
2023/0889

Mr D Chitombo

Change of use from a C3a dwellinghouse to a C2 Children's Care Home (Lawful development certificate for a proposed use)

27 Primrose Way, Hoyland, Barnsley, S74 0HN

Site Location and Description

The application site refers to 27 Primrose Way, Hoyland – which is a two-storey, semi-detached residential dwelling. The site is located in the Urban Fabric in what is an entirely residential area. There is a parking space/area to the front of the dwelling, forward of the existing integral garage. 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

B/84/0832/HN – Conversion of car port into garage (Historic)

2021/0986 – Erection of two storey side extension to dwelling (Approved with Conditions)

2023/0619 – Change of use from a C3a dwellinghouse to C3b Children's Care Home (Lawful development certificate for a proposed use) Refused

Barnsley Metropolitan Borough Council certifies that the proposed use/development of the above land for the Change of use from a C3a dwellinghouse to C3b Children's Care Home (Lawful development certificate for a proposed use) is not lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

In the opinion of the Local Planning Authority, insufficient evidence has been submitted by the applicant that the proposed use would fall under Use Class C3b (Dwellinghouse), with the information submitted indicating that several key elements of the proposed use/development would in fact fall into use Class C2 (Residential Institution). Additionally, the level of care required, the likelihood of significant increase in vehicular movements and staff change overs would very likely represent a material change of use and character of the property to Use Class C2. A change of use from C3(a) to C2 is not permitted development and therefore a Lawful Development Certificate in this instance cannot be granted.

Proposed Development

The application is for a Section 192 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 Optimum Health Care Ltd, is the owner/operator of this semi-detached property and it is intended to be used as a care home for 2 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 floorplans, which outline the existing accommodation arrangement, consisting of a hallway leading to a lounge, study and open plan kitchen/dining room at ground level. The first-floor accommodation consists of a landing leading to 4 bedrooms, 2 of which are en-suite and a family bathroom.

No physical works, internal or external, are proposed, and it is not intended to carry out any changes to the internal layout. There is room on site to accommodate 2no parking spaces to the front of the property onto Primrose Way.

Consultations

Legal – The supporting statements on this case indicate that the applicants appear to accept that the proposal 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 District Council [2003]. However, for the use to require planning permission the Local Planning Authority (LPA) must be satisfied that the change 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, it is not necessarily the case when there is a change from one use class to another. It must still 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 (LPA) to consult third parties, including neighbouring residents or parish councils on a lawful development certificate (LDC) application since an LDC application is a matter of fact and law and is not determined on its planning merits or judged against National or Local planning policies or guidance. Despite this, 7 letters of representation have been received, of which 1 is anonymous and 2 do not provide an address.

The representations raise the following concerns:

- Impact on parking
- Access for refuse collection, emergency services due to parking in turning
- Impact on neighbouring amenities
- Loss of a family home
- Running a business from a residential area
- Covenant stating to be used as residential use only
- Anti-social behaviour – noise and disturbance
- Children playing creating noise
- Lack of garden space
- Contrary to Local Plan Policies H8 and H9
- Lack of evidence to demonstrate a need for this type of property

- Evidence supplied not reflective of current circumstances at the property
- Planning application should be submitted for change from C3 to C2
- Installation of fire alarms and lockable doors not characteristic of standard residential property
- Unsuitable location of this type of use due to elderly demographic
- Increase in crime and fear of crime
- Storage of rubbish on driveway
- Rat infestation
- No contact with neighbours in line with 'Good Neighbour Policy'
- Impact on property prices

In addition, 31 standard letters have been received in relation to:

- Detrimental impact on neighbouring amenities
- Loss of a family home
- Title deeds state residential use only
- Traffic and parking pressure
- The change will affect house price and demand negatively
- Protection of larger accommodation
- No evidence supplied to demonstrate need
- Evidence supplied not reflective of current circumstances
- Change from C3 to C2 requires planning permission
- Installation of fire alarms and lockable doors not characteristic of standard residential property
- Not suitable location
- Not a suitable property
- Impact on parking
- Access for refuse collection, emergency services due to parking in turning
- Covenant stating to be used as residential use only
- Anti-social behaviour – noise and disturbance
- Children playing creating noise
- Lack of garden space
- Unsuitable location of this type of use due to elderly demographic
- Increase in crime and fear of crime
- Storage of rubbish on driveway
- Rat infestation
- No contact with neighbours in line with 'Good Neighbour Policy'
- Impact on property prices

However, whilst these concerns are acknowledged, they cannot be taken into account during the determination of this application for the above reasons.

Assessment

General

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 in order 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 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 the LPA has 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. The opposite is not necessarily the case when there is a change from one use class to another, one still must 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.

Specific

The application relates to a large 4 bedroomed semi-detached dwelling located within a purely residential area which characterised by a mix of 2-storey semi-detached family sized dwellings and single storey detached bungalows.

The property benefits from a paved parking area to the front (facing towards Primrose Way) and an open plan garden area to the rear, which backs onto the properties fronting onto Green Acres.

It is to be established whether the use of the existing large family dwelling (C3) as a children’s home (C2) is material and would require planning permission.

The applicant’s statement indicates that the proposed use is for the accommodation of up to two children and two care staff with an additional carer/manager visiting the site between 9am and 5pm Monday to Friday. The 2no care staff would work on a 48hours shift pattern, followed by 60hours off. Shift changes would take place at 9.30am every 24 hours, with the

exception of changeover times, which last around ten minutes, there will no more than three members of staff on the premises at any one time.

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. It is considered that the level of staffing proposed for 2no children would not amount to a material change of use of the premises.

The applicant has indicated that there is off street parking to the front of the property for 2no vehicles. The area to the front of the property, measures 8m in width and 7.5m in depth, which based on a standard sized parking space of 2.5m by 5m, the area front of the property could accommodate 3no vehicles. The dwelling, as mentioned previously is located at the head of a residential cul-de-sac with no on-street parking restrictions and whilst the applicant has referenced parking for only 2no vehicles, the space is large enough to accommodate 3no vehicles.

It is acknowledged that there may be more cars parked during the changeover times, however, the applicant states that it is the company policy to encourage staff to use public transport and not to allow on street parking. Where the carers do not own their own cars, an electric/ hybrid vehicle will be available on site, however, this does not remain on site, and is to be used to transport the children, when necessary, e.g. to school or for other visits

Whilst parking standards and vehicular movements 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 and parking arrangements and movements is a method of doing so. The comments in relation to the on-street parking at these premises are acknowledged, however given the lack of parking restrictions on the residential cul-de-sac, it is not considered that any on-street parking associated with the proposed use would result in there being a material change due to the similarities between the dwelling and its existing use as a large family dwelling.

The applicant has provided details in relation to the vehicular movements at the premises and in relation to education and visitors. It is outlined that the children will generally be homeschooled via online tutors and that any family visits, which are rare, usually take place away from the home.

It is agreed that this property is a substantial 4 bedroomed, dwellinghouse set within a modest plot, and in consequence it would, in its dwellinghouse form, have a larger number of vehicular movements than a smaller dwellinghouse would.

The applicant has provided a table of the estimated vehicular movements of the current C3 dwellinghouse and the likely movements associated with the proposed use. It has been demonstrated that the proposed use would reduce the number of vehicle movements at the premises in comparison to a standard family dwelling. The estimated existing movements are considered realistic and not over exaggerated.

Concerns have been raised in relation to an increase in noise and disturbance from the children occupying the property and the lack of outdoor space. The dwelling is orientated on an east/west axis with a driveway area to the front (east) and a grassed garden area to the rear (west). Whilst this area is not enclosed, it is of a sufficient size to be classed as a garden/amenity space.

In relation to the increase in noise and disturbance, it is not considered that a home for upto 2 children would give rise to an increase in noise and disturbance above that of a standard 4bedroom family dwelling.

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 4 bedroomed dwelling, which could have a large family residing within it. Essentially, this large semi-detached property will continue to function in very much the same way as it does as a dwellinghouse.

In this 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 4 bedroomed property to C2(b) and that the LDC for the proposed use should be granted.

Recommendation: Approve