

**MC/23/2038**

**Date Received:** 13 September 2023  
**Location:** 5 High Bank Rochester, Medway ME1 2XJ  
**Proposal:** Retrospective application for change of use from dwellinghouse (Class C3) to a residential care home (Class C2) for a single person - resubmission of MC/23/0088.  
**Applicant Agent:** Mr Tawanda MUDAVANHU  
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**Ward:** Rochester East & Warren Wood  
**Case Officer:** Chantelle Farrant-Smith  
**Contact Number:** 01634 331700

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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 22nd November 2023.**

**Recommendation - Approval with Conditions**

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Received 13 September 2023:  
3458 - 001 REVA - Plans and Elevations

Reason: For the avoidance of doubt and in the interests of proper planning.

- 2 The use shall be operated in accordance with the submitted Design and Access Statement received 8 September 2023.

Reason: In the interests of amenity protection in accordance with Policy BNE2 of the Medway Local Plan 2003 and paragraph 130 of the National Planning Policy Framework 2023.

- 3 The number of residents cared for and residing on the premises shall not exceed 1 at any one time.

Reason: To ensure that the development would not prejudice the amenities of the residents nearby in accordance Policy BNE2 of the Medway Local Plan 2003 and paragraph 130 of the National Planning Policy Framework 2023.

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

## **Proposal**

This application seeks retrospective planning permission for the change of use of a single dwelling house (Class C3) to a residential institution (Class C2) for 1 occupant aged 16 years old who needs special care requirements that do not include physical disabilities.

There are no internal or external alterations to the dwelling house and there is garden space to rear and off-road parking to front.

The two storey detached property is arranged internally as study, bathroom, lounge, cloakroom, and open plan kitchen/diner at ground floor together with 4 bedrooms and family bathroom at first floor. One of the bedrooms will be where the occupant resides. They will also have a secondary room for sensory use and play space. The further two bedrooms will be used for a staff office and storage space.

The supporting statement explains that the occupant will be cared for 24/7 by 2 members of staff during the day and 2 at night on a 08:00 to 20:00 basis. There will also be a manager on site during the day resulting in a maximum of 3 members of staff on the premises at any one time.

## **Relevant Planning History**

MC/23/0845	Application for a Lawful Development Certificate (proposed) for a change of use Class to C3(b). Decision: Withdrawn Decided: 18 September 2023
MC/23/0088	Retrospective change of use from dwellinghouse (Class C3) to a care home (Class C2). Decision: Withdrawn Decided: 9 March 2023
MC/15/4092	Construction of a single storey rear extension with roof lights and conversion of garage into habitable room. Decision: Approval with Conditions Decided: 18 January 2016

## **Representations**

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

**Kent Police** have been consulted and have requested that crime prevention measures are secured.

**13 letters, including one from the High Bank Residents Association,** of representations have been received raising the following concerns:

- The proposal will result in Parking issues on street and Increased Traffic.
- Inappropriate Location/ Out of Character with Residential Street.
- Unsightly bars on windows.
- Noise disturbance.
- Anti-social behaviour.
- There are errors in plans and supporting statements.
- Lights being on at night will have an impact on the street.

The following concerns are addressed within the *Others Matters* section of the report as they do not constitute as material planning considerations.:

- QCC documentation.
- Unregistered Care Home.
- Covenant.
- Fire hazard.
- Safety.

## **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 202 (NPPF) and are generally considered to conform. Where non-conformity exists, this is addressed in the Planning Appraisal section below.

## **Planning Appraisal**

### *Background*

An application for change of use from C3 to C2 (ref MC/23/0088) was submitted and withdrawn by the applicant, as was a subsequent application (ref MC/23/0845) for Existing Lawful Development Certificate for the change of use from C3(a) to C3(b).

The planning legislation concerning the difference between residential dwellinghouse and residential institutions is governed by the *Town and Country Planning (Use Classes) Order 1987* as amended (the UCO). In order to determine whether or not there would be a change of use, it is necessary to establish the existing primary use of the land/building. This is a matter of fact and degree to be assessed by looking at the facts of each individual case.

The term 'dwellinghouse' is not expressly defined in the UCO however caselaw provides that a distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities for day-to-day private domestic existence. Whether a particular building can be held to be a dwellinghouse will depend on the facts of that case. The criteria for determining C3 classification include both the manner of the use

and the physical condition of the premises. In this case, from the information available, 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 use is as a dwellinghouse for 1 person receiving care. In accordance with the abovementioned Order this could potentially fall within either use class C2 (residential institution) or C3 (b) (residential dwelling).

“The limit for Class C3b is no more than 6 residents living together as a single household where care is provided for the residents” and the UCO defines care in respect of Class C3b as “personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder.” However, a key consideration is whether they are living as a single household or whether the proposed use is more akin to a C2 use and a residential institution.

In this case, regardless of the need for care, due to the age of the occupant it is not considered that they would be able to ‘form a dwellinghouse’ by themselves, while the carers do not live in as part of the household but will be in the property 24/7 on a shift basis. So the carers are neither living in as part of the dwelling nor are they merely calling in to provide care and leaving. As such the proposed development cannot fall within a C3b use. The applicants therefore withdrew the LDC (Existing) and submitted this planning application for the retrospective change of use from C3 dwellinghouse to C2 care home.

### *Principle*

The main issues to consider are the loss of the residential dwelling; the impact that the proposed use would have on the residential amenities of people living adjacent to the site and in the neighbourhood; and the highway implications of the proposal.

Policy H2 of the Local Plan relates to the retention of housing and states that loss of existing residential accommodation will not be permitted unless the proposal would provide facilities of significant benefit to the immediate local community.

Policy H8 states that residential institutions will be permitted subject to the following criteria:

- The proposal would not adversely effect nearby residential amenity; and
- In appropriate cases, where the occupants have a degree of mobility and independence, the property is within reasonable walking distance of shops, public transport and other facilities; and
- Adequate amenity space is provided for residents; and
- Parking is adequate for staff, visitors and service vehicles, taking into account the accessibility of public transport; and
- For changes of use, the property is too large to reasonably expect its occupation by a single household.

Policy CF2 of the Local Plan supports the introduction of new community facilities subject to amenity, access, and size.

In the case, whilst the proposal would result in the loss of an existing dwelling in Policy terms however it would be providing alternative housing accommodation through a local community need as such no objection is raised in relation to Policy H2.

The property, while suitable for use by a single household is for the use for 1 child/young person and is not a large institution that would require more rooms. As a 4-bedroom property it could already be used for a family including at least 3 children.

While the property is of a size that could reasonably expect to be occupied by a single household, the proposal would retain a residential use and would provide a community facility with the young person living is as conventional a family home as possible which is to the long term benefit of the young person. The proposal is therefore considered acceptable in principle, subject to amenity and access which will be discussed further within this report.

### *Design*

Policy BNE1 of the Local Plan states that development should be satisfactory in terms of scale and mass and should respect the visual amenity of the surrounding area, further emphasised by paragraph 130 of the NPPF.

The letters of objection make reference to bars/grills having been installed in the rear of the property of which would be visible from St Williams Way. Whilst there were previously grills installed at the property, which do not require planning permission, these have now been removed.

As such, as the development would not result in any external alterations to the property, the proposal would not result in any additional harm in terms of the appearance of the host dwelling or the surrounding area and would therefore be in accordance with Policy BNE1 of the Local Plan and paragraphs 126 and 130 of the NPPF.

### *Amenity*

Paragraph 130f of the NPPF states that achieving well-designed places should include creating a high standard of amenity for existing and future users. Policy BNE2 of the Local Plan expects all development to secure the amenities of its future occupants and protect those amenities enjoyed by neighbouring properties. The design of the development should have regard to privacy, daylight and sunlight, noise, vibration, light, heat, smell and airborne emissions and activity levels and traffic generation.

Policy H8 also seeks to protect nearby residential amenity and to ensure adequate amenity space is provided for prospective residents.

There are two main amenity considerations, firstly the impact of the proposed use on neighbouring amenity and secondly the living conditions which would be created for the potential occupants of the development itself.

### Neighbouring Amenity

The proposed development would not result in any external changes to the dwelling and as such no concern is raised in relation to privacy, daylight and sunlight.

The property has 4 double bedrooms at first floor which could be occupied by a family of 2 parents and at least 3 children, some of whom could be of teenage age or older. Similarly, the property could be converted to a C3b use without planning permission for up to 6 unrelated individuals living as a single family or a C4 use which is a small HMO for up to 6 unrelated individuals who share basic amenities such as bathroom and kitchen. Therefore, in terms of noise and activities levels, due to the property being occupied by 1 child with a maximum of 3 staff at the property at one time it is not considered that the activities levels within the property would be above and beyond that of a C3 or C4 residential dwelling. In addition to this, the shift pattern of 08:00 to 20:00 would be considered reasonable within a residential area.

The management of the property, as stated within the supporting design and access statement, will be secured by the recommended condition. In addition, a condition is recommended to limit the number of occupants living at the property to not exceed more than 1.

Furthermore, Kent Police have requested that the applicant adhere to Crime Prevention Through Environmental Design in accordance with the NPPF, and an appropriate informative will be added to the decision for the applicant's information.

Taking the above into consideration it is not considered that the change of use would be detrimental to neighbouring amenity.

### Occupant amenity

There are no internal alterations proposed to the dwelling. All bedrooms meet with Technical Housing Standards and the occupant will have access to communal areas such as the lounge, kitchen and dining room as well as the garden to rear. The property is located within an urban area close to local shops accessible by foot and public transport.

As such no objection is raised in relation to occupant amenity.

Subject to the above-mentioned conditions, the change of use would be in accordance with Policies H8 and BNE2 of the Local Plan and paragraph 130f of the NPPF.

### Highways

Several of the letters of representations received raise concerns in relation to the increase of vehicles and car movements to the site. High Bank is predominantly a residential area. However, The Wisdom Hospice is located at the end of the street and the letters note that the on-street parking is often used by visitors and staff.

However, in relation to this application, the proposal site is a detached two storey property which accommodates 2 parking spaces to front and on street parking is

unrestricted and generally has availability. The number of staff would result in up to 3 members of staff being on site at any one time (other than during staff change over). It is noted that the proposal site is within an urban area with good access links to public transport and local amenities therefore providing alternative modes of transport for staff.

Whilst it is acknowledged that visitors of the Hospice do use the on street parking within High Bank it is not considered that the volume of staff working at the property would be detrimental to the highways network or safety.

As such, it is considered that the proposal would be in accordance with Policies H8 and T13 of the Local Plan and paragraph 111 of the NPPF.

#### *Inconsistencies in Plans*

The letters received make reference to incorrect information being provided including that the use has not yet been implemented and the incorrect address being used within the D&A Statement. This application seeks permission for a retrospective application and whilst the information provided on the application form is not accurate the D&A statement which will form an approved document includes all the relevant information needed to determine the application. It is understood that there are spelling errors within the statement including 'High Banks' rather than High Bank but this again does not deter the LPA from determining the application.

#### *Other Matters*

The letters of representation received make note of matters which are not planning considerations, these include:

- QCC documentation.
- Unregistered Care Home.
- High Bank have a covenant in place.
- Fire hazard.
- Safety.

The supporting Design and Access statement provides information on the service provider (Time4U) including that it is a CQC registered and regulated care provider. It is not considered necessary for the applicant to provide further information regarding this as part of the planning application as the care boards such as CQC and Ofsted would assess this information.

This is also relevant to concerns relating to safety and fire hazards, this again is a requirement under the relevant legislation which is enforced by CQC and Ofsted.

The submitted letters of representation states that the proposal site and High Bank in its entirety is subject to a Covenant. This is not a material planning consideration.

## **Conclusions and Reasons for Approval**

It is considered that the proposal will provide accommodation for much needed care for a young person in an appropriate “family” home. The development would not detract from the appearance of the residential street scene, nor would it result in a detrimental impact on neighbouring amenity, highways function or safety in accordance with Policies BNE1, BNE2, CF2, H2, H8, T1 and T13 of the Medway Local Plan 2003 and paragraphs 126, 130 and 130f of the NPPF 2023.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the number of representations received expressing a view contrary to officer’s recommendation for approval.

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## **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/>