

Officer Report

Application Number:	HGY/2026/2028
Application Type:	Lawful development: Proposed use
Address:	11 Pretoria Road, Tottenham, London, N17 8DX
Proposal:	Application for a Lawful Development Certificate for proposed use of a single family dwelling (Use Class C3a) to a children's home for up to a single child, with a manager and two carers who would stay overnight, working on a rota basis (Use Class C2).
Case Officer:	Kwaku Bossman-Gyamera
Valid Date:	17/07/202
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Applicant:	Stephen Maphosa
Agent:	Mr Adrian Rose

RECOMMENDATION

Permitted Development

DETAILS OF PROPOSAL

Certificate of Lawfulness for the proposed change of use of a dwelling C3(a) to a children's home for one child, with a manager and two carers sleeping overnight, working on a rota basis (C2 use).

Site and surroundings

The application site is a two-storey mid terraced dwellinghouse situated on the southwestern side of Pretoria Road, close to the junction with White hart Lane. The surrounding area is wholly residential in character.

The site is not located within any conservation area and does not fall within the curtilage of a listed building.

Relevant Planning and Enforcement history

There is no relevant planning history on this site.

RELEVANT PLANNING LEGISLATION

The application has been made under section 192 of the Town and Country Planning Act 1990 and relevant amendments. This not a planning application but instead the applicant seeks confirmation

that the proposed development is lawful. As such, the impact of the proposed development of the neighbour's amenities or the character of the area cannot be taken into consideration for this submission.

The Town and Country Planning (Use Classes) Order 1987 (as amended).

GPDO - The Town and Country Planning (General Permitted Development) (England) Order 2015.

ANALYSIS/ASSESSMENT OF THE APPLICATION

A change of use must first identify the land to be considered when identifying the existing use of the land, and its ancillary uses, in order to assess whether a material change of use has occurred across all or part of the planning unit. This determination must also consider any conditions or planning obligations that may impact the proposal.

The case of North Devon District Council v. First Secretary of State provides guidance on the classification of a change of use from a dwelling (Class C3(a)) to a care facility for children. The change of use can fall under both Class C3(b) and Class C2. For a care facility for children to fall under Class C3(b), the carers must be resident in the dwelling full-time, in other words, they must form a complete household with the children that they oversee. If the carers do not reside in the dwelling full time, it was considered that children, independent of a carer, cannot form a household as required under Class C3(b) and therefore the use would fall under Class (C2).

Class C2 could require planning permission under certain circumstances. However, if there would be no material change in the use of the property, under section 55 (1) of the Town and Country Planning Act 1990 (as amended) (TCPA), the change would not constitute 'development'. The activity associated with the change of use may also be material if the character of the use would be changed or there would be other environmental impacts.

An application for a proposed certificate of lawfulness must be specific as to the works, use and/or activity to be undertaken. Section 192(2) of the TCPA states "if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application". Unlike section 191(4), there is no legal scope for the local planning authority to modify or substitute that description. In this case, the application made states the current/last use is Class C3(a) and proposes a Class C2 use.

A statement has been supplied in support of the application detailing how the property would operate under the new use and asserts that, as a matter of fact and degree, the change proposed is not material. In North Devon District Council v First Secretary of State and Southern Childcare [2003], it was decided that the change of use to a children's home does not always constitute a material change of use. This was supported in a Ministerial Statement issued in June 2023. An assessment, therefore, must be made as to whether the level of activity at the site would be materially different to the existing Class C3(a) use. The Courts have also assisted with the concept of materiality, noting that determining whether there has been a material change of use is a question of fact and degree and the focus of the investigation must be on the character of the use – both existing and proposed.

The planning unit under consideration is the entirety of the property known as 11 Pretoria Road, London, N17 8DX and all assets within the curtilage of said property. There are no planning obligations associated with the property or conditions that impact the use of the dwelling. There is an Article 4 Direction over the entire area that restricts the conversion of dwellinghouses to Class

C4 use without first obtaining planning permission, but that has no substantive impact on this application.

A description of the activity associated with the current C3(a) use has been provided. The dwelling was last occupied by a typical family of 4. Activities at the dwelling are typical of any family of four, and a schedule of their movements in and out of the dwelling has been provided. There would also be standard deliveries of shopping and parcels that arrive at the dwelling as with most other dwellinghouses in the area.

Under the proposed use it is considered that one child will reside at the property full time. The supporting statement only asserts that the child is looked after by two carers, working on a rota basis and a manager. Two carers would work for 48 hours, staying overnight. A manager would also visit on weekdays. Six carers would operate on a 48-hour shift pattern, followed by 72 hours off. Except at changeover times, which last around fifteen to thirty minutes, there will be no more than three staff on the premises at any one time. The changeover of one of the overnight care staff members occurs every 24 hours, usually around 8.30 am.

As a 3-bedroom dwelling of this size could typically provide accommodation for 2 children and 2 parents, it is considered that the numbers of people at the property would not be significantly different to how the dwelling would be used in typical C3(a) use. It would also be typical for a C3(a) dwelling to receive visitors or deliveries on occasion and the same would be expected of the proposed use. The child living in the home would require no additional care at the dwelling beyond that of the two carers present in the home.

The way in which the dwelling would function would also be largely the same as a typical family, and similar to the most recent occupancy of the site. The activities at the dwelling would be similar, such as carers and the child both sharing/using the same spaces, food being cooked by the carers in the kitchen in a similar manner to the way in which adult family members might cook food, and carers accompanying children to school or other appointments or services/facilities within the surrounding area. This is considered not to be materially different to the way in which a C3(a) household with 2 parents could assist with helping to raise and living with 1 child.

The child would be in full-time education and be able to engage in hobbies and activities outside of the home, no different than children within a C3(a) household. The evening carer would teach them life-skills such as cooking and wash clothes, would assist with homework, and potentially take them out for recreational activities, just like a regular family. It is noted that the best way to support looked-after children is to provide a residence that mimics a 'traditional' family environment as would be found in Class C3(a) dwellings. Given the limited number of children, it is also unlikely that the Class C2 use would cause noise levels higher than what would be expected by any typical C3(a) use.

There are no proposed external changes and internal alterations are minor. The proposed development would utilise one of the three existing bedrooms on the first floor which would be used by the child. The ground floor would be fully accessible to all parties. From the outside observer the dwelling would appear exactly the same as it would be if occupied by a single household.

Family and professional visits may occur at the site or remotely and the visit of a social worker and Ofsted inspector would not be frequent. The application site has no off-street parking. Whilst the shift patterns will be arranged to enable staff to car share, walk, cycle or use the local bus services to come and go from the site without any material effect on surrounding residents and the parking/highways effects would not be significantly different from that of a class C3(a) dwellinghouse. Noise and disturbance associated with vehicle swap overs would be comparable to if the property had been in typical C3 use, for example parents with different employment hours. It

is expected that vehicular trips generated from the site would not be significantly different than those generated by the current Class C3(a) use.

In summary, the intensity of use and activity that would be carried out at this property in this specific location, along with the number of persons associated with this change of use would not be substantially different to the current activities of the existing class C3(a) use. There are no visual impacts, noise or amenity changes, changes to outlooks, or changes to the level of activity that make this use materially different than the existing class C3(a) use. The proposed change of use for the number of children and carers, on day and night shifts as presented would therefore not constitute a material change of use and therefore the proposal would not be classed as development which requires planning permission. A certificate of lawfulness should therefore be issued.

Conclusion

The change in use proposed would not constitute a material change in the use of the property and therefore a certificate of lawfulness should be issued.

CIL APPLICABLE

The increase in internal floor area would not exceed 100sqm and therefore the proposal is not liable for the Major's CIL charge.

RECOMMENDATION

Lawful for the following reason:

It is considered that the change in use proposed would not constitute a material change in the use of the property based on the individual merits of this application and therefore, planning permission is not required, and a certificate of lawfulness should be issued.

Conditions:

- 1 It is considered that the change in use proposed would not constitute a material change in the use of the property based on the individual merits of this application and therefore, planning permission is not required, and a certificate of lawfulness should be issued