

**COPELAND BOROUGH COUNCIL
DELEGATED PLANNING DECISION**

1.	Reference No:	4/22/2390/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) FOLLOWING PLANNING APPROVAL REFERENCE 4/22/2257/OF1	
3.	Location:	JASMINE HOUSE, MOOR ROW	
4.	Parish:	Egremont	
5.	Constraints:	ASC;Adverts - ASC;Adverts, Coal - Standing Advice - Data Subject To Change	
6.	Publicity Representations & Policy	Neighbour Notification Letter	Yes
		Site Notice	No
		Press Notice	No
		Consultation Responses	See Report
		Relevant Policies	See Report
7.	Report:		
	Site and Location		
	This application relates to a detached property, known as Jasmine House, located within the east of Moor Row. The property is sited along Dalzell Street and is located within a group of residential properties with a farm to the north and a car garage adjacent to its access to the north of the site.		
	Relevant Planning History		
	4/90/0127/0 – Dwelling house and garage – Approved		
	4/04/2657/0 – Change of use from B&B to B&B plus cafe/tea garden/refreshments – Approved		

4/04/2034/0 – Change of use from private dwelling to bed and breakfast – Approved

4/11/2058/0F1 – Static caravan to be used in conjunction with bed and breakfast – Approved

4/22/2257/0F1 – Change of use from guest house to dwelling (retrospective) – Approved

Proposal

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).

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, aged 12 -18 years. There would be no more than two carers living in the property at any one time, working on a rota basis. Furthermore, a manager will be based at the property for up to 25 hours per week, and there will be visits from the family members of the children in care, which will vary in frequency, length and time. A social worker may also visit the property once a month for approximately 1.5 hours and there will also be an external quality assurance visit to the property once a month for approximately 2 hours.

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.

Parish Council

No comments received.

Copeland Borough Council – Environmental Health

No comments received.

Public Representation

This application has been advertised by way of neighbour notification letters issued to ten properties.

No comments have been received in relation to the statutory notification procedure.

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 main consideration for this application is 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 when determining whether any activity constitutes a material change of use it is the character of the use which has to be considered rather than the particular purpose of an occupier. In the case of this application, it is considered that the character of the existing C2 use is not materially different from the lawful C3 use.

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.

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>The occupation of the property will include two children and two adult carers at any one time. Other visitors, including a manager and family of the children may also come and go from the property. This is considered to be proportionate 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 an existing use of a building and land is lawful by applying for a Certificate of Lawfulness of Existing Use or Development.</p> <p>The proposed use falls within Class C2 (residential institutions) of the Town and Country Planning (Use Classes) Order 1987 and the existing lawful use falls within Class C3 (dwellinghouses). Based on the information submitted for this application it is not considered that the proposed use would materially differ from the existing use and as such it would not amount to development requiring planning permission.</p>		
8.	<p>Recommendation:</p> <p>Approval of Certificate of Lawfulness</p>		
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<p>Dedicated responses to:- N/A</p>			