

COPELAND BOROUGH COUNCIL DELEGATED PLANNING DECISION

1.	Reference No:	4/22/2260/OE1
2.	Proposed Development:	CERTIFICATE OF LAWFULNESS TO ESTABLISH THAT THE CURRENT USE OF THE PROPERTY UNDER CLASS C2 DOES NOT CONSTITUTE A MATERIAL CHANGE OF USE FROM THE ESTABLISHED USE OF THE PROPERTY AS A RESIDENTIAL DWELLING (CLASS C3)
3.	Location:	LAMPLUGH CROSS HOUSE AND COTTAGE, LAMPLUGH
4.	Parish:	Lamplugh
5.	Constraints:	ASC;Adverts - ASC;Adverts, Coal - Standing Advice - Data Subject To Change
6.	Publicity Representations & Policy	See report
7.	Report: INTRODUCTION <p>The application site relates to two detached properties, utilized together as one property, known as Lamplugh Cross House and Cottage, situated on the T junction between the A5086 and access road to Lamplugh. There are further residential properties to the north east and open fields to the south east and south. The highways flank the north and west of the property.</p> PROPOSAL <p>This application which has been submitted under Section 191 of the Town and Country Planning Act 1990 (as amended) seeks to establish that the current use of the property under Class C2 is lawful and does not constitute a material change of use from the established use of the property as a residential dwelling (Class C3).</p> <p>The home is used for children in care. A maximum of two children stay at the property at any one time for approximately 12 months at a time, although the application forms allow for up to 4 children. There are two carers living in the property at any one time, working on a rota basis. Furthermore, a manager is based at the property for up to 25 hours per week and occasional visits</p>	

from the family members of the children in care.

There have been no internal or external changes to the property.

CONSULTATION RESPONSES

There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. 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 irrelevant when determining the application.

LEGAL CONSIDERATIONS

For the purposes of clarification a lawful development certificate enables applicants to establish whether a proposed development is lawful for planning purposes. In this instance it is claimed that the current use under Class C2 does not constitute a material change of use from the established use of the property under Class C3.

Class C3(b) as set out in the Town and Country Planning (Use Classes) Order 1987, permits the use of a dwelling house by not more than six residents living together as a single household, where care is provided for residents.

According to Case Law (in particular, the High Court judgement – North Devon District Council v First Secretary of State 2003), children cannot form a household where carers do not permanently reside in the property permanently.

Class C2 (Residential Institutions) includes uses relating to residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.

ASSESSMENT

Based on the legal considerations and evidence put forward by the Applicant, the current use of the property is considered to fall under use class C2 as a residential care home. This is not disputed by the Applicant.

The consideration for the application is therefore whether the change of use from use class C3 to class C2 can be considered to be a material change and whether it would require planning permission under the definition of development.

Case Law establishes that determining whether any activity constitutes a material change of use it is

	<p>the character of the use which has to be considered rather than the particular purpose of a particular occupier. In this case it is considered that the character of the existing C2 use is not materially different from the lawful C3 use.</p> <p>Section 55 of the Town and Country Planning Act states that 'development means 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'. In this context, the application does not fall under the definition of development.</p> <p>The property has not undergone any physical alterations and still benefits from the residential layout, including private bedrooms, bathrooms, kitchen and communal areas as well as a private curtilage. As this is no different to its previous use as a single residential property, there has been no material change.</p> <p>The occupation of the property will include up to four children and two adult carers at any one time. Other visitors, including a house manager and family of the children may also come and go from the property. This is considered to be commensurate with that of the occupation of the property as a single household.</p> <p>CONCLUSION</p> <p>Section 191 of the Act allows for a person to ascertain whether or not an existing use of a building and land is lawful by applying for a Certificate of Lawfulness of Existing Use or Development.</p> <p>Based on the information submitted I am satisfied that there is sufficient evidence to demonstrate that the change of use of the property from C3 to C2 use does not constitute a material change and is therefore a lawful use, based on fact and degree. It also does not fall within the definition of development as defined within the Town and Country Planning Act. On this basis, a Lawful Development Certificate can be issued.</p>	
8.	<p>Recommendation: Approval of Certificate of Lawfulness</p>	
Case Officer: Sarah Papaleo		Date : 08/08/2022
Authorising Officer: N.J. Hayhurst		Date : 11/08/2022
Dedicated responses to:- N/A		