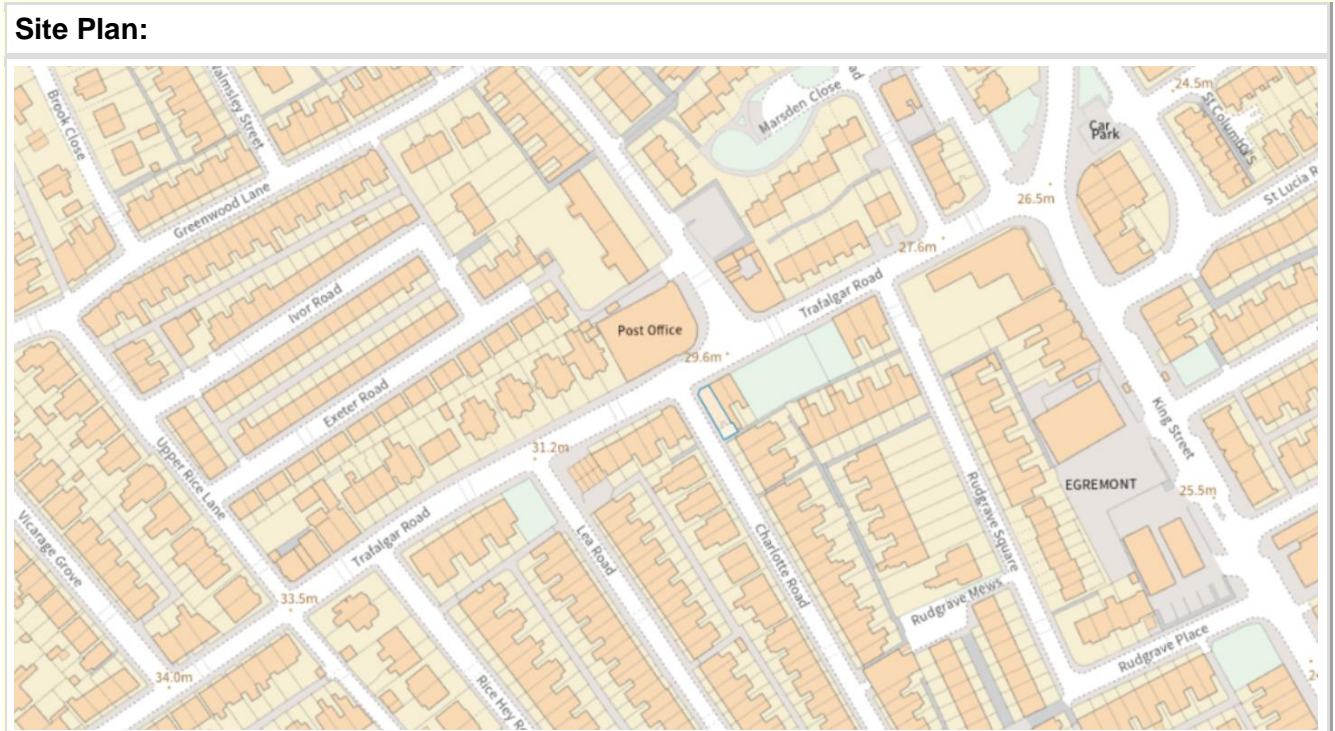


Planning Committee	18 th April 2024
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Reference:	PS Development Code	Case Officer:	Ward:
LDP/24/00138	Q26 - Certificates of lawful development	Miss C Robinson	Liscard

Location:	70 Charlotte Road, Egremont, Wallasey, Wirral, CH44 0DW
Proposal:	Application for a Lawful Development Certificate re: use of a C3 dwelling as a children's home for a maximum of four children, with up to three carers, with sleep overnight, working on a rota basis to C2 class
Applicant:	Mr Michael Parkes

Reason for referral to Planning Committee	Called out of delegation by Cllr Janette Williamson
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1. Development Plan designation:	Area of Greatest Need Primarily Residential Area
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2. Planning History:	Application <u>APP/12/00635</u>
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	<p>Proposed installation of externally applied insulation to the rear and gables of properties with either a coloured render or pebble dash finish. Various properties within Liscard Ward (CH44), properties fronting Charlotte Road, Church Street, Clifton Grove, Clysedale Road, Comely Bank Road, Crescent Road, Glenamond Street, Guilford Street, Lea Road, Mossy Bank Road, Rice Hey Road, Rice Lane and Union Street.</p> <p>Approved 02/07/2012.</p> <p>Application <u>APP/12/00650</u></p> <p>Proposed installation of externally applied insulation to the rear and gables of properties with either a coloured render or pebble dash finish. Various properties within Liscard Ward (CH44), properties fronting Blenheim Road, Egremont Promenade, Cliff Drive, Cunard Avenue, King Street, Kinglake Road, Poole Road, Cunard Avenue, Ismay Drive, Rudgrave Place, Rudgrave Square, Seabank Avenue, Seabank Road, King George Drive, St Brides Road, St Elmo Road, St Lucia Road, St Vincents Road, Trafalgar Avenue, Trafalgar Road, King George Drive, Poole Road, Richard Chubb Drive, Seabank Road, Wright Street, Whitley Drive and Webster Avenue.</p> <p>Approved 02/07/2012.</p>
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3. Summary Of Representations and Consultations Received:

<p>3.1 Ward Member Comments</p>	<p>Cllr Janette Williamson requested that the application be removed from delegation, noting that a site visit is required. Cllr Williamson cites that she believes that the site is not suitable to house vulnerable children, with the property being in an area of high rates of anti-social behaviour, criminal behaviour, drug use and fly tipping.</p>
<p>3.2 Summary of Representations</p>	<p><u>REPRESENTATIONS</u> Applications for Lawful Development Certificates are based purely on an assessment of whether planning permission is required for a proposed development or use. As such, no planning judgement can be made in relation to such applications. For this reason, the Council does not publicise such applications</p>

<p>3.2.1</p>	<p><u>CONSULTATIONS</u> There is no legal requirement to carry out consultations for this type of application and none have been undertaken.</p>
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<p>4. Site and Surroundings</p>	
<p>4.1</p>	<p>The host dwelling is a brick-built end of terrace property located in a primarily residential area. The property is three storeys, the second floor is within the roof space and served with existing dormer windows.</p>

	Only part of the ground floor will be utilised by the application for staff accommodation.
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5. Proposed Development	
5.1	This application seeks a lawful development certificate for the proposed use of the dwelling as a children's home within use class C2. The property is currently under C3a use.

6. Relevant Matters for Consideration	
6.1	<p>Section 192(1) of the Town and Country Planning Act 1990 (“the 1990 Act”) (as amended) provides that any person who wishes to ascertain whether any proposed use of a building would be lawful, may make an application for the purpose to the local planning authority, specifying the land and describing the use in question.</p> <p>In relation to such applications “Material planning considerations” which are as a matter of course considered in planning applications are not relevant. The decision in this matter is to be based strictly on factual evidence, the planning status/history of the site and the relevant law applicable to the circumstances of the case. The planning merits of the proposed use applied for do not fall to be considered.</p> <p>Section 192(2) of the 1990 Act provides that if, on an application under that section, the Council is provided with information satisfying it that the new use described in the application would be lawful they should issue a certificate to that effect. In any other case the application should be refused. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.</p> <p>National Planning Practice Guidance sets out that on an application for a Certificate the local planning authority needs to consider whether, on the facts of the case and relevant planning law, the use would be lawful. Planning merits are not relevant.</p> <p>In determining an application for a prospective development, a local planning authority needs to ask, "if this proposed change of use had occurred on the application date, would it have been lawful for planning purposes?"</p> <p>The lawfulness of the use for which a certificate of lawful proposed use or development is in force shall be conclusively presumed unless there is a material change, before the use is instituted, in any of the matters relevant to determining such lawfulness</p>
6.2	<p>Having regard to the Town and Country Planning (Use Classes) Order 1987 (as amended) (“the Use Classes Order”) Class C2 includes the following:</p> <p><u>Class C2. Residential institutions</u></p>

	<p>Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).</p> <p>Use as a hospital or nursing home.</p> <p>Use as a residential school, college, or training centre</p>
6.3	<p>Class C3 includes the following:</p> <p><u>C3: Use as a dwelling house (whether a main residence or not) by</u></p> <p>A) a single person or by people to be regarded as forming a single household,</p> <p>B) Not more than six residents living together as a single household where care is provided for residents: or</p> <p>C) Not more than six residents living together as a single household where no care is provided to residents (other than use within Class C4)</p>
6.4	<p>“Care” is defined amongst other matters as meaning the personal care of children including any medical care and treatment.</p> <p>In the case of <i>North Devon District Council v First Secretary of State [2003]</i> 2 non-resident staff were to be always on duty in relation to a premises that was used for the purpose of providing accommodation to looked after children. The premises that was the subject of the application for a certificate of lawful proposed use was under the supervision of a team of 6 or 7 adult carers operating in 8-hour shifts. It had been argued that the children would constitute a single household within Class C3(b) living together. It was held that the children were not capable of forming a single household in the absence of a live-in carer on the basis that children are not generally capable of running a household themselves.</p> <p>The judge stated that "The question ...arises whether carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care can be regarded as living together. In my view, the answer to that is no, what is required is indeed residential care with a carer living in full—time and looking after those in the premises who otherwise would be unable to live as a household."</p> <p>The judge found that the use came into Class C2. However, he went on to say that notwithstanding this, planning consent may not be required if the change of use was not a material change of use as a matter of fact and degree.</p> <p>The judge found based on the particular facts that there was no material change of use.</p>

7. Assessment	
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7.1.1	<p>The applicant recognises that the present use of the property is C3, and the proposed use would be C2 but asserts that the changes do not represent a material change of use.</p> <p>The definition of care in the 1987 Use Classes Order links the personal care of children specifically to class C2. Children cannot form a household without a caregiver and a children's home cannot fall within use class C3 unless a care giver is also resident at the property such that a single household is formed. A care giver staying overnight at the property in the course of their work is not resident if that care giver has their own residence elsewhere, which would be the case in this instance.</p> <p>As such a change of use to C2 will occur, but, in accordance with (North Devon District Council vs First Secretary of State (2003)), this only constitutes development if the change of use is material, namely that a clear change in the overall character of the use will arise.</p> <p>The main issue pertinent in the assessment of the proposal is therefore whether a material change of use will occur.</p>
7.1.2	<p>The case of East Barnet UDC v British Transport Commission (1962) held that 'material' means material for planning purposes.</p> <p>PPG guidance states that</p> <p>A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use' however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case. [And] Movement from one primary use to another within the same use class is not development and does not require planning permission.</p>
7.1.3	<p>The applicant has confirmed that there will be a maximum of four young people (between the ages of 8-18) at the house supported by a maximum of two members of staff during the day and through the night. During weekdays an additional (third) staff member - in the form of a carer/manager - will also be on site. Except at shift changeover times, which last approximately ten minutes, no more than three carers will be on the premises at any one time.</p> <p>Though anticipated to be home tutored initially, the intention is that the young people will attend school, undertake indoor and community-based activities, and will have a routine as would any other household. Any tutoring undertaken is intended to be done online, thus not bringing increased activity to the site.</p> <p>The house will not be changed structurally while the function of the dwelling would remain fundamentally the same in that it would be run as a single household. The house is located close to public transport routes and local amenities and the young people will attend local schools, leisure centres and activity clubs under supervision.</p>

	Based on the submitted information, the number of occupants of the property, the number of projected comings and goings, and the activities undertaken at the property would not be materially different in overall character to those which could be expected under the existing use of the property as a single dwelling. As such, based on this information it is considered that a material change of use will not occur.
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8. Other Matters	
8.1	There is little capacity to resist this application; should the submitted documentation satisfactorily evidence that no material change of use shall occur, the works must be considered lawful. It is however recognised that there is local concern regarding the suitability of this site to host a children's home. To formally operate in such a manner, the site will need to become an OFSTED registered provider. This process is independent from the planning process.
8.2	It is understood that the provider must undertake a location assessment. This assessment considers the suitability of the site and its surrounding area.

9. Summary of Decision	
9.1	The dwelling would be used as a children's home supervised by non-resident carers which will place the proposed use within use class C2. Based on the evidence presented during the application, on the balance of probabilities the use of the building and the character of activity associated with that use would not be significantly different to that which could be expected at a single dwellinghouse of this size. Therefore, a material change of use would not occur, and a Lawful Development Certificate should be granted.

9. Recommended Decision:	Lawful Use
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Recommended Reasons:
1 The dwelling would be used as a children's home supervised by non-resident carers. This puts the proposed use within use class C2 rather than the current use which is class C3. Nevertheless, based on the submitted evidence on the balance of probabilities the use of the building and the character of activity associated with that use would not be significantly different to that which could be expected at a single dwellinghouse of this size. Therefore, a material change of use would not occur by virtue of the proposed use.

Last Comments By:	17-03-2024
Expiry Date:	02-April-2024

