

**2023/0974**

Hexagon Care Services Ltd

Lawful development certificate for proposed use of a dwellinghouse (use class C3) as a home for up to 3 young people (no older than 18 years of age) with care provided 24 hours a day by up to 3 no. care staff, a manager and a deputy manager during the day, and 2 staff overnight (use class C2)

30 Rosegreave, Goldthorpe, Rotherham, S63 9GG

### **Description**

The application site refers to 30 Rosegreave, Goldthorpe – which is a two-storey, detached 5 bed residential dwelling. The property is set close to the end of the cul-de-sac and the garden area backs onto a trainline. The property has a large hard surfaced parking area to the front which has space for 3 vehicles. The property has been extended in the past with a two storey rear and single storey extension. The site is located in the Urban Fabric in what is an entirely residential area characterised by dwellings similar in appearance to the site.



### **Planning History**

2013/1367 – Two Storey Rear Extension – Approved with conditions

### **Proposed Development**

The application is for a S192 Lawful Development Certificate 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 use class 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).

The applicant's planning statement indicates that 'Hexagon Care Services Limited, is the intended owner/operator of this detached property. The property is in the process of being purchased with the intention that it be used as a care home for 3 children. With regard to the property, its lawful use is as a dwellinghouse. The applicants are not aware of any relevant planning history.

As noted above, accompanying the application are existing and proposed floorplans.

The existing accommodation at ground level is as follows:

- a hallway leading to
- two reception rooms
- a shower room
- a sitting room
- a kitchen/diner with utility room, and beyond that a lounge

The existing accommodation upstairs is:

- a landing
- 4 bedrooms (including one with ensuite facilities) and
- a bathroom
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No physical works, internal or external, are proposed, and it is not intended to carry out any significant changes to the layout. The only change is that downstairs, a reception room becomes a study, and another reception room a multifunction room. Upstairs 3 of the 5 bedrooms would be used by the 3 children in care, and the remaining two bedrooms by the two members of overnight staff.

There is room on site to accommodate 3 cars with offsite parking nearby.'



## Consultations

Legal – Having read the supporting statements on this case I note that the applicants appear to accept that the use amounts to a change of use from C3 to C2(b). This is the inevitable result of the decision in the case of North Devon. However for the use to require planning permission we have to be satisfied that the use amounts to a “material” change of use and that is where the problem lies in this sort of case. The law provides that a change within a use class (assuming a condition has not been added to the planning permission limiting the scope of the authorised use) is to be treated as lawful and not a material change. However the converse is not necessarily the case when there is a change from one use class to another one still has to demonstrate that the change is “material”.

What constitutes a 'material change' is not defined within planning legislation and is a matter of fact and degree to be determined on the individual merits of each case.

## Representations

There is no statutory requirement for Local Planning Authorities to consult third parties, including neighbouring residents or parish councils on a lawful development certificate

application. This is due to the LPA being unable to decide the LDC application on its planning merits.

## **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 case was assessed against a two-stage test as follows:

- a. does the use lie within C3?
- b. in any event is there a material change of use involved?

As a result of the North Devon Case, the proposal is considered to fall outside C3, and within C2, because of the way in which the residents interact, including with the staff, to the extent that they may not be regarded as living together as a single household. However for the use to require planning permission we have to be satisfied that the use amounts to a "material" change of use. The law provides that a change within a use class (assuming a condition has not been added to the planning permission limiting the scope of the authorised use) is to be treated as lawful and not a material change. However the converse is not necessarily the case when there is a change from one use class to another one still has to demonstrate that the change is "material".

What constitutes a 'material change' is not defined within planning legislation and is a matter of fact and degree to be determined on the individual merits of each case, so the LPA has to weigh up the facts of this case and make a planning judgement as to whether the change would amount to a material change or not. The applicants have referred to a number of appeal decisions where this change has not been found to be material.

The applicant's statement indicates that 'the specifically proposed use is for 3 children with 3 members of staff during the day and 2 on night shift, but these members of staff would be rotated accordingly. Other members of staff providing care would be utilised as necessary, if at all, without their being resident in any way. There would normally also be a manager and deputy manager present during daytime working hours. Appeal decisions have found that even where staff providing care to other residents are on a shift system living in their own homes, the use may still, on its facts, be within use class C3.'

This property is for the accommodation of 3 children, and there would be 3 care staff (and a Manager and Deputy Manager during normal working hours) on site at any one time. Two of the care staff work 24 hours on shift, and the third 12 hours. Shift changes are predominantly at around 8 AM every 24 hours. The applicant states that the staff members do not necessarily come and go for their shifts in cars, as they may employ other means of transport (public transport, car sharing, bicycles etc). Experience indicates that up to half of staff employ alternative means of transport rather than cars.

It is agreed that this property is a substantial 5 bedroomed, dwellinghouse set on a reasonably large plot, and in consequence it would, in its dwellinghouse form, have on balance a larger number of vehicular movements than a smaller dwellinghouse would. The level of care required for the residents, in particular the potential rise in vehicular movements is significant for what has been described in the applicant's statement as 2 residents. The number of employees at the property at any one time would not outweigh the 3 residents proposed, with 3 members of staff during the day and 2 in the evening on a rota system. In addition, whilst parking standards are not a part of the LPA's assessment of an LDC, there is a need to assess the claim by the applicant that there will be no material change of use on the site compared to that of a single household dwelling. The property has parking for 3 cars, which will allow for all cars to be parked within the site. With a property of this size it would be expected that there would be a similar amount of movement and parking demands as proposed by the use.

Ultimately, the onus of proof test for an LDC application always falls with the applicant, not the Council to prove. The submitted information indicates that the use of the dwelling as the children's care home would not operate in a way which would amount to a material change to the existing use as a large 5 bedroomed dwelling, which could have a large family residing within it. It is not proposed to carry out any external alterations, or internal physical works. Essentially, this large detached property will continue to function in very much the same way as it does as a dwellinghouse.

In any case, based on the current information, the Council determines that the proposed development and associated activity would not lead to a material change of use on the land or this large 5 bedroomed property to C2 and that the LDC for the proposed use should be granted.

**Recommendation: Approve**