**DELEGATED DECISION REPORT**

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| **SMD/2018/0123**<br>**Valid 01/03/2018** | **HOLLYOAKS UTTOXETER ROAD**<br>**DRAYCOTT IN THE MOORS** | **USE OF A 6 BEDROOM DWELLING HOUSE BY UP TO 4 CHILDREN AGED BETWEEN 7 AND 17 YEARS OF AGE AS THEIR PRIME AND SOLE RESIDENTIAL HOME, WHERE THEIR CARE IS PROVIDED BY UP TO THREE DUTY CARERS, AT ANY ONE TIME, OPERATING A 48 HOUR SHIFT WITH STAFF CHANGE OVER OCCURRING BETWEEN 8:00AM AND 10:00AM.**<br><br>**(CERTIFICATE OF LAWFULNESS - PROPOSED)** |

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**MAIN ISSUES**

The key question is whether or not the proposed use requires planning permission

**DESCRIPTION OF SITE/CONTEXT**

The application site comprises a 6 No. bedroom, two-storey, detached dwelling with hard-standing to the front and gardens to the rear. The building was given permission as a C3 residential unit (2 No. dwellings) under application SM.98/0698.

A certificate for proposed use (to use the building for a number of young people living together, as their sole residence, with care provided by staff on a shift rota basis) was granted in July 2012 (SMD/2012/0606). The Council concluded at that time that a) the building had a residential, C3, use and b) that up to 6 people could live in a residential property, receiving care, within the C3 use class (C3(b).

The applicant had apparently applied for the Certificate at the time as this was required for Ofsted purposes.

**PROPOSAL**

The application seeks to establish that the *"use of a 6 bedroom dwelling house by up to 4 children aged between 7 and 17 years of age as their prime and sole residential home, where their care is provided by up to three duty carers, at any one time, operating a 48 hour shift with staff change over occurring between 8:00am and 10:00am"* is lawful and that planning permission is not required.

**SUBMISSION**

Section 7 of the application form states:

> *We consider the proposed a variation to the existing lawful development, but to remain in the same class use given that the description for Class C3(b) is "not more than six residents living together as a single household where care is provided for residents". We are proposing to increase the capacity of the home by 1 further 'resident in need of care', where currently there are 3 residents.*

**SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS**

SMD/2012/0606 – Certificate of proposed lawful use for C3 residential use. Positive certificate issued, July 2012.

**CONSULTATIONS**

**Publicity**

Site Notice expiry date: 05.04.2018
Neighbour consultation period ends: 22.03.2018
Press Advert: N/A

**Public Comments**

None received.

**Draycott Parish Council**

No comments received.

**OFFICER COMMENTS**

The use Class C3 Dwellinghouses comprises:-

- *C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.*
- *C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.*
- *C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.*

**<u>Use</u>**

The application submission states that the property is currently used by up to 3 No. young people, living together, receiving care from staff that operate on a shift basis.

The proposal is to use the property for up to 4 No. children living together receiving 24 hour care, provided by up to 3 No. duty carers operating on a shift bases. C3(b) does allow for up to 6 people *"living together as a single household and receiving care".*

However, although the Council concluded in 2012 that the use did fall within C3, I am aware that the Courts have ruled:-

In the case of *North Devon District Council v The First Secretary of State [2003] EWHC 157,* Collins J concluded that a) children on their own are not capable of forming a single household, they are reliant on adult care and b) non-residential carers, operating on a shift basis, could not be regarded as living together with the children in a single household.

Hence, bearing this court decision in mind, the proposed use of Hollyoaks cannot, therefore, be said to fall under Class C3(b) (nor does the use fall under C3(a) or C3(c).

In terms of 'planning use classes' the question can be posed: does the proposed use fall within any other use class under 'Part C' i.e. C1, C2, C2A or C4 (or indeed any other use class)? It is considered and concluded that this is not the case but there has been a change in the use from that of a family dwellinghouse (C3a). Therefore, when a use does not fall/fit within with any of the planning use classes it is referred to as *sui generis.*

**Does the proposed use require planning permission?**

Importantly, however, the Change of Use will only be development that requires planning permission, if that change has resulted in a "material change of use". Where it is considered therefore, as in this case, that there has been a change of use from a dwelling (Class C3) to a *sui generis* use it is necessary to consider whether this change constitutes a 'material change of use'. This is a matter of fact and degree based on the specific circumstances of each case. The key test is whether there has been a change in the character of the use and second, the effects of this change upon neighbouring uses and the locality.

Information provided as part of the previous Certificate of Lawful Development application in 2012 explained that the children have no specialised mental health needs or physical disabilities, that efforts are made to ensure that the house feels like a home and not an institution. The staff members care for the children 24 hours at a time on a rotored shift basis supporting them to attend education at school, taking them to activities such as the cinema, cooking them food and anything else a normally family would do together. The kitchen bathroom and all other amenity are shared and no adaptations have been made to the property in respect of structural or operational changes.

Therefore the existing use as it has been undertaken since 2012 is not considered to be a "material" change of use from C3(a) and therefore did not require planning permission.

Given that the only difference between the proposed use and how the property is currently used is to increase the number of young people being cared for from 3 No. to 4. No., it is considered that a material change of use will still not occur and as such planning permission will still not be required.

Bearing the above points in mind it is recommended that a positive certificate be issued.

**OFFICER RECOMMENDATION: ISSUE A POSITIVE CERTIFICATE**

**Case Officer: John Williamson**
**Recommendation Date: 25/04/2018**

X B.J. Haywood

Signed by: Ben Haywood

**On behalf of Staffordshire Moorlands District Council**