
2024/0666

Ease Assist Limited

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

3 Willows Close, Barnsley, S75 1FN

Site Location and Description

The application site refers to 3 Willows Close, a modest 3 bedroomed two-storey, semi-detached residential dwelling located with a modern residential estate which generally characterised by 2-storey family sized dwellings. There is parking for 2no vehicles to the front of the dwelling with an enclosed garden to the rear.

The site is located in the Urban Fabric in what is an entirely residential area characterised by dwellings similar in appearance to the site.

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 C2 (relates to residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.).

The applicant's planning statement indicates that Ease Assist Ltd, is the owner/operator of this semi-detached property and it is intended to be used as a care home for 2no 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, and open plan kitchen/dining room at ground level. The first-floor accommodation consists of a landing leading to 2no bedrooms and a family bathroom, with an en-suite bedroom located within the roof space.

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 Willows Close.

Consultations

Ward Councillors

Cllr Newing – concerns in relation to the impact on the local community

Cllr Lofts – raises concerns in relation to:

- Applicant not previously consulted the planning department
- Not consulted neighbours
- Applicant is a Sheffield based company for young people from out of Barnsley which would be contrary to the interests of neighbours and Barnsley residents
- Impact on property prices within the new-build estate

Whilst not formally consulted South Yorkshire Police have provided comments in relation to the security of the dwelling to protect the occupants; this information has been forwarded to the applicant.

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, 22 letters of representation have been received. The representations raise the following concerns:

- Risk to children and their safety
- Impact on parking, blocking drives
- Running a business from a residential area
- Covenant stating to be used as residential use only
- Anti-social behaviour – noise and disturbance
- Noise late at night
- Disturbing neighbours
- Car leaving premises late at night
- Unsuitable location of this type of use
- Impact on property prices
- Impact on quality of life
- Litter

Comments have been made in relation to “the applicant has stated that there are no neighbours to consult” this refers to information on BMBC Planning Explorer web page. Unlike a conventional planning application, there is no statutory requirement for the Local Planning Authority to consult neighbours on a lawful development certificate application, this refers to the fact no neighbour notification letters were sent to neighbouring properties. However, in this instance, it was nevertheless decided that a site notice would be posted opposite the site, which was posted on 2nd August 2024 and expired on 23rd August 2024. However, whilst the concerns outlined above 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 with 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. A number of appeal decisions have determined that this change is not material.

Specific

The application relates to a modest 3 bedroomed semi-detached dwelling located within a purely residential area which characterised by a mix of 2-storey semi-detached and detached family sized dwellings. The property benefits from a paved parking area to the front and an enclosed garden area to the rear.

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 one care staff. The 1no care staff would work on a 36hour shift pattern, with a team of four staff in the rotation. Shift changes would take place at either 8am or 8pm, with the exception of changeover times, there will be no more than one member of staff on the premises at any one time.

Appeal decisions have found that the use may still, on its facts, be within use class C3 even where staff are on a shift system and are providing care to residents but living in their own

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

Whilst noise and disturbance, vehicular movements and 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 of the site compared to that of a single household dwelling and the above are methods of doing so.

The applicant has indicated that there is off street parking to the front of the property for 2no vehicles. The dwelling, as mentioned previously is located on a residential cul-de-sac with no on-street parking restrictions. The comments in relation to the on-street parking and cars blocking neighbouring driveways is 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 modest 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/young adults will attend college etc. with monthly visits from inspectors and social workers. Whilst the specific number of estimated movements haven't been provided it is not considered that the proposed use would lead to a significant increase in vehicular movements which would give rise to an increase in noise and disturbance above that of a standard 3-bedroom family dwelling.

Concerns have been raised in relation to the noise and disturbance from the occupiers of the property. Whilst the concerns relating to noise and anti-social behaviour are acknowledged, they cannot be taken in account during the determination of this lawful development certificate. It is not considered that a home for up to 2no children would give rise to an increase in noise and disturbance above that of a standard 3-bedroom family dwelling. However, the concerns raised by the objectors have been raised with the applicant.

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 modest 3 bedroomed dwelling, which could have a family residing within it. Essentially, this semi-detached property will continue to function in very much the same way as it does as a dwellinghouse.

Comments from a local councillor have been made in relation to the applicant being located outside of the borough and the dwelling would house children from outside of the brough which would be contrary to the interests of neighbours and Barnsley residents Barnsley residents as a whole as it takes advantage of local scarce resources (school places, social services, medical facilities, etc.) which are already under pressure. The address of the applicant is not a material consideration in the determination of this application

There is no requirement for applicants/developers to consult with the Local Planning Authority prior to the submission of a planning application or an application for a lawful development certificate.

It is acknowledged that there is a covenant on the property which states that a business is not to be run from the premises. However, in planning terms, as outlined above, it is not considered that there is a material change in the use of the premises from a standard domestic dwelling and therefore no business is being run from the premises. Whilst a covenant is a legal document it has no bearing on the determination of this LDC and should be pursued through other channels.

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 modest 3-bedroomed property to C2(b) and that the LDC for the proposed use should be granted.

Recommendation: Approve