

**REPORT OF HEAD OF DEVELOPMENT MANAGEMENT AND REGENERATION**

**9a Private Road, Nottingham**

**1 SUMMARY**

Enforcement Reference No: 12/00183/ENCCOU

Site Owner: Pathway Care Solutions Limited

Unlawful Development: Use of premises as a home for the care of four children

The application is brought to Committee because it is a sensitive case that is of interest to Councillors.

**2 RECOMMENDATION**

2.1 That it would not be expedient to take enforcement action under section 172 of the Town and Country Planning Act 1990.

**3 BACKGROUND**

3.1 The property is a detached dwelling set within large grounds on the northern side of Private Road within the Mapperley Park/Alexandra Park Conservation Area. The dwelling is positioned at a much lower level to Private Road. A steep driveway with room for two vehicles provides access to an attached double garage positioned to the front of the main dwelling. There is a low wall with mature landscaping to the road frontage. Private Road is an unadopted road which runs from Mansfield Road to the west and Woodborough Road to the east where there is a restrictive access barrier. The road is narrow in width throughout its length with a pedestrian footpath running along the southern side only. Residential properties are located on all three sides and opposite the site is a cul-de-sac serving 3 residential properties

3.2 The property has been used for the care of three disabled children since 2008. At the time the Council gave informal advice in writing that whilst the use of the property would result in a change from a dwelling (Use Class C3) to a residential care home (Use Class C2), this change of use would not be material and therefore planning permission would not be required.

3.3 Between when the use began, in 2008, and 2012, the Council received regular complaints in relation to the amount of comings and goings to and from the property. These complaints were investigated and until the autumn of 2012, there was no evidence that the use had intensified beyond what was envisaged in 2008.

3.4 A complaint was received in September 2012 where allegations were made that four children were being cared for within the premises. The complainant referred to problems with increased comings and goings to the premises. Investigation have confirmed that there are now four children occupying, and being cared for, at the property and that up to two adults are present at the premises, 24 hours per day,

caring for the children on a shift system. Officers have taken the view that this increase in occupation has resulted in a material change of use occurring, which requires planning permission.

- 3.5 The owner of the site has stated that they do not believe that a change of use has occurred. Notwithstanding this, they stated that they intend to revert back to occupation of the property by three children by summer of 2014. In addition, the owners have agreed to provide pro-active monitoring and management of the use to minimise impact on local residents in the intervening period.

#### **4 RELEVANT POLICIES AND GUIDANCE**

##### **Nottingham Local Plan (November 2005):**

Policy BE2 – Layout and Community Safety.

Policy NE9 – Pollution.

National Planning Policy Framework (2012).

#### **5 CONSULTATIONS AND OBSERVATIONS OF OTHER OFFICERS**

- 5.1 **Highways:** Private Road is not an adopted highway and therefore there are no comments to make in respect of obstructions caused by visits to/from the site, and parking on the road. The use would not generate a level of traffic that would have an impact on the Mansfield Road junction. In view of this, the continued use would not cause a highway safety problem.
- 5.2 **Pollution Control:** Complaints were received from July 2008 to October 2010 about the use, but no complaints have been received since. On-site monitoring has been carried out, including within affected residents' properties, but no evidence of statutory nuisance generated by the care home was found. In view of this, no objections are raised about the continued care of four children at the property.

#### **6 APPRAISAL**

- 6.1 As outlined above, the operator of the care home disputes officers' opinion that a material change of use has occurred and that planning permission is required to care for four children at the property. They have been given the opportunity to either apply for a Certificate of Lawful Use to seek to demonstrate this, or to apply for planning permission to seek to regularise the use. The submission of a planning application would have allowed full consultation to have been carried out with local residents. It would also have given the council the opportunity to apply conditions to mitigate against any impacts.
- 6.2 It is clear from discussions that the operator does not intend to submit an application. It has been suggested that by doing so, this would be an acknowledgement that planning permission is required to care for four children from the premises, which would have implications for the operator's other care homes. Given this, in the interests of giving residents the certainty of a decision, it considered appropriate that a formal decision be taken to determine whether or not it would be expedient to take enforcement action to cease the use.
- 6.3 The main issue to be determined is whether the use of the premises for the care of four children would have an adverse impact upon the amenities of neighbouring

properties. Policies BE2 and NE9 are therefore relevant. Paragraph 17 of the NPPF seeks to secure a good standard of amenity for all existing and future occupants of land and properties.

- 6.4 The property is located within a quiet residential area characterised by large detached properties set within their own grounds, with most having off-street parking. It is a 5-bedroom property with ample living accommodation on the ground floor. The external garden area surrounds the property to its western side and to the rear. The garden is large and private and together with the dwelling located along the eastern boundary of the site, provides a strong buffer between it and immediate neighbours. The property is sufficient in size to accommodate its use as a care home for four children.
- 6.5 As stated above, the noise associated with the care of both three and four children at the property has been considered in detail by Pollution Control officers over a number of years. Despite residents' complaints about disturbance caused by increased comings and goings to the property, no evidence of a statutory nuisance has been found.
- 6.6 One of the main concerns raised by residents is in relation to parking on the narrow road outside residential properties, causing obstruction and nuisance. Private Road is a narrow and unadopted street and parking / turning outside the property is far from ideal. However, this is not materially different to a situation where visitors to any of the other properties were to park on the street. Nor are these problems likely to be any more significant than if the property were being used to care for three children, which does not require permission.
- 6.7 The occupation of the care home by one additional child would result in some increase in the number of associated traffic movements due to an additional school pick up and drop off and necessary visits by parents, social and medical support agencies for the additional child. The driveway is large enough to be able to park up to four vehicles at any time. It is considered that the increased level of traffic and parking associated with the occupation of the home by a fourth child is not be sufficient to have a detrimental effect on the amenities of local residents.
- 6.8 The applicant has confirmed that they will pro-actively monitor / manage the impact of the use over the next 12 months, at which time the property will revert back to caring for three children. This includes taking measures to discourage on-street parking and turning vehicles in residents' driveways. While these measures are not considered essential, in planning terms, to allow the use to continue, the operator's intention to work to reduce the impact on local residents is welcomed.
- 6.9 Paragraph 207 of the NPPF states that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. For the reasons outlined above, it is not considered expedient to take enforcement to cease the use of the property for the care of four children. Should the situation change in the future, for instance if a fifth child were to be cared for, the situation would be re-assessed.

## **7 FINANCIAL IMPLICATIONS**

None

## **8 LEGAL IMPLICATIONS**

- 8.1 Service of an enforcement notice is discretionary and may only occur where the Planning Authority is satisfied that there has been a breach of planning control and that it is expedient to serve the notice having regard to the provisions of the development plan and any other material considerations. As indicated above paragraph 207 of the NPPF also requires that the Planning Authority should act proportionately in reacting to suspected breaches of planning control.

## **9 EQUALITY AND DIVERSITY IMPLICATIONS**

None.

## **10 RISK MANAGEMENT ISSUES**

None.

## **11 STRATEGIC PRIORITIES**

Working Nottingham: the use provides local employment opportunities.

## **12 CRIME AND DISORDER ACT IMPLICATIONS**

None

## **13 VALUE FOR MONEY**

None.

## **14 List of background papers other than published works or those disclosing confidential or exempt information**

1. Highways comments dated 30 July 2013.
2. Pollution Control comments dated 30 July 2013.

## **15 Published documents referred to in compiling this report**

Nottingham Local Plan (November 2005)  
National Planning Policy Framework (2012)

### **Contact Officer:**

Joanna Briggs, Community Planner, Development Management.

E-mail: [joanna.briggs@nottinghamcity.gov.uk](mailto:joanna.briggs@nottinghamcity.gov.uk). Telephone: 0115 8764041

