

DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	WC	3/2/2020
Planning Development Manager authorisation:	AN	4/2/20
Admin checks / despatch completed	CD	04/02/2020
Technician Final Checks/ Scanned / LC Notified / UU Emails:	SOB	04/02/2020

Application: 19/01867/LUPROP **Town / Parish:** Frinton & Walton Town Council

Applicant: Mr J Smith - Property Building Solutions Limited

Address: Day Care Centre at The Former Ernest Luff Homes Luff Way Walton On The Naze

Development: Proposal to use the building as a Care Home for up to 6 children with learning disabilities aged 11 to 18.

1. Town / Parish Council

2. Consultation Responses

NHS East Essex CCG Good afternoon,

Thank you for consulting NEE CCG on the above-mentioned planning application.

Please note that we do not intend to seek a healthcare contribution for this application.

Kind regards,

3. Planning History

91/01439/OUT	Nursing Home	Approved	18.02.1992
93/00121/DETAIL	(Land adjacent 2 Luff Way, Walton on the Naze) Construction of nursing home (details following outline planning permission TEN/91/1439)	Approved	30.03.1993
95/00254/FUL	(2 Luff Way, Walton on the Naze) Store	Approved	07.04.1995
95/00255/FUL	(4 Luff Way, Walton on the Naze) Entrance canopy	Approved	07.04.1995
97/01207/FUL	(2 Luff Way, Walton on Naze) Extension to care home including lift installation	Approved	03.11.1997

97/01208/FUL	(The Ernest Luff Homes, 2 Luff Way, Walton on Naze) Extension to nursing home	Approved	03.11.1997
98/00223/FUL	(The Ernest Luff Homes, 2 Luff Way, Walton on the Naze) Covered Way	Approved	20.03.1998
98/00459/FUL	(The Ernest Luff Homes, 2 Luff Way, Walton on the Naze) Variation to TEN/97/1208 extension to nursing home with additional ground floor window	Approved	18.05.1998
05/01151/FUL	2 rear extensions.	Approved	23.08.2005
05/01748/FUL	Day centre for elderly	Refused	30.11.2005
06/00518/FUL	Day care centre.	Withdrawn	16.05.2006
06/01396/FUL	Day care centre	Approved	05.10.2006
11/00631/FUL	Extension to guest suite.	Approved	05.08.2011
12/00235/FUL	Proposed internal and external alterations to merge 20 suite care bedrooms (C2) into 8no. one bedrooms apartments for assisted living for the elderly (C3a).	Approved	02.05.2012
12/00721/FUL	Variation of condition 06 of planning permission 12/00235/FUL to vary the minimum age of tenants from 65 to 55 years of age.	Approved	17.08.2012
13/00152/DISCON	Discharge of condition 2 of planning permission 12/00235/FUL - Details of parking and deliveries - FOR INFORMATION ONLY.	Approved	15.03.2013
15/00384/FUL	Internal alterations, small extensions, partial demolition, alteration of windows, doors and fenestration to improve the home.	Approved	18.05.2015
15/30091/PREAPP	Residential development.		11.05.2015
17/01080/FUL	Construction of 12 almshouse-type one bed dwellings.	Approved	28.09.2017
18/00092/FUL	Construction of 4 almshouse-type one bed dwellings.	Refused	20.07.2018

18/00201/FUL	Erection of timber summer house in garden of care home.	Approved	10.04.2018
18/00335/FUL	Variation of conditions 5 (Landscaping), 9 (Drainage) & 10 (Materials) of approved planning application 17/01080/FUL, to allow the demolition of the existing building in advance of the submission of the details of Landscaping, Drainage and Building Materials, in relation to the construction of 12 almshouse-type one bed dwellings.	Approved	15.05.2018
18/01265/FUL	Construction of 4 almshouse-type one bed dwellings.	Refused	25.09.2018
18/01306/DISCON	Discharge of conditions 4 (boundary treatment), 5 (landscaping) and 10 (materials) of 18/00335/FUL.	Approved	27.09.2018
18/01581/DISCON	Discharge of Condition 9) Drainage to approved planning application 18/00335/FUL.	Approved	07.01.2019
19/00714/FUL	Proposed 2 storey extension.	Approved	09.07.2019
19/01530/FUL	Proposed conversion of existing building into four 1 bedroom units for elderly persons, with associated parking facilities.	Current	
19/01867/LUPRO P	Proposal to use the building as a Care Home for up to 6 children with learning disabilities aged 11 to 18.	Current	

4. Relevant Policies / Government Guidance

Status of the Local Plan

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2019) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term

sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

In relation to housing supply:

The NPPF requires Councils to boost significantly the supply of housing to meet objectively assessed future housing needs in full. In any one year, Councils must be able to identify five years' worth of deliverable housing land against their projected housing requirements (plus an appropriate buffer to ensure choice and competition in the market for land, account for any fluctuations in the market or to improve the prospect of achieving the planned supply). If this is not possible, or housing delivery over the previous three years has been substantially below (less than 75%) the housing requirement, paragraph 11 d) of the NPPF requires applications for housing development needing to be assessed on their merits, whether sites are allocated for development in the Local Plan or not. At the time of this decision, the supply of deliverable housing sites that the Council can demonstrate falls below 5 years and so the NPPF says that planning permission should be granted for development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework as a whole. Determining planning applications therefore entails weighing up the various material considerations. The housing land supply shortfall is relatively modest when calculated using the standard method prescribed by the NPPF. In addition, the actual need for housing was found to be much less than the figure produced by the standard method when tested at the recent Examination In Public of the Local plan. Therefore, the justification for reducing the weight attributed to Local Plan policies is reduced as is the weight to be given to the delivery of new housing to help with the deficit.

5. Officer Appraisal (including Site Description and Proposal)

Proposal:

The applicant seeks a certificate of lawfulness for a proposed C2 use of the building, as a children's care home to accommodate up to 6 children, each with their own bedroom.

Site Description;

The site comprises a single storey L-shaped building with curtilage constructed in 2006 on the junction of Luff Way/Garden Road within a residential area of Walton on the Naze. The building is currently vacant and adjacent to a housing development (formerly Ernest Luff Care Home).

Assessment

The key issues are:

- 1) Whether the proposed use falls within Use Class C2.
- 2) Whether the extant use of the building is Use Class C2.

The legal test of the evidence is on "the balance of probability" rather than "beyond reasonable doubt". The decision on the application is therefore taken purely on factual information, without any regard to suitability or whether or not planning permission would have been granted.

- 1) Whether the proposed use falls within Use Class C2.

The proposed care home would provide accommodation and care for up to 6 children in the age range of 11 - 18. There will be an additional bedroom for overnight member of staff. There would be one-to-one staffing for each child, therefore for 6 children there would be 6 members of staff plus the manager. Staffing would be operated on a shift basis.

The submitted planning statement (section 3) argues the case for the proposed use to be within C2, not C3 (it is possible for a care home to be C3b if not more than 6 residents). If the proposed use were to fall into C3, it would need to be a 'household' with both residents and staff permanently residing at the premise. However, given the home is proposed to be staffed on a shift basis, it is considered this implies there would be no carer living at the premise as their sole permanent address. The proposal therefore falls into C2.

2) The Extant use of the site

The key issue is whether the proposed C2 use of a children's care home would be lawful. This would rest on the extant use of the site.

The applicant has submitted a planning statement which sets out the case for the extant use to be C2, based on the argument that the building was ancillary to the primary use of the adjacent former care home (C2) and that the planning permission for the day centre included a condition referring to C2 use which would not have been necessary had it not been C2.

As stated in *Burdle v Secretary of State*: Where the occupier pursues a single main purpose to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered to be the planning unit. Therefore the ancillary uses in this situation take on the primary use of the whole planning unit.

The evidence submitted to demonstrate that the building was ancillary to the former care home includes the following:

- > Google Maps from 2009 to show the building in use and having a physical connection to the adjacent care home.
 - > The day care centre and adjacent care home were under the same land ownership (Ernst Luff Homes). Indeed the site location boundary on 06/01396/FUL, the planning permission for day centre, showed a blue boundary around the adjacent care home demonstrating same ownership.
 - > Previous planning applications for alterations to the Ernst Luff Homes site as listed in the submitted planning statement show the care home site to include the corner of land on which the day care centre building now sits, suggesting the day care centre building was part of the original planning unit.
 - > Officer reports associated with previous planning application make reference to the day centre having a strong connection to the care home. In the officer report for the 06/01396/FUL permission, for example, it was stated that '...The proposal for a Day Care Centre seems to be a natural extension of this concept'.
 - > The imposition of Condition 3 on the original permission (06/001396/FUL) for the day care centre imply that it was considered to be C2 use and would not have been a necessary condition were the use of the building was not considered C2:
- "Notwithstanding the provision of Class C2 of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order with or without modification), the premises shall not be used as secure residential accommodation, that requires a means of enclosure to a height of 2 metres or higher, to prevent residents leaving the site".
- > Evidence that the day care centre building was implemented through building regulation records.

The above evidence that the day centre was ancillary to the adjacent care is considered to be strong and demonstrates there was a clear physical and functional connection to the care home. Furthermore the planning permission for the day care centre included a condition regarding C2 which would not have been necessary if it were not considered C2.

Other considerations:

Comments from the council's planning solicitor also confirm that the use is C2.

It should be noted that the adjacent care home closed down in 2017 along with the day centre. The adjacent care home was subsequently redeveloped for housing, leaving the day care centre unconnected to the site and vacant without an adjacent care home. However these changes to the built fabric do not change the assessment of the use class - the extant use is still C2, because it closed down at the same time as the care home, and there have been no intervening uses since.

Conclusion

The proposed use is considered to fall within use class C2 because the adult carers would not be treating the premise as their sole permanent address, which would otherwise suggest C3 use. Furthermore the evidence for the extant use of the day care building is considered to be strong showing a clear physical and functional connection between the two buildings which is strongly evidenced by the documentation. The fact they both closed down together further reinforces the ancillary nature of the day centre. The comments of the council's planning solicitor are also in agreement with this assessment. Therefore on the balance of probabilities, the current use of the day care centre is considered to be C2 and the proposed use is considered to be C2 and therefore the certificate of lawfulness should be granted.

6. Recommendation

Lawful Use Certificate Granted

7. Conditions / Reasons for Refusal

- 1 The Local Planning Authority are satisfied on the basis of the information provided to them that both the proposed use of the former day care centre at the Former Ernest Luff Homes, Luff Way, as a care home for up to 6 children, and the existing lawful use of the premises are for purposes falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The proposed use would therefore not amount to development within the meaning of Section 55 of the Town and Country Planning Act 1990 and would therefore be lawful.

8. Informatives

Are there any letters to be sent to applicant / agent with the decision? If so please specify:	YES	NO
Are there any third parties to be informed of the decision? If so, please specify:	YES	NO

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