

Name of Applicant	Proposal	Expiry Date	Plan Ref.
Mr M Shaban	Change of Use from a dwellinghouse (Use Class C3) to a children's home (Use Class C2) 135 Shawhurst Lane, Hollywood	11.04.2024	24/00025/FUL

Councillor Forsythe has requested that this application be considered by Planning Committee rather than being determined under delegated powers.

RECOMMENDATION: That planning permission be **GRANTED**

Consultations

Worcestershire Highways - Bromsgrove

No objection subject to a condition. The site is located in a residential location off an unclassified road, the site has an existing vehicular access. Shawhurst Lane has footways, street lighting and "No Parking" restrictions 8am - 5.30pm are in force in the vicinity. The site is located within walking distance of amenities, bus route and bus stops. It is noted this planning application has received 21 objections to date, these objections have all been taken into consideration.

The applicant has failed to provide 2 cycle parking spaces in accordance with WCC parking standards - conditioned below.

It is recommended the overgrown vegetation that impedes vehicular and pedestrian visibility at the entrance of the drive is cut back and maintained at all times in the interest of highway and pedestrian safety.

In accordance with WCC car parking standards this proposed development is recommended to provide 1 car parking space per member of staff and 1 car parking space per 4 residents as a worst-case scenario. A site visit confirmed the forecourt has the ability to park 3 plus vehicles therefore the parking on site is deemed to be acceptable in this instance.

It is noted from the objections that the objectors are concerned about unsafe parking of vehicles associated with the proposal on the highway during school pick up time - leading to highway safety concerns. "No Parking" restrictions 8am - 5.30pm are in force outside the application site and along Shawhurst Lane. With the current layout the applicant has room on site to park 4 vehicles and if the drop kerb was extended there would be room to park 6 vehicles on the forecourt, however; as highlighted above only 3 car parking spaces are recommended in accordance with WCC car parking standards.

The proposed development expects one - two visits from social workers every six weeks and that these visits will be by appointment only. As highlighted above car parking would be available on site for these visits - no displacement of vehicles onto the highway.

The home also expects a therapist to visit once a week for one to two hours and that these visits are also pre-booked. Again, as highlighted above car parking would be available on site for these visits.

The applicant has confirmed residents would be transported to education facilities depending on their needs, by an appointed vehicle or vehicles which could be a taxi or minibus. It is expected that these transportations would comprise a pick-up and drop-off arrangement. Sufficient parking area is available within the site for the appointed vehicle to pick up / drop off. This area would ensure vehicles are not being displaced onto the highway causing pedestrian and highway safety concerns.

WRS - Noise

WRS can only comment on noise from predictable sources such as external plant / equipment associated with a change of use. The use of the dwelling house as a children's home should not necessarily result in any increase in noise levels from domestic activities compared to that of a family home. If there are concerns that the building structure is substandard in terms of party wall sound insulation then this would be a matter for building control / regulations. Therefore I have no objection to the application in terms of noise.

Wythall Parish Council

No objections from a planning view point, although we note the concerns of some local residents about the unknown quantity that this change of use may represent. Particularly regarding a fear of a potential increase in problems such as anti-social behaviour due to the unknown background of the children. We are mindful of a sizeable elderly population living close by and would welcome any more information being made available to allay these concerns.

Publicity

5 letters sent 01.02.2024 (expired 25.02.2024)

1 site notice displayed 06.02.2024 (expired 1 March 2024)

25 letters of objection have been received, raising the following in summary matters:

- Lack of clarity of the proposals
- Intensity of the use
- Overlooking
- Concerns over the running and operations of the childrens home
- Lack of information and conflicting information
- Lack of community engagement
- No benefit to the local community
- Noise, disturbance, increase in crime, drug use, and anti-social behaviour
- Insufficient car parking, highway safety and a busy local area, lack of public transport options
- Potential future expansion
- Concerns in respect of fire risk

A number of other issues have been raised which are not material planning considerations and therefore have not been reported in this section to Members.

Cllr Derek Forsythe

Due to the concerns of local residents regarding this planning application for the "change of use of 135 Shawhurst Lane", I request a Call-In Notice in order to give the BDC Planning Committee the opportunity to approve/reject this application.

Relevant Policies

Bromsgrove District Plan

BDP1 - Sustainable Development Principles

BDP2 - Settlement Hierarchy

BDP12 - Sustainable Communities

BDP16 - Sustainable Transport

BDP19 - High Quality Design

Others

National Planning Policy Framework (2023)

Bromsgrove High Quality Design SPD

Ministerial Statement made on 23 May 2023 'Planning for accommodation for looked after children'.

Relevant Planning History

There is no relevant planning history.

Assessment of Proposal

The site is located to the north of Shawhurst Lane, within the residential area of Wythall.

The host property is a semi-detached, two storey, three bedroom dwelling which has a C3 use class relating to a dwelling house (occupied by a "household"). This application seeks permission for a change of use from a dwellinghouse (Use Class C3) to a children's home (Use Class C2).

Throughout the determination process, additional clarification and information has been sought and received in respect of how the home would operate. This information has been added to the public record upon receipt and confirmed as follows:

- The proposed development includes the change of Use from a dwellinghouse (Use Class C3) to a children's home (Use Class C2).
- 135 Shawhurst Lane is a semi-detached property.
- The home would provide accommodation for up to three children aged 8 to 18 years old. The children may be looked after on a temporary basis until the placing of the child in a Local Authority foster home, or on a longer-term basis until they are no longer a child of if their care plan changes.
- The children would be in full time mainstream education, they would not be home schooled. The children would be taken to school by an appropriate vehicle.
- There would be two staff present on site during a standard shift. One staff member would be sleeping during the night and the other would be on duty during the night.
- Each staff member would be on shift for 24 hours, each shift starts at 7.30/8am and finishes at 7.30/8am the following morning. There is only one shift change per day,

and at that time there would be four members of staff on site for c.20minutes for staff handover.

- It is anticipated that two visits from social workers would take place every six weeks, by appointment only and lasting for approximately one hour. A therapist would also attend the home once a week for a couple of hours, again by appointment only.
- There is a staff office on the first floor within the home and a staff bedroom at ground floor, the children's bedrooms would be on the first floor.
- No external alterations to the building are proposed. Minor internal alterations are proposed.

Change of Use

Development is defined in Section 55 of the Town and Country Planning Act 1990 as the carrying out of building, engineering, mining or other operation's in, on, over or under land; or the making of any material change in the use of any buildings or other land.

Town and Country Planning (Use Classes) Order 1987 (as amended)

Use Class C2 (Residential Institutions) of the Order reads as follows:

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.

Use as a residential school, college or training centre.

Class C3 (b) of the Town and Country Planning (Use Classes) Order (as amended) refers to "use as a dwelling house by not more than six residents living together as a single household, (including a household where care is provided for residents)." If a children's home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there would be no requirement for planning permission.

The Agent has submitted an example appeal decision for a lawful development certificate as part of its submission. Regard has also been had to the Ministerial Statement made on 23 May 2023 'Planning for accommodation for looked after children'.

Case law has provided us with important distinctions between Use Class C2 and C3. In the case of North Devon District Council [2003] Justice Collins made the point that children "need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing fulltime 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."

The North Devon judgement confirms that it is unrealistic to expect children to look after themselves in a single household. It also clarified that carers who provided 24 hour care but were not resident could not be regarded as living together in a household.

On this basis, the Council is satisfied that the proposed use would fall within Use Class C2.

The proposed change of use class (from C3 to C2) does not necessary equate to a material change of use. A change of use requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of the 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.

The applicant has provided details as to how the home would operate, as set out above.

Based on the information which has been provided including but not limited to: staff would operate in shifts, there would be a member of staff on waking night duty, there would be a designated office within the home, there would be other visitors to the home on a weekly and monthly basis, the host dwelling is semi-detached and within close proximity to other dwellings, and that the children may reside for a temporary period only, it is considered that as a result of the above the intensity and character of the property would result in a material change to the dwelling.

Policy BDP12 supports facilities that: meet the diverse needs of existing and future residents, are safe and inclusive, well planned, built and run, and offer equality of opportunity and good services for all.

The material change of use is considered to be acceptable in principle, there is no substantive evidence to suggest that children's care homes are incompatible with C3 dwellings and that whilst there will be a change in character that is not to say that such a change would be unacceptable as a matter of fact.

A planning condition could be attached to a permission to ensure that the use is restricted to the provision of residential accommodation and care for the children outlined within this application and not an unrestricted C2 use which may not be acceptable.

The following matters are considered as to the suitability of the use in the proposed location.

Highways Matters

The site is located within a residential and sustainable area of Wythall, which is identified in Policy BDP2 as a large settlement. Shawhurst Lane has footways, street lighting and "No Parking" restrictions 8am - 5.30pm are in force in the vicinity. The site is located within walking distance of amenities, bus route and there is a bus stop outside the site which is served by the A4 which provides connections to Solihull to Inkford Brook via Shirley, Dickens Heath, Maypole and Wythall. This is a Monday to Saturday service operating approximately hourly between 6am and 7pm (depending on stop location).

The County Council raises no objection and has requested a planning condition for cycle parking in accordance with its standards within Appendix G of the Streetscape Design Guidance which requires 1 space for every 4 members of staff and 1 space for every 10 residents for a C2 (Nursing Home) which is the closest land use within the standards to the proposed development.

The existing access and car parking area to serve three plus vehicles is to remain, and the County is satisfied that there is sufficient space available for the required car parking and that there should be no vehicular displacement to the highway. Any indiscriminate parking in an area of "no parking" would be a police matter. There is an option for some staff and visitors to arrive via public transport or by walking or cycling, even though car parking would be sufficient to accommodate all staff members. The County Council has

clarified that Shawhurst Lane is not a classified road and that vehicles are not required to enter and leave the site in a forward gear, and that existing properties located in the vicinity of the site reverse onto the highway.

There may be deliveries to the site, however, there is no evidence that deliveries will be other than may be expected at a C3 dwelling.

Overall, parking provision and the movement of vehicles and pedestrians in association with the proposed development would be acceptable and would not lead to any issues of highway safety. In addition there would be no conflict with the National Planning Policy Framework which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The County Council has not raised issues of highway safety or severe impacts on the road network.

Noise, Living Conditions and Residential Amenity

WRS have no objections and confirm that the use of the dwelling house as a children's home would not necessarily result in any increase in noise levels from domestic activities compared to that of a C3 dwelling. WRS also note that if there are concerns that the building structure is substandard in terms of party wall sound insulation then this would be a matter for building control/regulations. The planning system should not duplicate other control measures.

The information submitted indicates that there would be some additional traffic movements, over and above that associated with a three bedroomed house, connected to the changeover of staff and perhaps at the beginning and end of the school day. However, such movements would not be disproportionately large or significantly above that associated with the existing use as a dwelling. Given the limited change in traffic generation anticipated, I am satisfied that there would be no detriment to the adjacent residents living conditions associated with the manoeuvring of vehicles at the site.

The NPPF seeks to ensure that development is inclusive, and the fear of crime does not undermine quality of life, community cohesion and resilience. The courts have held that the fear of crime can be a material consideration. The children's home would be for up to three children between 8 to 18 and this could be controlled by planning condition. The children would be cared for by 24-hour carers. Several neighbour responses note that this area is of an older generation. There is no evidence to suggest that the home would be in conflict with such a population. The matters in respect of noise and disturbance have been considered above. It is considered that at the level proposed the development would not have a greater impact for crime than any other C3 home.

There would be internal alterations to facilitate the development only. Given that there would be no external alterations to the dwelling, the proposal raises no concerns with matters relating to design and appearance.

There is sufficient amenity space to the rear and the property has permitted development rights to erect boundary treatments as is necessary.

Complaints of anti-social behaviour, crime and drug use would all be police matters.

Other Matters

Article 3.1 of the United Nations Convention on the Rights of the Child provides that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. It is important to note that a child's best interest is not determinative of the planning issue and may be outweighed by the cumulative effect of other considerations provided that the adverse impact on the child of any decision is proportionate.

The application is supported by an extract of an article about a lawful development certificate, an article about the loss of supported accommodation and changes within the system, an appeal decision for a lawful development certificate (Ref: 3300634), a Report on Children's social care market study (2021) including a summary (2022).

One resident has objected to state that the location plan does not include all surrounding properties. It does appear that 133A Shawhurst Road has been omitted from the location plan. The location plan does identify the land to which the application relates and therefore satisfies The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).

The proposed plan has also been amended following the identification of a drafting error; an internal door was missing to a bedroom on the first floor.

With regards to the possibility of the development devaluing other neighbouring properties, this is not a material planning consideration. The location of the company headquarters, pay of staff, profits of the company and overall operational running of the business is not a material planning consideration. Concerns in respect of fire risk would be matters for building control. There is no statutory requirement for a development of this size to consult the local community prior to a planning application being submitted. Some of the comments made on the history of the children which may reside at the property, alongside comments made as to their potential behaviours are not material planning considerations.

Conclusion

The proposed change of use from a dwellinghouse (Use Class C3) to a children's home (Use Class C2) for up to 3 children between the ages of 8 – 18, in this semi-detached dwelling, located in the residential area, is considered acceptable in principle.

There are no outstanding objections from consultees, and it is concluded that there are no issues of highway safety or severe road network impacts. There would likely be an intensification of activity at site; however, this is not considered to be so significantly adverse as to cause unacceptable noise and disturbance to residents.

WRS have concluded that if the building structure is substandard in terms of party wall sound insulation, then this would be a matter for building control / regulations.

The best interests of the children are a primary consideration in this case.

Taking all of the above into account, it is considered that the change of use is acceptable subject to the necessary conditions.

RECOMMENDATION: That planning permission be **GRANTED**

Conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of the grant of this permission.

Reason: In accordance with the requirements of Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in accordance with the following plans and drawings:

- Location Plan and Block Plan: PL01
- Proposed Plans: PL03 REV A

Reason: To provide certainty to the extent of the development hereby approved in the interests of proper planning.

3. The premises shall only be used as a residential care home for children, with a maximum of 3 children in residence at any one time and shall be between 8 and 18 years when first placed in care at the premises, and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: to provide certainty of the proposed development and limit the use of the property to a care home for a maximum of three children of a restricted age range in order to minimise the intensity of the use and protect the amenity of neighbours.

4. The Development hereby permitted shall not be first occupied until 2 sheltered, safe, secure and accessible cycle parking spaces to comply with the Council's adopted highway design guide have been provided and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.

Reason: To comply with the Council's cycle parking standards and provide and encourage opportunities for sustainable methods of transport.

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