

Planning Committee	12th December 2024
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Reference:	PS Development Code	Case Officer:	Ward:
LDP/24/01605	Q26 - Certificates of lawful development	Mr K Woodward	Heswall

Location:	Cherry Cottage, Wallrake, Gayton, Wirral, CH60 8PG
Proposal:	Application for a Lawful Development Certificate for the use of a dwellinghouse (C3) as a home to support child in need of care (C2)
Applicant:	O'Neill (Safe Space 4 U Ltd)
Agent:	Robert Parle

Reason for referral to Planning Committee	Councillor Andrew Hodson has requested the application be taken out of delegation and referred to Planning Committee. Qualifying petition of objection also received.
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Site Plan:



1. Development Plan designation:

- Primarily Residential Area;
- Heswall Lower Village Conservation Area.

2. Planning History:

Location:	'Cherry Cottage', Wall Rake, Gayton, CH60 8PG
Application Type:	Full Planning Permission
Proposal:	Erection of single storey extension to bungalow and internal alterations providing new utility room, bathroom, en suite bathroom and two bedrooms.
Application No:	APP/79/12822
Decision Date:	19/09/1979
Decision Type:	Conditional Approval
Location:	Cherry Cottage, WALLRAKE, HESWALL, WIRRAL CH60 8QW
Application Type:	Full Planning Permission
Proposal:	Demolition of existing buildings and rebuilding as two-storey dwelling, together with temporary demolition of part of the boundary wall for construction access (wall to be rebuilt following construction)
Application No:	APP/18/00632
Decision Date:	18/07/2018
Decision Type:	Approve
Location:	Cherry Cottage, Wall Rake, Heswall, CH60 8QW
Application Type:	Full Planning Permission
Proposal:	DEMOLITION OF EXISTING BUILDINGS AND REBUILDING AS TWO STORIES WITH NEW TWO STOREY EXTENSION TEMPORARY DEMOLITION OF PART BOUNDARY WALL FOR CONSTRUCTION ACCESS. THEN REBUILT INCORPORATING NEW RETAINING WALLS.
Application No:	APP/19/00172
Decision Date:	01/04/2019
Decision Type:	Refuse

3. Summary Of Representations and Consultations Received:

3.1 Ward Member Comments

Councillor Andrew Hodson has raised concerns with the application at this property on the basis it is unsuitable for the intended use.

3.2 Summary of Representations

REPRESENTATIONS

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 formally publicise such applications.

At the time of writing this report, three representations (3 objections) and a petition of objection with 53 signatures have been received. The main comments from the objecting representations and petition are summarised as follows:

- Property is not suitable for children due to a lack of secure garden space.
- Children are at risk from traffic due to the property being sited on a blind bend.
- Cherry Cottage is not run as a family home.
- Emergency service call outs.
- Rubbish left outside the property
- Detrimental to the character of the conservation area and wellbeing of elderly/vulnerable neighbours.
- Noise pollution.
- Aggressive behaviour towards neighbours.
- Cherry Cottage has been operating as a childcare home for 2-3 months without a Lawful Development Certificate.
- Cherry Cottage and neighbouring properties have covenants which prohibits their use for business purposes.
- There is scope to increase the number of children in the future.

CONSULTATIONS

There is no legal requirement to carry out consultations for this type of application and none have been undertaken.

4. Site and Surroundings

4.1

Cherry Cottage is a detached 3-bedroom dwellinghouse situated along Wallrake. The property is situated within a designated Primarily Residential Area and Heswall Lower Village Conservation Area in Wirral's Unitary Development Plan.

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 one child/young person with up to three members of staff (2 carers and a manager) providing 24-hour care. The property is currently under C3a use (dwelling).

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 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.</p>
6.2	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.
6.3	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 only applies to the lawfulness of development in accordance with the planning legislation.
6.4	<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>

	<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>
6.5	<p>Planning Use Class C3 includes the following:</p> <p><u>C3: Use as a dwelling house (whether a main residence or not):</u> by</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	<p>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).</p>
6.7	<p>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 “making of any material change in the use of any buildings or other land”.</p> <p>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.</p>
6.8	<p>The question of what is considered ‘material’ has been subject to a number of legal cases, for instance, Devonshire CC v Allens Caravans (Estates) Ltd (1962), 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 North Devon District Council v First Secretary of State [2003] 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</p>

	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).
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7. Assessment	
7.1	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 care giver 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.
7.2	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.
7.3	The main issue pertinent in the assessment of the proposal is therefore whether a material change of use will occur.
7.4	The applicant has confirmed that there will be a maximum of one young person (between the ages of 7 and 17) living at the house. They will usually be supported by 2 carers during the day and no more than 2 carers overnight. A manager would visit the property on an ad-hoc basis between 9am-5pm on weekdays only. Any additional visits, such as by a social worker or other professionals, would take place during normal working hours and are likely to be monthly rather than weekly.
7.5	The applicant has submitted details of 4 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. In the case of the two example Lawful Development Certificates, Inspectors deemed them development which does not require planning permission. The largest of the referenced Lawful Development Certificate cases which was proposed to operate and function in the same manner as that proposed here, comprised a total of two 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, carers will work on a two-day shift pattern starting work at 10:00am and finishing their shift at 10:00am. During the handover period there will be no more than five staff members (4 carers and a manager) present at the property during weekdays and no more than 4 staff members (4 carers, no manager) at the weekend. 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. Carers would also be responsible for the initial education of the child by assisting them with online tutoring from home. Consequently, there will be no requirement for tutors to visit the property to assist the child's educational development. It is anticipated that the child will then progress to a special education unit and then mainstream education.
7.7	In addition to staff, further comings and goings to the property comprise social workers and a responsible individual. The applicant advises that the responsible individual would oversee management of the property and ensure the home is safe, well run and complies with regulations. Both the social workers and responsible individual would visit the property on an infrequent basis (couple of times per month) and the prevalence of their visits is likely to be de-minimis and therefore unlikely to result in any material change of use.
7.8	There will be no external changes to the building while its function as a dwellinghouse would remain fundamentally the same in that it would be run as a single household. Internally, the layout of the building will remain the same as existing with kitchen, dining and living facilities on the ground floor and all bedrooms for the staff and young people on the first floor. There is off-street parking spaces provided to the front of the site which is considered sufficient for the size and intended use of the property.
7.9	The representations received and qualifying petition do not raise evidence to suggest that a material change of use would occur.
7.10	Based on established precedents and evidence submitted by the applicant, 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. As such, it is considered that a material change of use will not occur.

8. Summary of Decision (planning Balance)	
8.1	Based on the submitted information, the number of occupants of the property, 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 information it is considered that a material change of use will not occur, and a lawful development certificate can be issued.

9. Recommended Decision:	Planning Committee is recommended to approve the application for a Certificate of Lawfulness of Proposed Use or Development.
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Recommended Conditions and Reasons:	
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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.

Last Comments By:	06-12-2024
Expiry Date:	30-12-2024