much needed healthy and comfortable environment for the children.

Planning Context

S55 of the Town and Country Planning Act 1990 states;

The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a)the carrying out for the maintenance, improvement, or other alteration of any building of works which—

(i)affect only the interior of the building, or

(ii)do not materially affect the external appearance of the building,

S192 of The Town and Country Planning Act 1990 relates to the following;

(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.

Guidance states

If the LPA has no evidence of its own, or 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 is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

This reflects the ministerial advice that was formerly printed in Annex 8 to Circular 10/97, at

paragraph 8.15. 'Evidence' from neighbours, or others objecting to the application, consisting of no more than doubt, disbelief or scepticism regarding the evidence adduced by the applicant does not amount to evidence contradicting or otherwise making the applicant's evidence less than probable.

A full award of costs is liable to be made on appeal under section 195 against an LPA which refuses an LDC in ignorance or defiance of the rule in Gabbitts.

Consultees

Legal Officer – provided case law and examples

Adult Joint Commission – No comments as it is a home for children

Children Services – No comments

Representations

Given the nature of the application as a Lawful Development Certificate i.e., to purely establish whether the proposed use/operations would be lawful, neighbouring residents were not consulted. However, 15no. letters of objection have been received. The main points of concern are;

- Use is inappropriate for the location
- Business use inappropriate in residential area
- Increased noise and disturbance from residents and care workers
- Incorrect information on application form and statement
- Reduced safety for existing residents
- Limited amenities within the area for future residents
- Lack of consultation with residents
- Impact on highway safety and parking provision
- No links to the local community

Principle

A local planning authority can grant a certificate confirming that a proposed use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.

The concerns of the residents are noted, however, as with all such applications the LPA are only concerned with the factual background in this case to establish that any proposed use of buildings; or any operations proposed to be carried out in, on, over or under land, would be lawful. The merits of the application cannot be assessed against policies and guidelines, just purely against the factual background.

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.

The applicants have confirmed that internal alterations are required/have taken place to support the use, but these would not materially affect the appearance of the building.

Assessment

Where activity results in a material change of use of a building to a use falling within a different use class then planning permission will be required to authorise that change of use. Depending on the circumstances of each case, a children's home will fall into either a C2 or C3 use classification.

A material change of use from class C3 to C2 amounts to development requiring planning permission. There is therefore a potential requirement for planning permission to use a dwelling house as a children's home. The starting point is to first establish as a matter of fact and degree, whether such a use would constitute a change of use from C3 to C2. The issue largely centres on whether or not the children are in themselves capable of living together as a single household.

Class C3 (b) of the Town and Country Planning (Use Classes) Order as amended refers to "up to six people living together as a single household and receiving care e.g., supported housing schemes such as those for people with learning disabilities or mental health problems." If a children's home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there would be no requirement for planning permission.

However, the matter is less clear when the care is based on shift patterns, as is the case proposed. In the North Devon District Council [2003] case Justice Collins made the point that 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 it is unrealistic to expect children to look after themselves in a single household. It also clarified that carers who provided 24-hour care but were not resident could not be regarded as living together in a household. The concept of living together as a household means that a proper functioning household must exist, and children and carer must reside in the premises. In such circumstances, the use cannot therefore be considered to fall within Class C3 (b). A children's home run on shift patterns could not be considered to fall within Class C3 (a), because clearly, this is not occupation of a dwelling house by a single person or people living together as a family.

Equally, C3(c) distinguishes groups of people living together as a single household, which could for example include people with lodgers, or student accommodation for up to six individuals. Children's homes based on shift patterns would not be considered to fall into these criteria either. Following an assessment of case law and an Inspector's decision of 2010 at Stockport, use of premises as a children's home will generally be held to fall within Class C2 of the Order (Residential institutions).

Summary

The proposal is for 4no. children of ages 7-17 living together in a residential property, however, their car would be provided by 4no. carers who work on a shift pattern and do not permanently reside at that address.

As outlined above, it is unrealistic to expect children to look after themselves in a single household. Also, carers who provided 24-hour care but were not resident could not be regarded as living together in a household. The concept of living together as a household means that a proper functioning household must exist, and children and carer must reside in the premises.

In such circumstances, the use cannot therefore be considered to fall within Class C3 (b) and would fall into use class C2. Given a change of use from C3(a) to C2 is not permitted development, a Lawful development Certificate in this instance cannot be granted.

Recommendation

Lawful development certificate refused

It is unrealistic to expect children to look after themselves in a single household. Carers who provided 24-hour care but do not reside at the property and work in shift patterns cannot be regarded as living together in a household. The concept of living together as a household means that a proper functioning household must exist, and children and carer must reside in the premises. In such circumstances, the use cannot therefore be considered to fall within Class C3 (b) 'Dwellinghouse' and would fall into use class C2 'Residential Institution'. Given a change of use from C3(a) to C2 is not permitted development, a Lawful development Certificate in this instance cannot be granted.