

Appendix 1

GUIDANCE NOTE - PLANNING PERMISSION FOR CHILDREN'S HOMES C2 OR C3.

A number of issues have recently arisen in respect of privately registered children's homes within the City and whether or not planning permission for such is required. It is understood that a small number of dwelling houses across the City may currently be operating as private children's homes.. The registration process is directly between the operator and Ofsted . There is no legal requirement upon the operator to notify Children's Services.

In addition a recent review by a planning inspector of case law (Stockport 2010), has prompted recognition that further clarity of the planning position is required. Children's Services have requested that from a planning perspective it would be useful if some general guidance note is issued to help in determining the circumstances when planning permission may be required.

The Town and Country Planning (Use Classes) (Amendment) Order 2005 (amended further in 2010) distinguishes a range of uses of buildings and specifically permits changes of use from one use to another within individual classes.

Where activity results in a **material** change of use of a building to a use falling within a different use class then planning permission will be required to authorise that change of use.

Depending on the circumstances of each case, a children's home will fall into either a C2 or C3 use classification.

Use Class C2 (Residential Institutions) of the above Order reads as follows:

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.

Use Class C3 (Dwelling houses) reads as follows:

Use as a dwelling house (whether or not as a sole or main residence)

by —

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

A material change of use from class C3 to C2 amounts to development requiring planning permission. There is therefore a potential requirement for planning permission to use a dwelling house as a children's home.

The starting point is to first establish as a matter of fact and degree, whether such a use would constitute a change of use from C3 to C2. The issue largely

centres on whether or not the children are in themselves capable of living together as a single household.

Class C3 (b) of the Town and Country Planning (Use Classes) Order as amended refers to “use as a dwelling house by not more than six residents living together as a single household, (including a household where care is provided for residents).” If a children’s home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there would be no requirement for planning permission. However, the matter is less clear when the care is based on shift patterns. In the North Devon District Council [2003] case Justice Collins made the point that that children “need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing full-time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should.”

The North Devon judgement confirms that it is unrealistic to expect children to look after themselves in a single household. It also clarified that carers who provided 24 hour care but were not resident could not be regarded as living together in a household. The concept of living together as a household means that a proper functioning household must exist and children and carer must reside in the premises. In such circumstances, the use cannot therefore be considered to fall within Class C3 (b). A children’s home run on shift patterns could not be considered to fall within Class C3 (a), because clearly, this is not occupation of a dwelling house by a single person or people living together as a family.

Equally, C3(c) distinguishes groups of people living together as a single household, which could for example include people with lodgers, or student accommodation for up to six individuals. Children’s homes based on shift patterns would not be considered to fall into these criteria either. Following an assessment of case law and an Inspector’s decision of 2010 at Stockport, use of premises as a children’s home will generally be held to fall within Class C2 of the Order (Residential institutions).

The next point to bear in mind that a change of use from C3 to C2 may not amount to a **material** change of use and may still not amount to development which requires planning permission. So it is possible to conclude that no material change of use has occurred if there is no material difference in activity to that which may be anticipated in the case of a conventional residential use.

So, if the premises have the look and character of a conventional residential dwelling, and the use gives rise to no greater level of disturbance or amenity effects than could be generated by a C3 use, then no material change of use has occurred. Should the carers be living on the premises full-time, and have no other permanent address, the likelihood is this may amount to a C3(b) use even where substantial internal adaptation of the building has taken place.

If planning permission is required, what are the issues?

The key issues relate to the impact on the amenity of nearby occupiers. Relevant factors will include the movements to and from the premises associated with such a use, including shift patterns, the need for visitors on a regular basis (including the

emergency services). The internal fitting out of the premises with fire alarms, lockable doors etc would also be factors suggesting that a material change of use may have taken place.

Where unauthorised development has taken place, as for any other enforcement case, an assessment of the expediency of taking enforcement action will need to be considered.

If a planning application is submitted then generally, if the premises in question provides for sufficient parking, outdoor space and the amenity effects on neighbouring dwellings are capable of being mitigated, it is the case that these developments would normally be appropriate uses, in planning terms, in residential areas. Similarly, if the surrounding area is not mainly characterised by single family dwellings, it may well be the case that such a use could continue with little quantifiable impact subject to there being no increased concerns in other areas such as to highway safety.

Conclusions

The issue of whether or not a material change of use has occurred will ultimately be a matter of fact and degree in each individual case. The key issues are however the numbers of residents involved, whether or not staff work shift patterns or have a permanent residence at the site and the materiality in planning terms of any change of use.

The starting point will be to consider:

1. The number of residents involved and how the operation is to be conducted, for example whether or not staff are employed and if shift patterns are in operation or whether staff are permanently resident. If the number of residents is not more than six and the staff live in full time then this is consistent with a C3 use.
2. By contrast, where the staff working shift patterns and are not full time residents this is consistent with C2 use. Ultimately it will remain a matter of planning judgement but this should be the start of a sequence of considerations to help establish whether or not a change in the character of a dwelling-house has occurred, for example, through increased coming and goings and disturbance.

There are probably many care-related uses that run smoothly with no complaint in residential areas, and generally, residential areas are the most suitable place for such uses. Others by contrast may well bring long-term harm and significant amenity concerns for adjoining residents. It must also be fully recognised that whilst planning processes can be used to regularise existing situations, it can only complement other statutory functions and if proposals are on their own merits acceptable, any planning controls through the use of conditions, will be limited. Equally, such assessments require careful balancing of the need to assess the amenity expectations of residents in their communities against the need to ensure that vulnerable children are also appropriately accommodated.