

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
HEAD OF PLANNING	PLANNING COMMITTEE	5 APRIL 2023	5
<b>USE OF PREMISES AS CHILDREN'S CARE HOMES</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

#### SUMMARY

Each year the council receives several applications for certificates of lawful use seeking to establish whether planning permission is required to change the use of an existing dwelling to a children's care home, typically (but not exclusively) to accommodate 2 children with 24 hour care provided by non-resident staff working on a rota basis. This report seeks to clarify the process for the determination of such applications and the other legislation available to address concerns often expressed by the local community when such proposals are submitted.

#### RECOMMENDATIONS

1. That the committee notes the content of the report regarding the process and the issues that may be taken into consideration in the determination of a certificate of lawfulness for a proposed use or development.
2. That officers be requested to draft an advice note to explain the certificate of lawfulness process to neighbours and other interested parties and the regulations that are exercised by other public bodies in the control and operation of children's homes.

#### SUMMARY OF PREVIOUS DECISIONS

The council has previously issued a number of certificates of lawful use and planning permissions for the use of properties as children's care homes at various properties across the borough.

#### CORPORATE PRIORITIES

Economy – To create a vibrant and healthy economy	
Environment – To deliver services customers expect	√
Efficiency – By spending money in the most efficient way	√
Tourism – To create a great place to live and visit	

## REPORT

### CERTIFICATES OF LAWFUL USE

1. Recent years have seen an increase in the number of applications submitted to Fylde Council for certificates of lawful use, particularly those proposing to use an existing dwelling as a small-scale care home for children. These are not applications for planning permission. Instead, they seek to establish whether a proposed use may be lawfully commenced without planning permission. Accordingly, the decision whether to issue a certificate does not involve any discretion and the individual planning merits of a proposal cannot be taken into consideration in reaching that decision. Essentially, the question that needs to be answered by the local planning authority (LPA) is: “does the proposal need planning permission?” rather than “should the proposal be granted planning permission?”. If the LPA is satisfied that the use in the application can lawfully commence without a grant of planning permission, the Authority must issue the certificate.
2. There is no provision within legislation requiring residents to be notified when a certificate of lawfulness application is received. The issue of a certificate involves technical consideration of whether the proposed use falls within certain parameters, rather than a consideration of its planning merits<sup>1</sup>. Seeking the views of third parties could raise the expectation that comments received might influence the determination of an application. However, the lack of neighbour notification often leads to confusion and concern amongst neighbours if they become aware of an application about which they have received no official notification. This report seeks to provide clarification of the considerations involved in determining applications for certificates of lawfulness for proposed uses<sup>2</sup>.

### WHY APPLY FOR A CERTIFICATE?

3. It should be noted that, in circumstances where planning permission is not required prior to commencing an alternative use, there is no requirement in planning law to obtain a certificate of lawfulness prior to commencing that use. Putting it another way, a certificate acknowledges that the use is lawful, but does not of itself confer the lawfulness: if a use is lawful, it is lawful whether there is a certificate or not. So why do intending operators of small-scale children’s homes apply for certificates of lawful use?
4. Care for children, including children’s homes, is regulated by Ofsted. As part of the process for registering children’s homes, Ofsted require the operator of the home to confirm the planning status of the property. As a result, even where a children’s home could operate lawfully in planning terms without a certificate of lawful use, an intending operator will normally apply for one.

### WHEN PLANNING PERMISSION IS AND ISN’T NEEDED

5. Planning permission is required (subject to exceptions set out in the planning legislation) for ‘development’. ‘Development’ includes “*the making of any **material** change in the use of any buildings or other land*” (emphasis added)<sup>3</sup>. But any change of use within the same use class as set out in the Town and Country Planning (Use Classes) Order 1987 (“UCO”) is not regarded as development<sup>4</sup> and so planning permission is not required to change between the uses. This means that for any application for a certificate of lawful use for a proposed change of use, the LPA needs to decide (i) whether the new use is in a different use class to the existing use and (ii) whether the change is material. Planning permission would only be needed if the new use is in a different use class **and** the change would be material. If planning permission isn’t needed, the LPA is required to issue a certificate.

### ARE CHILDREN’S HOMES IN THE SAME USE CLASS AS A DWELLINGHOUSE?

6. Children’s homes almost always fall in a different use class to dwellinghouses, for the reasons explained below.

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<sup>1</sup> Because of the narrow, technical issues involved and the lack of discretion available to the LPA, decisions on LDCs are delegated to the Head of Planning.

<sup>2</sup> It should be noted that separate provisions relating to certificates of lawfulness for existing uses are not addressed in this report.

<sup>3</sup> See sections 55 and 57 of the Town and Country Planning Act 1990.

<sup>4</sup> Sn 55(2)(f) Town and Country Planning Act 1990

7. Dwellinghouses fall within use class C3, which includes: *“Use as a dwellinghouse (whether or not as a sole or main residence) by—
    - (a) a single person or by people to be regarded as forming a single household;
    - (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).”*
8. Residential Institutions such as care homes, fall within use class C2, which provides for: *“Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)), use as a hospital or nursing home, or use as a residential school, college or training centre”.*
9. For the purposes of the UCO, ‘care’ means *“personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment”.*
10. Whilst the UCO sets out that certain types of care home fall within class C3, as children rely on adults for their day-to-day needs, they are not generally considered able to form a single household on their own and so it is an established position that children’s homes fall within class C2 irrespective of how many children live at the property. The only exception to this would be if the carers are living on site full time and form part of a single household<sup>5</sup>. The majority of applications for certificates of lawfulness received by Fylde Council over recent years relating to use as a children’s home have proposed care to be provided on a rota basis by non-resident staff and so this exception is not generally relevant to the cases in point.

#### IS A CHANGE FROM A DWELLINGHOUSE TO A CHILDREN’S HOME MATERIAL?

11. If a change of use involves moving from one class to another, planning permission is only required if that change is ‘material’. As ‘material’ is not defined in the legislation, each case must be considered as a matter of fact and degree, but essentially the test is whether the proposed use would be any different in character to the existing permitted use<sup>6</sup>.
12. As class C3 includes uses other than a single-family dwelling, for example small care homes providing other forms of care and other types of community living, the starting point for any assessment will not simply be related to the character of the dwelling as it is currently used, but how it might be used within class C3. As many of the uses within class C3 are very similar to a small-scale children’s care home, the change of use may not be a material one. It is also the case that, the lower the number of children proposed to be residing at a particular home (and, in turn, the lower the staffing numbers required to care for them), the more similar that use will be to a family type of environment especially, for example, those households with grown up children still living in the family home or where a family member is in receipt of care in the home.
13. As each application must be considered on its merits having regard to the fact and degree of the proposed change, it would not be appropriate to introduce a blanket policy or prescribed set of circumstances that predetermines that all changes of use from class C3 to C2 will represent a material change of use requiring planning permission.
14. If a certificate is issued, the authorised use will be as set out within the certificate . Any intensification of use, for example the use of a premises to care for more children than stated in the certificate, would need to be subject to further consideration.

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<sup>5</sup> As established in the High Court ruling: North Devon DC v FSS [2003] EWHC 157 (Admin)

<sup>6</sup> Sage v Secretary of State for Housing, Local Government and Communities [2021] EWHC 2885 (Admin)

## CONTROLS OUTSIDE PLANNING

15. Many issues raised by neighbours and other stakeholders cannot be taken into consideration in the determination of an application for a certificate of lawfulness or, in circumstances where planning permission is required, will not be regarded as material planning considerations. In a response to a parliamentary question raised by the hon. Member for Stockport (Ann Coffey) in 2013<sup>7</sup>, the Parliamentary Under-Secretary of State for Communities and Local Government (Mr Don Foster) advised “*planning is not intended to deal with problems such as antisocial behaviour by occupants or the location of a home in respect of other children’s homes*”. Rather than moving children’s homes to a separate use class allowing the planning implications to be considered before granting planning permission, the Government of the day chose instead to introduce tighter regulation through Ofsted to “*allow new homes to be opened only in safe areas where they are run by competent providers.*”
16. Accordingly, in addition to ensuring the necessary planning permissions are in place, a person, partnership, or organisation that wishes to provide a social care establishment must register with Ofsted. This registration process assesses the fitness of a person or company to provide social care services and involves regular inspections following an initial registration.
17. Ofsted register providers and managers of children’s social care establishments to:
  - protect children, young people, and adult service users
  - assess that providers and managers meet the requirements of the relevant legislation
  - evaluate whether they can deliver good services for children and young people
  - report on the quality of an individual establishment to the public, including children and young people
18. Each establishment must have a manager who will take full time day to day control of the establishment and who is also required to be registered with Ofsted.
19. For children’s homes, Ofsted require a location assessment to be carried out. This will address safeguarding concerns for the resident children and the accessibility of local services. The assessment must consider the needs of the children who are expected to live at the premises and will include, for example, whether the proposal:
  - puts children at risk of exploitation due to local criminal activity
  - is close to other children’s homes
  - is close to local criminal ‘hot spots’
  - is close to environmental hazards such as reservoirs, busy roads, or railway lines
  - is in a neighbourhood where children can flourish
  - has accessible, available, and suitable local education, leisure, faith, cultural and healthcare services
20. It is considered that Ofsted’s registration process is more able to fully address the suitability of a premises and its operator because they can take account of a wider range of issues, many of which are not regarded as material planning considerations.

## CONCLUSIONS

21. The courts have held that whether a change of use is material or not is a matter of fact and degree for the local planning authority to determine, having considered the individual facts of the case. The matters for consideration will be different in each case and so will need to be determined on a case-by-case basis. Whilst planning permission will not always be required to change the use of a family dwelling to a small-scale children’s home, Ofsted’s registration scheme is able to exercise control to ensure the premises are suitable and continue to be operated in a satisfactory manner.

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<sup>7</sup> Hansard Volume 566: debated on Thursday 11 July 2013

22. It is appreciated that local residents in particular may have concerns if it is proposed that a children's care home is to be established in their local community. It is recommended, therefore, that a guidance note be prepared that seeks to clarify the relevant legislation and provides reassurance to local communities about the legislation that is in place to regulate the establishment of such premises.

IMPLICATIONS	
Finance	None arising from the report
Legal	The Legal implications are outlined in the report
Community Safety	None arising from the report
Human Rights and Equalities	None arising from the report
Sustainability and Environmental Impact	None arising from the report
Health & Safety and Risk Management	None arising from the report

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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
None		