

Application 20/02131/LDPU

Details of Application:	Cert of Lawful dev't - proposed use Application for a certificate of lawfulness for a proposed use to operate a small childrens home Date Registered 6 August 2020 (Subject to three year condition)
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Location:	Address: Silver Birches 9 Silchester Road Pamber Heath RG26 3EB Ward: Pamber And Silchester Parish: PAMBER CP OS: 461087 162713
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Applicant:	Calcot Services for Children (Assessments) Ltd
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Case Officer:	Meredith Baker 01256 845444
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RECOMMENDATION:

It is RECOMMENDED that the application be **APPROVED** subject to the conditions listed at the end of this report.

Reason for Approval

1. **The proposed change of use to a small children's home, as outlined within the submitted documents, does not constitute a material change of use from the existing Class C3 use (dwellinghouse).**

Planning Policy

The application is a Lawful Development Certificate for a proposed small children's home within an existing Class C3 dwellinghouse, and therefore must be considered under Town and Country Planning Act 1990 (as amended).

Description of Site

The application site comprises a two storey detached dwelling, a two storey detached annexe and outbuilding set within a large plot and located at the end of a private road.

Proposal

The proposal seeks a Certificate of Lawful Development for a proposed small children's home to accommodate up to four children and four members of staff, with a maximum of two staff staying overnight.

The children would have learning difficulties and would range between the ages of 5 to 18. A shift pattern is proposed for the adult carers in an eight hour pattern, although no vehicle movements are proposed after 22:00 or before 07:30.

Consultations

None received.

Public Observations

Five comments were received raising concern as follows (in summary):

- Private road is owned in portions residents in the locality.
- Increase in traffic as a result of the change of use which would negatively impact neighbouring properties.
- Increased traffic highway safety concern at the junction with Silchester Road and noting the road is also a Public Right of Way Footpath (Pamber 901).
- Proposal would be for a business and not a residential use.
- Additional traffic would be generated beyond occupants such as professionals, deliveries etc.
- The shift pattern questions the Class C3 use, as children need to be looked after and cannot run a house and therefore if not functioning as a household cannot fall within Class C3.
- Carers who provide 24 hour care but are not resident could not be regarded as living together in a household.
- Level of activity and nature of use would be materially different to current use.
- Behaviour of children would lead to noise pollution.
- Four children's home nearby in Tadley.
- Type of children to be cared for as not been communicated.

Relevant Planning History

BDB/32328	Relief from condition 4 of NDC 125472 (BDB 30280) Section 106 annexe tied to main dwelling	Granted	13.11.1991
NDC 125472	Double garage with store over.	Granted	29.01.1986

Assessment

Under the Town and Country Planning Act 1990 (TCPA), planning permission is required for any operational development or any change of use of land. In order for this certificate to be granted, it must be demonstrated that no change of use of land is involved.

Section 55 (1) of the TCPA outlines that "Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

Section 55 (2) of the TCPA, stipulates that is not taken for the purposes of this Act (TCPA) to involve development of land. The most relevant in this instance is (f) which states:

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.

Class C3 use

As outlined within the Planning Statement the Class in question in this instance is Class C3 (dwellinghouse) which under The Town and Country Planning (Use Classes) Order 1987 (as amended) is formed of three parts:

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

The current lawful use of the site is considered to be Class C3 with no change of use being approved by the Local Planning Authority. This in particular takes into account the planning history whereby the applications were assessed on the site being residential in nature (including a Section 106 agreement for the garage structure (annex) to be for residential purposes being ancillary to the use of the host dwelling).

The consideration is therefore turned to whether the proposed children's home comes under Class C3 (notably (b)) or a change of use has occurred, in particular to Class C2 (residential institution): which is:

- Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).
- Use as a hospital or nursing home.
- Use as a residential school, college or training centre.

"Care" is defined within the Order as personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class C2, also includes the personal care of children and medical care and treatment.

In this regard, a children's home could fall into either a Class C2 or Class C3 use, whereby it is a matter of fact and degree for each case.

A key Case Law for this debate is North Devon District Council v First Secretary of State and Southern Childcare [2003] whereby it was held that the concept of what constituted a 'household' meant more than 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 it was considered that the use fell to Class C2.

In following this Case Law it has been outlined that the carers on site would be in a shift basis and no adult would live there on a permanent basis. Therefore whilst given that there would be staff who would provide 24-hour care they were not a resident and therefore not regarded as living together as a household. Inspectors for other appeals such as under Appeal Ref: APP/P4225/X/16/3145074 against Rochdale Metropolitan Borough Council also note that a group of young people could not reasonably be regarded as being capable of living together as a single household (given that the carers cannot be included as not a resident). In line with the above given the proposed nature of the use with a shift basis for carers the proposal would involve a residential institution falling within Class C2.

Change of use - material?

Whilst the use to a children's home is considered to be Class C2, the North Devon Case Law outlines there also needs to be an assessment of whether a material change of use would occur from the existing situation. As such, this is a two-stage assessment process. In particular this would assess whether the change of use was material taking into account the activity of the site compared with a Class C3 use (dwellinghouse).

In particular the following appeals have been noted:

- Brecon Beacons National Park: 18/02/2014 Appeal Reference: APP/P9502/X/12/2205394 Inspector considered that a scheme for five children which would be supervised by a team of adults on a shift basis would not be material in planning terms (although considered to be Class C2). The scheme displayed many features associated with a family dwelling and while some of the children may make more noise than children in a typical family dwelling, the overall number of children was small. The property was large, sitting in a rural location and the coming and going of staff and family would not materially impact on the surrounding area.
- Hinckley & Bosworth Council 7/11/2011 Appeal Reference. APP/K2420/X/11/2155849: Inspector assessed no material change of use was involved for care up to three children with non-resident care staff working in shifts. The sole issue was the number of staff (three carers at one time excluding change over timings), however the Inspector considered that it was not materially different from what might be expected of a large family house such as a parent and two teenagers or young adults who live together and each uses a car to get to work or college and for socialising. Transport associated with school and weekend outings would not be an untypical occurrence in a family house. It was also stated that up to two vehicles departing from the property late at night would not, on its own, be a sufficient basis for determining that a materially different character of use would be taking place.
- Crewe and Nantwich Borough Council 24/04/2006 Appeal Reference. APP/K0615/X/05/2004825: In this case the Inspector considered whether the lack of any carers living within the property materially changes the character of the property - which in his opinion it did not. Although the carers when visiting would increase the number of coming and goings it would not disturb local residents or affect the character of the area.
- City of Wolverhampton Council 15/09/2006 Appeal Reference: APP/D4635/X/06/2013826 The inspector found that a use of a dwelling occupied by children with carers on a 24-hour basis with staff being rotated in shifts of eight hours each would not trigger a material change of use. Whilst would not fall within Class C3 (b) due to not being a household the day-to-day activity would be similar to that of a dwellinghouse with people coming and going to school and the maximum number of cars at any one time associated with employees (three) would not be materially different from its use as a dwelling in a suburban location.

In this respect, it has been confirmed that the patterns of workings would be eight hour shifts and would not include any vehicle movements between the hours of 22:00 and 07:30 (except in the instance of emergency vehicles etc.) It is also confirmed by the Agent that the children would be attending one of the applicant's local educational resources (therefore not on site) and the home would be used for children with learning difficulties with a potential age range from 5 to 18.

The level of care provided as outlined within the supporting information submitted with the application outlines that the carers would not be playing a professional role such as in medical or teaching and are purely for supervisory means similar to a parent in some respect, whereby it is confirmed that the carers would care for the children in a similar arrangement to a family, including cooking and cleaning for the children and general overseeing of their care, including taking the children to the local schools. Whilst the carers are professional in the sense that they are qualified for care (to NVQ 3 to 5 as required by OFSTED) and trained for personal 1:1 care, given the use of the home with no other professionals, noting that the care element is required for children with learning disabilities, this level of care is not considered to be 'high level of care'.

Also, no internal adoptions are required for the property to operate as required by the applicant. The property will be registered with OFSTED for 'care' but not 'medical care'. The communal living experience will be the same as a normal family home, functioning as a single household.

In considering the submitted information and taking into account the Case Law and appeals listed above, it is considered that the proposed use would be similar to that of a large household. The existing residential property is large and therefore would comfortably accommodate the proposed and up to four children and carers, in a similar situation to a large household. The children would be attending school in comings and goings which could be similar to that of a large household.

It is noted there is potential for noise, however, similar to that under the Brecon Beacons National Park Appeal while some of the children may make more noise than children in a typical family dwelling, the overall number of children is small (four) therefore not considered to materially change the use.

Concern has been raised over increased traffic movements as a result of the proposal. Whilst acknowledging that there would be movements, in particular a shift change over timings as with the above appeals, the day-to-day running with children attending school would not be so significantly different to a large household at this address, and the coming and goings are not considered to be a materially different character. Taking into account the reassurance that no vehicle movements from carers would take place between the hours of 22:00 and 07:30.

As such, based on the information submitted and the above assessment, the proposed use would not amount to a material change of use from the existing Class C3 use (dwellinghouse). The change of use would therefore not require planning permission on this instance.

Other matters

Under the Council's scheme of delegation, being a question of law, (and not a subjective view), a certificate of lawful development can be determined under delegated powers. It is noted that the public have raised concerns of the private nature of the road (and Public Right of Way). This matter does not fall within the remit of assessing this application. The existing dwellinghouse is already served by this road and as above it is not deemed that there would be a materially different character from the change to a children's home as to warrant refusing the Certificate of Lawfulness application.

It should also be noted that this assessment is based on the details submitted to the Local Planning Authority. If the situation changes there is potential that a material change of use would be triggered.

Conditions

- 1 This decision relates to the following plans and documents:
 - Location Plan
 - Supporting Statement by Pegasus Group - August 2020 MR P20-1894
 - Email from Michael Ruddock dated 01/10/2020 providing further information.
 - Email from Michael Ruddock dated 12/10/2020 providing further information.
 - Emails from Michael Ruddock dated 13/10/2020 providing further information.

N/A – Pre commencement conditions agreed

Y CIL checked

Net additional gross internal floorspace = 0

Signed: MVB

Name: Meredith Baker Case officer

Date: 13.10.2020

Y CIL checked

Signed: NLW

Name: NICOLA WILLIAMS PPO

Date: 15/10/2020