

DELEGATED OFFICER REPORT



**WOKINGHAM
BOROUGH COUNCIL**

Application Number:	243011
Site Address:	69 Eastcourt Avenue, Earley, Wokingham, RG6 1HH
Expiry Date:	28 February 2025
Site Visit Date:	N/A
Proposal: Application for a certificate of lawfulness for the proposed use of the existing dwelling for supported accommodation.	

PLANNING HISTORY

Application No.	Description	Decision & Date
F/1999/70799	Proposed Single Storey Side Extension To Dwelling And Conversion Of Garage To Granny Annexe Plus Rear conservatory	C/A – 21/01/2000
R/414/70	Alterations to garage	C/A – 01/10/1970
97/53	Detached house	Approved – 10/03/1953

APPRAISAL

Site Description:

The application site comprises a two-storey 6 bedroom 1950s detached dwellinghouse which benefits from previous alterations and additions. The dwelling is located within the major development location of Earley within a predominantly residential area where neighbouring properties are of a mixed scale, design and material palette.

Proposal:

The submitted Planning Statement sets out that the proposal is for 6 individuals, between 13-18 in age, to live at the property. In addition, there would be a maximum of 3 members of staff on site at any time, with 1 staff member on site overnight.

There are 6 bedrooms and 4 bathrooms within the existing property as well as a kitchen and dining room, playroom, living room and laundry room which would be shared by the intended occupants. Staff members would use a dedicated office during their shifts. No staff members would permanently reside at the property.

The submitted Planning Statement also states that the proposal is for semi-independent living for vulnerable individuals who are unable to live with their families but have the capacity and skills to live alone albeit with some support. Staff members

will be at the property to assist with tasks, however some tasks would be carried out by the residents independently.

It is also stated that the intended occupants would live together as one nuclear family akin to a typical family home. Whilst the duration of the stay for the intended occupants will vary, it is anticipated that the property would be their long-term home, and it is anticipated that a minimum stay will likely be one year. The property would be the individual's primary living accommodation for the duration of their stay.

Appraisal:

Whether the proposed use falls within Use Class C3(b) or Use Class C2

The first matter to determine is the Use Class of the proposal and whether this falls within a C2 or C3 use. The submitted Planning Statement states that the proposal accords with C3(b) of the Use Class Order which is defined as *the use as a dwellinghouse (whether or not as main residence) by a single household of not more than 6 residents where care is provided*.

While the proposed use is not described as a children's home within the applicant's submission, and it is stated that the property would provide "semi-independent living" for the intended occupants, the proposal ultimately comprises residential accommodation for children under the age of 18 with on-site staff members providing care and support to the residents. Notwithstanding that the intended occupants would not have complex or specific needs which requiring specialist care, the residents of the property would be children who cannot live independently and would require the care, albeit to a limited degree if that is the case, and support/supervision of staff throughout their stay. The staff members are ultimately responsible for the care and wellbeing of the residents throughout their stay at the property.

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 permanently reside at the site and would operate on a shift basis. Therefore, the proposed use would not operate as a single household based on these facts.

The Development Control Practice also highlights the same conclusion based on 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 children aged 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:

'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.'

This case appears to have key similarities to the *Leeds Case* discussed above, whereby the intended occupants would not have specific or complex needs requiring specialist care. As the carers (the applicant's employees) would not permanently reside at the site and the intended occupants would be under the age of 18, the proposed use could not be considered to operate as a single household under Class C3(b). This conclusion is consistent with the case law discussed above.

The conclusion that the proposed use would be C2 is also supported by Circular 08/2010 which is referred to by the applicant in their Planning Statement. This states:

'It remains the case that in small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class (Class C2), regardless of the size of the home. Local planning authorities should include any resident care staff in their calculation of the number of people accommodated.'

This guidance was also replicated in Circular 03/2005, which superseded Circular 13/87, which is also cited by the applicant. It must however be noted that all three circulars have been withdrawn.

The clear starting point is that a care home facility would normally be classed as a C2 use in accordance with the description in the Use Class Order, the case law and judgements cited above, and the longstanding understanding provided by previous circulars.

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.

Whether the proposed use constitutes a material change of use of the site

The submitted Planning Statement also sets out that if the LPA are of the view that the proposed use falls within Use Class C2, it would not constitute a material change of use compared to its lawful use as a dwellinghouse. The case law cited is noted, but there have been further decisions and judgements since those listed that provide greater clarity on whether a material change of use has occurred.

An Inspector's decision (APP/K5600/X/16/3146855 and APP/K5600/W/16/3146856) set out the application of 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 a 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 proposed use is subject to different development plan policies is also an indicator of whether a change of use has occurred. MDD Local Plan policy TB09 refers specifically to care homes and 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 a C3 dwelling is also contrary to Core Strategy policy CP3.

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 important to note that one of the principles highlighted states that *'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'*. Therefore, even if there are no additional environment impacts as a result of the proposal, a material change of use can occur.

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.'

It is noted that the Planning Statement refers to several facts of the case which **could** demonstrate that there would be no significant impact on the existing character of the use of the site, and amenities, such as the length of staff shifts. However, as discussed above environmental impact is not the sole consideration for establishing whether a material change of use would occur. The proposal has the potential to have a significant impact on the character of the use of the site and other material planning considerations.

It is noted that the applicant has referred to several decisions taken by other Local Planning Authorities, stating that these represent a nationally consistent approach to this matter, as well as two appeal decisions in support of their application. However, the exact facts of each case and how they compare to this proposal is unknown, and different local circumstances (e.g., policy requirements) may have resulted in a different view being taken.

In summary, the proposed development would result in a material change of use of the character of the site.

Conclusion:

The proposed use of the existing dwelling for supported accommodation for up to 6 children constitutes development requiring planning permission as it would result in a material change of use from Use Class C3 to C2. The description provided in the Planning Statement falls squarely within a C2 Use Class. The use as described would not form a single household and therefore would be a C2 Use Class. This conclusion is supported by case law. The proposed use would result in a material change to the character of the use of the site. C2 and C3 uses draw upon different planning policies; strategic assessments and can attract different material weight: they are materially different uses with different material planning consequences. This certificate is therefore recommended for **refusal**.

Community Infrastructure Levy (CIL): When planning permission is granted for a development that is CIL liable, the Council will issue a liability notice as soon as practicable after the day on which the planning permission first permits development. Completing the assumption of liability notice is a statutory requirement to be completed for all CIL liable applications.

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:	Refusal. PP required.
Date:	26 February 2025
Earliest date for decision:	N/A

Recommendation agreed by: (Authorised Officer)	
Date:	27/02/25