

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242232	
Site Address:	32 Cirrus Drive, Shinfield, Wokingham, RG2 9FL	
Expiry Date:	27 January 2025	
Site Visit Date:	18/09/2024	
Proposal: Application for a certificate of lawfulness for the proposed change of use of the dwelling to residential institutions (Use Class C2).		
PLANNING HISTORY		
Application No.	Description	Decision & Date
041564	Proposed erection of 310 residential units and bat barn together with associated car parking, new access roads, open space and landscaping. (Duplicate application with F/2004/3675).	Approved, 08/06/2005
010563	Outline application for proposed residential development to a maximum of 310 dwellings with retained and new open space plus community centre and security fence to European Centre for Medium Range Weather Forecasts.	Approved, 24/07/2002

APPRAISAL

Site Description:

The application site relates to a two storey, three bedroomed town house located in an established residential area. The site benefits from one off-street parking space.

Proposal Development and Contextual Information:

The Planning Statement outlines that the proposed use is for a children's care home accommodating up to two children, operated by Lifespring Residences Ltd, a provider of accommodation and care services for young people. Care would be delivered by a team of six carers working on a 48-hour shift pattern, with two carers present overnight, either sleeping or remaining awake on a rotational basis. A manager, who also acts as a carer, would visit the site on weekdays, and a daily carer would attend each day. At no time would more than four staff members be present on the premises simultaneously.

In addition to the core staffing arrangement, there may be occasional visits from family members or friends, local social services, and regulatory bodies. This includes OFSTED's annual visit requirement and monthly Regulation 44 inspections. Initially, the children would receive tutoring at home but are expected to transition to mainstream schooling in the future.

Assessment:

The Planning Statement acknowledges that the proposed use falls within Use Class C2 and, as such, a change of use from Class C3 would not benefit from permitted development rights. It is well established that a care home facility is typically classified as a C2 use, as defined in the Use Class Order. This classification is supported by relevant case law, judicial precedents, and longstanding interpretations provided by previous circulars.

The proposed use is described in the Planning Statement as a 'children's care home' and with the care packaged outlined, this falls within a C2 Use - The Use Class Order states 'use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)). Development Control Practice (DCP) also confirms that 'Children's homes fall within Use Class C2 Residential Institutions.'

In this case, the children would be unrelated and given their age, would be unable to form a household by themselves. The carers in this instance would not live at the building and would operate on a shift basis. The care home would not operate a single household based on these facts.

Whilst the applicant acknowledges the proposal represents a change of use, it is still relevant to consider the cases below as these aid in setting out the materiality of the change of use.

The Development Control Practice highlights the conclusion of change of use between from a residential dwelling (C3) children's care home (C2) in caselaw known as *Devon District Council v First Secretary of State and Southern Childcare [2003]*:

'A children's home may fall within Use Class C3 (Dwellinghouses) where the total number of residents does not exceed six and the carers and the cared-for live as a single household. This provision has given rise to debate, particularly where carers do not live at the premises, but operate on a shift basis. The key case used is North Devon District Council v First Secretary of State and Southern Childcare [2003] involving the use of a house to provide residential care for two children. In this case it was held that the concept of what constituted a 'household' meant more than simply the number of people. It was necessary to assess whether they could truly be regarded as a household and carers who did not live there all the time meant that the use fell within Class C2.'

A further case in Rochdale is referred to in DCP came to the same conclusion as the Devon judgement referred to above. It highlighted that child between 10 – 18 could not reasonably be regarded as being capable of living together as a single household. It was also observed that although there were carers present 24/7, they did not form part of a household because they did not live there and operated in a shift pattern. The following summary is provided by DCP:

'In Rochdale 3/8/2016 DCS No [400-012-452](#) the conversion of a dwelling in to a young persons' care home was found constitute a material change of use requiring planning permission. The appellant argued that the development would

fall within class C3(b), which covers uses involving up to six people living together as a single household and receiving care. He explained that the property would be occupied by no more than four young people aged ten to 18 in a domestic environment where they could receive education and therapeutic care as necessary. There would be two to three care staff on a 24-hour shift cycle, with a 10am daily changeover. In support of its refusal to refuse a lawful development certificate (LDC), the council referred to North Devon, where the court held that staff who provided 24-hour care but were not resident could not be regarded as living together in a household. In the case before her, the inspector noted that although adult carers would be present at all times, they would not be living permanently at the property as part of the household. She also remarked that a group of young people containing individuals as young as ten could not reasonably be regarded as being capable of living together as a single household. She concluded, as a matter of fact and degree, that the proposed development would not involve persons living together as a household and therefore would not fall within class C3. In considering whether the change of use was material, the inspector decided that the level of daily activity at the site would be more intensive and constant than might reasonably be expected to be generated by even a large dwellinghouse. The overall character of the use would differ materially from that of a dwellinghouse and the council's decision to refuse an LDC was well founded, she decided.'

A further case in Leeds is identified in DCP that a care home would not fall within a C3 use and constituted a material change of use:

'A claim that a children's care home would fall within the definition of a dwellinghouse was rejected in Leeds 3/3/2014 DCS No 400-003-340 because of the nature of staff supervision. The appellant stated that the property had been used as a dwellinghouse within Class C3. The property would accommodate up to three children and two members of staff would live in and be responsible for domestic chores, cleaning and preparing meals. Staff would sleep in the property for three consecutive nights and be replaced by two other members of staff. The appellant asserted that the use would fall within Class C3(c) which allowed a group of up to six people living together as a single household since no care would be provided to the children other than meeting their everyday needs. An inspector found that the proposals would be closer to being a household than was the case in North Devon where children were under the supervision of a team of six or seven people operating eight-hour shifts. But the use would still involve carers operating a shift system thereby falling outside Class C3(c). Class C3(b) allowed a household of up to six people, with some receiving care such as those with learning disabilities. But the appellant did not propose to house children in need of this type of care. Moreover, it would be used as a place for living and working with the staff being paid to look after the children. It was judged likely to generate more activity and traffic movements which would mean that it would involve a material change of use from a dwellinghouse to a residential care home falling within Class C2.'

Facilities providing care can fall within a C3 use where they form a single householder and do not exceed the HMO threshold, but for the reasons stated above, the proposed use would not be operating as a single household.

The Planning Statement states that *'that there is little material difference between the current and proposed use'*. This statement acknowledges that there is a material difference between the two uses. Whether the material difference is 'little' or 'great' does not alter the fact of whether the difference is material one. The Planning Statement does go on later to state there the change of use would not be materially different, but this does conflict with the early statement that there is a material difference.

Two appeal decisions outside of the borough are referred to in the Planning Statement but the individual circumstances of those are unknown and there are clear court judgements that set out the established position of when a material change of use has occurred. A 1982 court judgement is also referred to but there have since been more recent judgements clarifying relevant issue.

An Inspector's decision (APP/K5600/X/16/3146855 and APP/K5600/W/16/3146856) set out the application of the principles regarding whether a material change of use had occurred, based on the judgment (*R (oao) The Royal Borough of Kensington and Chelsea v (1) SSCLG (2) David Reis (3) Gianna Tong [2016] EWHC 1785 (Admin)*). The appeal decision stated that the following factors should also be taken into account when determining whether a material change would occur:

- *The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use, such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;*
- *Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;*

The difference in use class C3 and C2 fulfils a proper planning purposes, in particular by calculating and addressing housing land supply requirements, the types of housing required and for whom. This is a key function of the planning system set out in section 5 of the NPPF. Therefore, the change between C2 and C3 is not inconsequential for strategic planning and housing delivery. It highlights that there is crucial and legitimate planning purpose for a separate C2 and C3 Use Class and the different uses would materially affect the character of the use of land.

Whether the use is subject to different policies is also an indicator of whether a change of use has occurred. Policy TB09 refers specifically to care homes and this is not applicable to C3 dwellings. C2 accommodation is also calculated differently for housing land supply purposes and impacts the boroughs housing stock. The loss of C3 dwelling is also contrary to Core Strategy policy CP3. A recent appeal decision (ref: APP/X0360/W/24/3341373) in the borough to replace two houses with a commercial development was dismissed based on the loss of dwellings – the loss of a residential dwelling results in a material impact.

Applying for different C Use Classes would also cause a decision maker to give weight to that particular use based on the need for it. For example, a lack of care homes bed spaces may give rise to a decision maker giving greater weight to such a use than a C3 dwellinghouse.

Referring back to the appeal decision and judgement above, it is clear that there is a material difference in character between the existing C3 dwelling and the C2 Care Home use proposed.

It is further highlighted in the *Sage v Secretary of State for Housing, Local Government and Communities [2021]* Judgement, that treating environmental impacts as a crucial issue when determining whether a change of use would occur is not consistent with established law. The judgment states:

‘a material change of use can be made without any adverse environmental impact at all. Treating environmental impact as the seemingly crucial issue for the judgment as to whether a material change of use has occurred, or a purpose is reasonably incidental is not consistent with clearly established law. The crucial test is whether there has been change in the character of the use. Environmental impact can be relevant as evidence that a material change has occurred, because a use of the new character may be capable of yielding environmental impacts or have done so already. The Guidance [PPG] as written is apt to mislead as to what the real question is, and as to the true but limited relevance of environmental impact.’

In further consideration of the *Sage* Judgement, the assessment in the Planning Statement highlights that there would be multiple instances where there would be a change in the character as a consequence of being used for an institutional children care home. There will be an increase of over 50% in vehicle movements (not including Ofsted inspections, six-week social service visits, monthly Regulation 44 inspections, and independent visits from each child's family and friends). There would be a materially greater level of comings of staff and visitors that are not residents of the building, including a rota of 6 carers and one manager. The staff comings and goings would be a notable change in character from a residential dwelling that would also be perceptible to neighbouring occupiers.

A quote from a ministerial statement has been referred to that sets out broad comment that a change of use depends on the facts of case. It does not refer to any caselaw. The ministerial statement was also made by a previous minister from a previous government.

In summary, the proposed development would result in a material change of use. In this case, the different use classes fulfil a proper planning purpose and there are different policy and strategic implications between the existing use and the one proposed. There would be a material change in the character of the site and the way it functions. Planning permission is therefore required for this change of use.

The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics

include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION	
Conditions agreed:	Not required
Recommendation:	Refuse. Planning Permission Required.
Date:	11 December 2024
Earliest date for decision:	

Recommendation agreed by: (Authorised Officer)	<i>MC</i>
Date:	23.01.2025