

Item No: a1

Application Ref.	23/00190/CTP
Application Type	Certificate of Lawfulness - Proposed Use
Site Address	7 Kingfisher Walk, Worksop, Nottinghamshire, S81 8TQ
Proposal	Application for Lawful Development Certificate for a Proposed Use as C2
Case Officer	John McKeown
Recommendation	GTD - Grant
Web Link:	Link to Planning Documents

The Application

Site Context

The application site comprises a 2 ½ storey detached five bedroom property sited within a predominantly residential area within Worksop. The property fronts Kingfisher Walk and is positioned opposite an informal area of public open space.

The property benefits from a generous driveway, double garage and private rear garden area.

Proposal

The application is for a Certificate of Lawful Use. The application is seeking the confirmation that proposed use would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.

The proposal is for the use of 7 Kingfisher Walk, Worksop as Use Class C2 (residential institution). The dwelling would provide a home for 2 children, up to 18 years of age, as their sole or main residence. They would be looked after by two carers sleeping overnight, working on a 48 hour rota basis, sharing facilities with them. A manager would be on site during weekdays from 9am to 5pm.

Development Plan and other Material Considerations

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process. Therefore there are no development plan or national planning policies or guidance relevant to the consideration of this application.

Section of 192 of the Town and Country Planning Act 1990 (as amended), or 'the Act', states that:

'(1) If any person wishes to ascertain whether -

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) If, on an application under this 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 they shall refuse the application

Relevant Planning History

None

Summary of Consultation Responses

None

Summary of Publicity

This application was not publicised by the Local Planning Authority as there is no statutory requirement to consult third parties including parish councils or neighbours in respect of applications for Certificates of Lawful Use.

Councillor Pressley requested that the application be considered by Planning Committee as there are over 80 objections from residents regarding lack of amenities, noise, fear of crime and anti-social behaviour and highway issues in a residential area.

89 letters of objection have been received from local residents on the following summarised grounds;

- Noise
- Residential amenity
- Highway safety
- Anti-social behaviour
- Unsuitability of area and lack of local facilities

Consideration of Planning Issues

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

Applicant's Position

Following discussions with the Planning Department, the applicant has agreed that the description of the proposal should be altered to 'Application for Lawful Development Certificate for a proposed use of property as Class C2 (from Class C3).

The applicant's view is that there would be little material difference between the current permitted use of the dwelling C3 and the proposed use of C2 as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended).

Accordingly it is the position of the applicant that the above proposal would not constitute a material change of use.

Discussion

Character of the proposed use - The submitted Supporting Statement provides an outline of the proposed use of 7 Kingfisher Walk. The property would be the sole or main residence for a maximum of two children aged between 8 and 18 years.

They would be looked after by two carers sleeping overnight, working on a 48 hour rota basis, sharing facilities with them. A manager would be on site during weekdays from 9am to 5pm.

The submitted Statement describes that the proposal is for up to 2 child residents occupying the dwelling and receiving care.

It is acknowledged that the use would not fall within Use C3 dwelling; Uses as a dwellinghouse (whether or not as main residence) by: A single person or by people to be regarded as forming a single household. Not more than 6 residents. A 'single household' is defined in Section 258 of the Housing Act 2004. However, by virtue of the Use Classes Order this definition is only applicable to a C3(a) use and cannot reasonably be applied in this case.

It has to be considered whether 2 children living within the dwelling and being cared for by non-resident staff would constitute a household. There have been recent appeal decisions that are considered relevant to this matter. In his decision for appeal APP/A3010/X/21/3277785 (a copy of the appeal decision is provided at the end of this report) against Bassetlaw District Council's refusal for a Certificate for 3 children living together and receiving care, (reference number 21/00759/CTP), the Inspector Stated;

'Children alone are unable to form a household because they are reliant on adults to care for them and to run the home. Where care is provided in a dwelling that is not the main residence of the carers, those providing care do not form part of a household. In those circumstances, the use falls within Class C2 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 as amended and is not a dwellinghouse use within Class C3 of the same Order. While that is so, it must be determined, on the facts of the case, whether there would be a significant difference in the character of activities from the present use, such that a material change of use would occur.'

Therefore the main consideration in the determination of whether this use is lawful for planning purposes is whether the use proposed is materially different than what would occur should the property be in use as a dwellinghouse.

At most, on non-school weekdays, there would be 6 people, 4 adults and 2 children, within the house. The submitted information states that the carers work shifts on a rota basis which comprise of them staying at the property for at least 2 nights before changing over. There will always be 2 members of staff at the property with a manager being present between the hours of 9.00 and 17.00. A Social Worker will visit the property once every 6 weeks. There would be annual inspections by Ofsted but no regular welfare or wellbeing visits.

On a typical day, it is considered that it is likely that there would generally be 3 cars, those of the carers and manager, parked at the property and vehicular movements would be generated by taking the children to school, the change-over of care staff (once every 48 hours) and movements associated with trips out such as for shopping or leisure.

The existing property is a 5 bedroom dwelling that could be occupied by a family, which given the scale of the dwelling could realistically comprise 2 adults and 3 or 4 children. A family of this size may have several vehicles, particularly should the children be young adults, that would be parked at the property at any one time and the vehicular movements associated with a large family dwelling occupied by family with independent children are likely to be greater than a care home with 2 children who are generally supervised by 3 members of staff during the day time. It is therefore considered that there would not be material difference between cars being parked at the site and vehicular movements associated with the use when compared to a family dwelling.

Whilst there is no reference to a dedicated office area at the property, the use of a room as an office or study is not unusual in domestic settings, particularly due to the increase in home working since the pandemic. While the length of any child's stay will depend on factors particular to that child, it is anticipated that each stay will be generally more than temporary or passing. The information provided by the applicant state that the property will provide the main or sole residence for the children so occupation as a halfway house or as overnight emergency lodgings is not proposed. Therefore, while the children's lengths of residence may be shorter, their occupation of the house would be comparable with children of a family that may occupy a family home of this character.

Conclusion/Planning Balance

Having had consideration to the character of the property of 7 Kingfisher Walk, the information provided by the applicant regarding the way the care home would operate demonstrates that the proposed use would not be materially different in character from the occupation of the house by a single household. It is therefore recommended that the Certificate of Lawful Use for Use Class C2 should be granted.

Recommendation:

Grant the Application for the Lawful Development Certificate for a Proposed Use as C2

It is hereby certified that on 13th February 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use, while falling within Class C2 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 as amended, would not be materially different in character from use as a dwellinghouse within Class C3 of the same Order.

First Schedule

Use of a dwelling for a children's home for a maximum of two children, with two carers sleeping overnight, working on a rota basis

Second Schedule

7 Kingfisher Walk, Worksop, Nottinghamshire, S81 8TQ