

Mr N Beeby
Miss L A Tilston
5 Nab Hill Court
Leek
ST138BZ
23rd June 2021

Mr B Hurst
Staffordshire Moorlands Council
Planning Department
Moorlands House
Stockwell Street
Leek
ST136HQ

OBJECTION - SMD/2021/0290 – Change of use from a dwelling house (class 3) to a residential care homes (Class C2) for up to six residents (no external alterations proposed).

0.1 We are writing to object to the above application on the following grounds. However, before we outline our objections, we would like to make a couple of points.

0.2 In relation to administration we are a landowner adjoining the scheme (we own the private driveway that access would be required to cross) but we did not receive a consultation letter dated 6th June 2021. It is our understanding that all adjoining landowners should receive a letter. There has also been no site notice posted advertising the planning application.

0.3 In relation to the Planning Statement (PS) we make the following observations. The information submitted in the PS for the application is vague and fails to properly represent the circumstances. It also fails to provide enough information to fully understand the potential impacts of the proposed use on the surrounding area.

0.4 The PS does not include details on the age of the proposed residents. We have surmised from further research on Compass's website that the intended residents of the scheme would be attending the Compass run school at Heath House, Cauldon Lowe as this appears to be the only one in the area. According to the Ofsted report this is a school for boys aged 11-17. We therefore presume that the intended residents of the property would be boys aged 11-17.

0.5 The PS also fails to address if the residents would include any detained offenders or if they would have any medical or clinical conditions who may demonstrate more extreme behaviours requiring secured facilities or hands on attention. Knowledge of this is important to assess the potential impact on the surrounding area.

0.6 The PS also contains no mention of visitors of the residents to the site. It is our understanding, from research on this topic, that regular visits by friends and family are encouraged. This would significantly increase the traffic movements to and from the property and we comment on this further under the access objection in section 2 below.

1. Planning Policy

1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.

1.2 The Staffordshire Moorlands Local Plan adopted in September 2020 is the development plan for the area. The Local Plan does not contain policies specifically related to the provision of care homes nor does it provide guidance on their scale or location.

1.3 Policy H1 states that housing for special groups should be of a scale and in a location which is appropriate to its needs. Through this objection we outline why the proposal is not of an appropriate scale or in an appropriate location.

1.4 Supporting paragraph 7.49 outlines that housing for special groups will be needed to meet the increase in persons with learning or physical disabilities. It goes on to say that housing strategies produced by the Council, Staffordshire County Council and other agencies will be used to support particular housing needs. We have reviewed the Council's websites and can find no evidence of any strategies relating to Children's Care Homes. The Government's guidance on the location of children's care homes has been reviewed and relevant comments to this are outlined in section 6.

1.5 In line with S38(6) we outline below the other material considerations that should be taken into account when determining the application.

2. Access

2.1 The application site, Nab Hill House, is accessed from Nab Hill Avenue via a single-track private driveway with no pavement and is 147 metres in length. Part of this private driveway is within the ownership of the applicant (approx. 85 metres) the other part is within our ownership (approx. 62 metres). The part of the driveway owned by us is tarmacked and maintained at our expense and must be crossed to access the driveway of Nab Hill House. The private driveway currently serves 6 detached private residential properties, including Nab Hill House. The driveway way in the ownership of Nab Hill House is unmade. The driveway, in its entirety, is not lit and there is little to no ambient light from properties along it. The driveway also has no natural surveillance along its length.

2.2 The PS states that vehicular movements at the site will not be significant and comparable to its existing use as a private dwelling. We do not consider this to be an accurate representation of the vehicular movements associated with the proposed use. The application states that there will be two members of staff permanently on site and up to three additional members of staff attending the site throughout the day. In addition to these vehicular movements, as we have outlined above, there will be movements associated with visits from family and friends of the 6 residents. Each of the 6 residents may have multiple family members and friends who, we understand, are encouraged to visit regularly. This would amount to significant additional vehicular movements above and beyond what would be expected from its use as a private dwelling.

2.3 Further there are likely to be additional vehicular movement generated by professionals (therapists, social workers, regulatory agencies, etc) visiting the residents and maintenance staff.

2.4 There are numerous appeal decision across the country where Inspectors have concluded that children's care homes with up to 4 residents would create vehicular movements that are not

representative of a private residential dwelling. Inspector Sherratt noted in relation to a care home for 4 residents that the level of activity would be more intensive than reasonably expected from even a large dwelling house. The dwelling house subject to the appeal was described as having 7 bedrooms.

12. I consider that the increased level of activity that would occur on a daily basis associated with the proposed use would be more intensive and constant than might reasonably be expected to be generated by even a large dwellinghouse, such that the overall character of the use would materially differ to that of a dwellinghouse.¹

2.5 It is a sentiment that is also expressed by Inspector Russell in relation to a care home for 4 residents.

18. It appears that comings and goings from the building will be determined by the shift pattern of staff; their duties to provide accommodation and care to the four children in their care; and by visitors. I would expect a residential institution of this size and standard to generate more traffic than a dwelling occupied by any single household. Whether or not there would be any planning harm, the appellant has not shown that the use has not led to increased vehicular activity; this adds weight to my finding there has been a material change to the character of the use.²

2.6 Further support that the level of activity of a care home for 4 residents would be above that of a normal domestic household can be found in appeal decisions APP/C4235/X/10/2132351 paragraph 25 and APP/N4720/X/13/2201154 paragraph 29. These appeal decisions are attached to this objection.

2.7 It is clear from the above that numerous Inspectors have concluded that the vehicular movement and activity generated by care homes for 4 children are above and beyond what would be expected from a normal dwelling house, even a large one similar to Nab Hill House. The proposals at Nab Hill House are for 6 children we therefore consider it appropriate to conclude that the vehicular movements and activity would be significantly in excess of those of a private dwelling house and not as the Planning Statement suggests “not materially different”. We do not consider that the single-track private driveway access constitutes an appropriate access to serve this number of vehicle movements.

2.8 As mentioned above the private driveway has no pavement and is unlit. Due to extensive tree cover along the driveway and because for a significant proportion of it no properties front it the driveway at night is very dark. We consider this makes the access unsuitable in two ways. Firstly, there is increased danger to pedestrians caused by the increased vehicular movements combined with no pavement and no lighting and secondly the lack of lighting and natural surveillance creates a threatening environment and creates opportunities for crime which gives rise to a safety risk for pedestrians.

3. Change of Use

3.1 The PS at paragraph 4.1.10 states that the property could already be used as a small care home for up to 6 residents living together as a single household and receiving care. This would be use

¹ APP/P4225/X/16/3145074 800 Rochdale road, Middleton, Rochdale M24 2RB 3 August 2016

² APP/Y2003/X/16/3142336 The Old Barn, Epworth, Doncaster, DN9 1DB

Class C3(b). We consider that this statement is incorrect for the reasons set out below and that in all circumstances planning permission for a change to use Class C2 would be required. It is not therefore a foregone conclusion that this use would be permitted at this property.

3.2 Firstly, according to the Planning Portal Use Class C3(b) allows for six people living together as a single household and receiving care. The Planning application outlines that there would be 6 residents/children with 2 staff members present at all times. This would equate to 8 people being present at the property and therefore would not fall within Use Class C3(b).

3.3 Second, as outlined in the appeal decisions attached to this objection the children in the home can not be said to be living as a single household as they require supervision and support and are not responsible for the day to day running of the home. The staff undertake these tasks as part of their job, which is further evidenced by the creation of 2 offices as part of the proposals. The staff are not said to reside in the property as their main residence and the presence of them does not make it a single family unit.

3.4 Having reached the conclusion that, the correct Use Class for the proposals is C2, the question of whether there would be a material change of use should also be addressed. As I have outlined in section 1, Access, the significant increase in vehicular movements and activity would be materially different to that expected with even a large dwelling house. The increase in vehicular movements and activity was found to be a material change to the character of the use by the Inspectors in the cases provided. There would also be a material change in character due to the concentration of 6 children which social and behavioural difficulties which I expand upon in Section 5, Impact on amenity of surrounding properties.

3.5 For these reasons it is clear that the correct Use Class is C2 and that the proposals would require planning permission regardless of the number of residents/children.

4. Sustainability

4.1 As outline above at paragraph 0.4 the PS does not include details of where the residents will attend school but from research, we understand this will be in Cauldon Lowe. It is 9 miles from the proposed care home to the school. This is an 18-mile round trip which will have to be undertaken by multiple cars as there is no public transport between the two locations.

4.2 Public transport in general in Leek is very poor. The PS statement suggests that there is a bus stop on Westwood Heath Road 100m from the site. Presuming that the measurement is taken from the back gate of the site which exits on to Kiln Lane, which is an unmade unadopted track with limited street lighting, Google Earth measures this distance as 160m. This bus stop is served by the 109 service to Macclesfield. However, this service consists of only 6-7 buses per day (the first bus of the day does not stop at all stops) starting at 07:15 and ending at 18:05. There is approximately 2 hours between each service.

4.3 The bus top on Mill Street mentioned in the PS is outside The Dyers Public House and is only 425m as the crow flies. On foot the distance is 1000m (measured on Google Earth). This is considerably outside of the preferred walking distances outlined in the Staffordshire Residential Design Guide (2000) of 350m.

4.4 The 96 bus service listed in the PS does not appear on the Staffordshire Moorlands website and therefore does not appear to exist. The Westwood Heath Rd stop is served by the 165 Leek Town circular bus, but this only runs 5 buses per day around Leek between 9:00 and 15:40 which is unlikely to be useful for commuting or accessing any services and facilities.

4.5 The PS references that outside of school the children will be taken to activities such as shopping, cinema, sports. We consider that the majority of these activities will require transportation by car as there is a lack of facilities in Leek. There is no appropriate shopping for boys 11-17 and no cinema, therefore these activities would need to take place in surrounding towns and trips made by private vehicle. The lack of activities for young people in Leek is frequently raised by local people.

4.6 The site is a considerable distance from the school, is not well served by public transport and the extra circular activities of the children would need to take place in surrounding towns due to a lack of facilities in Leek and these would need to be accessed by private car. The environmental element of the NPPF is therefore not met.

5. Impact on amenity of surrounding properties

5.1 As is highlighted in the appeal decisions that are appended to this objection 6 young people with social/behavioural difficulties living in one property would be unusual and will give rise to a greater level of disturbance than would most family homes. The proposed site is surrounded by dwellings who would be impacted by this disturbance. The closest dwelling is located only 22m from the proposed site.

5.2 The increase in vehicular movements would also impact significantly on the properties 1 Nab Hill Court and Ashenhurst as the private driveway runs along the side boundary of these properties.

6. Suitability of the property for intended use

6.1 The Children's Homes Regulations Amendments 2014 outlines the factors which should be taken into account when assessing the suitability of a location for a children's home. The guidance at paragraph 1.28 talks about the perimeter security of the homes so that individuals and vehicles approaching the home can be recorded and act as a deterrent to the potential predators. As outlined at paragraph 2.1 above the approaches to the property are unlit and have no natural surveillance. These conditions would not be conducive to deterring predators. The perimeter of the property is quite large and not fenced further increasing the risk of children being approached within the grounds of the property. We therefore consider that the proposal does not meet the social element of sustainability as outline in the NPPF.

7. Waste Collection

7.1 The Planning application form states that the waste collection from the property will be as at present. The property is currently a private dwelling and therefore, if occupied by more than 6 people, has the use of up to 2 general waste wheelie bins, 2 recycling wheelie bins and 2 green waste wheelie bins. As the home is proposed to accommodate up to 8 people at all times with the addition of 3 staff on a daily basis plus family, friend and professional visitors and is being run as a business it is clear that they would require additional waste storage and collections. This may be serviced through the collection of business waste rather than residential waste.

7.2 The wheelie bins are currently collected from the end of the driveway where there is no space for additional or larger bins without blocking the private driveway causing disruption to existing residents. Large refuse vehicles would not be able to access the private driveway due to their width and height.

8. Conclusion

8.1 The Staffordshire Moorlands Local Plan does not contain policies specifically related to the provision of care homes nor does it provide guidance on their scale or location. In line with S38(6) we outline the other material considerations that should be taken into account when determining the application and we conclude that these lead to the conclusion that the proposals are not of a suitable scale or in a suitable location. Further we do not consider that the proposals meet the 3 strands of sustainability as outline in the NPPF.

8.2 The access is unsuitable, and the proposed use will lead to a significant increase in the number of vehicular movements to and from the property in excess of those associated with a private dwelling, even a large one leading to a material change in use.

8.3 The property cannot be used as a children's home without planning permission due to the material change in use that will occur due to the significant increase in vehicular traffic and disturbance caused by a concentration of 6 children all with social and behavioural issues.

8.4 The property is not suitable for use as a children's home due to its approaches being unlit with no natural surveillance which would not be conducive to deterring predators or recording their activity.

8.5 Waste collection from the property is likely to require commercial waste collection due to the number of people proposed to be at the property and there is no suitable collection area for additional or larger waste receptacles without blocking the private driveway.

8.6 For the reasons outlined above we respectfully ask that you refuse the planning permission. If you require any further information, please do not hesitate to contact us.

Your Sincerely

Mr Nicholas Beeby

Miss Laura Anne Tilston MRTPI

Appeal Decision

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 August 2016

Appeal Ref: APP/P4225/X/16/3145074

800 Rochdale Road, Middleton, Rochdale M24 2RB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ian Bywater against the decision of Rochdale Metropolitan Borough Council.
 - The application Ref 15/00960/CPL, dated 11 August 2015, was refused by notice dated 5 November 2015.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of residential building as a young persons care home which will remain residential in character.
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Decision

1. The appeal is dismissed.

Reasons

2. A certificate of lawfulness is sought. Section 192(2) of the Town and Country Planning Act 1990 indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. The planning merits of a proposal are not relevant to the question of lawfulness. A site visit was not necessary. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.
3. Use Class C3 (Dwellinghouses) was amended in April 2010 to split the class into three parts:
 - C3(a) a single person or people living together as a single household, as defined by the Housing Act 2004;
 - C3(b) not more than six people living together as a single household and receiving care; and
 - C3(c) not more than six people living together as a single household with no care provided and who do not fall within the C4 definition of a house in multiple occupation.

4. The appellant's considers that the development would fall within Class C3(b), explaining that the property would be occupied by a maximum of 4 young people, aged between 10 and 18 years old, and their care staff; the aim being to create a domestic environment for young people where they can also receive education and therapeutic care as necessary. This requires a large residential property in order to provide adequate sleeping and living accommodation which allows a degree of privacy for residents as well a separate education / therapy rooms. There would be 2 to 3 care staff operating a 24 hour shift cycle with change over at 10am daily. The young people may, the appellant explains, require home-based education and / or therapy where professionals from each discipline will attend the property and visit the young person.
5. All categories of Class C3 require the occupiers to be living together as a single household. It is necessary to focus first on those in occupation and ask whether they themselves form a single household, as a matter of fact and degree. To my mind, a group of young people ranging from only 10 years old cannot reasonably be regarded as being capable of living together as a single household. There would be no adult carer(s) residing permanently on the site who would themselves form part of the household.
6. The Council has referred to the case of *North Devon District Council v The First Secretary of State and Southern Childcare QBD 30.1.03 Collins J [2003] JPL 1191*. In that case, the Court said that 2 children aged between 10 and 17, supported by non-resident carers, could not constitute a household for the purposes of Class C3(b). Collins J said a household needed more than just children, as children: "need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing full-time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should."
7. In the North Devon case there were carers on the property at all times but they came and went. They were not residents of the house. They lived elsewhere. The North Devon case decided that carers who provided 24 hour care, but were not resident, could not be regarded as living together in a household. Similarly, in the current appeal case, there would be adult carers present at all times but they would not be living permanently at the property as part of the household; rather carers would operate on a shift basis.
8. Article 2 of the UCO interprets "care" as meaning "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". The interpretation clearly distinguishes between Class C3 and C2 insofar as it relates to children.
9. In my view the proposed development would not, as a matter of fact and degree, involve persons living together as a household and would not therefore fall within Use Class C3.
10. Whilst I find that the proposed development would not fall within Use Class C3, it is nevertheless necessary to consider whether the change of use would, as a matter of fact and degree in the circumstances of this individual case be material.

11. The appeal property is situated in Middleton and is described as a seven-bed property in the Planning Statement and five-bed in the Supportive Documentation accompanying the appeal. Separate education / therapy rooms would be provided. The proposal would, the appellant asserts operate like a normal family home with domestic living areas. I accept that a five+ bed dwelling can accommodate a large family with the comings and goings associated with a large family. The household could reasonably include four or more young people. I do not doubt that the communal spaces and bedrooms would be used by the young people in a manner comparable to a dwellinghouse. However, there would be the daily exchange of care staff operating in a shift pattern. In addition, there would be other professionals coming and going to the property to provide education and therapy as necessary.
12. I consider that the increased level of activity that would occur on a daily basis associated with the proposed use would be more intensive and constant than might reasonably be expected to be generated by even a large dwellinghouse, such that the overall character of the use would materially differ to that of a dwellinghouse.
13. It is recognised that this is inconsistent with another decision referred to by the appellant where Roachdale Metropolitan Borough Council issued a certificate of lawfulness for a comparable proposal. Nevertheless, having regard to the specific wording of the UCO, relevant caselaw and the information provided in relation to this appeal, I do not consider it appropriate to follow the decision reached in that application.
14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use in respect of the use of the residential building as a young persons care home which will remain residential in character was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Inspector

Appeal Decision

Site visit made on 27 September 2016

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 October 2016

Appeal Ref: APP/Y2003/X/16/3142336

The Old Barn, Epworth, Doncaster, DN9 1DB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Debra Deeks o/b Absolute Children's Services Ltd against the decision of North Lincolnshire Council.
 - The application ref: PA/2014/1094, dated 24 September 2014, was refused by notice dated 29 July 2015.
 - The application was made under section 192(1)(a) of the 1990 Act as amended.
 - The use for which a LDC is sought is described as 'C3'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

The LDC application

2. The application was made under s192 in relation to a proposed use, but the use has commenced. I shall consider the application as made under s191(1)(a) – to ascertain whether an existing use is lawful – and this will assist the parties. The 1990 Act provides that the description of development may be modified where the LDC application relates to an existing, but not proposed use.
3. The description of the use quoted above is that given on the LDC application form. 'C3' means use class C3 – use as a dwellinghouse – as defined in the *Town and Country Planning (Use Classes) Order 1987* as amended (the UCO). However, the Government's *Planning Practice Guidance* states that a LDC application needs to describe precisely what is being applied for and not simply the use class.
4. The application form suggested that the use would be a home used to provide care for young people. The proposal was then described in the Council's decision notice and appeal form as 'use of a dwelling as a children's home (C3b use)'. I shall consider whether 'use of a dwelling as a children's home' would be lawful.
5. Where a LDC is sought, the onus of proof is on the appellant and the standard of proof is the balance of probabilities. The appellant submitted information about the use in emails to the Council dated 23 March and 4 and 14 July 2015. The Council determined the application on the basis of this evidence and I have done likewise.

Planning Matters

6. A planning application was previously submitted to the Council for the use of the building, but an officer suggested that the appellant could apply for a LDC. I am not bound by that advice. I understand that the planning application was

withdrawn; in any event, it is not before me and I have not seen the documents. I have had regard to representations made by local residents in respect of the LDC application and appeal, but only where relevant to the question of lawfulness. The merits or otherwise of the use as a children's home are not within my remit.

Main Issues

7. The main issues are whether the appeal children's home falls under use class C3(b) and, if not, whether there has been a material change of use of the building.

Reasons

C3(b) Dwellinghouse

8. The lawful use of the Old Barn falls under use class C3. The appellant states that the building was previously occupied by a family with four children, and it is or will be occupied by up to four children in care with their care-givers. She argues that there has been no material change; the building remains in use as a dwelling, specifically under class C3(b), where not more than six residents live together as a single household and care is provided for residents. Objectors suggest that the building is in use class C2 – use for the provision of residential accommodation and care to people in need of care (other than a use within C3).
9. In order to form a "household" for the purposes of class C3(b), the persons who live together need not be related as family members. However, Article 2 of the UCO indicates that, for the purposes of the Order, "care" means 'personal care for people in need of such care...and in class C2 also includes the personal care of children...' It was held in *North Devon DC v FSS & Southern Childcare Ltd* (QBD 30.1.03 Collins J) that Article 2 restricts the personal care of children to class C2 only. Children cannot form a household without the presence of a care-giver and a children's care home may not fall within class C3 unless a care-giver is a resident.
10. The appellant suggests that a named main carer 'resides' at the property four days per week, for two or three days at a time, as his 'main residence'. As in a foster home, the main carer is allowed respite care – and that is provided by other staff, who 'reside' at the property for two or three days per week. Two carers are present at any one time. The Council officer's report suggested that 'the fact that the [main] carer resides at the property for the majority of a weekly period results in some continuity of care. The property is the main or sole residence of the child and the main carer...[who] forms part of the household in planning terms'.
11. However, staying for most of the week does not show that the main carer lives in the building as his main residence; there is a difference between 'residing' in a property and sleeping over as part of a duty of work. The appellant suggests that the main carer and staff 'make the home function as a family home, ie two carers (parents in a home) providing care to young people', but a building is not used necessarily as a dwelling because two carers are always present, and it seems here that different carers work on rotation. It is not decisive that the main carer is registered for Council Tax at the appeal property because local government rating falls under separate legislation.
12. In a dwellinghouse, living rooms would be shared – as they are here – and bedrooms provide separate private sleeping space. I saw that all of the bedrooms in the building are single, and none included furnishings to suggest use by an adult for whom this could be their main residence. An en-suite bedroom and the largest bedroom were both occupied by children. A third party suggests that the main carer has a family home at a specified address elsewhere. The appellant has not disputed that claim, which is consistent with the look of the accommodation.

13. In a fostering situation, children are placed in the foster carer's main home – but the appellant has not shown that the building is the main residence of the main carer. She has not shown that the building is occupied by not more than six residents who live together as a single household. On the balance of probabilities, the building is not in use as a C3(b) dwelling, but is used for the provision of residential accommodation and care to children in need of care, with carers who own or work for the appellant company and sleep over but do not use the property as their main residence; it is used as a C2 institution.

Material Change of Use

14. Notwithstanding that the LDC application was made to establish whether the use falls within use class C3(b), it would be insufficient for me to dismiss the appeal on the basis of my finding on the first main issue. It was also held in *North Devon* that a C2 use would not necessarily be materially different from C3, and I shall consider whether a material change of use has occurred. The question is whether there is some significant difference in the character of activities undertaken from what has gone on previously, as a matter of fact and degree.
15. The appellant has not said how many carers overall would work at the Old Barn but I am told that an advertisement was placed in the local press for 'senior residential staff, residential staff and bank staff', required to work 'shifts that include days, nights, sleepovers, waking nights and weekends'. If two carers would be present at any one time, it is likely that several would be needed in total for the 24/7 running of this children's home.
16. I saw that the building has three living rooms including a conservatory, plus a therapy room, an activity/education room, two offices and two kitchens. While some large dwellings will include similar amenities, these are provided to support the accommodation and care of four children who are in need of care, and not for the benefit of a household with resident adults. The layout of and facilities in the building plus the advertisement for staff indicates that the home is significantly different to a C3(b) dwelling; there has been a material change to the character of the use through the professional level and quality of care to children.
17. Neighbours have described a significant increase in traffic in the area, and I saw some vehicles parked outside of the building¹. I agree with the appellant that a large dwelling would generate noticeable traffic, particularly if occupied by an adult household or a family that is supported by others. However, it does not follow that the appeal children's home has not led to an increase in activity in this area, and it is not sufficient for the appellant to state that the traffic is not 'excessive'.
18. It appears that comings and goings from the building will be determined by the shift pattern of staff; their duties to provide accommodation and care to the four children in their care; and by visitors. I would expect a residential institution of this size and standard to generate more traffic than a dwelling occupied by any single household. Whether or not there would be any planning harm, the appellant has not shown that the use has not led to increased vehicular activity; this adds weight to my finding there has been a material change to the character of the use.

Conclusion

19. Ofsted have registered the children's home and rated it as 'outstanding'; I acknowledge the significance of that to the appellant. I would also regret any further disruption to the lives of the children who are settled in the building. However, a LDC can only be issued where the facts point to lawfulness.

¹ The LDC application related only to the use of the appeal building and not any land within the curtilage.

20. The appellant has failed to demonstrate that the building is in class C3(b) use. On the balance of probabilities, I conclude that the premises is used for the provision of accommodation and care to children in need of care, and a material change of use has taken place for which planning permission is required but not granted. I have had regard to all other matters raised but none alter my decision. The Council's decision to refuse to grant a LDC was well-founded and the appeal fails.

INSPECTOR



Appeal Decision

Site visit made on 9 November 2010

by John Whalley CEng MICE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 November 2010

Appeal ref: APP/C4235/X/10/2132351

73 The Crescent, Stockport SK3 8SL

Appeal made by Mr Gavin Mackay

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to grant a certificate of lawful use or development, (LDC).
- The appeal is made by Mr Gavin Mackay against the failure of Stockport Metropolitan Borough Council to determine an application for a certificate of lawfulness.
- The application, No. DC/044060, was dated 9 March 2010.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is for the proposed use of the premises as a dwellinghouse for not more than six persons living as a family unit.

Summary of Decision: The appeal fails. An LDC is not issued.

Procedural matter

1. The appellant, Mr Mackay, made an application for an award of costs against the Council. That is the subject of a separate decision.

Scope of the application and appeal

2. This was an application for a Certificate of Lawful Use made under s.192(1)(a) of the Act. It was an application to the Council to determine whether the use described in the application would be lawful if instituted or begun at the time of the application.
3. No. 73 The Crescent, Stockport, is a large detached dwelling set amongst similar houses. The Council confirmed the appellant's statement that the lawful use of No. 73 was as a dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987; Class C3(a).
4. The application for a certificate of lawfulness proposed the use of No. 73 as a dwellinghouse for not more than six persons living as a family unit. That does no more than describe a Class C3(b) use, a use which comes within Class 3. If that was all there was to it, such a change of use within the same Class would not be development requiring planning permission. But what the appellant wanted to find out was whether the use as a children's home, as described in part of the application, needed planning permission. The supporting information sent in with the application set out details of the intended use. So I am dealing with this appeal on the basis of the proposed use as a children's home with up to 4 resident children aged between 8 to 17 years and with 2 carers working on a shift basis being there at all times.

5. The subject of this application for the proposed use as a children's home, has started. But I must deal with the appeal as a proposed use and in accordance with legislation applicable on 9 March 2010.

Appellant's case

6. The application to the Council for a certificate of lawfulness, (LDC), was submitted by "Choices Homes for Children". Mr Mackay, for the applicant company, referred to the company operating at No. 73 as "Choices". It was a registered home providing care to young people. They offered a nurturing environment where young people were encouraged to address specific behaviours which were problematic to themselves and others. The company had been established for more than 17 years. They had an outstanding record in providing care for children throughout that period.
7. The appeal property, No. 73 The Crescent, would provide comfortable and well maintained surroundings for up to 4 young people aged between 8 and 17 years. Each would have use of this fully furnished detached house. They would have their own room, with access to a communal kitchen, living room and dining room. Two members of staff would be available all the time.
8. No. 73 had a family bathroom with a shower, a bath and a toilet. The kitchen provided facilities for cooking, making snacks and dining along with making drinks and washing and drying clothes. Choices sought to emulate the care and support a young person would normally have in a family home environment.
9. No. 73 was an established dwelling within Class C3(a) 'Dwellinghouses' Town and Country Planning (Use Classes) Order. Use Class C3(a) permitted the residential use of a property by a single person or by people living together as a family. Use Class C3(b) permitted use as a dwellinghouse by not more than six residents living together as a single household, (including a household where care is provided for residents).
10. The only difference between the use by Choices and a normal family dwelling would be that the 2 adult carers would not reside at No. 73 permanently. They would instead rotate on a shift basis with other Choices staff every 2 days. But there would be 2 staff at No. 73 at all times.
11. The main consideration for the appeal decision was whether the manner of the carers living at No. 73 would mean the use would fall within Use Class C2 'Residential Institutions' to provide to people in need of care. It was accepted the point was debatable. The Council said the intended use fell within a C2 use. But, as proposed to be carried out, it would be tantamount to the same operation as a C3 use. As such, the appeal should succeed and a certificate of lawfulness should be issued.

Council's case

12. The Council said the lawful use of No. 73 The Crescent was a dwellinghouse within Class C3 of the amended Order; C3(a). But the use of No. 73 as a children's home would not fall within Class C3. It would be a Class C2 use.
13. The Council's inspection of No. 73 showed the appeal use had started. They looked to see if the use had intensified to such an extent as to amount to a material change from that of a normal household. They said there was a fire

alarm panel on the ground floor as well as a health and safety notice. There was an office and a bedroom for use by residential carers. The office comprised filing cabinets, a safe, 2 desks, computers, sofa beds and an easy chair. That room had a lock on it. All the bedrooms had door locks.

14. The Council said they were aware that the police had been asked to attend No. 73 on several occasions since the use started. They said the use of No. 73 as a children's home was likely see an increase in coming and goings from the premises, materially intensifying the use. Those factors clearly demonstrated the materiality of the use. It confirmed that planning permission was required for a change of use.

Reasons for decision

15. As I indicated earlier, I must determine this appeal on the basis of legislation applicable at the time of the s.191 application and, in particular, the Town and Country Planning (Use Classes) Order 1995, without considering the amendments to that Order which came into force later in 2010. Most pertinent, therefore, is Statutory Instrument 2005/84, which amended the Town & Country Planning (Use Classes) Order 1987, and came into force on 21 April 2005 and by Statutory Instrument 2005/85. Guidance on this legislation came in ODPM Circular 03/2005. (I note, however, that changes after March 2010 would not have materially affected the appeal proposal. For example, post - 9 March 2010 amendments changed the description of uses similar to the appeal application: Class C3: Dwellinghouses, included use as a dwellinghouse by (b) not more than six residents living together as a single household where care is provided for residents. Later, CLG Circular 08/2010 of November 2010, which replaced Circular 05/2010 of 31 March 2010, advised that Class C3: Dwellinghouses consists of 3 parts: (including) C3(b): those living together as a single household and receiving care, (the limit for C3(b) was no more than six people)).
16. I inspected the house at No. 73 The Crescent on 9 November 2010. I bear in mind that the appeal before me seeks to discover whether the use as proposed in the 9 March 2010 s.191(a) application would have been lawful on that day. Nevertheless, I think it reasonable to consider the layout as I saw it to help assess the nature of the then proposal.
17. My inspection of the appeal property showed it to be a large, well furnished and decorated house. There was a room used as an office, a large fully equipped kitchen, a lounge, dining area and w.c. on the ground floor. There were 4 bedrooms and a bathroom on the first floor. There was another bedroom with an en-suite bathroom on the second floor. The top floor bedroom was for use by a carer; the 4 first floor bedrooms were separate rooms for the resident children.
18. The lawful use of No. 73 is as a single family dwelling, a use within Class C3(a) of the Order. There is no limit on the number of members of a single household. Also within Class C3, C3(b) was then defined as "use as a dwellinghouse by not more than six residents living together as a single household, (including a household where care is provided for residents.)". So, if the then proposed use of No. 73 The Crescent fell within that Class then, by virtue of Article 3(1) of the Order, that change would not have been development requiring planning permission.
19. In my view, the decision on that point turns on whether the children could live together as a household. If not, would the carers who occupy No. 73 do so as

- residents who form part of a household? I also look at whether a change of use class would itself amount to a material change of use of the property.
20. The Council had pointed to the case of *North Devon District Council v The First Secretary of State and Southern Childcare QBD 30.1.03 Collins J [2003] JPL 1191*. In that, the Court said that 2 children aged between 10 and 17, supported by non-resident carers, could not constitute a household for the purposes of Class C3(b). Collins J said a household needed more than just children, as children: "need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing full-time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should."
21. In *North Devon* there were carers on the property at all times. But they came and went. They were not residents of the house. They lived elsewhere. *North Devon* decided that carers who provided 24 hour care but were not resident could not be regarded as living together in a household. As Circular 13/87 indicated, what was required was 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 concept of living together as a household meant that a proper functioning household must exist. It meant the children and a carer must reside in the premises. Otherwise, the use would clearly fall in Class C2.
22. I consider that to be the case here. That view is reinforced by the proposed manner of occupation of No. 73. In *North Devon*, the Judge said that the children could not be said to be a household, that is, not unless they were looked after by adults. It was accepted that the 2 carers at No. 73 would not reside at No. 73 permanently. They were to rotate on a shift basis every 2 days with other Choices staff. So, whilst there would be 2 staff at No. 73 at all times to care for up to 4 young persons, they could not be said to be residents living together with the children as a single household. The children could not be expected to look after themselves. The carers were to have use of an en-suite bedroom on the top floor. At night, one would be on duty, the other asleep. As they were to alternate with colleagues every 2 days, they could not be said to intend to live on the premises. No. 73 would not be their home. Nor could it be said it would be their temporary home, as might be the case with the children, who could be there for a matter of weeks or months. While the children would be resident at No. 73, it would be their home. The same could not be said of the carers. In my view, this manner of intended use would fall outside Class C3(b).
23. The appellant questioned the Council's reliance on an appeal decision ref: APP/K0615/X/05/2004825, at Briar Cottage, Bickerton. He said in that case, the Inspector had said: "I consider the fact that the carers are not resident would not result in the proposed use of Briar Cottage being materially different in character to its lawful use as a as a dwellinghouse.". There, however, it is evident to me that the Inspector was considering whether the actual use of Briar Cottage, which he had found to be a Class 2 use, was materially different to its the lawful Class 3 use. The Inspector in the Briar Cottage case had followed Collins J in *North Devon* where the Judge had said the Inspector in *North Devon* had been wrong to regard the use as falling in Class C3(b) rather than C2. Class C3 required at least one resident carer together with those cared for. Nevertheless, on the particular facts of the case, the Inspector in *North Devon* had been correct to

decide that there had been no material change of use, and that the use was lawful. The Briar Cottage decision closely followed *North Devon*.

24. That brings me to the consideration in this instance, as to whether, even where the proposed use of No. 73 is within Class C2, that change of use from a Class C3(a) use would not amount to a material change of use. In *North Devon*, Collins J said; "Although it may sound somewhat illogical, it is accepted that, notwithstanding that this may fall within Class C2 rather than Class C3, nonetheless planning permission may not be required if the change of use was not a material change of use.", I need to look at the question of the materiality of the change of use of No. 73 The Crescent. In *North Devon*, the Judge went on to say: "I am bound to say that if an Inspector is satisfied that the use falls within C2 rather than C3, then it would appear that there is prima facie a change of use. Nonetheless, the Inspector is entitled, as indeed are the local planning authority, to consider whether that change of use was material. It will only be material if, as a matter of fact and degree in the circumstances of an individual case, the change of use was material.". *North Devon* was an s.191 application appeal as here. But some reliance was made on evidence of the actual use, rather than only on details of the proposed use. That seems to me to be reasonable, if the actual use correctly reflects that applied for.
25. The Council said the use of No. 73 as a children's home was materially different to use as a Class C3(a) residential use. They pointed to the fire alarm panel, health and safety notice, lockable office and other rooms, suggesting aspects more akin to institutional, rather than normal family home, life. The formal organisation of the business tends to support that. Even more pertinent, in my view, is the likely change in activity in the immediate vicinity of the property. Shift changes for carers are likely to see between 3 and 4 carers briefly in No. 73. There would be more comings and goings of cars and the people carriers referred to by the appellant than might be expected in a normal domestic household. Residential use of the property by troubled children could bring more disturbance than would most family homes. The reference to the police making visits to see children also suggests the nature of the use of No. 73 is not that of a normal domestic use. Numerous local residents had no doubt that the character of the use of No. 73 had changed. All these factors, cumulatively, lead me to conclude that a material change of use of No. 73 would occur as a result of running it as a children's home as set out by the appellant.
26. Had I found the proposed use of No. 73 to be lawful, that would have been lawful only on the date of the application. Subsequently, any change in use from a Class C3(a) to another use would have to be examined against relevant legislation applicable at that time and the nature of the use.

FORMAL DECISION

27. A Certificate of Lawful Use for the use of the property at No. 73 The Crescent, Stockport SK3 8SL as a Children's Home for up to 4 young people and 2 carers is not issued.

INSPECTOR

Appeal Decision

Site visit made on 25 February 2014

by John Whalley

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 3 March 2014

Appeal ref: APP/N4720/X/13/2201154

1 Parlington Court, Barwick in Elmet, Leeds LS15 4EB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by Leeds City Council to grant a certificate of lawful use or development.
- The appeal was made by Mr Robert Bamling.
- The application, No. 13/01139/CLP, dated 8 March 2013, was refused by a notice dated 3 May 2013.
- The application was made under s.192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The proposed use for which a certificate of lawful use or development is sought is: Use of the property as a single dwelling house for not more than 5 residents for the purposes of operating a children's care home within use Class C3.

Summary of decision: The appeal fails. A certificate of lawfulness is not issued.

Appeal property

1. Parlington Court is a short cul-de-sac road at the north-eastern end of the small settlement of Barwick in Elmet. The road is fronted by 9 detached houses. The appeal property, No. 1 Parlington Court, is a large 4 bedroomed detached house and its gardens, situated close to the junction with Aberford Road.

Council's reason for refusing the application

2. The Council's reason for refusing to issue a certificate of lawful use for the proposed development was: *Leeds City Council certify that on 3 May 2013 the use described in the First Schedule can not be considered to be lawful as the proposed use as a care home for children where staff operate on a rota basis falls within C2 of the Use Classes Order.*

Use Classes Order

3. The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories, including:

C2 Residential institutions - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.

C2A Secure Residential Institution - Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre,

secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks.

C3 Dwellinghouses - this class is formed of 3 parts:

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.

C4 Houses in multiple occupation - small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

Appellant's case

Proposed use

4. The Appellant, Robert Bamling, for Care Assist Children's Services, said the appeal property, No. 1 Parlington Court, had been used as a dwelling house, (Class C3 of the Town and Country Planning (Use Classes) Order 1987; Class C3(a)), since 1967. There was no dispute that was the lawful use.
5. The Appellant's company provided a normal domestic environment for children who were unable to live with their families. Typically, children were placed with them by a local authority's Children's Services department for up to 3 years until they either returned to their own families or became independent adults. While at No. 1, they would attend mainstream schools and live a normal family life.
6. No. 1 would house up to 3 children. To provide care, 2 members of staff would live in. They would be responsible for domestic chores, cleaning and preparing meals for themselves and the children. Staff would live and sleep at the property for up to 3 consecutive nights. They would then rotate with 2 other staff members. Staff would therefore be permanently resident to care for the children. No. 1 would be occupied and run as a normal family home with a single kitchen where all food would be cooked and eaten in a family environment. Each child would have a separate bedroom. No locks would be fitted to bedroom doors. Staff members would share a bedroom. One room would be an office for use by the care home manager.

Main case – C3 use

7. The Council had said use of No. 1 as a care home for children where staff operated on a rota basis fell within C2 of the Use Classes Order. That was based on a wrong interpretation of the judgement in *North Devon District Council v The First Secretary of State [2003] EWHC 157 Admin*. In *North Devon*, 2 non-resident staff were to be on duty at all times. The house 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 and the staff would provide care,

but would not be regarded as being part of the household. Mr Justice Collins rejected that, saying: *"Children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home. It seems to me that in the context "household" means more than merely the bodies. You have to consider whether the bodies are capable of being regarded in the true sense as a household."* He went on: *"The question then 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."*

8. The care situation at No. 1 would be materially different to that in *North Devon*. It would comply with the requirement that the carers should live full-time in the house. Two adults would be residing in the property for a number of days, resident on a full-time basis, living with the children in a normal family environment. It would be a properly functioning household. The house would be a temporary residence for the carers during their shift.
9. The use would fall within Class C3(c) of the Use Classes Order; - *"(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)."* Although this would be a care home, "care" was defined in the Order as: *"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;"*. Here, the children resident at the home would not be receiving care within the meaning of that definition. It would be a Class C3(c) use.

Alternative case – no material change of use

10. If that conclusion was not accepted, and the proposed use was found to come within Class C2, the use would not amount to a material change of use.
11. No more than 3 children and 2 carers would live in the house at any time. Each child would have their own private bedroom. One bedroom would be available for use by staff sleeping at the house. All normal domestic duties, such as cooking, cleaning and gardening, would be shared by the children and carers. There would be no substantial physical alterations to the premises.
12. It was accepted there would be a slight increase in car movements when carers changed shifts. There would also be vehicle movements when the children were taken to school and brought home. That would be no more than expected for such a house.
13. Some objectors were concerned about the potential behaviour of children at No. 1, particularly if the children had mental health issues. The children who would be resident at the care home at No. 1 would not have psychological or behavioural problems. The Appellant was not authorised to provide placements for children with mental health issues and had no intention to obtain that type of authorisation. It was not inherent in the character of a children's care home that the proposed use of No. 1 would have an adverse impact upon the local community and welfare services.

14. The building would not require significant adaptation because it was the intention to provide a normal home environment. There would not be features associated with an institutionalised care home such as locked doors, fire alarms and specific rules or notice boards. An office would be provided for the care home manager. But it would only be one room, similar to an office or study used in a dwelling house. The use of No. 1 as a children's care home would not result in a use materially different in character from its lawful use as a dwellinghouse.

Council's case

C3 use?

15. The proposed use of the property did not to fall within Class C3. All parts of Class C3 required those in the property to form a single household. The Appellant's assertion that the property would be the "permanent home of up to 3 children and 2 adults" and that the "staff and children should properly be regarded as forming a single household", failed to take account of relevant legislation, appeal cases and legal judgements.
16. No. 1 Parlington Court would not be the permanent home for up to 3 children and 2 adults, as suggested by the Appellant. It would be a temporary home for up to 3 children and the work place of a number of adults attending the property according to a rota of shifts. *North Devon* and a Stockport LDC appeal decision, (ref. APP/C4235/X/2132351), made it clear that where children resided in a property and were cared for by staff who attended a place of work on a rota basis, (and who thus lived elsewhere), a household could not be said to exist. The use would be more consistent with Class C2.

Material change of use?

17. *North Devon* and the Stockport decisions showed that local authorities needed to consider whether the manner in which the property was to be used was likely to be perceptibly different to that of a normal dwellinghouse.
18. The appeal property would be a place of residence and of work, a use different to a normal domestic environment. The employment use would be permanent. Paid carers attending their place of work would be essential to the enterprise. Without them, the children could not live at No. 1. But the carers would not live at No. 1. Alternation of personnel dictated by commercial employment practices was not usual in a domestic context.
19. Car use and levels of activity were relevant to deciding whether a material change of use would occur. The 2 carers and the care home manager would come and go by car. There would be more visitors than usual at a dwellinghouse. Each of the 3 children would continue attending school in their placing authority. Vehicle movements would be well in excess of those associated with a normal domestic dwelling.
20. The Council's Children's Services drew attention to the property being used as a short-term home where there would be regular changes in the group of children who resided at the property. That would be likely to increase tensions within the area and hamper the ability of the residents to integrate into the community. The Council would be unable to prevent the residents of No.1 changing every 3 or 6 months as the needs of the children or the

Appellant's business model changed. The use of the appeal property would be noticeably different from the usual pattern of social interaction and integration. Together, those elements led to the conclusion there would be a material change of use.

Inspector's considerations

Use Class C3?

21. The lawful use of No. 1 Parlington Court is as a dwelling within Class C3(a) of the Town and Country Planning (Use Classes) Order. It was the Appellant's case that the proposed use of No. 1 Parlington Court would remain a Class C3 use, within Class C3(c). That allows for groups of up to six people living together as a single household.
22. Both parties referred to the *North Devon* case. In that, Collins J decided that the use, which had started, fell within Class C2, but that no material change of use had occurred. In the present appeal, the Appellant pointed to what he saw as a significant difference between the care situation in *North Devon* and his proposal. In *North Devon*, 2 non-resident staff were to be on duty at all times, but not living in, the house being supervised by a team of 6 or 7 adult carers operating in 8-hour shifts. At No. 1 Parlington Court, the care arrangements were that 2 adults would reside in the property for a number of days at a time. The Appellant said the carers would be resident on a full-time basis, living with the children in a normal family environment.
23. I agree that, for the time they were there, the children at No. 1 would live in the house. It would be their home. But that would not be the case for the carers. They would not live full-time in the premises. It would be their place of work, rather than their only or main residence. Their pattern of work would be that one of the 2 would be awake, on duty, through the night. They would take it in turns to use the one staff allocated bedroom for rest or sleep. The pattern of work for those 2 carers would continue for up to 3 consecutive nights, before swapping places with other colleagues taking over their duties. In my opinion, they would not be living a normal family life while working at No. 1. They could not correctly be said to "live" at No. 1. Employed for caring purposes at No. 1 by the Appellant's company, they would surely more likely think their homes to be in their own households, or with their families, elsewhere. The 2 staff members at No. 1 could not reasonably be said to be residents living together with the children in their care as a single household.
24. The method of running the home at No. 1 would be closer to being a household for the purpose of Class C3 than that in *North Devon*. But it would still be a children's residential care home run by carers working on shift patterns. That would fall outside the definition of a Class C3(c) use. It would be a C2 residential care home use. I look at the other 2 parts of a C3 use.
25. It was not suggested that the proposed use of No. 1 would fall within Class C3(a). That part deals with dwellings predominantly occupied as a single person, or a family, home. Although, amongst others, it covers situations where a dwelling is occupied by a carer and the person receiving the care, I would expect them to live in the dwelling, not come and go on in shifts.
26. The proposed use of No. 1 would not meet the definition of a dwellinghouse as set out in Class C3(b). A Class C3(b) use is defined as (Dwellinghouses) - "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.”. There was no intention to house children in need of that type of care. Again, it would be expected that all the occupants would live in the dwelling as a single household.

Material change of use?

27. The Appellant said that if the proposed use were found to be within Class C2 of the Use Classes Order, planning permission would not be required as there would be no material change of use.
28. *North Devon* showed, where it was found that a use fell within C2 rather than C3, that although there was, on the face of it, a change of use, the decision maker was entitled to determine whether that change of use was material.
29. The Council were right to point out that No. 1 would be a place of residence and of work. That suggested a use of the entire property significantly different in character and use to that of a normal residential dwelling. Many of the aspects of normal family life would exist. But the type of occupation, a carer on duty all night, comings and goings more numerous than usual and patterns of life different to those of most family homes, would reveal a use noticeably different to that expected in a normal residential dwelling. It might be that each child had to be taken to and from a different school to the others. That could bring significantly more traffic into Parlington Court, a short, and apparently quiet, residential cul-de-sac with few houses.
30. It appears that, in May 2013, No. 1 was briefly operated as a children’s care home. That led to complaints from local residents, disturbed by discordant activity and more traffic at or close to No. 1. The apprehensions of those living nearby that they would be likely to be disturbed by occupants and visitors to No. 1 if the use re-started also showed they would not expect the proposed use to be similar in nature or in its effects as a family home.
31. What appears to have been an unlawful children’s home use at No. 1 may not have been typical of the appeal proposal. But it further indicates that the nature of the use and the type of activity associated with even a modest sized children’s care home use of No. 1 compared to a normal domestic use would be materially different. The appeal proposal would amount to a material change of use of No. 1 Parlington Court that would require planning permission.
32. The refusal by Leeds City Council to grant a certificate of lawful use or development for the use of the property at No. 1 Parlington Court, Barwick-in-Elmet, Leeds LS15 4EB, as a single dwelling house for not more than 5 residents for the purposes of operating a children's care home within use Class C3 was well founded.

FORMAL DECISION

33. I dismiss the appeal.

INSPECTOR