

Delegated Report

Planning Reference: 25/00549/CLP
Applicant(s): YMCA Leicestershire
Ward: Markfield, Stanton & Fieldhead



Hinckley & Bosworth
Borough Council

Application Site: 217 Leicester Road, Field Head, Markfield, Leicestershire

Proposal: Certificate of proposed lawful development for the change of use of property (C3) to a small-scale residential home for up to 3 children from the ages of 7-18.

Case Officer: Ashleigh Gade (Senior Planning Officer)

1. Recommendations

1.1. Grant Certificate of Lawful Proposed Development

2. Planning Application Description

- 2.1. This application seeks a Certificate of Lawful Proposed Development to confirm that the change of use of a Use Class C3 dwelling to a Use Class C2 residential care home for up to three young people at 217 Leicester Road, Field Head constitutes lawful development.
- 2.2. No external works are proposed as part of the change of use. The internal works proposed involve expansion of the existing ensuite bathroom to allow access from the first-floor landing, and related reconfiguration and relocation of the doors to the largest bedroom.
- 2.3. To facilitate the operation of the residential care home, three staff shall be present during the daytime shift and two members of staff shall be present over the night shift, to provide care for the children at all times. The staff will work on a rota system to ensure 24-hour coverage, with shift changes occurring twice daily at 8:15am and 10:15pm.
- 2.4. Outside of staff, visits to the site by social workers allocated to each child under care shall occur once every 4-6 weeks by appointment. It is anticipated that family visits would be rare and that where they do occur, they would be pre-planned in advance and likely to be undertaken away from the application site.

3. Description of the Site and the Surrounding Area

- 3.1. The application site is located within the settlement boundary of Field Head which is adjacent the settlement of Markfield. It is located approximately 900 metres from the village centre of Markfield.

- 3.2. The application site comprises a two-storey detached dwelling containing four bedrooms, an attached but not integrated garage and a lean-to storage area. The dwelling is predominantly cream rendered with red brick features and has a tiled roof. To the side and rear of the dwelling the site is fenced with wooden close-boarded fencing, while to the front of the site and side of the parking areas the site is bounded by hedgerow.
- 3.3. The site is located on the eastern side of Leicester Road. Leicester Road is an adopted and unclassified service road located adjacent to Leicester Road/A50, an adopted 'A' road. The Leicester Road service road is subject to a speed limit of 30mph and is separated from the A50 by a grassed verge with a low wire fence.
- 3.4. The surrounding area is predominantly residential in character and comprises mostly detached dwellings. The scale and design of surrounding dwellings varies, as does their proximity and visibility from the service road.

4. Relevant Planning History

- 4.1 Nil.

5. Publicity and Consultation

- 5.1. There is no statutory requirement to consult third parties on an application for a lawful development certificate. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is a good reason to believe they possess relevant information about the content of a specific application.
- 5.2. Notwithstanding this, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question are not relevant when determining the application given that it seeks the formal opinion of the LPA as to whether the proposed use requires planning permission.
- 5.3. In this instance, letters were sent out to neighbouring properties.
- 5.4. A total of eleven responses were received. None of the responses received were from the immediately adjoining properties to whom letters were sent. Of the responses, ten objected to the proposal and one supported the proposal.
- 5.5. The responses in objection to the proposal are broadly summarised as follows:
 - The location stated by the Applicant is inaccurate as the application site is in the hamlet of Field Head within the parish of Groby, and not within the village of Markfield.
 - The location adjacent the busy A50 is unsuitable and poses safety and safeguarding risks.
 - The site and local area lacks social infrastructure and access to amenities, facilities, and transport infrastructure.

- The proposal would result in an increase of vehicle movements along a narrow road with existing traffic problems.
- The proposal would not provide sufficient parking for the proposed use and would add to existing parking congestion on Leicester Road. It also provides no disabled parking.
- The proposal represents a material change of use as it is a commercial business with 24-hour staffing, need for professional visits, use of external CCTV, and will be in use as a regulated care setting that materially differs from a single household.
- The proposal would result in increased activity, noise, and light disturbance not in keeping with the character of the area.
- Leicestershire Police have raised concerns regarding safety and potential criminal activity in their response to a Charnwood Borough Council application on adjoining land.
- The proposal increases the risk of crime, exploitation anti-social behaviour, impacts to other children and families living on the street, and children going missing.

5.6. The response received in support of the proposal broadly commented that disadvantaged children should be looked after and that the proposal would provide opportunity for children to reside in a safe environment in proximity to community assets.

5.7. No further responses were received.

6. Policy

6.1 Section 192 of the Town and Country Planning Act 1990.

7. Appraisal

7.1 Section 192 of the Town and Country Planning Act 1990 enables any person with the opportunity to ascertain whether any proposed use of buildings or other land, or any operations proposed to be carried out in, on, over or under land would be lawful.

7.2 The statutory framework covering, 'lawfulness,' for lawful development certificates is set out in Section 191(2) of the Town and Country Planning Act 1990. Section 191(2) of the Town and Country Planning Act 1990 confirms that uses and operations are lawful at any time if:

- (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

7.3 Planning Practice Guidance (PPG) states that the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. However, this does not preclude another application being submitted later on if more information can be produced.

7.4 Ultimately, the PPG highlights that 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.

Use Class

7.5 There are no provisions within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) that enable a Use Class C3 dwellinghouse to be converted to a Use Class C2 residential institution via Permitted Development Rights.

7.6 The Town and Country Planning (Use Classes) Order 1987 defines Use Class C3 uses as:

“Use as a dwellinghouse, as a sole or main residence and occupied for more than 183 days in a calendar year by—

- (a) *A single person or by people to be regarded as forming a single household; or*
- (b) *Not more than six residents living together as a single household where care is provided for residents; or*
- (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).”*

7.7 A Use Class C2 use is defined as:

“Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (Dwellinghouses, used as sole or main residences)). Use as a hospital or nursing home. Use as a residential school, college, or training centre.”

7.8 Paragraph 4.1 of the Applicant's Planning Statement confirms that staff on the site will operate under a rota of shiftwork. This clarifies that while the children shall live at the property, the care staff would not be permanent residents of the premises.

7.9 Whilst Government Guidance confirms that the law does not confirm an age when you can leave children on their own, it is an offence to leave a child alone if it places

them at risk. It was established in the case of *North Devon District Council v the First Secretary of State (Queen's Bench Division) (2003)* at Paragraph 16, that:

"Children need to be looked after... As a matter of principle and approach the whole point of these homes is that the 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."

7.10 This justification was utilised at Paragraph 8 of the allowed appeal decision at 15 Crownhill Road, Burbage against the refusal of application 11/00279/CLU. Paragraph 8 of this Appeal Decision states that:

"Children need to be looked after and could not, on their own, be regarded in the true sense as a household without the presence of a carer. Carers who provide 24-hour care but who are not resident could be regarded as living together in a household. The concept of living together as a household means that in the context of Class C3(b), that a proper functioning household must exist."

7.11 By virtue of these factors, the Local Planning Authority (LPA) considers that the proposed use of the property does involve a change of use from Use Class C3 as a dwellinghouse to Use Class C2 for use as a residential institution for the care of children.

Material Change of Use

7.12 Paragraph 55(1) of the Town and Country Planning Act 1990 defines, 'development,' as the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land.

7.13 Planning Practice Guidance (PPG) confirms that there is no statutory definition of 'material change of use'; however it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.

7.14 The Applicant in Paragraph 1.2 of their Planning Statement has referred to the statement made by the Minister of State for Housing and Planning on 23 May 2023. The 2023 Ministerial Statement confirms that:

"Planning permission will not be required in all cases of development of children's homes, including for changes of use from dwellinghouses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2."

7.15 No external alterations are proposed to the property. The internal alterations proposed relate only to the layout of one bedroom and one bathroom on the first-floor, and involve the expansion of that bathroom to allow access from the first-floor

landing. As these alterations have no external impact it is not considered the proposal would result in a material change to the character and appearance of the property.

7.16 As a Use Class C3 dwelling, the property can be occupied by up to six residents who receive care and live as a single household. This proposal is for a residential care home providing care for up to three children with a maximum of three members of staff on site during the day. Therefore, the proposed use involves the occupation of the property by up to six persons and does not exceed the limitations of a property as it could be utilised for a Use Class C3 use.

7.17 Paragraph 12 of the allowed appeal decision against the refusal of 11/00279/CLU at 15 Crownhill Road, Burbage considered potential vehicle movements of up to three staff members and concluded:

“Looking at the numbers involves, they are not materially different from what might be expected of a large family house in which, say, a parent and two teenagers or young adults live together and each uses a car to get to work or college and for socialising.”

7.18 The proposal involves three staff members on site during the daytime with two members on site overnight. The Applicant's Planning Statement confirms that a change in shift would occur twice daily. The vehicle movements therefore arising from the use are not considered to be materially different in number to what might be expected of a large family home or a dwelling comprised of young adults living together.

7.19 Paragraph 4.2 of the Applicant's Planning Statement confirms that each child will have an allocated social worker who will visit the site every 4-6 weeks by appointment. The Statement goes on to clarify that family visits are expected to be rare but where they occur they would be pre-planned and likely to be held away from the premises. Once per week food shopping would be delivered to the property.

7.20 Given the above, it is not considered that such visits to a use of this capacity would materially depart from that of a typical Use Class C3 dwellinghouse.

7.21 By virtue of these factors, whilst the proposal is considered to be a Use Class C2 Use, the scheme does not result in a material change to the use of the premises as a Use Class C3 use. Therefore, the proposed change of use in these site-specific circumstances is not considered to amount to development for which planning permission is required.

7.22 As a result, it is considered that a Lawful Development Certificate for the change of use of the property at 217 Leicester Road, Field Head to a residential home (Use Class C2) for up to 3 young people between the ages of 7 and 18 years should be granted.

8. Equality Implications

8.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; and

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

8.3 There are no known equality implications arising directly from this development.

8.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

9. Conclusion

9.1 Based on the facts of the case and the relevant planning law, the change of use of property at 217 Leicester Road, Field Head to a residential home (Use Class C2) for up to 3 young people between the ages of 7 and 18 years does not represent a material change in the use of the application site and therefore the Lawful Development Certificate should be granted for the proposed use in these site-specific circumstances. This conclusion is made on the basis of details provided by the Applicant, and as shown on the following documents received by the Local Planning Authority:

- Application Form
- Planning Statement
- Site Location Plan, Drg No. 103-275-RGP-XX-XX-DR-A-001
- Site Layout, Drg No. 103-275-RGP-XX-XX-DR-A-002
- Existing Floor Plans, Drg No. 103-275-RGP-XX-XX-DR-A-003
- Proposed Floor Plans, Drg No. 103-275-RGP-XX-XX-DR-A-004

All submitted 04.06.2025.

10. Recommendation

10.1 Grant Certificate of Proposed Lawful Development