

Delegated Report

Planning Ref: 23/01063/CLP

Applicant: Mr. Muchenje

Ward: Markfield Stanton & Fieldhead



Hinckley & Bosworth
Borough Council

Site: 4 The Nook Markfield Leicestershire

Proposal: Lawful Development Certificate for a change of use from Use Class C3 (dwellinghouse) to Use Class C2 (residential institution) for the accommodation and care of one child

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 the acceptability of the change of use from a Use Class C3 dwellinghouse to a Use Class C2 residential institution at 4 The Nook, Markfield to provide care and accommodation for one child aged between the age of 8 and 17, who is supported by a maximum of two non-residential members of staff at all times.
- 2.2. The Applicant acknowledges that the proposed use is Class C2 but suggests that in this instance no material change of use occurs. The child requires care at all times by non-resident staff members on a shift pattern.
- 2.3. The development does not consist of, or include, the carrying out of any building works, internal operations, nor other operations.

3. Description of the Site and the Surrounding area

- 3.1. The application site is located in the identified settlement boundary of Markfield, which is classified as Key Rural Centre relating to Leicester within the adopted Core Strategy. The development is also located within the identified boundaries of the Markfield Conservation Area, Charnwood Forest, and the National Forest.
- 3.2. Dwellings within the Conservation Area have developed organically and are predominantly two storeys in massing and are set off the pavement, which results in them having a strong relationship with the street scene.
- 3.3. The application site comprises a parcel of land that was historically part-garden area and part-parking area, which served the commercial units fronting Main Street. However, the existing two-storey, two-bedroom dwelling was approved via planning permission 13/00979/FUL, alongside a further dwelling, 6 The Nook, that is attached to this property.
- 3.4. The Nook narrows from a wide junction with Main Street to a single-track lane that is constrained by development on the back edge of the highway on the eastern side, and a high granite stone wall to the western side. This forms part of a series of high stone walls around the site. A significant part of the character of the Nook is derived from the narrowness and enclosed nature of the road. The Nook slopes down and widens towards No. 19, which results in a far more open character. A Public Right of Way provides pedestrian access from Main Street through The Nook to Rectory Road. The application site follows this trend, which results in the rear of the properties to Main Street being located significantly higher than the properties situated at the southern end of The Nook

- 3.5. To the west, the application site adjoins the rear boundaries of numbers 102 to 110 Main Street, which comprises of residential and commercial units and the Methodist Chapel at 104 Main Street. The Methodist Chapel is identified as an important landmark building within the Markfield Conservation Area. To the southwest of the site is land to the rear of 100 and 102 Main Street. Main Street has a strongly defined linear character.

4. Relevant planning history

4.1 16/00609/CONDIT

- Variation of Condition 2 and 3 of planning permission 13/00979/FUL to amend materials on all elevations and amendments to windows.
- Permitted
- 26.08.2016

4.2 13/00979/FUL

- Erection of 2 dwellings with associated parking
- Permitted
- 19.05.2014

4.3 09/00551/FUL

- Erection of four flats with associated parking and access.
- Refused
- 30.09.2009

4.4 89/00981/4

- Erection of one dwelling outline
- Refused
- 26.09.1989

5. Publicity

- 5.1. The application is for a Certificate of Proposed Lawful Use and no publicity is necessary.

6. Consultation

- 6.1. The application is for a Certificate of Proposed Lawful Use and no consultation is necessary.

7. Policy

- 7.1. Section 192 of the Town and Country Planning Act (1990).

8. Appraisal

- 8.1. Section 192 of the Town and Country Planning Act (1990) provides a person with the opportunity to apply to the Local Planning Authority (LPA) for a Certificate of Lawfulness to confirm that a proposed use or building operation is lawful.

- 8.2. There is no provision under Section 192 for the planning merits of what has been applied for to be considered within the application. National or Local Policies also have no bearing on whether a development is lawful. It is therefore an evidence-based application.

- 8.3. Section 192(2) of the Town and Country Planning Act (1990) provides that if the LPA is satisfied on the evidence provided with the application that the proposed use

or operations are lawful, they shall issue a certificate; or in any other case they shall refuse the application.

- 8.4. There are no provisions within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) that enables a Use Class C3 dwellinghouse to be converted into a Use Class C2 residential institution via Permitted Development Rights.
- 8.5. Therefore, the main issues for consideration are whether the use of the premises changes from Use Class C3 (dwellinghouse) to Use Class C2 (residential institution) and, if so, whether this change is considered to be a material change of use in these site-specific circumstances to the degree that the development requires full planning permission.

Use Classes

- 8.6. The Town and Country Planning (Use Classes) Order 1987 (as amended) classifies Use Class C3 (dwellinghouse) as a property where up to six people live together as a single household and receive care.
- 8.7. On the other hand, Use Class C2 (residential institution) is identified as a residential care home, hospital, nursing home, boarding school, residential college, or a training centre.
- 8.8. Whilst the law does not confirm an age when you can leave a child on their own, it is an offence to leave a child alone if it places them at risk. The National Society for the Prevention of Cruelty to Children (NSPCC) suggests that children under 12 are rarely mature enough to be left alone for a long period of time, and children under 16 should not be left alone overnight.
- 8.9. The proposal comprises accommodation for one child, who will be supported by a maximum of two members of non-residential staff that undertake 48-hour shifts on site at a time. Therefore, the child and the members of staff will not 'live' together within this property and no adult will live on the premises on a permanent basis. As a child cannot be live in a household unaccompanied, the use of the property cannot be considered to be a Use Class C3 use. Consequently, the proposal is considered to represent a change of use from Use Class C3 to Use Class C2 as acknowledged by the Applicant.

Material Change of Use

- 8.10. Whilst a change of use typically requires full planning permission, the Applicant has, amongst other things, compared the development to application 15/00201/CLUP. Within this 2015 planning application, a Lawful Development Certificate was granted for the conversion of a residential dwelling (Use Class C3) to a children's care home (Use Class C2) in Bagworth. 15/00201/CLUP was approved because, although a change of use from Use Class C3 (dwellinghouse) to Use Class C2 (residential institutions) had occurred, the proposal was not considered to amount to a material change of use, and therefore no development that required planning permission took place.
- 8.11. The change of use within this application is to provide care and accommodation for one child. The Applicant has suggested that the child will be placed in a local school, and that they will utilise the services and facilities in the surrounding area.

- 8.12. Only two members of staff are on site at any time, and their shifts are staggered to ensure that only one member of staff arrives and departs from the site in any 24-hour period. All other staff movements would be to accompany, and to transport, the child to their general activities such as school, medical appointments, and social activities. In addition, any training or meetings will generally take place off-site.
- 8.13. Whilst there will be occasional visits from the property manager and monthly visits from Ofsted, this level of activity within the site is not considered to materially depart from that of a typical Use Class C3 dwellinghouse.
- 8.14. Given the above, whilst the proposal is considered to be a Use Class C2 use, the scheme does not result in a significant, nor 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. As a result, it is recommended that a Lawful Development Certificate for the use of the 4 The Nook, Markfield as a Use Class C2 (residential institutions) use for the care and accommodation of one child is granted.

9. Equality Implications

- 9.1 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;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 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.
- 9.3 There are no known equality implications arising directly from this development.
- 9.4 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).

10. Conclusion

- 10.1. The proposed change of use of a Use Class C3 dwellinghouse to a Use Class C2 children's residential care home for the accommodation and care of one child is not considered to represent a significant material change to use of the premises in its existing use in these site-specific circumstances.
- 10.2. Therefore, the proposal is not considered to amount to development for which planning is required, and it is recommended that a Lawful Development Certificate for this specific use at 4 The Nook, Markfield is granted.

10.3. This conclusion is made on the basis of details provide by the applicant, and as shown on the following documents received by the Local Planning Authority:

- Application Form (submitted: 10.11.2023)
- Floor Plans and Site Location (submitted: 10.11.2023)
- Original Planning Consent 13-00979-FUL (submitted: 10.11.2023)
- Planning Statement (submitted: 10.11.2023)

11. Recommendation

11.1 Grant Certificate of Proposed Lawful Development.