

## Agenda Item 8

**Development Control**  
Salisbury District Council, 61 Wyndham Road,  
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# Report

**Report subject:** 28 &30 Wyndham Road, Salisbury; 76 London Road, Salisbury.

**Report to** : City Area Committee

**Date** : 2nd February 2006

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### REASON FOR REPORT TO MEMBERS

This report has been submitted for Members' information only –no decision is required.

Councillor Mrs. Chettleburgh has requested that the Committee be informed as to the outcome of applications S/05/2398, S/05/2399 and S/05/2400 for Certificate of Lawfulness of Existing Use and the reasons for granting Certificates.

**NOTE: Decisions on Certificate of Lawfulness applications are always delegated to the Head of Development Services, with legal advice from Legal Services. This is because such applications have to be determined on narrow issues of fact and planning law. Planning issues cannot be taken into account in the decision. If the evidence is sufficient the Council has no choice but to grant a Certificate. A Certificate cannot be granted subject to conditions.**

### SITE ADDRESS

28 &30 Wyndham Road, Salisbury; 76 London Road, Salisbury.

### THE USE APPLIED FOR

Use of dwellinghouse as children's residential care homes (Use Class C2) occupied by no more than 6 children (nos. 28 &30); Use of dwellinghouse as children's residential care homes (Use Class C2) occupied by no more than 6 children (76 London Road).

### THE EVIDENCE SUBMITTED

*Statutory Declaration of Arthur Minett* dated 17<sup>th</sup> December 2004 (AM). States that he has had involvement with the above sites (in capacity as Property Manager, Five Rivers Group) since August 1995. Properties were purchased on behalf of Five Rivers, registered as children's homes in 1993 and far as he is aware have been used as children's homes up to the date of the applications. A copy of WCC registrations as children's homes, referring to an initial registration date of 29<sup>th</sup> June 1993 accompanied the application.





Site Notice displayed No  
Neighbour notification Yes- three letters received (two from same neighbour) in relation to nos.28 &30 Wyndham Road, referring to a long history of the use causing problems at the site in the past (dates unspecified), referring to an agreement between the applicants and other agencies to reduce numbers and ages of children residents, alleging that no.30 was not used at all for a year for the purposes applied for, about eighteen months ago and suggesting that accommodating 12 children at this and no 30 is too many.

One letter received in relation to no. 76 London Road, supporting claim of use applied for, for more than ten years.

## **EVIDENCE OF SITE VISITS**

At a site visit on 15<sup>th</sup> December 2005, it was noted that nos. 28 & 30 were currently occupied as one property with in total 6 resident girls (3 in no. 28 and 3 in 30) although there were twelve rooms in total across both properties capable of occupation. The girls shared two communal living rooms, kitchen, playroom, dining room and bathroom and toilet facilities and a room used for educational purposes. There were locks on each of the doors to the rooms; none of the rooms contained any cooking or toilet facilities. There was a communal garden. All of the girls were referrals from local authorities' social services and could not leave unless placed in another property or asked to leave. There were 3 staff on duty at the time of the visit however there could be a maximum of 4 staff on duty, with at least 2 staff on duty at other times. The staff were responsible for cooking and cleaning and general care of the girls and management responsibilities although residents were encouraged to cook and clean for themselves. None of the staff were resident and worked there on a shift basis. The staff had two dedicated rooms used as offices, one in no.28 and another in no.30, which were not accessible to the residents and were locked when not in use.

Similar circumstances were noted at 76 London Road. The occupants were all boys. There were no locks on the room doors. The staff had a separate bedroom for night duty workers.

## **JUDGEMENT**

The onus is on the applicant to demonstrate by reference to clear precise and unambiguous evidence, that a Certificate should be granted for the matters in respect of which one is sought.

In order to gain a Certificate the applicant must show to the technical legal standard of proof –the balance of probabilities, that the use applied for either did not require planning permission or that it has operated in breach of planning control for the required period to obtain immunity from enforcement action.

### Has a material change of use occurred?

Whilst the applicants do not argue that the use did not require permission, this still has to be considered. The authorised use of the above sites appears to be within Class C3 of the Use Classes Order -i.e. use as a dwelling house (whether or not as a sole or main residence) by a single person or by people living together as a family, or; by not more that six residents living together as a single household (including a household where care is provided for residents).

The residents of all three properties are sent to the site by local authorities, and the duration of their residence varies in every case, according to their individual circumstances. Residents cannot leave of their own volition but have to have some arrangements for alternative accommodation available. The criteria for residency is selective (i.e. age, male/female) and outside of the residents' control. There are also employees at the premises. Such employees are not resident. They do not form part of the household, and have a separate office and other space within each property. The employees provide pastoral care to the residents as well as ensuring that they are cared for by ensuring meals are provided and cooking and cleaning are done and ensuring that other administrative matters relating to the property are dealt with. Moreover, it must also be relevant that the use of no.28 is interrelated with that of no. 30. John Stoddart considers that the properties are (and have been) used for the purpose of residential accommodation and care to children in need of care and not as dwelling houses.

It is recognised that the provision of care can occur within Class C3 and it is also noted that there are (currently) only 3 residents each at 28 and 30 (although there would appear to have been up to 6 in the past), with 6 at no.76 London Road. Moreover residents appear to share most of the facilities including the garden. The advice in the (now cancelled) Circular 13/87 regarding care homes with less

than 6 occupants and the scale and intimacy of such uses being a consideration in the determination of the requirement for planning permission is also noted. The written view of an SDC Officer in 1993 that planning permission would not be required for use of the property as a children's home by no more than 6 children is also taken into account, although the circumstances of the use of the premises at that time can no longer be ascertained.

However it is considered, as matter of fact and degree, that the use of the sites as described in the applications and the accompanying Statutory Declarations and other supporting evidence referred to above, all fall outside of Class C3 as, for the above reasons, the residents are not living together as a single household.

Authority for the conclusion on the facts as ascertained, can be found in relevant case law.

Class C2 of the Order relates to use for amongst other things, the provision of residential accommodation and care to people in need of care (other than a use within Class C3. It is considered, that the use, being for the provision of residential care to children, falls within Class C2. The definition of care in the Order expressly refers to personal care of children being embraced within Class C2.

Therefore it is considered that a material change of use of these dwellings has occurred. Such a change of use has not been authorised by an express grant of planning permission or under the General Permitted Development Order and is therefore in breach of planning control.

#### Has the breach been continuous for more than ten years?

The above is the relevant time period for determining whether enforcement action could be taken in relation to the above breach.

In refusing the previous applications, the Council decided that the applicants had failed to show, by reference to clear and precise evidence, that use of the sites as 'residential children's' homes' had subsisted for more than ten years prior to the date of the application.

The relevant additional evidence submitted with this application includes John Stoddart's Declaration, the letter from the Commission for Social Care Inspection (CSCI) and the table of admissions. John Stoddart confirms that from his professional knowledge the premises have been registered and used as a residential care home for more than ten years. The CSCI also confirm that to their knowledge the premises have all been continuously registered as a children's home throughout the relevant period. The table of admissions confirms that a number of children were admitted to each home every year during the relevant period, apart from no.30 where there were no admissions from 2002 onward. The CSCI also confirm the subsequent amalgamation of nos.28 and 30.

The above should also be taken together with the evidence of Arthur Minnett in his Declaration, which stated that, from his knowledge, the above properties had all been used as a children's home from February 1995 onward, together with the certificates certifying the use of the premises as children's homes.

Whilst it appears that no.30 was not occupied for around 18 months, it maintained its registration as a children's home, there is no evidence to suggest any different intervening use and it was subsequently re-occupied as such. In planning law, a use can continue even when there is a gap in occupation. As a matter of fact and degree it is considered that the use applied for had not ceased for the period when no.30 was unoccupied and there had been no cessation of the breach.

All the above evidence is now considered sufficient to show that, on the balance of probabilities, the sites have been used as children's residential care homes for more than ten years prior to the application being made.

However, the scale and extent of the use should also be considered when examining whether it is lawful. In this case, the evidence (2004 registration) suggests that for part of the relevant period, no more than 6 residents in total have been accommodated at nos. 28 & 30. It is therefore considered that Certificates limited to no more than 3 residents each should be granted in each of the above cases as that number of residents is the maximum proven by the available evidence. Similar conclusions apply in relation to 76 London Road, which was registered as a children's home in June 1999 and subsequently in 2004 to accommodate up to 6 children.

## **CONCLUSION**

In the latest applications it is considered that the applicants have now demonstrated that, on the balance of probabilities, the use of nos. 28 & 30 as children's residential care homes, for no more than 3 residents each (6 in total) such use being within Class C2 of the Use Classes Order and therefore in breach of planning control, have subsisted for more than ten years and enforcement action cannot therefore be taken.

Similar conclusions also apply in relation to 76 London Road, in respect of its use as a residential children's home for up to 6 children.

Certificates of Lawfulness were therefore granted in respect of the existing uses of the above properties, the extent of which were limited as described above, by the Head of Development Services under delegated powers

**RECOMMENDATION: That Members note the contents of the report.**