

**E/13/0221/B – Unauthorised use of property as a Children's Home at Nutwood Cottage, West End Road, Wormley West End, Herts, EN10 7QN**

**Parish: BRICKENDON LIBERTY CP**

**Ward: HERTFORD HEATH**

**RECOMMENDATION:**

That the Director of Neighbourhood Services, in consultation with the Director of Finance and Support Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the cessation of the unauthorised use.

Period for compliance: 6 months.

Reasons why it is expedient to issue an enforcement notice:

1. The change of use, by reason of the degree of activity, noise and disturbance at the property and the actual and perceived potential for anti-social behaviour in close proximity to existing residential uses, is harmful to the residential amenity of neighbouring occupiers and the rural character of the area. The proposal is thereby contrary to policy ENV1 of the East Herts Local Plan Second Review April 2007.
2. The use of the premises as a children's home, in a location away from a significant centre of population and key services, results in an unsustainable form of development which is heavily reliant on motor vehicles and which results in additional traffic movements within the surrounding rural area. This development is at odds with the Council's strategy for development in the District as set out in Policy SD2 of the East Herts Local Plan Second Review April 2007 and the principles of sustainable development set out in the National Planning Policy Framework.

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**1.0 Background**

- 1.1 The site is shown on the attached OS extract. It comprises a detached property, located at the western end of West End Road in Wormley West End and which lies within the Metropolitan Green Belt. To the west is a farm, to the east is a neighbouring residential property and to the north is garden land and fields, to which access is gained from West End Road to the south.

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- 1.2 In July 2013 concerns were expressed to the Council by the Parish Council that the site was being used as a care home for “seriously disturbed young people” by an organisation called Advanced Childcare.
- 1.3 Officers noted that there had been correspondence between the operator of the home and the Development Management department in November 2012 with regard to the need for planning permission. An officer informed them that on the information provided, (i.e. that the care home would operate under Use Class C3(b) – as a dwellinghouse shared by up to 6 people), it would not require planning permission. However, the Officer further stated that a Lawful Development Certificate must be submitted for formal confirmation from the Council and that the advice given was the informal opinion of the Officer, based on the information provided, and would not prejudice the final decision of the Council.
- 1.4 Officers began investigating the use of the property but delayed further action due to an outstanding Lawful Development Certificate appeal at similar sites being operated in Bishop’s Stortford and Sawbridgeworth. The appeal in Bishop’s Stortford was withdrawn, but the appeal decision relating to a similar use in Spellbrook, Sawbridgeworth was issued in December 2013 and provided some useful clarity in respect of the consideration of such applications.
- 1.5 Following the appeal decision, Officers served a Planning Contravention Notice (PCN) on the operator of the site in December 2013 to obtain further information regarding the use of the property.
- 1.6 Following a review of the responses to the PCN, Officers considered it necessary to visit the site and inspect the inside of the home. Following unsuccessful attempts to arrange a mutually convenient visit (given the sensitive nature of the use), Officers utilised their powers of entry to visit the site in May with the required written notification sent directly to the property.
- 1.7 From the visit it was apparent that part of the property had been converted to accommodate an office for the exclusive use of Advanced Childcare employees, with locked access, desks, multiple computer stations and wallcharts/files. An employee of the company informed Officers that a further bedroom had been converted for use by staff only, with three additional bedrooms (although only 2 had ever been used at one time). The downstairs contained fairly open plan shared living accommodation with a kitchen/dining room and lounge space. This generally accorded with the information provided through the PCN.

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- 1.8 The property was stated to be occupied by two young persons in need of care and their caring staff who are resident on a shift basis. Further information on the precise nature of the use is set out in paragraph 4.4 of this report.
- 1.9 Following consideration of the appeal decision, case law, and the results of investigations, Officers consider that the use of the site does not fall within the C3(b) (dwellinghouse) category, but falls within Use Class C2 (Residential Institutions). For ease of reference the various C2/C3/C4 uses are explained below:
- **C2 Residential institutions** – 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.
  - **C2A Secure Residential Institution** – Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks.
  - **C3 Dwellinghouses** – this class is formed of 3 parts:
  - C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
  - C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
  - C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.
  - **C4 Houses in multiple occupation** – small shared dwelling houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

## 2.0 Planning History

2.1 There is no relevant planning history relating to this site.

## 3.0 Policy

3.1 The relevant saved policies of the adopted Local Plan in this matter are:

ENV1	Design and Environmental Quality.
SD2	Settlement Hierarchy
GBC1	Appropriate Development in the Green Belt

3.2 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are also material considerations in the determination of this matter.

## 4.0 Considerations

4.1 The determining issues in this case relate to whether the existing use of the property requires planning permission and if so, whether it is appropriate development in the Green Belt and acceptable in terms of policy and its impact on the amenities of nearby properties and the character and appearance of the surrounding rural area.

4.2 In relation to the first issue, Officers consider that the use does not fall within Use Class C3(b). This is because C3(b) requires residents to be living together *as a single household*. The appeal decision for The Sidings at Spellbrook Lane East, Spellbrook, was against the refusal of a Certificate of lawfulness by the Council for the use of a dwellinghouse by up to six people living together as a single household and receiving care (Use Class C3(b)). In his decision the Inspector stated that for a 'household' to be created there would need to be at least one permanent adult living on the premises with the children (who are unable to form a household themselves). The response to the PCN in this particular case confirmed that "no carers reside at the home permanently. All staff have their own residential premises".

4.3 As the use does not fall within use Class C3(b), it is necessary to determine whether, in fact, there has been a *material* change of use of the property from residential dwellinghouse. This is a fact and degree assessment based on a range of different factors. One of the recent leading authorities in determining the issues at hand is *Kartikeya solutions Limited v Secretary of State for Communities and Local Government [2013] EWHC 2019 (Admin)* which involved a children's home in the London Borough of Waltham Forest. The issues the

original appeal inspector had considered when forming a view on *materiality* included the behaviour of the children: noise, disturbance, extreme behaviour, anti-social behaviour and causing fear to the neighbours; the cumulative activity caused by shift working by the carers, visits from family, friends, social workers and the police and the traffic and parking. The internal character of the property was also considered relevant, including the presence of fire alarms, reinforced doors, fire doors and locks to the room doors. Overall, the character of the use of the site was compared to the type of use typically associated with a Class C3 dwellinghouse and the full extent of the type of use this allows (e.g. multiple car ownership) and was found to be materially different from that under Class C3. This approach was ratified by the above High Court Judgement.

- 4.4 Applying those factors to this particular case, the Council has a large amount of material to draw upon, including submissions from the Parish Council; local residents; information from the Police and information submitted by the company, including through the PCN responses. The PCN responses are considered to be a very reliable form of evidence. In those responses, the company confirmed that the home has a staff team of 10, including a manager. Three staff are on shift each day between 8am-11pm. Two staff then remain on site and commence sleep-in duties from 11am-8pm, with waking nights when needed. Additionally, it appears that staff meetings are held at least once a month, with some months featuring 2 meetings, attended by 5-7 people. The home also has a staff office, which was viewed by Officers at the site visit. The Office has multiple computers, wallcharts and files, and the PCN confirmed that residents are not allowed unsupervised access in the office.
- 4.5 In Officers' opinion these factors all indicate that a material change of use of the property has occurred, and this involves, inter alia, a significant number of vehicle movements beyond that which would be associated with a family home. This is also reinforced by anecdotal evidence from local residents which suggests that parking for the home constantly overflows into the lane. Multiple cars were witnessed parked in the lane by Officers on site.
- 4.6 Furthermore, evidence is also available on issues of noise, disturbance, anti-social behaviour (actual and perceived). From the PCN, 15 incidents involving neighbours were recorded by the company between January and November 2013 regarding a range of issues including parking on the lane, noise, language and verbal abusive. This is corroborated by correspondence between Advanced Childcare and local residents, which included comments on incidents such as

intruders in a local resident's front garden, an intruder in an elderly resident's back garden during the night, and noise and disturbance (involving pursuits) during the early hours of the morning. This anecdotal evidence from local residents also refers to the fear and anxieties regarding incidents and potential incidents, and this is acknowledged by Advanced Childcare in letters sent to local residents in 2013. The above evidence is also supported by the Police. The Council has been informed of the number of call-outs required, and without disclosing sensitive information, this involved up to 11 call-outs per month, with incidences of violence, missing persons and nuisance. It is the view of Officers that these factors indicate a degree of activity, noise and disturbance that exceeds that which would normally be associated with a dwellinghouse. It also indicates an actual and perceived potential for anti-social behaviour beyond that associated with a dwellinghouse use.

- 4.7 The physical findings from the Officers' site visit must also be considered. The downstairs of the property appears as a typical C3 (dwellinghouse) use, with a shared lounge, kitchen, dining area and garden. Signs are in place to instruct with the use of facilities, but these are not atypical of a shared occupancy premises. The upstairs of the property has a number of rooms, all of which have been fitted with locks. The staff office was of a significant size, with multiple computers and workspace, with a secure lock to the door. A staff only bedroom was located within the office, and another bedroom was also for staff only.
- 4.8 Overall, it is the considered opinion of Officers that, notwithstanding the potential for anti-social behaviour, multiple car ownership and the general activity associated with a Class C3 dwellinghouse, all of the factors mentioned above cumulatively result in a use which is materially different from a Class C3 dwellinghouse, and permission is required for this material change of use.
- 4.9 Officers have then considered whether it is likely that planning permission would be granted for the material change of use involved. Concerns can be primarily divided into two issues – the impact of the use on residential amenity and the rural character of the area, and the sustainability of the location.
- 4.10 With regards to amenity, the site is located in the Green Belt at the end of a lane which is typified by its rural qualities, with any unusual noise or disturbance likely to only be agricultural in nature. The lane is a no through route, and so the traffic is likely to be limited only to the occupiers of the houses and their guests. Officers consider that the

actual and perceived degree of activity, noise, disturbance and potential for anti-social behaviour in close proximity to existing residential uses is harmful to the residential amenity expected by neighbouring occupiers and the rural character of the area. Whilst the site is only immediately adjoined by one property, due to the above characteristics of the area, any noise or disturbance (e.g. requiring police presence) is likely to impact on the amenity of a wider number of properties. Cumulatively, the additional level of activity when compared to a Class C3 (residential) use is considered to represent sufficient harm to residential amenity and the character of the area so as to warrant refusal of the application under Policy ENV1.

- 4.11 Additionally, Officers have also considered the sustainability of the location. The site is located outside of any settlement boundary and is within the Green Belt and, whilst the use is unlikely to impact on the openness of the Green Belt to the extent that it represents inappropriate development, the use is likely to generate significant additional vehicle movements and activity in an unsustainable location. This is typified by the number of staff required to visit the site, staff meetings held on site and the attendance of other agencies or bodies such as the Police and Ambulance service. The young people would also be reliant on private transport for visits to and from the site. As a result, Officers consider that the use of the premises as a children's home in a results in an unsustainable form of development which is heavily reliant on motor vehicles and results in additional traffic movements within the Green Belt. This is at odds with the Council's strategy for development in the District as set out in Policy SD2 and the principles of sustainability contained within the NPPF.

## **5.0 Recommendation**

- 5.1 For the above reasons, it is recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the cessation of the unauthorised use.