

DELEGATED FILE NOTE

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

APPLICATION REFERENCE	BRIEF DESCRIPTION OF DEVELOPMENT	APPLICATION SITE
24/01760/LDCP	Use of garage as a habitable room and use of existing house for the provision of care to no more than 3 young people living together as a single household (Class C3b)	25 Milestone Road Hitchin Hertfordshire SG5 2SZ

Submitted Plan Nos

MR/01 MR/02 Location Plan

1.0 Policies

2.0 Site History

2.1 01/00828/1HH Single storey side and rear extension for disabled person
CONDITIOANL PERMISSION

2.2 04/00875/1HH Single storey front extension and porch, rear conservatory and first floor side extension **CONDITIOANL PERMISSION**

2.3 **21/02188/FPH** Erection of attached front elevation garage **REFUSED**

2.4 **24/01308/LDCP** Change of use of existing dwelling to children's home (under Class C3b) and conversion of garage into habitable accommodation. **REFUSED**

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:

3.2 **Neighbours - 27 Milestone Road, Hitchin - Objection**

As residents of Milestone Road, we do not support this application as the reasons mentioned (and supported by the petition signed by neighbouring residents) in our letter dated 18th July 2024 are still relevant.

- ② *In reference to the letter dated 25th June 2024 from the Crime Prevention Design Advisor (Ref: CPD 11652024), it states that parts of Westmill are currently being regenerated to the Police preferred minimum security standard that is Secured by Design (SBD), which should help lower the crime levels. A home of this nature could potentially increase crime levels.*
- ② *The same letter states that the local Crime Prevention Design Advisor is not able to fully support the application due to concerns over the property potentially becoming a secure nit which could result in increased calls to the police, pressure on an already overstretched service.*
- ② *This is seemingly a 'for profit' children's home; research suggests that 'children's homes operated by profit-making firms had a disproportionately higher number of police callouts compared with those of not-for-profit providers' 1.*
- ② *The applicant is the owner of Bluebird Care, which is based in Uxbridge, Ickenham and Hayes2; the areas they cover are all based in London or a London Borough. Why are they looking at a property in Hitchin? Does this meet a 'Local Housing Need' and were the Local Authority consulted? According to the Government website, a local area risk assessment must be carried out3. Has this been done, and are we permitted to view this?*
- ② *Neither we nor the Crime Prevention Design Advisor can see that the company is OFSTED registered, so if it is regarded as 'unregulated', you could forgive us as residents for fearing that this is purely a business decision rather than something taken with the welfare of vulnerable children at the forefront of their minds. The number of those living in unregulated care rose by 45% from 2018-22, according to Department for Education figures4, and children are increasingly being placed far from their home5. In moving away from their home area, these children lose their support networks, are at greater risk of going missing and become ready-made targets for exploitation by criminal gangs6.*
- ② *There is also evidence to suggest that 'Children living in children's homes are being criminalised at excessively high rates compared to other boys and girls, including those in other types of care'7*

- ❑ *Based on our research, unregulated care homes in the private sector do not seem to have the children's best interest at heart and we fear that the outcomes for them would not be positive.*
- ❑ *An alternative location should be considered with better accessibility and facilities, such as the town centre. The current location is more than a 30 minute walk from the town centre in a quiet residential street among vulnerable elderly residents and families with young children whose safety and wellbeing could be compromised as a result of this dwelling.*
- ❑ *There is a bus stop between 25 and 27 Milestone Road which is utilised throughout the day from Monday to Saturday, with elderly people and young children waiting for the bus. There is currently no fencing to separate the path from the bus stop and we are concerned that an unsecured unit means that if a resident were to leave of their own accord, there is no protection for residents.*

4.0 Planning Considerations

4.1 Site and Surroundings

- 4.1.1 No. 25 is a two storey semi-detached dwelling situated on the east side of Milestone Road and within a predominately residential area of Hitchin. The application property features an existing single storey side and front extension. The site also benefits from 2 off-street car parking spaces.

4.2 Proposal

- 4.2.1 Lawful Development Certificate is sought for the use of garage as a habitable room and use of existing house for the provision of care to no more than 3 young people living together as a single household (Class C3b)
- 4.2.2 Parking – a space for 2 cars are provided.

As a result of the proposed change of use, conversion of the existing garage to habitable accommodation is proposed. A new window is proposed to replace the existing garage door on the front elevation.

The property would be the main or sole residence of the persons being cared for. The carers would be living with the young people like one family.

This application has been amended following the refusal of the previous LDC application.

4.3 Key Issues

- 4.3.1 The key issues relate to whether the proposed change of use from residential dwelling C3(a) to C3(b) to a residential care home for up to four children would constitute a material change of use as defined in Section 55 of the Act.
- 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 The applicant is seeking confirmation that the use of the application premises by up to three children living together as a single household, with 24-hour resident care falls within Class C3(b). As the present use of the premises as a single dwellinghouse also

falls within Class C3, a change from one use to the other does not constitute development and therefore there is no requirement to obtain planning permissions for such a change of use. 16. 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”

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 3 children, with two carers living in the house and would be part of the household. 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.
- 4.3. During the application process I sought further clarification on the living and care arrangements.
- ☐ How many carers in total will be employed working at the property?
2 carers
 - ☐ How many carers are in the house at any one time?
2 carers
 - ☐ Are they on any form of shift pattern and if yes what is this?
No
 - ☐ Is this their (carers) only place of residence / home?
Yes
- 4.3. Based upon the information available I consider that the proposed use would class as Use Class C3(b) because the carers and children will live as one householder. If the

host dwelling was not the sole residents of the carers and shift patterns were introduced then my view would have been that the proposal would instead be more akin to a Use Class C2 care facility.

Parking provision

- 4.3. No supporting plans have been submitted. Following a site visit, there are currently two off street parking space on the front drive. There are also no parking restrictions on Milestone Road 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 The proposal to use C3b is considered lawful, in line with the recent revisions to The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

5.0 Recommendation

- 5.1 That the application for a certificate of lawful use be **GRANTED**:

- 1. The proposal change of use from C3 to C3b would not constitute a material change of use and would fall within the same use class. As such, the proposed use is considered lawful, in line with Section 55 of The Town and Country Planning Act 1990 (as amended).

Signed  Sam Dicocco Determining Officer	Development Management North Hertfordshire District Council Council Offices Gernon Road Letchworth Herts SG6 3JF
Date: 1 October 2024	