

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242842
Site Address:	38 Woodwaye, Woodley, Wokingham, RG5 3HB
Expiry Date:	3 January 2025
Site Visit Date:	N/A
Proposal: Application for a certificate of lawfulness for the proposed use of the existing dwelling as a children's home.	

PLANNING HISTORY

Application No.	Description	Decision & Date
There is no planning history relating to this site.		

APPRAISAL

Site Description:

The existing site comprises a bungalow style, 3-bedroom dwelling situated within a residential area, with hardstanding parking area to the front and typical residential private amenity space to the rear. The property sits on a road of similar bungalow style residential properties.

Proposal:

The submitted Planning Statement sets out that the proposal aims to use the property as a residential care home for young people, aged between 9-18 years old (boys and girls).

The property has 3 bedrooms and the proposal will be for up to 2 looked-after children. It is proposed to have at any one time a maximum of 4 staff who will cover for the 24 hours, minimum 2 staff in shift and 4 maximum to accommodate the children's needs if required.

The Planning Statement also refers that the children for which the home is intended to present complex needs arising from emotional trauma and subsequent behavioural issues. Structure will be provided through daily living routines, group activities and one to one time with keyworkers and also allow them space to reflect. No structural changes to the accommodation are proposed.

It is noted the proposed Floor Plans show 3 bedrooms (one within the loft space), kitchen, living room, ground floor bathroom, an ensuite within the loft space and garage. However, page 6 of the Planning Statement mentions that *"The premises is proposed to be laid out to provide a living room/dining room, office/ activities room, kitchen, WC, hall, patio area and garden at ground level and 4 children's bedrooms,*

one staff bedroom and a bathroom at first floor level.” This appears to relate to a different scheme.

Assessment:

The first matter to determine is the Use Class of the proposal and whether this falls within a C3 or a C2 use. It has been established by case law that where care is provided and this is not the main residence of the carers, the use falls within C2 and not C3b.

The supporting Planning Statement refers that the house will be a residential Children’s Home registered for boys and girls aged between 9-18 years, to provide care for up to two looked-after children. With the care package outlined, this falls squarely 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 Planning Statement argues that there would be a live-in carer, however this is unlikely to be the case as the same Statement also refers the carers would operate on a shift basis with staff coming in and going out to support the children’s needs. The care home would not operate a single household based on these facts.

The Development Control Practice also highlights the same conclusion based on case law 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 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.'

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.

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

The applicant also proposes the suggestion that even if the proposal were a C2 use, planning permission would not be required if the change of use would not be a “material change” of use. Case law surrounding further decisions and judgements provides greater clarity as to whether a material change of use has occurred or not.

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 (*inter alia*) 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 purpose, in particular by calculating and addressing housing land supply requirements, the types of housing required and for whom. This is 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.

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.’

The Planning Statement also refers that the children looked-after are likely to present complex needs arising from emotional trauma and behavioural issues, including but not limited to neglect or abuse. On this aspect, a recent Inspector’s Decision (APP/Z4718/X/23/3335778)(dated October 2024) considered that whilst the proposed use had something in common with a C3 dwellinghouse use, the character of the use could be materially different to that of a dwellinghouse with emotional and behavioural disorder provision being something quite different to a dwellinghouse. The Inspector noted that the behaviour of the residents of a property clearly has the potential to have an effect on neighbouring properties and on the character of the use, and concluded that based on the evidence provided, the proposal would amount to a material change of use for which planning permission is required.

In summary, the proposed development would result in a material change of use and the character of the site therefore planning permission is required for the development.

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:	12 December 2024
Earliest date for decision:	N/A

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