

## DELEGATED DECISION REPORT

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**SMD/2024/0146**  
**Valid 26/03/2024**

**1 WINDY ARBOUR**  
**CHEADLE**

**APPLICATION FOR A LAWFUL  
DEVELOPMENT CERTIFICATE  
FOR PROPOSED USE OF  
PROPERTY AS RESIDENTIAL  
CARE HOME (CLASS C2) FOR  
UP TO 2 CHILDREN AGED  
BETWEEN 5 AND 18 WITH  
CARE PROVIDED BY UP TO  
THREE NONRESIDENT  
MEMBERS OF STAFF (NO  
MATERIAL DIFFERENCE WITH  
LAWFUL USE AS CLASS C3  
DWELLING)**

**(CERTIFICATE OF  
LAWFULNESS - PROPOSED)**

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### MAIN ISSUES

- Whether there is a change of use (in terms of the use classes order) between the current and proposed uses.
- Whether the proposal is 'not material' and therefore is not subject to planning controls.

### DESCRIPTION OF SITE

The application site is number 1 Windy Arbour Cheadle. The dwelling is a detached, dormer style property with accommodation over two floors. The plans accompanying the application show lounge, sitting room, kitchen/dining, utility and garage on the ground floor with four bedrooms (one with ensuite) and a separate bathroom at first floor level. There is external amenity space including off-road parking and garden space. Boundaries are marked by fencing.

The property is situated within a residential area, occupying a generously sized plot at the junction of Windy Arbour and Queen Street. Surrounding dwellings vary in terms of age, size and appearance with a mix of detached, semi-detached and terraced properties.

### PROPOSAL

The application is for a certificate of lawful development for the use of the dwelling as a residential care home for up to 2 children and care by three 'non-resident' members of staff. The accompanying Planning Statement provides the following information concerning the intended use.

*3.1 The application seeks formal confirmation under Section 192 of the Town and Country Planning Act 1990 (as amended) that the proposed use of 1 Windy Arbour, Cheadle as a residential care home for up to 2 children would not require planning permission.*

*3.2 The existing property has the layout, facilities, services and character of a large dwellinghouse. The proposed use would not change this. The external appearance of the building would not be changed and no internal alterations would be required.*

*3.3 This home would aim to provide 2 children with an environment as close as possible to that of a traditional family home. The use of the property would not fall within Class C3 as there would not be any resident adults living at the property as their main place of residence. Care workers would work on a shift basis and, as 1 Windy Arbour would not be their home, the property would not be occupied by a "single household". The proposed use would therefore, whilst not being materially different to a Class C3 use, fall within Class C2.*

*3.4 Up to 2 children between the ages of 5 and 18 years would live at the property as their principal residence. The children who would live at the home will have been taken into care because they are unable to live with their natural parents and are not old enough to live independently. They would be expected to leave the home on maturity to live independent lives.*

*3.5 At the proposed care home, day-to-day living facilities, including bathroom, kitchen, dining and sitting rooms would be shared. Each child would have their own bedroom. Bedrooms would be fitted with locks to meet legal requirements, including human rights legislation; however, the carers would have a master key to each room.*

*3.6 The preparation of meals would be principally undertaken by the carers; however, the children would be encouraged to assist. Both carers and children would eat their meals together at the dining table and children would socialise together. Children would usually attend a local school.*

*3.7 Staff would work shifts to provide 24/7 cover. Shift changes normally take place between 8 and 9am and staff would sleep over between shifts. The purpose of staggering shift changes is to optimise the impact of shift changes on the young residents and to reduce vehicle movements to and from the site.*

*3.8 Not all staff would be present on the site, at all times. During the day there would be 2 carers present and a registered manager would work flexibly on and off site to provide oversight to meet the needs of children and the staff team. During the night 2 care staff would be present to provide care and/or support for the children should they wake during the night.*

*3.9 In addition to carers, there would be short and infrequent visits from social workers and other support professionals. Family visits are rare but where appropriate, the visits would be pre-planned in accordance with the child's contact arrangements. Vehicles trips for day-to-day living activities such as shopping, school runs and social outings for the children would be undertaken by the carers and, as with any family dwelling, shopping can also be ordered online for delivery.*

*3.10 The application site has ample off-road parking and outdoor amenity space for the proposed use. Typically, there would be approximately 2 cars on the site during the day which can easily be accommodated within the site.*

## **SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS**

04/00714/FUL Detached dwelling with garage. Approved.

03/01277/FUL Detached dwelling with garage. Refused.

01/00091/OUT Renewal of outline application for dwelling. Approved.

## **CONSULTATIONS**

### Publicity

There is no statutory requirement to consult third parties on applications such as this. However it can be useful to the Local Authority to undertake some consultation. In this instance it was decided to display a site notice and notify the town council. It is noted that any representations regarding the planning merits (or otherwise) of the application cannot be considered as this application is to be determined on the basis of whether the proposal is lawful within the terms of the Use Classes Order 1987.

Site Notice expiry date: 16.05.2024

Public Comments: One representation objecting to the application. Comments are as follows;

*Saw this when looking up another application. Have seen no notifications posted anywhere near the property. Thought this was a legal requirement?. We have lived on Windy Arbour for 30 years and object to this application. There will be wear and tear to the access of the premises which is responsibility of all Windy Arbour residents to upkeep as it is unadopted road. I feel the location is totally unsuitable for the care that these children need.*

Cheadle Town Council: No representations received during the statutory consultation period.

## **OFFICER COMMENTS**

Class C3 'Dwellinghouses' of 'The Town and Country (Use Classes) Order 1987' categorises the use of any dwellinghouse as any of the following;

Class C3a: A single person or by a family to be regarded as forming a single household;

Class C3b: Not more than six residents living together as a single household where care is provided for residents; or

Class C3c: 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)

The Planning agent has confirmed that the vendor of 1 Windy Arbour and his family still reside at the property. It is clear that the building was constructed for the purposes of a dwellinghouse. Number 1, Windy Arbour is proposed to be used as a home for up to two children and care by three 'non-resident' members of staff. It is understood that the staff members will occupy the property on a rota basis and that care would be provided at all times

by adult members of staff. The application property would not be the adults' main residence and due to the ages of the children, the property could not be classed as a single household for the purposes of Class C3a.

In terms of whether the proposal falls within Class C3b, case law (North Devon District Council v First Secretary of State [2003]) has established that carers who do not live at the property as their main residence cannot be considered to be the adults who can establish a 'household.' In terms of the Windy Arbour application, the application specifically states that the adults would not use this property as their main residence. The proposal cannot therefore fall within the scope of Class C3b.

The proposal does not comply with Class C3c as care is being provided.

However, it is well established by the courts that, notwithstanding whether the use might fall within Class C3, a different use class, or no class at all, planning permission will not be required, if the change of use would not be a 'material change' of use. The local planning authority must still consider therefore, whether the change of use proposed would be 'material'. It is a matter of fact and degree, in the circumstances of an individual case, as to whether a change of use will be material.

The determination therefore, rests with whether the differing use as set out and proposed by the applicant would be 'materially' different to that of a dwellinghouse and result in development requiring planning permission. "The Act" does not define 'material change of use' and in general therefore, it is necessary to exercise some considered judgement in individual cases, and this is regarded by the courts as being primarily a matter of fact and degree for the Local Planning Authority. Differences which might be considered 'material' are those which are measurable or quantifiable as resulting in a significant or substantial change or step up in the character or impact of a use.

As a starting point, the previous and lawful uses of the property, against which the materiality of the applicant's proposed change must be measured, provide the base line for comparison. The building is currently being used as a 4 bedroom dwellinghouse, which could easily be accommodated by 5 family members (possibly more if children were to room share). Up to 6 people could occupy the property under Class C3c. The Local Planning Authority are informed that a registered manager would work flexibly on and off site as needed and together with the two carers and two children, the number of people present (although not always at the same time) would equate to a number similar to a family living at the site.

There would be 'short and infrequent visits from social workers and other support professionals.' These movements could be likened to family, friends and deliveries coming to the property. The comings and goings from day to day activities such as school journey's, outings, visitors to the property would not be significantly different to a general household. The Planning Statement informs that staff shift changes would be between 8am and 9am. Movements at a property at this time of day is not considered unusual, especially during weekdays when many families could be departing for work, take children to school or depart for days out/errands. The submitted Planning Statement (at paragraph number 5.23) informs that the children who live at the application property will be those who cannot live with their natural parents and that it is not '*necessarily any behavioural reason why they may be in care.*' The Planning Statement goes on to say that '*The proposed home would not be a secure unit, and the children taken into care would not be expected to have any inherent behavioural problems, although for the purposes of Ofsted registration, children's homes must be registered to be able to provide for children with emotional and behavioural difficulties as a minimum level of care provision; this would be the case with 1 Windy Arbour.*' An email dated 21.05.2024 from the planning consultancy further confirms the '*the home would not be an institution or offenders unit.*'

Four bedroom dwellings are expected to provide 3 off-road parking spaces, 1 Windy Arbour is capable of providing in excess of the 3 spaces externally and also has the benefit of a single, attached garage which could provide a further space if required. The spaces would be used by the two care workers (both not always on site at the same time) and the manager, who would also not be at the property at all times. Social workers/support professionals (as mentioned above) would also come to the property but as the visits would relate to solely 2 children, it is unlikely that they would have any significant impact above and beyond what would typically be expected in relation to a standard C3 dwelling. The ages of the children and their circumstances means it is highly unlikely that any vehicle would be owned by them but even if it was the case, the nature of the journeys would not be anything beyond what would be expected for a young person. The Planning Statement informs the LPA that there would be approximately 2 cars at the property.

Externally there are no proposed changes. 1 Windy Arbour was constructed as a dwelling and has been occupied as such. There are external amenity areas and fencing and planting of a domestic nature. There is no proposed change to the appearance of the dwelling which would suggest any intended, intensified use.

## **CONCLUSION / PLANNING BALANCE**

The lawful use of a dwellinghouse, included at Class C3 of “the UCO 1987”, is broad in scope and could in association bring with it considerable activity, associated and ancillary use, or vehicle movement. The prevailing character of the proposed use would be that of just two children living together and using the property in a way similar to that of a family home where they would be supervised and cared for by adult guardians. While there might be identifiable differences, between proposed and existing uses, these would not be ‘material’ or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwellinghouse.

**OFFICER RECOMMENDATION :** Approve.

**Case Officer:** Lisa Jackson

**Recommendation Date:** 21.05.2024

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Signed by: Ben Haywood

**On behalf of Staffordshire Moorlands District Council**