

**Report to:**

**PLANNING COMMITTEE**

**Relevant Officer:**

Susan Parker, Head of Development Management

**Date of Meeting:**

16 June 2020

## **INTENDED APPROACH FOR THE DETERMINATION OF CERTIFICATE OF LAWFULNESS APPLICATIONS RELATING TO THE PROPOSED USE OF PROPERTIES AS RESIDENTIAL CHILDRENS HOMES**

### **1.0 Purpose of the report:**

- 1.1 To set out the intended approach for the determination of Certificate of Lawfulness applications relating to the proposed use of properties as residential children's homes.
- 1.2 To explain the reasoning behind the intended approach and invite comments from the Planning Committee.

### **2.0 Recommendation(s):**

- 2.1 To approve the approach with immediate effect.

### **3.0 Reasons for recommendation(s):**

- 3.1 In recent years the Council has seen a growing increase in the submission of Certificate of Lawfulness applications to use properties as residential children's homes. Where a Certificate is granted, the Council has no control over the occupancy of that home. As a result, many such homes are being used to accommodate children from outside of the Blackpool area. This is placing a strain on local public sector resources to the detriment of local service delivery, and making it more difficult for the Council to accommodate local, looked-after children within Blackpool.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

3.4 The alternative option would be to consider approving Certificate of Lawfulness applications for the proposed use of properties as residential children's homes. This would perpetuate and exacerbate the issues that have been identified.

#### **4.0 Council Priority:**

4.1 The relevant Council priority is 'Communities: creating stronger communities and increasing resilience'.

#### **5.0 Background:**

5.1 The Council's Development Management team is currently dealing with 10 applications for Certificates of Lawfulness for the proposed use of properties as residential children's homes. A Certificate of Lawfulness is a specific type of application made under the Town and Country Planning Act 1990. It essentially asks for a formal determination from the Council as to whether or not a use can proceed without the need for planning permission.

5.2 A Certificate of Lawfulness is determined on legal grounds rather than planning merits. As such, the Council's constitution does not make any provision for such applications to be brought before the Council's Planning Committee for determination. However, given the number of applications currently being dealt with, and given the potential for challenge, officers consider it prudent to seek the support of the Committee for the intended approach prior to making any decisions.

5.3 The applications currently under assessment all relate to residential properties falling within class C3 (Dwellinghouses) of the Town and Country Planning (Use Classes Order) 1987 (as amended). Case law has established that a residential children's home falls within class C2 (Residential Institutions) of that Order.

5.4 The definition of development is set out under Section 55 of the Town and Country Planning Act 1990. This states that a material change of use constitutes development.

5.5 There is no provision under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) that would permit a change of use from C3 to C2 (i.e. there are no relevant 'permitted development allowances').

5.6 On this basis, and notwithstanding the fact that the two uses are in separate use classes, the Council can only determine that planning permission is required for a change of use from a dwellinghouse to a children's residential home where it considers that change to be **material in planning terms**.

5.7 To date, and based on the information submitted in support of the applications, Officers have judged that the change of use from a house to a children's home is not material. A change of use that is not material in nature does not constitute development and

therefore does not require planning permission. As a result, Certificate of Lawfulness applications have previously been approved on this basis. However, in recent months new information has come to light and the Council's Development Management team has been working closely with Children's Services to better understand the nature of a children's home use. It is now felt that the change of use from a house to a children's home is material and is therefore development requiring planning permission for the following reasons:

- 5.8 **Change in the character of the use based on day-to-day activity, operations and physical layout** – the children accommodated in residential children's homes tend to have complex needs. In order to meet Ofsted requirements, all homes must have a manager, duty-manager and "responsible individual". In addition, a range of other professionals and support workers are likely to visit the property as part of the care package for the children. As would be expected, residential children's homes are subject to stringent regulation and management to safeguard the children living there. Many properties also have a manager's office and propose the use of a room as an education/activity or therapy room which would not normally be found in a family home. The turnover of children occupying the property is also likely to be much higher than would typically be found in a normal household as more than half of care placements last less than three months. As such, the character of a residential children's home in terms of its set-up and level of activity is likely to be materially different to that of a standard house.
- 5.9 **Impact of the proposal (wider strategies)** – case-law has established that it is reasonable to consider off-site effects as part of an assessment of materiality. Residential children's homes are more profitable than the use of a property as a single house. This results in pressure to convert family homes into residential children's homes. Given that Blackpool is a very constrained urban borough with little open land available for housing development, the uncontrolled loss of family homes is a material planning consideration. The impact on the Council's regeneration strategy is of further concern. Staff at children's homes will view the property as a workplace and are less likely to integrate with the local community. Similarly, the older average age of an accommodated child (14years), the greater potential for them to be educated outside of mainstream schooling, the measures that must be put in place for their safeguarding, and the high level of turn-over make integration more challenging. The replacement of family homes with residential children's homes therefore undermines efforts to create community cohesion and more balanced and settled local communities. Finally, the introduction of vulnerable children into some of the most deprived areas of the country would be contrary to the Council's approach towards child-care provision.
- 5.10 **Impact of the proposal (service delivery)** – as set out above, the children accommodated in children's homes tend to have complex needs. Some 70-80% of looked-after children have recognisable mental health problems with 45% having a recognised disorder and 62% having clinically significant mental health difficulties. Some 61% are reported as having a conduct disorder with 74% reported as having been violent and aggressive in the last six months. Around 36% of looked-after children have special educational needs.

Nearly half of the children in care who go missing do so from residential care homes. This places a significant strain on local policing and the provision of education and mental health support. Case law has established that increased strain on local public sector resources can be accepted as an indicator of a material change of use.

5.11 **Impact of the proposal (ability to meet needs)** – three-quarters of Blackpool’s looked-after children have to be accommodated outside of the borough. This is because the amount that a placing Authority can pay for a child’s care varies dependent upon the cost of provision in that area. Given the relatively low price of property in Blackpool, the Council’s Children’s Services department cannot match the prices paid by remote authorities in areas such as London. As no conditions can be placed on Certificates of Lawfulness, there is no control over the origin of the children placed in homes created in this way. As a result, Blackpool Council often cannot match the prices sought by operators and so in many cases cannot make use of the provision created in Blackpool. The National Planning Policy Framework makes it clear that a priority of the planning system is to meet local housing needs, including those of groups with specific housing requirements. The impact on the ability of an Authority to meet its own needs within its own area is therefore a material consideration.

5.12 It is accepted that not all looked-after children will experience the issues discussed above. However, because the Council cannot place any controls on a Certificate of Lawfulness, these factors must all be taken into account when assessing such applications.

5.13 Officers accept that provision must be made for looked-after children to be accommodated within the borough. It is also accepted that it is in the best interests of some children for them to be entirely removed from their place of origin. The refusal of Certificates of Lawfulness would prevent the unregulated creation of children’s homes (unregulated in the planning sense, all residential children’s care homes are regulated by Ofsted), but this would not prevent the granting of planning permission for such uses in appropriate circumstances. Support may be given to proposals for residential children’s care homes outside of the defined Inner Area of Blackpool in appropriate properties where the operator is prepared to work with the Council’s Children’s Services team. It is envisaged that such permission would be subject to a condition or legal agreement requiring the children to be accommodated to be placed by Blackpool Council. This would not necessarily preclude placements from remote authorities, but such placements would have to be agreed by the Council based upon the specific circumstances of the case.

6.0 Does the information submitted include any exempt information? No

6.1 **List of Appendices:**

6.1.1 Appendix 6(a): List of applications for children’s homes in Blackpool. This list makes it clear that the pressure for such uses has increased significantly in recent years.

7.0 **Legal considerations:**

7.1 A Certificate of Lawfulness is a legal determination. There is the potential risk of the Council's decision being tested through a legal challenge.

**8.0 Human Resources considerations:**

8.1 None

**9.0 Equalities considerations:**

9.1 None

**10.0 Financial considerations:**

10.1 The Council could face an award of costs if its decision is appealed and if an Inspector judges the Council to have acted in an unreasonable manner. Similarly, costs could be incurred if the Council was unsuccessful in its defence of any legal challenge arising from this intended approach.

**11.0 Risk management considerations:**

11.1 None

**12.0 Ethical considerations:**

12.1 None

**13.0 Internal/ External Consultation undertaken:**

13.1 Extensive consultation has been undertaken with Children's Services and also colleagues in Public Protection. Some information has also been obtained from the local NHS Care Commissioning Group (CCG).

**14.0 Background papers:**

14.1 None