

DELEGATED FILE NOTE

CASE OFFICER: ...Melissa Tyler.....

APPLICATION REFERENCE	BRIEF DESCRIPTION OF DEVELOPMENT	APPLICATION SITE
24/01544/LDCP	Use of the property as a children's home for up to four children	44 Sparhawke Letchworth Garden City Hertfordshire SG6 4PX

Submitted Plan Nos

Location Plan 24068-001 24068-010 Block Plan

1.0 Policies

2.0 **Site History**

- 2.1 19/01818/FPH Retention of detached outbuilding in rear garden to serve as ancillary living accommodation for 6 bed HMO **REFUSED**
- 2.2 19/02596/FPH Retention of detached outbuilding in rear garden to serve as ancillary living accommodation for 5 bed HMO **CONDITIONAL PERMISSION**
- 2.3 24/01539/FP Change of use from an HMO (Use Class C4) to a Children's residential home (Use Class C2) **TO BE DETERMINED**

3.0 **Representations**

- 3.1 Although Consultation is not required as part of a Lawful Development Certificate application the following comments and objects were received:

3.1 **Neighbour Representations**

Objections have been received from No. 42 Sparhawke

Below is a summary of submitted objections

- *Impact on amenities*
- *Anti-social/criminal behaviour*
- *increase in noise*
- *setting a precedence for change of use in residential area*
- *Questions over the need*
- *Unsuitable dwelling – terrace property - lack of provision and space*

Concerns surrounding the applicant/company, and the compliance of the Children's Homes to other legislation outside of Planning are not relevant planning matters and therefore cannot not be considered during the determination of this application.

4.0 **Planning Considerations**

4.1 **Site and Surroundings**

- 4.1.1 The application property is a 1950's terrace property which has been changed into a 5 person HMO.

4.2 **Proposal**

- 4.2.1 The Lawful Development Certificate seeks confirmation specifically that the use of the property for up to four children, with two non-resident carers on a shift basis would be

lawful.

- 4.2.2 There will be up to 4 residents of mixed sex, living together as a single household, and up to 2 members of staff (dependent on the complexity of user), working on a shift basis at the property generally, with members of staff providing 24-hour care in a family oriented way as normal parents would, with levels of care varying based on age and need of each child/young person and to support community access (i.e., someone going out for appointments or activities or to do shopping, assistance with home/school learning). 1 – 2 members of staff will be present during the daytime, depending upon the specific needs and requirements of the residents and one member of staff will also be at the property and sleep there at night (again depending upon the needs of the residents) although this will not be their principal place of residence.

4.3 Key Issues

- 4.3.1 The key issues relate to whether the proposed change of use from HMO residential dwelling C4 to C3 is lawful.
- 4.3.2 The burden of proof is on the applicant to show that on the balance of probabilities a lawful development certificate should be granted. The evidence must be clear and precise in order to justify granting a certificate and should be accepted unless the LPA has any evidence to the contrary.
- 4.3.3 As the present use of the premises as a HMO dwellinghouse falls within Class C4, the use of the property can change from Use Class C3 to Use Class C4 without the need for permission. Furthermore, the change back, from Use Class C4 to Use Class C3 is also lawful. The definition of Use Class C3(b) in the Town & Country Planning (Use Classes) Order 1987 (as amended) reads “use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household where care is provided for residents”
- 4.3.4 The proposal as described above would class as C2 in my view given that the carers would be on a shift pattern and therefore not their principal place of residence. The proposal is for a residential care home for up to four children which would constitute a material change of use as defined in Section 55 of the Act.

Case Law – C3/C2

- 4.3.4 Established case law provided for by the North Devon judgement in respect of a house used to care for children provides understanding of the use of a Children’s Care Home which is a fundamental basis of determining the application. This case considered whether a dwellinghouse used to provide residential care for two children fell within Class C2 or C3(b). Only the children would live permanently on the premises; the carers being resident elsewhere and providing care on a shift rota system. In the North Devon case, the property was being used as a home for two children. Two non-resident staff were at the property at all times with a shift system operated by 6 to 7 carers to maintain the requisite cover. The application was based on the premise that the children by themselves would constitute a single household with the use falling within Class C3(b). Crucially, the Judge found that the children could not be regarded as constituting a household by themselves. The question also arose as to whether carers who do not live on the premises but who, between them, provide 24 hour care can be regarded as living

together as part of the household. The court held that the concept of living together as a household means that a proper functioning household must exist and thus, for the use to fall within Class C3(b), the children and carers must reside in the premises. Otherwise, the use falls within Class C2.

Material Change of Use

- 4.3 The North Devon case also determined that whilst a change of use had occurred, it was not a material change of use and therefore planning permission was not required. Consequently, in this case it is necessary to determine whether the proposed use of the property would constitute a material change. Materiality has to be assessed on a fact and degree basis.
- 4.3. The proposal is for use as a residential home for no more than 4 children. Use Class C3 (b) is use of a dwellinghouse by not more than 6 residents living together as a single household (including where care is provided for residents), whereas Use Class C2 involves use for the provision of residential accommodation and care to people in need of care. It is not clear in terms of the detail submitted as to whether the children would be in need of care or the normal level of care for children provided by their guardians within a household.
- 4.3. The Planning Statement submitted in support of the application states that there would be up to 2 members of Staff working on a shift basis at the property providing 24 hour care.
- 4.3. Due to the lack of clear information, the details of the operation are not precise and are ambiguous. Consequently, it has not been shown, on balance of probability, that the proposed use would fall within Class C3(b) of the Use Classes Order.
- 4.3. I therefore do not have adequate evidence to demonstrate whether the proposed use would or would not be a material change of use. However, based upon the limited information available the children with learning difficulties or mental health issues are likely to be in need of care. Therefore, I consider that the proposed use would go beyond Use Class C3(b) and would instead be more akin to a Use Class C2 care facility.
- 4.3. A dismissed appeal Ref: APP/C4615/X/22/3301567 4 Perrins Rise, Wollescote, Stourbridge, West Midlands DY9 8XP is a similar proposal of the application here. The Inspector concludes that:

"Paragraph 14. Class C3 allows for the use as a dwellinghouse by not more than 6 residents living together as a single household where care is provided for residents. While it is proposed to have a constant presence of one carer/manager at the home, the premises is unlikely to provide permanent accommodation for that person. The employee would work on a form of rota, albeit with possible longer periods on duty than that provided by staff on a daily/night-time rota. On days off and when leave is taken, the carer/manager would require accommodation elsewhere as their private space at the premises would be occupied by a replacement carer/manager. Furthermore, the two additional support workers would be employed on a shift basis, with the care undertaken by different members of staff coming and going to the premises."

“15. The circumstances before me propose a use based on complex care provided by the adults in the household who would be various staff working at the premises on a shift pattern with one live-in member of staff. I therefore find that on the balance of probabilities the use of the premises would not fall within Class C3(b). It would provide residential accommodation and professional support for three children in need of care, with carers who would work for the provider and use the premises in which to reside during working periods. The children and staff would not, as a matter of fact and degree, live as a single household and the use would therefore fall within Class C2.”

Parking provision

- 4.3. No supporting plans have been submitted. Following confirmation from the agent there are currently two off street parking space on the front drive. There are also no parking restrictions on Sparhawke for on-street parking.
- 4.3. There are no specific parking standards for children's care homes are detailed within the Parking SPD. It is considered that given the existing dwelling is required to have a minimum of 2 off-street car parking spaces and the small number of people residing at the property are unlikely to have the use of a vehicle given the age of the residents. However, given the potential extra requirements and visitors needed to provide the care of the children in the proposed Home, one can only assume that there is a need for additional visitor car parking spaces which would be lacking in the current situation. Therefore, I am minded to conclude that given the potential need for additional car parking spaces which have not been demonstrated this would add to the conclusion that the proposal would constitute a material change of use.

4.4 Conclusion

- 4.4.1 As a result of the above discussion, it appears clear that the proposal would be materially different in use class terms than the existing use, by reason of the variance in use class as well as operational differences. There is a material change in use which requires planning permission and there is no automatic permitted development right which is considered to apply in this scenario, and as a result the proposed change of use would be material, and thereby development as defined by section 55 of the Town and Country Planning Act 1990 (as amended). Accordingly, the application for a certificate of lawful use should be refused.

5.0 Recommendation

- 5.1 That the application for a certificate of lawful use be **REFUSED** for the following reason:
1. The proposed use is considered to represent a material change of use of the premises, which is development as defined by the Town and Country Planning Act 1990 (as amended). There is no part of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which would apply in this case. The application for a certificate of lawful use is thereby refused by reason of the proposal being development for which planning permission is required.

Signed  Anne McDonald Determining Officer	Development Management North Hertfordshire District Council Council Offices Gernon Road Letchworth Herts SG6 3JF
Date: 30 September 2024	