DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0118-25**	**Applicant:**	**Cedony Group Ltd**
Proposal:	Use of property from C3(a) residential to C3(b) use as children's home/supported living accommodation		
Location:	4 Tointon Close Spalding		
Terminal Date:	3rd April 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	32	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the proposed use of 4 Tointon Close, Spalding as a dwelling house occupied by no more than six residents (Use Class C3(b)).

The applicant considers that a full planning application to change the use of the site would not be required as the existing use is Use Class C3, and the proposed use would also fall under C3.

The application is submitted under Section 192 of the Town and Country Planning Act (1990) (as amended).

Site Description

The application site comprises land at 4 Tointon Close, Spalding. The site features a two-storey detached dwelling which is located near the end of Tointon Close, which is a cul-de-sac.

Planning History

H16-0578-01: (Outline Application) Erection of residential estate development, including community centre, public open space/footpaths/ cycleways - allowed on appeal on 06 November 2003

H16-0899-05: (Reserved Matters) Erect 96 dwellings (outline H16/0578/01) - approved 27 April 2006

Consultation

There is no statutory obligation for the Local Authority to publicise an application for a certificate of lawful development. A site notice has however been displayed next to the site for 21 days in the interests of transparency.

40 representations have been received from members of the public. A letter has also been received from the local MP setting out concerns with the lack of information that has been provided, and also the potential negative impact on the amenity of residents within the area. The public representations set out objections to the proposed development based on matters such as the lack of parking provision and the potential increase in noise and disturbance from the proposed use.

For lawful development certificates, planning policy guidance is clear that there is no statutory requirement to consult third parties including parish councils or neighbours (Paragraph: 008 Reference ID: 17c-008-20140306). A site notice has however been displayed in this case for transparency. Planning policy guidance is also clear that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are therefore not relevant (Paragraph: 009 Reference ID: 17c-009-20140306). Therefore, the local planning authority (LPA) is not able to take into account matters such as the impact of the proposed use on the amenity of neighbours and the lack of parking provision. The LPA is only able to consider information that relates to the lawfulness of the proposed use.

Key Planning Considerations

Relevant Legislation

Section 192 of the Town and Country Planning Act (1990) (as amended) sets out the following:

"Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whetherâ??
(a) any proposed use of buildings or other land; or
(b) any operations proposed to be carried out in, on, over or under land,
would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) 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.

(3) A certificate under this section shallâ??
(a) specify the land to which it relates;
(b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
(c) give the reasons for determining the use or operations to be lawful; and
(d)specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.]"

Therefore, the LPA needs to be provided with sufficient information to demonstrate that, on the balance of probability, the proposed use is lawful in planning terms and would not require full planning permission for a change of use.

Assessment

The application seeks consent to establish that the proposed use of the site under Use Class C3 is lawful. No operational development is proposed such as external changes to the building.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Use Class C3 as follows:

"Use as a dwellinghouse (whether or not as a sole or main residence) â??
(a) by a single person or by people regarded as forming a single household, or
(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 with Class C4)."

The current use class of the site is Use Class C3 as it has been occupied as a dwelling. According to the application form, the applicant initially considered that the proposed use of the site would fall under Use Class C3(b). As such, the applicant considered that a full planning application for a change of use would not be required. The application form sets out the following:

"We believed the property is currently used as a by people living together as family falling under Class C3(a) of the Town and Country Planning (Use Classes). We are proposing to use the property as a residential Children's home/Supported Living Accommodation which we believe falls under Class C3(b) of the Town and Country Planning (Use Classes) thereby not a use classified as a development requiring full planning permission but a Lawful Development Certificate."

No further information was submitted such as a statement setting out how the applicant considered that the use would fall under Use Class C3(b). National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt. Notwithstanding this, the applicant was contacted during the determination of the application to obtain clarification on the proposed use.

The applicant has subsequently set out within an email dated 13 February that they consider that the proposed use would in fact fall under Use Class C2 as a children's home. The applicant has set out that they would propose a four-bedroom children's home with staff that work shifts. It is therefore considered that this would fall under Use Class C2, and not Use Class C3(b). As such, a full planning application would need to be submitted for the proposed change of use. The applicant has confirmed that this is understood.

As such, the certificate cannot be granted in this case as the proposal requires full planning permission.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a

duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

The proposed use of the site is considered to fall under Use Class C2 as a children's care home. The current use of the site falls under Use Class C3 as a dwelling. As such, full planning permission for a change of use would be required and a separate full planning application would need to be submitted. Any full application that is submitted would be assessed separately. It is therefore considered that the certificate cannot be granted based on the submitted information.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority.