

5o E/10/0275/B - Unauthorised material change of use of the land, from a dwellinghouse to a residential institution, at The Beeches (formerly The Orchard), Westmill, SG9 9LL.

Parish: WESTMILL

Ward: MUNDENS AND COTTERED

RECOMMENDATION

That the Director of Neighbourhood Services, in consultation with the Director of Internal 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 application site lies within a Category 3 Village and the Rural Area, both as defined in the East Hertfordshire Local Plan, where development will only be allowed for certain specific purposes. There is insufficient justification for the development and it is thereby contrary to policies OSV3 & GBC3 of the East Herts Local Plan Second Review April 2007.
2. Insufficiently detailed information is available to the local planning authority to determine whether or not the use is likely to result in detriment to the amenities of nearby residential properties by reason of noise and general disturbance, contrary to policy ENV1 of the East Herts Local Plan Second Review April 2007.

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1.0 Background

- 1.1 The site is shown on the attached OS extract. It lies on the western side of the road, about 100 metres South of village green, opposite the recreation ground. The site is within the Rural Area beyond the Green Belt.
- 1.2 In April 2008 concerns were expressed to the Authority, by a number of local residents, that the site, then known as The Orchard, was undergoing physical works to convert it into a residential care home. At that time the enforcement officer was still awaiting works by the previous owners of the site to reduce unauthorised decking. The previous owners were a married couple with two children

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- 1.3 The enforcement officer visited the site and noted that works were underway to make significant alterations to the property. The workmen stated that they were working for a company called Care Aspirations who operated care homes.
- 1.4 The enforcement officer wrote to the company on 16th April 2008 requesting that they contact him within seven days to discuss their proposed use of the site. Despite a number of further e-mails and letters a response was not forthcoming until 7th May 2008. That response gave no details of the proposed use but asserted that it would be within the C3 dwellinghouse use class.
- 1.5 Later that month the company was sold to another group specialising in providing residential healthcare. The new owners held a 'public meeting' for residents on 17th September 2008 at which they reportedly informed the residents that it was their intention to use the site as a 'low secure hospital'.
- 1.6 Despite a number of written and telephone requests from the enforcement officer the company did not contact the enforcement officer until 12th December 2008, although, as the premises remained unoccupied during that period, there was no breach of planning control.
- 1.7 On 14th April 2009 the company submitted an application for a certificate of lawful use with regard to their proposed use of the property, considering that it fell within the C3 dwellinghouse use class. This application was refused on 9th June 2009 and no appeal was made against that decision.
- 1.8 The property remained unoccupied and enforcement and planning officers' visited the site with the owners and their agents. At that meeting it was agreed that much of the paraphernalia connected with the use of the building as a secure hospital would be removed. The owners stated that they would pursue a use that fell within the C3 use class. Officers, on a number of occasions, asked the owners to submit a further application for a certificate of lawful use to establish the local planning authority's formal view on any proposed use before commencing it. The owners declined to do so.
- 1.9 The agents have now stated that the premises would be used as a 'supported living model' for persons with 'minor learning difficulties', in a letter dated 15th June 2010. That letter also stated that "There would, however, be no requirement for staff living in the property;".
- 1.10 On 26th July 2010 the first of the intended occupants moved into the property. The enforcement officer contacted the Transition and Placements Manager from HCC Adult Care Services (who 'placed' the resident at the site). She stated that the occupant had "high support needs" and had

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constant (24 hour) one to one supervision from a carer. She added that sleeping accommodation may be required for night staff.

- 1.11 On 30th July 2010 the Council issued a planning contravention notice requiring the owners to provide detailed information with regard to the use of the site. Following a further meeting between enforcement and planning officers and representatives of the company a reply was received on 10th September 2010 from the owners' solicitor.
- 1.12 The response to the planning contravention notice stated that "there are no carers or staff permanently residing at the property". The response also stated "We cannot provide details of the support needs or the support provided to individual tenants at the property for data protection and privacy reasons".
- 1.13 The enforcement officer again visited the site on 16th September 2010 and met the Business Development Manager of the owners, now known as Cambian St Pauls Limited. He was also introduced to the occupier and her carer. The officer noted that much of the physical 'secure hospital' paraphernalia had been removed from the building.
- 1.14 The officer was informed that there needed to be a carer on site for the resident throughout the 24 hour period (although it was unclear if this was the same person) and that as the need was for support, if required, the member of staff slept on the premises.
- 1.15 Whilst economies of scale will emerge with further residents (between 4 and 5 residents are anticipated), the Transition and Placements Manager from HCC Adult Care Services expected that 4 staff would be necessary during the day and 2 staff at night.
- 1.16 The Development Control Manager wrote to the owners on 17th September 2010 informing them that it was the view of officers that the use of the premises was within the C2 Residential Institution class, for which planning permission was required. She recommended that the owners submit either a planning application or a certificate of lawful use application if they still considered that the use still fell within the C3 use class.
- 1.17 The response from the owners' solicitors was that as their clients considered that the use fell within the C3 use class they would not submit a planning application.
- 1.18 For ease of reference the following details the various C2/C3/C4 uses are explained: -

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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 The most relevant planning history for the site can be summarised as follows:-

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3/97/1241/FP	Demolition of existing garage/stores/bedroom and replacement garage and bedroom annexe extensions.	Refused.
3/98/0152/FP	Alterations and extension to existing dwelling and new (attached) 'granny annexe'.	Approved.
3/03/0293/FP	Replacement of existing hipped roof destroyed by fire with new roof incorporating gable ends with pitch increase.	Approved.
3/05/0152/FP	Single storey double garage.	Refused.
3/06/1658/FP	Single storey side extension incorporating a garage.	Refused.
3/07/0203/FP	Garden decking to side of house (retrospective).	Refused.
3/07/2194/FP	Single storey side extension to the west end of the property to provide a double integral garage in lieu of the existing single integral garage.	Approved.
3/07/2224/FP	Provision of pool and deck surround with amended levels to respect the ground contours and the removal of the above ground pergola (part retrospective) and raised replacement fencing.	Approved.
3/09/0567/CL	Proposed use of dwellinghouse (use class C3) for the use by not more than 6 residents living together as a single household where care is provided for residents.	Refused.
3/10/0118/FO	Removal of condition 5 of 3/98/0152/FP – the garage will be used for the housing of private vehicles.	Approved.

3.0 Policy

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

OSV3 Category 3 Villages.

GBC3 Appropriate Development in the Rural Area Beyond the Green Belt.

ENV1 Design and environmental Quality.

4.0 Considerations

4.1 Officers' consider that the staffing component of the use of the property is very significant, in fact the residential use of the site would appear to be dependant upon staff being present. This leads to a situation where the use, as in a hospital, appears an institutional one.

4.2 Residents for the property are sourced from Hertfordshire County Council Adult Care Services. They have informed officers that it is their intention to place four young people with similar needs in the property. At that level it is likely that four support workers would be required during the day and up to two during the night.

4.3 Officers' consider that such a level of care is indicative of a residential institution rather than care that would be appropriate within a dwellinghouse.

4.4 As is indicated above, changes to the Use Classes Order in 2010 have introduced a new category of C4, small houses in multiple occupation. This class was primarily intended to include houses occupied by up to six unrelated students although it also includes similar properties. However this use class does not include a property where any form of care is provided for residents. Accordingly officers' do not consider that the above use of the property can be accommodated within the C4 use class.

4.5 For the above reasons officers' consider that there has been a material change of use of the site, which they consider now falls within the C2 residential institutions use class. As there are no permitted development 'rights' for a change of use from class C3 to class C2 planning permission is required for such a change.

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- 4.6 The site lies within a category 3 Village where development is controlled by (saved) policy OSV3 which only permits development if it accords to the criteria contained within policy GBC3. This development does not accord to those criteria, accordingly it is contrary to saved policies OSV3 and GBC3 of the East Herts Local Plan Second Review April 2007.
- 4.7 The site is situated in a quiet country lane with little traffic. The full use of the site as an institution would generate significantly more traffic than would normally be expected in such a location. The location is considered to be remote from services and facilities and therefore is not a good location sustainably in relation to the needs and requirements of the residents or the availability of the professionals required to support them.
- 4.8 It is anticipated that the occupiers of the property will exhibit behaviours which are likely to have a detrimental impact upon the living conditions of the occupiers of neighbouring properties. An example of this was witnessed by the enforcement officer during a visit to the site. A similar incident, which occurred outside the property, was reported to officers by a local resident. With four such residents, as proposed, this impact is likely to be exacerbated.
- 4.9 With the use of part of the site for staff to sleep, attendance at the site by full time care/support staff and regular attendance by other external support workers, officers' consider that the house would contain more people and generate more noise and activity than would be usual if the property were occupied by a single family.
- 4.10 The development therefore fails to comply with (saved) policy ENV1 East Herts Local Plan Second Review April 2007.

5.0 Recommendation

- 5.1 It is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the cessation of the unauthorised use.