

MC/18/3007

Date Received: 16 October 2018

Location: 20 Pattens Lane, Rochester, Kent, ME1 2QT

Proposal: Change of use from dwelling house (class C3) to residential children's home (Class C2) (resubmission MC/18/1631)

Applicant Acorn Homes

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Ward: Rochester South & Horsted Ward

Case Officer: Paul Ives

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Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 16th January 2019.

Recommendation – Temporary approval with conditions.

For the reasons for this recommendation for temporary approval please see Planning Appraisal Section and Conclusions at the end of this report.

Proposal

Change of use from dwellinghouse (Class C3) to residential children's home (Class C2) (resubmission of MC/18/1631)

This application proposes the provision of a children's home for 5 young people (aged 8 to 16) with 2 to 3 staff present outside school times and one staff member present on site throughout the day. A total of seven staff would work on a shift basis to care for them and arrange for parental visits predominantly off site as and when required. The setting would provide a home for children having difficulties with anxiety, depression, post-traumatic stress disorder, self-harm or relationship problems. The applicants also support young people to participate in sports activities and provide transition support for those aged 16+.

No changes are proposed to the building itself but the proposal would utilise first floor rooms as bedrooms for 5 children with the remaining two bedrooms at ground floor level used as staff rooms. The remaining kitchen, lounge diner and conservatory would be shared by all as a household sharing facilities and household tasks. The intended group will be brought together by mutual need. To the front garden, 5 car parking spaces are provided for staff and visitors.

The applicants propose a management plan which covers the level of care, number of children, age range for children, staffing and management responsibilities, vehicle management, parental contact management and a commitment to designing for crime prevention. They confirm that CCTV will cover the front and rear of the premises in addition to staff being fully trained to deal with any issues that may arise.

All staff working with children will be qualified to a minimum of NVQ level 3, the applicants do not recognise level 1 or 2 as being sufficient and have provided a schedule of training requirements for staff supporting the children. They do not work with gang members or accept such referrals for accommodation. Staff will however be trained to spot gang activity or members in the community to safeguard welfare.

They confirm that they recognise the potential impact of the development but will provide the appropriate care and supervision to ensure the development would work in harmony with the area.

Acorn Homes are legally obliged to address any issues of concern raised by Ofsted. If they fail to do this, they will lose their registration and would not be able to operate the children's home. Most children in the home will come from the Kent area (which includes a priority for children from Medway). They currently operate 10 children's homes at the present time. Seven of these homes are located in Kent and a further one in each of Bromley, Greenwich and Surrey. Inevitably there may be a few children in those homes from neighbouring Council areas including Bromley, East Sussex and Essex where if the children had remaining local to those areas may have been a concern.

The works will require the installation of fire doors, an alarm system, and an emergency lighting to meet the appropriate safety standards under building regulations.

Relevant Planning History

MC/18/1631	Change of use from residential dwelling to residential children's home Withdrawn 9 August 2018
MC/15/3682	Application for Lawful Development Certificate (proposed) for the change of use from a residential dwelling house (Class C3) to a small House in Multiple Occupation (Class C4). Both Classes referred to in this Schedule are defined by the Town and Country Planning (Use Classes) Order 1987 (as amended).

Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

16 Letters received including 4 from two households have been received **raising objection** to the proposal on the following grounds:

- The Proposal has not demonstrated it will have no significant impact on the community and neighbours.
- Adverse impact on neighbours amenity in particular the immediate neighbours.
- Anti-social behaviour caused by noise and disturbance.
- A semi-detached property is inappropriate for such a use and a detached dwelling would be more suitable.
- Residents had numerous issues last time with the previous use, which were over an 18 months period. This involved the persons that were placed in 20 Pattens Lane. These issues have involved the children/young adults jumping into gardens over the fences to run away from the police, noise from their garden which included offensive language, violence against each other until early hours of the morning, on most nights of the week, furniture being thrown around in the front and back garden, several windows being broken, numerous amounts of people coming and going at all hours of the day and night, young girls, not living at the property, coming and going into the property until the early hours of morning.
- Regular inspections by Ofsted is a legal requirement and does not prove that the proposal will not affect the residential amenity of neighbours
- This "family" is guaranteed to have some if not all children with behavioural and or anti-social behaviour issues. This does not demonstrate that the impact would be similar to that of any large family. Class 4 use of the property ceased when the previous Children's Home was closed.
- How is it known that staff will live locally, this is not proven and subjective.

Kent Police Advise that whilst they appreciate the absolute need for children's care homes of this nature, the proposed children's care home is a semi-detached property. The previous similar use of the building resulted in a high number of police interactions for a number of reasons. Although the applicant/agent has assured that appropriate management procedures, practices and staffing levels will be in place, Kent Police still have concerns.

Kelly Tolhurst MP has written in advising that she has received a number of concerns relating to the proposed use. In particular in response to many previous incidents of anti-social behaviour which occurred when the property was used as a hostel. The immediate neighbour at 20 Patterns Lane was physically assaulted during that time with the attacker receiving eight months sentence at a young offender's institution. Residents have also expressed a concern that the property has not been maintained and landscaping has

overgrown to the rear garden and front overhanging the public highway. The residents have serious concerns about the proposal overall and the impact it will have.

Cllr R Turpin has requested that the application be reported to Planning Committee for consideration and his comments are summarised as follows:

- As a semi-detached dwelling in a quiet suburban residential location, there is a high likelihood that the neighbours will have their peaceful enjoyment of their property disturbed in a significant way.
- Previous experiences of noise disturbances involving police visits on numerous occasions is recorded including a violent attack on the immediate neighbour which occurred around one year ago albeit under different management.
- The local residents have made their concerns known to me, especially the couple who live in the adjoining house.
- The descriptions of the application do not make logical sense given the disturbed and vulnerable nature of the proposed children who will also be removed from their parents at a time of maximum vulnerability in their teenage years.
- There is also no evidence that the children will be familiar with the local area or the children of local residents, leading to an increased likeliness of a sense of disorientation in already vulnerable children, and being of no benefit to the residents of Medway in either a particular sense in which we take responsibility as a local area for our own vulnerable children, or in a general sense in that there is a likelihood of increased pressure on local schools and social services in maintaining stable lives for these disturbed and vulnerable children, which may have a knock on effect, particularly on local schools already under pressure.
- There is also the proximity of two local primary schools which may adversely affect these institutions given the nature of the previous difficulties and areas of concern with the children proposed to live at number 20.
- There have been a few recent problems with companies in the area purporting to be solving social issues with vulnerable people but these are clearly mismanaged and making resident's lives a misery. Dale Street house houses people from outside the area and has recently suffered a suicide where a mattress with blood on it was left in the front garden for all to see, hardly appropriate given the circumstances and with children nearby.
- In King Edward Road obscene graffiti has been sprayed on a house housing vulnerable youngsters. This hasn't been removed for months and a severely damaged wall hasn't been repaired for weeks. These examples show that vulnerable people are being dumped in the area from outside. They have no connection to Medway and the prime motivation is profit. The prime detriment is to both the residents of these holes which are inadequately supervised and also to the local residents who see the damage done to their neighbourhood.

Natural England have confirmed that in this instance, no developer contribution (or case for demonstrating no harm to wildlife habitat) is necessary but are in the process of reviewing this for the future.

Medway Council Children's Services advise that the provider (Acorn Homes) has agreed that Medway Council will be given priority to placements at this property.

It is always advantageous to have local children in local homes in Medway. Taking in children from Medway supports the sufficiency plan of Medway. Retaining access to local schools for local children is always going to be a preference.

The provider would hope to contract with Medway, not as a block contract, but as a preferred provider much as they do with Bromley Council for a similar care service. Acorn have a good reputation for value and quality of outcomes for young people.

The provider currently (on occasions) receive referrals from Medway Council for young people to be placed in Kent due to a lack of options or resources in Medway itself. Within the partnership working and in line with Medway's sufficiency strategy, commissioning discussions have taken place in with the provider to consider further accommodation resources in the Medway Area, including a Residential Home.

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2018 and are considered to conform.

Planning Appraisal

Background

The applicants confirm that they have been providing quality services for children and young people through its homes for more than fifteen years supporting over fifty young people to rebuild their lives and develop into responsible adults with futures. All the homes are, according to the planning agent rated good or better by Ofsted but no details of addresses have been supplied in this application to verify this. They confirm that 120 staff are employed and are supported with training but no information has been supplied to reaffirm the levels of training for this site. With the need to be registered however they would need to meet Ofsted's objectives with the housing being aimed at providing the provision of a caring and home like environment for children and young people with integrated specialist education and therapy support. Acorn's health and well-being team, drawn from Kent County Council Child and Adolescent Mental Health Service, provides a community-based service for young people who may be experiencing difficulties with anxiety, depression, post-traumatic stress disorder, self-harm or relationship problems. In addition the firm operates Outward Bound projects, supporting young people to participate in sports activities and provides transition support for those aged 16+.

Property History

The application property is a large extended semi-detached property with six bedrooms and an office (at first floor level), located within a reasonable sized plot. The property is currently vacant. The gardens to the front and rear are unmanaged and overgrown. The original pair (18 and 20 Patterns Lane) were built as police houses in the late 1950's / early 60s as three bedroom homes. By 2000, the application site was being used as a two bedroom dwelling with first floor office (with off-site assisted care).

In 2000, an application was submitted seeking alterations and extensions to increase the bedroom numbers and occupancy levels. Correspondence in that application referred to the existing and proposed use as a small residential care home where night staff would sleep over to assist a maximum number of six residents. The sleepover space for staff at the time was noted as a staff room (the smaller front bedroom at first floor level). The changes were implemented. At the time it was one of a number of properties in the area utilised by the Medway Community Living Services, operating as a residential home for people with learning difficulties.

In 2015, an application was sought to utilise the property as a small house in multiple occupation (HMO) as defined by Class C4 of the use classes order. The submitted details confirmed that the property would be used as a dwelling house by not more than 6 six residents. This intended use fell within the definition of Class C4 of the Use Classes Order 1987 and amounted to Permitted Development. No formal planning consent was required for this use where up to 6 unrelated individuals would be living together sharing basic amenities.

There is no evidence that this was implemented but the applicants current submission indicates that the property may have been used for 7 residents as a larger HMO (sui generis) use with a former office converted to a bedroom at first floor level. If this were the case, it would have been unlawful and planning permission would have been required. As the property is now vacant and with the evidence provided and history research undertaken, its fallback position is as a dwelling (Class C3) with the potential to be occupied as a six person HMO (Class C4).

Use Class

The term 'dwellinghouse' is not expressly defined in the Use Classes Order (UCO). Whether a particular building can be held to be a dwellinghouse will therefore depend on the facts of that case. The criteria for determining Class C3 classification include both the manner of the use and the physical condition of the premises. In this case, the current primary use of the land is as a domestic dwelling, which according to the UCO falls within use Class C3 (a) (residential dwelling).

The proposed care use could fall within either Class C3 (b) (residential dwelling with an element of care) or Class C2 (residential institution). In order to determine which class is

applicable the facts/details of the proposed use need to be considered in light of the current guidance and case law.

Class C3 (b) *Dwellinghouses* provides for houses where the use is by no more than 6 residents living together as a single household (including a household where care is provided for residents). Direction on the definition of a C3 (b) single household may be deduced from the Court of Appeal case of *R (Hossack) v Kettering BC and English Churches Housing Group* 25/06/2002. Here it was found that the precise relationship between residents, although clearly a material consideration, was not necessarily a determinative matter and even where residents were not a preformed group, they could live as a single household, in this case where they were brought together simply by mutual need. The lesson from *Hossack* is that, regardless of the origins of a given group of people, a fact and degree assessment is required as to whether, in the circumstances, they live together as a C3 (b) single household receiving care or the use is a C2 care home.

Each case must be determined on its own circumstances as a matter of fact and degree. In this case, the children will live in a homely environment where all facilities are shared. They will of course have their own bedrooms and the mode of living would be communal. The communal areas will allow for the cooking and sharing of meals, socialising and entertainment. They would have commonality as each child would be cared for and live within a communal setting as one household, sharing facilities, household tasks. However, the number of residents (which include staff as residents for the purposes of numbers) is key and also the level of support to be provided is a factor.

Staffing /residential provisions

In the case of *R v Bromley LBC EX p Sinclair [1991]* it was confirmed that if carers are resident then they must be included as residents for purposes of numbers. While care and support will be provided by two to three support staff it is not clear whether they would be resident and thus that this would take the number of people in the building to 7/8 at any one time outside the definition of Class C3 (b).

Care provision

Turning to the extent of care, occupants will live as a family but with the support needed to assist them in daily living beyond that considered of a foster home. The individuals would not have the capacity or ability to live independently on their own in view of their specialist support needs supported 24/7 by a team of support workers. The level of support would be variable and determined on the circumstance of each child including age, background and need. Whilst the extent of living may be common to single household living, the extent of care required by up to 3 trained staff numbers(at any one time) to support a group of 5 children with such needs would exceed Class 3(b) boundaries in terms of care provided and numbers. The very fact that staff need to be specially trained rather than being looked after by guardians/foster parents reinforces this.

Use class conclusion

Accordingly, with this being the case, planning permission is required for change of use to Class C2. The main issues to consider are the principle of development, the effect that the proposed use would have on the residential amenities of people living adjacent to the site and in the neighbourhood with particular regard to visual amenity, privacy, noise, disturbance, fear and highway.

Principle

The application site is situated in a residential area surrounded by family housing and a primary school exists opposite the frontage of the site. Parking is available both on and off street but there are controlled measures on the highway (due to the siting of the school opposite the site). Paragraph 8(i) of the NPPF seeks to support communities by ensuring a sufficient number of homes are provided to meet the needs of present and future generations fostering a safe built environment. Paragraph 91(b) promotes development that does not undermine the quality of life or community cohesion. The Local Plan is somewhat silent in terms of policy specifically for children in particular with specialist need.

Need

With information obtained from the 'Annual Update on Children's Services, June 2018', at the end of 2017/18, there were 413 children looked after in the Medway area at a rate of 65 per 10,000 people. This rate is in line with the England rate per 10,000 of 62 (2016-17). Comparatively, the Kent figure was 57 per 10,000 (2017). Over the last two years, the number of children in care has reduced overall in spite of an increase in the last year. Of the children and young people looked after at the end of March 2018:

- 92% are placed within the area – Medway/Kent (54% Medway, 38% Kent)
- 60% are placed within the local authority's own provision
- 341 live with foster carers, of whom 67% live with local authority foster carers
- 22 live in children's homes
- 2 live in residential special schools
- 4 live with parents
- 23 placed for adoption
- 16 are in supported accommodation
- 5 are in other.

The demand for housing local children is clear from the information available and from the representation received. Medway's Children's services confirm that children from Medway (or the surrounding area) would be given priority with the proposal to provide a homely environment with level of support that they need. Notwithstanding the need, such proposals have to be sensitively considered on merit and site circumstance.

Paragraph 8b of the NPPF supports the community's health, social and cultural well-being. Paragraph 61 recognises that there is a housing need for different groups in the community; and Paragraph 92 seeks to provide the delivery of local strategies to improve health, social and cultural well-being of all sections of the community with a reference also to having an integrated approach to development.

Policy H2 of the local Plan seeks to retain housing and resist the loss of residential accommodation. The accommodation would provide a residential use for specialised care. This would conform to part (i) of the policy objective albeit that the proposed use would result in the loss of a large house suitable for housing a large family or extended family. Also notwithstanding amenity considerations, the proposal would also provide facilities of potential benefit to the local community. Policy H8 is relevant in terms of the provision of residential institutions. Its accompanying pre-ambles in paragraph 5.5.30 recognises the need for care balanced against the impact that may arise from such development. It notes that some institutional uses can result in loss of privacy, overlooking, noise and disturbance particularly where it is proposed to convert or extend terraced or semi-detached houses. In particular part (i) of Policy H8 specifically states that development would only be supported if the proposal would not adversely affect nearby residential amenity (see amenity section of this report).

The proposal will not result in any harm affecting privacy or outlook loss. The occupation of the semi-detached property for specialist needs, will give potential rise to noise and disturbance levels which may affect neighbours' amenity. Balanced against this is the provision of a management plan in place with children supervised by fully qualified staff on a 24-hour basis. The Environmental Protection team have been consulted and have no observations to make. This implies that judgement should be made more so on amenity considerations of disturbance rather than measurable levels of concern.

With appropriate management, the use could potentially work in harmony with neighbouring amenity where there is the potential that the property could also be used as an HMO (Class C4 use) as a fall-back within its current lawful use.

On this balance, the use could be deemed appropriate for this particular site in terms of principle but subject to considerations of amenity which may suggest that a temporary approval would be appropriate. In terms of principle, the proposal is considered to comply with the objectives of Policies H8 (i) and its accompanying paragraph 5.5.30 of the Local Plan, subject to the amenity issues being satisfactorily mitigated.

In terms of location and sustainability objectives, the site is located in a sustainable location and would comply with the objectives of Policy H8 (ii) of the Local Plan where the property is within walking distance of local shops and bus routes. In addition, there is acceptable parking for staff and visitors on site.

Design

There are no changes proposed to the property. With the building retained and being brought back into use, no objection is raised in terms of paragraphs 124 and 127 of the NPPF and Policy BNE1 of the Local Plan.

Amenity

Paragraph 8 of the NPPF fosters a safe built environment and Paragraph 91(b) requires that decisions should aim to achieve healthy, inclusive and safe places so that they do not undermine the quality of life or community cohesion. Paragraph 127(f) of the NPPF requires decision makers to 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience'. Policy BNE2 (and its accompanying paragraph 3.4.10) is concerned with the protection of amenity for existing and future residents and Policy H8(i) is relevant in terms of impact on neighbours amenity

Impact on neighbouring amenity

Many of the objections received are concerned with the use itself; the type of property to be used, potential occupants and the risk to the sense of cohesion of community. Key to the scheme is whether the use of a semi-detached property is appropriate for such a use and whether assurances given by the applicant can be delivered.

Disturbance including safety are material planning considerations and in many respects are reliant on appropriate management of the site. The concerns of local residents are quite genuine, indeed many of the fears of residents have arisen out of a experiences of a previous situation but this should not pre determine this application as the circumstance are different with an established care provider. Residents currently could be disturbed by a single family use or as an HMO. The proposal questions whether the development would increase disturbance levels beyond this existing lawful situation. Key to this is the management of the setting and the variable needs of occupants. It is inevitable that incidents of anti-social behaviour may occur from time to time.

It falls for the Local Planning Authority to weigh up this impact. No matter how competent the applicants may be at managing their operation; such incidents of disturbance cannot be entirely prevented from taking place. Such a scheme would increase the chances of disturbance levels for residents and enforcement of such matters would be time consuming and difficult to monitor either by the local Planning authority or by external sources such as Ofsted. There is also a perceived fear about the use and the risk to public safety. Additional consideration is given to the rationale of fear as the property is semi-detached. The property is in a relatively quiet environment, any disturbance and commotion will be strongly experienced by those residents nearby. Although some issues like noise from inside the building and CCTV surveillance can help, it is not possible to

assure residents that incidences will not occur. It would be impossible to prevent disturbance or address all the concerns and anxieties raised by the local residents.

Once planning permission has been granted, there would be little going back under the planning route. The loss of amenity for local residents must be weighed against the undoubted benefits of the proposed facility for Medway and wider area. It is acknowledged that the proposed development would provide a needed facility on face value; however, this does not outweigh the identified harm to the amenities of the local residents that will result.

It is, therefore, considered that given the semi-detached nature of the property, high density residential character and tight relationship of the application site with its residential surrounding, it is highly likely that the amenities of the adjoining and nearby residents could be impacted.

Whilst the development would provide a homely environment and meets a specialist need and management would be in place, a temporary permission is considered appropriate in this instance where the applicants would be given the opportunity to demonstrate that the use can be appropriately managed.

The applicants feel that a minimum of five years would be the most appropriate with the settlement factor of children's needs being considered but this is deemed too long a time if a problem arises. A two year temporary permission is therefore recommended to enable the applicants to demonstrate to all that the site can be managed effectively. Clearly if managed well, this will assist in a potential positive outcome at a later date on renewal.

Impact on future occupants

The internal space has been altered to utilise a small room at first floor level as a bedroom. This was formerly an office and potentially a bathroom before that. Based on the use of all rooms as bedrooms at first floor level, the use of the smaller first floor bedroom is a concern as it would fall short of the minimum floor space for a bedroom if the National Technical Standards are applied. However, as this room was originally a bedroom, no objection is raised in terms of amenity. Overall, the layout, floor space including bedroom sizes for occupation by 5 children with provision of rooms for staff and shared amenity rooms for residents is considered acceptable where ground floor rooms could also be used for this purpose as an alternative if necessary.

Taking all these matters into account in terms of amenity overall, it is considered that the benefits of the proposed change of use are sound but only if measured appropriately through temporary planning permission. The proposal therefore would on this basis be considered to comply with paragraph 8(b), 91(b), 127(f) of the NPPF and Policy H8(i) its accompanying paragraph 5.5.30; and Policy BNE2 and its accompanying paragraph 3.4.10 of the Local Plan.

Highways

The proposed development would utilise the existing frontage parking for the use for staff and any visitors. It is unlikely that the development will generate significant additional levels of vehicle movement over that of a large family home. In consideration of this, no objection is raised. The development would accord with the objectives of Policies T1 T 13 and H8 (iv) of the Local Plan.

Bird Mitigation

In consideration of the nature of the use, whilst the site falls within the catchment area for developer request towards Wildlife Mitigation, no request has been made as no additional planning unit would result from the development.

Local Finance Considerations

There are no local finance considerations

Conclusions and Reasons for Temporary Planning Permission being granted

This officer recommendation is balanced in favour of the proposed use for a temporary period of two years to enable monitoring to occur.

This would not be ideal for the applicant or for consistency of accommodation for individuals, but could offer a way to see how the site is managed over a period of time in order to give some protection to the amenities of the area and in particular those of neighbouring residents

The application would normally be determined under delegated powers but is being referred for Committee determination at the request of the Head of Planning Services due to the sensitive nature of the application.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess1.medway.gov.uk/online-applications/>