

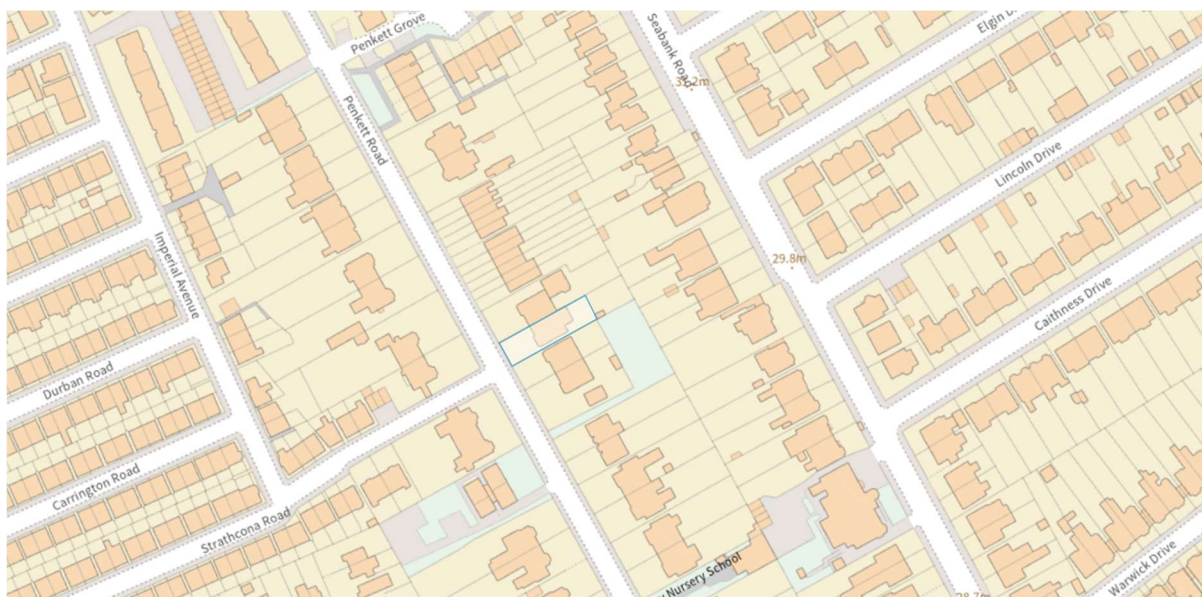
Planning Committee	12 th January 2023
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Reference:	Area Team:	Case Officer:	Ward:
LDP/22/01313	DM	Mr B Pratley	New Brighton

Location:	52 Penkett Road, Liscard, Wallasey, Wirral, CH45 7QW
Proposal:	Proposed change of use from 7 bed residential dwelling to an Ofsted Registered Residential Children's Home, providing accommodation for up to four Looked After Children aged between 10-18.
Applicant:	Lauren Huggon
Agent:	

Qualifying Petition	A petition with 92 signatures has been received.
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Site Plan:



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Development Plan designation:	Areas of Greatest Need, Primarily Residential Area
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Planning History:	APP/75/02884 - Rr 42-54 Penkett Rd New Brighton L457qn - <i>Stables, tack store etc. yard, exercising paddock and grazing.</i> Withdrawn.
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Summary Of Representations and Consultations Received:

1. Ward Member Comments	Councillor Martin has confirmed that he has received a number of representations from constituents regarding this application.
2.1 Summary of Representations	<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 in relation to such applications. For this reason, the Council does not publicise such applications. Nonetheless, two objections have been received to this application, listing the following matters:</p> <ul style="list-style-type: none"> • There are already too many care homes in the area. • Detrimental impact on amenity of neighbours <p>A petition against the proposal has also been received, containing 92 names.</p>
2.2 Summary of Consultations	There is no legal requirement to carry out consultations for this type of application and none have been undertaken.
3.1 Site and Surroundings	The site comprises a semi-detached dwelling located within a Primarily Residential Area.
3.2 Proposed Development	Proposed change of use from 7 bed residential dwelling to an Ofsted Registered Residential Children's Home, providing accommodation for up to four Looked After Children aged between 10-18. The number of staff in the dwelling at any one time will not normally exceed four. Two staff will sleep overnight in the property.
3.3 Material Planning Considerations	<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, "A 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>

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 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.

Having regard to the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the Use Classes Order") Class C2 includes the following:

Class C2. Residential institutions

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.

Class C3 includes the following:

C3: Use as a dwelling house (whether or not a main residence) by

A) a single person or by people to be regarded as forming a single household,

B) Not more than six residents living together as a single household where care is provided for residents; or

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)

"Care" is defined amongst other matters as meaning the personal care of children including any medical care and treatment.

In the case of *North Devon District Council v First Secretary of State* [2003] 2 non-resident staff were to be on duty at all times 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.

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."

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.

The judge found based on the particular facts that there was no material change of use.

3.5 Assessment

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.

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. 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.

The main issue pertinent in the assessment of the proposal is therefore whether a material change of use will occur. The case of East Barnet UDC v British Transport Commission (1962) held that 'material' means 'material for planning purposes'.

PPG guidance states that

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.

The applicant has confirmed that there will be a maximum of four young people between the ages of 10 – 18 at the house supported by a maximum of four members of staff during the day and two through the night. The young people will attend school, undertake indoor and community-based activities, and will have a routine as would any other household.

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.

On the basis of the submitted information, the number of occupants of the property, the amount 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, on the basis of this information it is considered that a material change of use will not occur.

Representations have been made on behalf of occupants of a neighbouring property, including concerns raised in relation to the health implications of the proposal. However, the circumstances of the occupants of neighbouring dwellings are not material in considering whether or not a material change of use will occur at this site.

Summary of Recommendation

In reaching this recommendation consideration has been given to the following:-

	<p>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. On the basis of the evidence presented during the course of 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</p>
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Recommended Decision:	Planning Committee is recommended to approve the application for a Certificate of Lawful Property Use of Development
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Reason for Decision:
<p>1</p> <p>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:	
Expiry Date:	19-January-2023