

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	243147
Site Address:	3 Salmond Road, Shinfield, Wokingham, RG2 8QN
Expiry Date:	7 February 2025
Proposal: Application for a certificate of existing lawful development for a children's care home (C2 use)	

PLANNING HISTORY

Application No.	Description	Decision & Date
191777	Householder application for the proposed erection of a two-storey side/rear extension, plus internal alterations	Approved 29/08/19

INFORMATION PROVIDED

By the applicant:

- Ofsted Reports carried out in 2009, 2010, 2014, 2018, 2020, 2021 and 2022
- Planning Statement dated 12th December 2024
- Supplementary Planning Statement dated 18th December 2024
- Supporting Statement from Wokingham Borough Council Service Director, Early Help and Social Care
- Application Form

By the Council:

- WBC Council Tax records confirm that the property *"appears to have been used for children's home for period 3.12.2003- 14.7.2022, as an exemption from council tax was on the account for all occupiers under 18 years old"*. However, the property is currently recorded as a long-term empty property.

By third parties:

- None – no public consultation carried required as per paragraph 008 Reference ID: 17c-008-20140306 of the NPPG which states *"There is no statutory requirement to consult third parties including parish councils or neighbours"*.

APPRAISAL

The application is for a Certificate of Lawful Existing Use of the building as a C2 children's care home. It is noted that use of buildings for care home purposes can fall into use class C3(b) or C2. However, in this case the property would fall into a C2 use as children cannot be left unaccompanied or live as a single household unit without the presence of an adult. The requirement of C3(b) use class is *"use as a dwelling house by not more than six residents living together as a single household, (including*

a household where care is provided for residents).” As such, the LPA are content that the use class referred to in this certificate of lawfulness application (C2 use) is correct.

In determining a Certificate of Lawful Existing Use a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. In the case of this Certificate, it must be demonstrated that the use has been on-going continuously for at least ten years. In this case, the required time period is 10 years prior to the date of submission of this application, and so the period to be accounted for and evidenced between 12th December 2014 – 12th December 2024.

Planning merits are not relevant at any stage in the process. The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that “if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided that the applicant’s evidence is clear and unambiguous to justify the grant of a certificate”.

The applicant has submitted Ofsted Reports from 2014, 2019, 2020, 2021, 2022 which describe the property as a children’s care home. Within these reports it refers to the dates of previous inspections carried out in 2016, 2017 and 2018. Although the reports of 2016, 2017 and 2018 have not been provided, it is considered that their reference in the submitted reports is sufficient on the balance of probability to account for these years. The year of 2015 is not accounted for in Ofsted reports, however Council Tax records confirm that the building was registered as a children’s care home from December 2003 – July 2022, accounting for 2015 – 2018.

It is noted that in 2019 a planning application (see planning history) was approved for an extension at the property. This application was submitted as a householder application – this type of application should only be used for buildings in a C3 (residential) use, not C2 uses. However, it can be seen on the application form that the applicant was a children’s care home provider (Calcot Services for Children), despite a procedural incorrectness of the application type

Limited information has been submitted to account for 14th June 2022 – 12th December 2024. However, within the supplementary it states that the applicant purchased the property on 7th June 2023 to continue being used as a children’s care home (prior to purchase that it had a period of sales marketing) Since purchasing, the Council has been renovating the property with the express intention to continue the children’s home use. The renovations are now complete and the Council (the applicant) are now ready to re-register the property with Ofsted and start placing children there.

Notwithstanding the above, the building has not been physically used as a care home for in excess of 2 years and this is considered to be more than a *de minimis* gap, but on balance it is considered that the appellant’s case is justified on the basis that despite the period during which the property was not in active occupation, the continuity of use as a children’s care home was maintained to an extent sufficient to conserve use rights.

Panton & Farmer v Secretary of State and Vale of White Horse District Council [1999] JPL 461 where the High Court confirmed that an accrued planning right could only be lost in one of three ways, by operation of law. These are:

- 1) Abandonment
- 2) Change of new planning unit
- 3) Material change in use

None of the above are considered to have occurred; with the period for refurbishment not constituting 'abandonment'. The Council hold no evidence to the contrary of the applicant's or make their version of events less probable.

Conclusion

Within the NPPG "in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability" (NPPG: Paragraph: 006 Reference ID: 17c-006-20140306).

In this instance the evidence presented to cover the required time period is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

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: APPROVE

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated that the building has been used for a C2 use (children's care home) for a consecutive period of ten years. It is therefore considered that the application of a certificate of existing lawful use should be granted.

Date:	19 December 2024
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Recommendation agreed by: (Authorised Officer)	
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Date:	19/12/24
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