

DELEGATED DECISION REPORT

SMD/2024/0464
Valid 10/10/2024

26 ABBOTTS ROAD
LEEK

**APPLICATION FOR A LAWFUL
DEVELOPMENT CERTIFICATE
FOR AN EXISTING USE AS A
CHILDRENS HOME**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

Whether or not a certificate of lawfulness can be granted for the use of the site as a children's home (in "C2" use) on the basis of whether it has been used for this purpose continually for at least ten years and in accordance with the Town and Country Planning Act.

DESCRIPTION OF SITE

The site is within the Development Boundary of Leek and lies to the north-west of the town centre. It comprises a modern detached two-storey dwellinghouse which is the end house of a row of four modern detached houses on a small cul-de-sac off Abbots Road which lies to the west. The other modern dwellings lie to the north side and the one next to the application site is also within the same ownership. Detached houses in large plots lie to the south side, to the front (west) and to the rear (east).

PROPOSAL

This is a Certificate of Existing Lawful Use application which seeks a certificate to confirm that the house has been used as a "C2 Residential Institution" (in the Town and Country Planning (Use Classes Order) 2015 (as amended)), which includes children's care home. There is no record of any planning permission being granted for this change of use of the dwelling (a C3 "Dwellinghouse" Use Class) and therefore the use is deemed to be an unauthorised use. However, Section 171B of the Town and Country Planning Act (as amended) states that unauthorised uses of land occurring for a period of at least ten years are immune from Enforcement Action. Therefore the use would become lawful.

The onus is on the applicant to demonstrate/give evidence of the use having occurred continually for this length of time. If the Council does not have any evidence of its own to dispute the applicant's evidence, then, on the balance of probabilities if the Council considers the current use has continued uninterrupted for this period, the current use becomes lawful and a Certificate can be granted on that basis.

The application form submitted, from the care provider, states the following:

On 15.08.2008 26 Abbots Road was registered with OFSTED as a Children's home

for up to 2 young people between the ages of 8 and 17 who have emotional and behavioural difficulties. The young people were generally placed with a 1:1 staffing ratio with sleep in staff, however on occasions young people are placed on 2:1 staffing, and a wakeing night might be required. the home also had a Manager and Deputy Manager. Since 15.08.2008 the property has operated as a childrens home until its temporary closure on 10th June 2022. When a new manager is recruited the home will be re registered with OFSTED and reopened.

Following initial consultation with the planning office 26 Abbots road was registered with OFSTED on 15.8.2008 as a children's home. From 15.8.2008 till 10.6.2022 the property operated as a children's home. from 11.6.22 the property has been vacant pending re registration with OFSTED.

There is no other supporting information or evidence provided.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

N/A

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

None.

CONSULTATIONS

Publicity

Site Notice expiry date: 3.12.24

Neighbour consultation period ends: 3.12.24

Press Advert: N/A

Public Comments

Three letters of objection have been received from nearby neighbours who state that the children's home use has led to noise and disturbance, traffic and parking problems.

One comment neither supporting nor objecting raises boundary issues with regard to an extension over the garage.

Town / Parish Comments

None.

SMDC Legal Services

The Council Solicitor refers to an independent Solicitor's article (which can be viewed online: <http://planninglawblog.blogspot.com/2014/01/breaches-of-planning-control-need-for-28.html>) focussing on CLEUDs (Certificates of Lawful Existing Use) and debating "continuity of use" and the article comments on this as follows:

“It is apparent that there has from time to time been some woolly thinking on this point, or at least some rather loose and imprecise use of language. What emerges from the decided cases discussed in earlier parts of this article is that, following the relevant period of continuous breach so as to achieve immunity from enforcement (whereby the change of use becomes lawful), uninterrupted continuity of the use is not thereafter necessary (as discussed above, see Panton), but that the use must be current at the time of making an application under section 191(1)(a). It is incorrect to talk of the ‘breach’ continuing at that date, because the breach of planning control ceased upon the use becoming lawful at the end of the 4/10-year period beginning with the date of the breach.”

The Council Solicitor comments that, therefore, because the use is not current as at the time of the application we cannot grant the certificate.

OFFICER COMMENTS

In order to achieve a certificate of lawfulness for an unauthorised use of land, in this case, the use of a dwellinghouse as a care home for two children, the applicant must demonstrate that the care home is still in use (i.e. the use has not ceased) and there has been a continual uninterrupted care home use for a period of at least ten years from the date that the operations were substantially completed. If the Council has no evidence of its own to refute the applicant’s evidence then if it considers on the balance of probabilities the use did continually occur for this period, without the intervention of enforcement action where it was possible to do so, then the certificate of lawful use should be issued. This is because Section 171B of the Town and Country Planning Act (as amended) states that unauthorised uses of land occurring for a period of at least ten years are immune from Enforcement Action.

The Planning Encyclopaedia also states that where an applicant’s case is that the time for enforcement action has expired, the decision-maker must start with the date of the valid application and then consider the 10-year period (as the case may be) prior to that date.

However, in addition to the online legal article (in the Consultation Responses Section of this report), the Council has found a case which must also be taken into consideration in deciding whether or not to grant the certificate. This involves a 2010 appeal case in West Sussex relating to a Certificate of Lawfulness for an “existing dwelling” (Appeal Ref: APP/U1430/X/10/2120295). The inspector simply says that if the use isn’t existing at the time of the application, no matter what may have occurred in the past, then a certificate of existing use cannot be issued.

This case does impact on the determination of whether or not to grant a Certificate of Lawfulness for a care home at the application site, because the care home use has now ceased and the dwelling was still vacant at the time the application was submitted.

Under S191(1)(a) of the Town and Country Planning Act, the use must be current at the time of making an application. It is incorrect to talk of the ‘breach’ continuing at that date, because in this case, the breach of planning control (i.e. the unauthorised

change of use of a dwellinghouse as a care home) ceased on 10th June 2022 and the property has been vacant ever since (including at the time the application for a certificate was submitted). Following this logic and in consideration of the fact that the care home has ceased, the Certificate of Lawfulness must be refused.

CONCLUSION / PLANNING BALANCE

The issue of whether or not the unauthorised change of use of a dwelling as a care home has occurred continually for a period of at least ten years (which would normally make exempt from Enforcement Action and therefore becomes lawful) is irrelevant because under S191 of the Town and Country Planning Act (as amended) and in line with other planning cases, a certificate of existing lawful use cannot be granted for a use of land which no longer exists and as declared by the applicant, due to the care home use ceasing in June 2022, the application for the certificate of lawfulness for an "existing" use as a care home should be refused.

OFFICER RECOMMENDATION : REFUSE

Case Officer: Chris Johnston

Recommendation Date: 27.6.25

X *B.S. Haywood*

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council