

Plan:8 Town Planning Ltd

Planning Statement

Proposal: Use as a children's home within use class C3

Site Address: 27 Hewlett Road, Chorlton-cum-Hardy, Manchester, M21 9RE

June 2023

Prepared for Isaak Ali



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Supporting Statement – Application for a Lawful Development Certificate for use of 27 Hewlett Road, Chorlton-cum-Hardy, Manchester, M21 9RE as a home for up to two children with care provided on shift basis

Summary

The existing use is a single family home as categorised within C3 of the Use Classes Order. The existing use has been lawful in excess of 10 years.

The applicant intends to use the building as a home for two children with up to two sleep in carers; the carers would work on shift basis. During the day up to three carers would be present to look after the children. We consider the applicants intended use also falls within use class C3 of the Use Classes Order. Even if the proposed use were considered to fall outside of the general definition of use class C3 we contest that the use of the property would remain as a dwellinghouse; the proposed use does not lead to a material change of use of the building or land and as such planning permission would not be required.

Proposed Use

The proposed use is a dwellinghouse for two children who would be cared for by qualified people who will provide that care on a shift basis. The children will be permanently resident, for a period in excess of six months, and this will be their only home.

Additional information provided with this application include

- a statement by the applicant explaining how the operational
- plans

Background of the Applicant

The applicant, Isaak Ali of New Moon Residential, intends to operate an Ofsted regulated residential children's home is to create, as closely as possible, a family type home environment to provide care for children. The applicant has provided an operational statement which is attached to this submission.

The application property and existing and previous use

The house, 27 Hewlett Road, has always been in use as single dwelling house. An internal inspection shows the existing property to be clearly within use class C3 of the Use Classes Order; the property is clearly one single family dwelling. Mr Ali, the applicant, has confirmed the property has been a family home for many years.

The house has three bedrooms at first floor. The ground floor has a large open plan dining and living room and a separate kitchen. The property is set back from Hewlett Road and has off road parking. The property has been used as a family dwelling for many years.

Planning History

No entries are shown on the MCC planning portal.

Proposed use of 27 Hewlett Road

The intention of the applicant, as per the operational statement, would be for the home to continue to resemble and function as a dwelling. The intention and sole purpose for the building will be as a use where the children who live there do so as a family. The intention is that the children live in a safe family environment. The existing house has three bedrooms. The applicant will utilise the two main bedrooms for children to sleep in (one child per bedroom) and the third for a carer to sleep in. The ground floor rooms will be shared for all the occupants to use together (children and carers) and meals will be taken together at the same time for all residents (children and carers). The third bedroom will also be used for an office when not in use for staff sleeping.

It is proposed that two children would live at the property with carers living with the children on a shift system. The carers would act in a parental role to the children providing support and advice. The children would, for example, with assistance as required from the carers, go to school, help around the house with domestic chores, help with shopping, sit down together for meals, watch TV and go on trips out in the same way as any other family would.

The attached plans by Goodwinter Design show the proposed plans of the property which match that of the existing layout.

A summary of the proposed use of the property is thus:

- No more than two children will live at the property
- The children will live together as a family unit
- Each child will have a permanent bedroom of their own
- The children will be cared for during night time by up to two carers. One carer will sleep over in a bedroom at the property. The night time carers will be on a shift pattern.
- During the day the children will be cared for by up to three carers (up to a maximum of three carers); working on a shift pattern

- The house will be used as the children's only place of residence. The house will be their family home.

Planning Justification/Support

Class C3 of the Use Classes Order includes care homes under the description of single family homes where six people live together with care being provided. The applicant intends to use the property as a single house for two occupants with care provided. The two occupants will be living as one family along with up to two night time carers, one of whom who will have bedroom at the property. The carers will not reside permanently at the property but will work on a shift basis.

Our first contention is that the intended use falls within use class C3 as the occupants will live together as single household and will receive care. Our second contention is that even if the proposed use fell outside of C3 the property would remain as a dwellinghouse and there would be no material change of use requiring planning permission.

There are several appeal cases as well as court rulings that apply and would back up the applicants view that planning permission is not required for the intended use. A starting point to establish this position is the use classes order. Class C3 defines dwellinghouses in 3 parts:

- C3(a): those living together as a single household as defined by the Housing Act 2004 (basically a 'family');
- C3(b): those living together as a single household and receiving care, and
- C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.

Paragraph 8 of Circular 08/2010 also advises *"The common feature of all premises which can generally be described as dwellinghouses is that they are buildings that ordinarily afford the facilities required for day to day private domestic existence."* The building as existing and as proposed would without doubt cater for normal day to day domestic existence.

Whether the proposed use falls within class C3(b) could be debated as the criteria within paragraph 2 of Circular 08/2010 advises the limit for occupation is no more than 6 people. Many appeal decisions have considered whether non resident or resident carers should be counted and whether those sleeping over on shift should be counted. Also considered as part of many appeal decisions is the concept of whether

children can themselves form a household without the care of the non resident staff. Most appeal and court decisions exclude daytime shift workers from the calculation and many exclude staff sleeping over on shift pattern.

There are several appeal cases also relevant including the Micawber House Appeal, copy attached. The Inspector noted in the Micawber House Appeal the lawful use of Micawber House (following an earlier LDC) was as a children's home within Class C3 for up to 4 children and 2 night time (non) resident carers. The appellant then proposed to increase the number of children to five which the Planning Authority had refused as they claimed the limit of six (defined by para 2 of Circular 08/2010) was breached as there would be seven people 'residing'. The Inspector concluded that the carers had non resident status, living permanently elsewhere; so the number of people residing would be the five children thus the use would fall within C3(b).

The Inspector in the Micawber House case followed the ruling in Hossack (*The Queen (on the application of Hossack) v. Kettering Borough Council & Another v. English Churches Housing Group (Hossack)*). The issue in Hossack revolved around whether a group of unrelated people could live together as one defined household under use class C3. The ruling in Hossack explained that there were no conclusive criteria whose presence or absence defined a single household. It follows that six children living together as one household with care provided can be defined as one single household under Class C3 of the use classes order. It follows that in this case where the applicant intends to use the single house as a house for two children and up to two members of staff overnight there would be no material difference between the use of the property as proposed and the lawful existing use.

As noted above we suggest the proposed use is for two permanent resident children alone this can be considered to be within C3(b). If, for the sake of argument, we take an alternative view and include the two night time or up to three day time 'resident' carers resulted in five people in the household - this does not alone result in a breach of planning control. It would not even if it were six or more people. The categorisation of use as set out within Circular 08/2010 Advises:

"Although the control limit of six persons defines the scope of the C3 (b) and (c) dwellinghouses and C4 houses in multiple occupation classes, this does not imply that any excess of that number must constitute a breach of planning control. A material change of use will occur only where the total number of residents has increased to the point where it can be said that the use has intensified so as to become of a different character or the residents in relation to C3 no longer constitute a single household."
(Paragraph 17, Annexe A, Circular 08/2010).

So more than six residents does not result in a breach of planning control, rather it is whether the intended use would increase to a point where the character changed and if the character does not change then no material change will occur. Of importance is the existing building and its previous and current use (all comprising character) along with the intended use of the building.

In considering whether the proposed use will change the character of this family home we should note that:

- No additional bedrooms are to be created as a result of the proposal
- No additional parking is required
- The occupants will interact together on a day to day basis as a family
- No extensions are proposed or required
- No physical changes of a nature that would constitute development would be made to the property
- The garden would remain largely as it is now
- Comings and goings would be comparable to any three bedroom house of this size
- The two residents here would not be driving cars due to their age
- Comings and goings could be no more than expected at any similar property
- Carers would be on staggered shifts
- If three carers are in situ during the day they would only enter the site at the start of shift and leave at the end of their shift – this would not result in comings and goings above a level one would find with extended family members leaving to go to and from work, gym, shopping and other normal activity at a house.

A similar proposal was considered in East Yorkshire where the proposed use of an existing dwelling for a home (with care) for people with learning difficulties was allowed at appeal in a similar case to this. The Inspector in appeal decision APP/E2001/X/99/3301 concludes the use of the seven bed home for five residents and two night time carers did not amount to a material change of use of the dwelling. The Inspector considered the intended use fell outside C3 but that the only issue to be, as a matter of fact and degree, whether the character and nature of the proposed use would be materially different from the use as a single dwelling. Paragraph 9 of appeal decision APP/E2001/X/99/3301 (copy attached) lists the matters that assisted the Inspector in determining there would be no material change in use. In summary the matters considered were:

- No indication of external works

- Residents would live on a communal basis sharing all functions
- There would be no individual tenancy or element of multiple occupation
- The number of occupants including staff would not give rise to more vehicular activity than might be expected in any large family
- Comparisons are drawn between the proposed use with residents not driving and potential for a large family with grown up children driving and elderly parents driving or having visitors or being socially active and having lots of visitors.

These are similar matters to those identified above and as a whole by the submission including those submissions made by Mr Ali. In concluding the East Yorkshire case the Inspector makes a very fair and balanced point in paragraph 10 where he states:

“Clearly, the purpose of the proposal is to enable people with learning difficulties to live in as normal a residential household environment as possible, as part of the community, rather than in an institution. In all the character and nature of the proposed use would not differ materially from that of the previous use of the property as a single family dwellinghouse. I conclude that no change in use would be likely to occur.....” paragraph 10 APP/E2001/X/99/3301.

In support of the applicants case it is reasonable to paraphrase the above quote: Clearly, the purpose of the proposal is to enable children to live in as normal a residential household environment as possible, as part of the community, rather than in an institution. In all the character and nature of the proposed use would not differ materially from that of the previous use of the property as a single family dwellinghouse.

The Hosack case notes that small group homes play a major role in Government community care policy. It should be noted that dwellinghouses are categorised as including not only families but also people living together under arrangements for providing care and support within the community.

The intended use is to provide a safe and secure family home for children who have no security or stability; the proposal presents an opportunity to improve lives. A normal residential environment would be provided within the house. There would be no noticeable change to the character or feel to the site from outside of the site. The property would remain as a single family dwelling, there would be no material change in use of the land or house.

Conclusion

It is our contention that the proposed use would not be materially different from the current use of the premises and that the proposed use would not constitute development requiring planning permission. As such the applicant requests a certificate of lawful proposed use/development.

Enclosures

- Plans by Goodwinter Design
- Operational Statement
- Micawber House Appeal
- East Yorkshire Appeal

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Prepared at the request of Isaak Ali