

Planning Committee	7 th November 2024
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Reference:	PS Development Code	Case Officer:	Ward:
LDP/24/00858	Q26 - Certificates of lawful development	Mr P Roberts	Leasowe and Moreton East

Location:	41 Epsom Road, Moreton, Wirral, CH46 1PT
Proposal:	Application for a Lawful Development Certificate (Proposed) regarding use of a dwelling (Planning Use Class, C3a), as a children's home for up to four children, with up to three carers and a manager, with two sleeping overnight working on a rota basis (Use Class C2).
Applicant:	Lewis McDonough
Agent:	Adrian Rose, Rose Consulting

Reason for referral to Planning Committee	<ol style="list-style-type: none"> 1. Councillor Angie Davies has raised concerns with the application at this property on the basis it would result in a material change to the character of the area. 2. Petition against homes being turned into businesses signed by 99 individuals
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Site Plan:



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1. Development Plan designation:	Primarily Residential Area Housing Development Site
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2. Relevant Planning History:	None.
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3. Summary Of Representations and Consultations Received:

3.1 Ward Member Comments	Councillor Angie Davies raised concerns with the application at this property on the basis it would result in a material change to the character of the area
3.2 Summary of Representations	<p><u>REPRESENTATIONS</u></p> <p>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. For this reason, the Council does not publicise such applications.</p> <p>1 representation objecting to the application was received. Comments made within submitted representation are summarised below:</p> <ul style="list-style-type: none">• The use is not permitted by a covenant associated with the property• The use will have a negative impact on property value locally <p>Petition against local residential properties being turned into businesses for care homes/hostels/youth and immigration centres.</p>
	<p><u>CONSULTATIONS</u></p> <p>There is no legal requirement to carry out consultations for this type of application and none have been undertaken.</p>
4. Site and Surroundings	
4.1	The application comprises a two-storey detached 5 bedroom dwellinghouse on the western side of Epsom Road, Moreton.
5. Proposed Development	
5.1	This application seeks a Lawful Development Certificate for the proposed use of the dwelling as a children's home for up to four children / young people with up to four members of staff providing 24-hour care. The property is currently under C3a use (dwelling).
6. Relevant matters for Consideration	
6.1	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.
6.2	In such an application the development plan and “material planning considerations’ which form the framework for decision making in respect of 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.
6.3	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.
6.4	National Planning Practice Guidance (Paragraph: 009 Reference ID: 17c-009-20140306) 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. 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?" The guidance also notes that the grant of a certificate applies only to the lawfulness of development in accordance with planning legislation.
6.5	<p>Having regard to the Town and Country Planning (Use Classes) Order 1987 (as amended) (“the Use Classes Order”) the following planning use classes are of relevance:</p> <p><u>Class C2. Residential institutions</u></p> <ul style="list-style-type: none"> - Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses). - Use as a hospital or nursing home. - Use as a residential school, college, or training centre <p>In terms of the relevant definition of Class C2 for the proposed use, the Use Classes Order states that care, “<i>means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment</i>”</p> <p>Planning Use 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>
6.6	The application is to confirm the lawfulness of the proposed use of the land for a Class C2 use in the context of the existing lawful C3 use(dwellinghouse).
6.7	Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in section 55 of the Town and Country Planning Act 1990. In addition to physical works, the meaning of development includes, the " <i>making of any material change in the use of any buildings or other land</i> ". National Planning Practice Guidance paragraph 011 (Reference ID: 13-011-20140306) states that 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.
6.8	The question of what is considered 'material' has been subject to a number of legal cases, for instance, <i>Devonshire CC v Allens Caravans (Estates) Ltd (1962)</i> , noted that for the planning decision maker in assessing whether a change was material the impacts of the change of use in particular on neighbouring properties are a consideration. In the case of <i>North Devon District Council v First Secretary of State [2003]</i> questions arose concerning the use class of a children's home and whether such a use was 'material'. That proposal consisted of a home with 2 non-resident staff, always on duty (on rota out of 7 carers) supervising two looked after children. The judgement reached in the case was that the Use Class was C2 however due to the circumstances of the case and the impact that the development had it was not considered to represent a material change from the established residential use (Class C3).

7. Assessment	
7.1	The applicant has confirmed that there will be a maximum of four young people (between the ages of 7-17) living at the house. They will be supported by no more than 3 carers and one manager present at any one time during daytime on weekdays and no more than 2 carers otherwise. Six carers would operate on a shift pattern of 48 hours on and 60 hours off. Family visits are said to be rare. In the submission statement, it is noted that the staff would be directly responsible for the care and welfare of the young people by supporting them in their daily routine. The carers would cook, clean, transport the child around and care for them.
7.2	In physical terms there will be no alterations made to the building or the grounds with any works confined to the interior.

7.3	The building will provide the sole residence for the children, have a kitchen, living room and dining room and function in a manner consistent with a family household with opportunity for shared or individual meal times. Other activities around the property such as gardening would be undertaken by the staff and children with outside visitors being generally limited to social service staff approximately every six weeks and a visit from Ofsted once a year.
7.4	In terms of comings and goings the applicant advises that there would be in the order of 10 movements (in and out) on a weekday (including school run) and less at the weekend. This is anticipated to be approximately 2 more (1 in and 1 out) each day than currently, based on information given by the present occupier.
7.5	The applicant has submitted details of comparable changes of use throughout the country (which have been approved at planning appeal) on the basis that the change of use from a dwellinghouse to this type of children's home did not represent a material change and therefore not development requiring planning permission. The largest of the referenced cases which was proposed to operate and function in the same manner as that proposed here, comprised a total of four staff and three children at any one time within what was a four bedroom terraced house (appeal ref: APP/C5690/X/22/3299351), the conversion of which to a C2 use was considered to be non-material and lawful at appeal.
7.6	In this case, outside of the limited visiting periods and school times there could be up to 8 people at the property during a weekday. Considering that this is a five-bedroom detached home, that number of people is not unexpectedly large and whilst there would be staff shift changes these are limited and should not materially affect the character of the property. One of the rooms would be used as an office however such room use is not uncommon in houses and would not impact on either its appearance, character or use. The property also benefits from up to 4 off-street parking spaces which is considered sufficient to accommodate the need associated with such a use and helps to limit impacts on the character of the street. In addition, the comings and goings associated with the use are considered to be within the reasonable expectations for a property of this size.
7.7	Based on established precedents and the details of this submission, the nature and scale of the activity associated with this large detached dwellinghouse would not be materially different than that of a 'typical' family home of this size.

8. Other Matters	
8.1	Representations have been made regarding the potential impact of the proposal on the character of the area, parking, the covenant associated with the property and the nature of the proposed business operation. The covenant is a private matter between the parties involved and not a material planning consideration, and the nature of the business operation as a children's home is not inherently a change of use but has to be considered and assessed as has been set out in this report. In that regard and based on the above assessment, the

	<p>impact of the proposal on the residential character or parking is not considered to be materially different to that associated with the use of a dwellinghouse of this size and consequently, as the submitted documentation satisfactorily evidences no material change of use shall occur, the development must therefore be considered lawful.</p>
8.2	<p>The property would fall under the control of OFSTED which has power beyond planning control. One requirement would be for the property to operate in the form of a family home with staff providing a parental support role for the children, the only material differences being emergency lighting and a requirement for locks on children's doors. These are not matters which are considered to result in a material change of use of the land.</p>

9.1 Summary of Decision (Planning Balance)	
9.2	<p>Based on the submitted information, the number of occupants, the anticipated 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 Class C3 dwelling. As such, based on this, Officers are satisfied that a material change of use will not occur and a lawful development certificate can be issued.</p>

10. Recommended Decision:	<p>Planning Committee is recommended to approve the application for a Certificate of Lawfulness of Proposed Use or Development.</p>
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Recommended Conditions and Reasons:
<p>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, on the basis of 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.</p>

Last Comments By:	26-07-2024
Expiry Date:	14-August-2024