

EXECUTIVE BOARD DECISION



REPORT OF:	Executive Member for Growth and Development
LEAD OFFICERS:	Director of Growth & Development
DATE:	Thursday, 10 September 2020

PORTFOLIO(S) AFFECTED:	Growth and Development
WARD/S AFFECTED:	Billinge and Beardwood;
KEY DECISION:	N

SUBJECT:

Petition regarding the use of No.8 Eden Park, Blackburn, to provide care and support for no more than three children and two adult carers resident at the property at any time.

1. EXECUTIVE SUMMARY

This report has been prepared to inform the Board that a petition has been received from residents of Larmenier Village off Eden Park in relation to the proposed use of No.8 Eden Park, as a home to provide support for no more than three children.

2. RECOMMENDATIONS

That the Executive Board:

1. Notes the petition.
2. Agree to a process whereby any commissioning department within the Council require any commissioning applicant intending to use non-Council owned property to provide a declaration from the applicant's legal representatives confirming that there are no restrictions or covenants on the proposed property that could affect the commissioned service.

3. BACKGROUND

On the 26th March 2020, a Lawful Development Certificate application was submitted by Nurture Childcare Services Ltd in relation to the proposed use of No.8 Eden Park, Blackburn as "a home to provide care and support (Use Class C2) for no more than three children and two adult carers resident at the property at any time."

Lawful development certificates are certificates issued by local planning authorities, which certify that a proposed or existing development is lawful in accordance with Section 192 of the 1990 Town and Country Planning Act. A Certificate of Lawfulness of Proposed Use or Development ("CLOPUD") is used to certify that a proposed use of buildings or land, or any proposed operations to be carried out in, on, over or under the land is lawful. In determining a CLOPUD application, the local planning authority must issue the CLOPUD if it is satisfied that the answer to the following question is 'Yes':

If this proposed change of use had occurred, or if this proposed operation had commenced, on the [CLOPUD] application date, would it have been lawful for planning purposes?

Answering this question will involve the local planning authority considering:

Whether the proposal would involve development requiring an application for planning permission. Whether it would involve a breach of any existing condition or limitation imposed on a grant of an implemented planning permission.

The legal way of expressing the effect that the grant of a CLOPUD has is that the :

"Use or operations for which a CLOPUD is in force shall be conclusively presumed unless there is a material change, before the use is implemented or the operations are begun in any of the matters relevant to determining such lawfulness".

A CLOPUD application is required to be supported by information/evidence that demonstrates the proposed use is lawful.

The supporting statement on behalf of Nature Childcare Services states; emotional, behavioural and social difficulties. In the context of assessing the proposed use, the term is not considered to materially differ from the term; learning disabilities or sensory impairment. The facility may cater for children and young adults who may have learning disabilities, and sensory impairments. There would be a communal lounge with dining area, kitchen and staff office/sleep in room with staff bathroom.

The local planning authority were satisfied that the proposal included sufficient information to understand what is involved (i.e. the care of no more than three children between the age of 8 and 19, by no more than two adult carers present at any one time, plus a visiting manager once a day during standard working hours). The precise nature of the use is considered lawful as described in the First Schedule of the Certificate. As such, the lawful development certificate was granted on the 28th April 2020 (ref: 10/20/0194).

A petition submitted by the Eden Park-Beardwood & Lammack Action Group on behalf of the Larmenier Village residents containing 14 signatures, with supporting document, was received on 17th June 2020 in relation to the site. The petition requests that all activity at the site is suspended and the local planning authority revoke the issuing of the lawful development certificate

Residents have set out why they believe all activities should cease, and the decision be revoked (see Appendix 1).

At the time of the Petition Report being prepared, the property is not yet occupied by the applicants (Nurture Childcare Services Ltd), as the owner of the property is seeking their own independent legal advice with regards the restrictive covenants placed on the property. In addition, the Council is also seeking to clarify the ownership position with the applicants, and what this means with regards to the Lawful Development Certificate application. A notice has been served under Article 39(15) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 on the 3rd August 2020, on the applicants and the owners of No.8 Eden Park, with regards the Council's proposal to revoke the Certificate. The notice invites the applicants to submit written representations within 14 days, which will be considered by the Council in assessing whether revocation of the Certificate is appropriate in this instance.

4. KEY ISSUES & RISKS

There are two fundamental issues raised by the Action Group as part of the petition. Firstly, there can no breach of any restrictive covenant placed on the property, and secondly, there is no difference between this residential institution and a normal domestic and family setting.

Breach of restrictive covenant to number 8 Eden Park.

The restrictive covenant states:

No building now or at any time in the future to be built on any part of the property shall be used other than as a private dwellinghouse (together with associated garage, greenhouse and garden shed) in the occupation of one family.

The Council has considered the title to the property and although there is the restrictive covenant, as the Action Group suggests it is a private legal matter between the applicant/property owner and the persons who have the benefit of the covenant, who may choose to take enforcement action. The Action Group and the residents on the estate may choose to pursue a private course of action with reference to the intention of an alleged business use of the property, in breach of the covenant, and would need to seek their own independent legal advice in this regard.

The Council's Strategic Commissioning Service is a 'People' wide service covering Adults, Children's and PH. The Council's Head of Strategic Commissioning who reports to the Director of Adults Social Services and Prevention, has confirmed the Service has not commissioned the proposed facility at Eden Park through Placement North West, and the applicants have confirmed the placement has been commissioned through Lancashire County Council.

Because restrictive covenants and so forth are not material planning considerations, they cannot be asked to form part of applications for a CLOPUD. However, it is recommended that any commissioning department within the Council require any applicant intending to use non-Council owned property for the provision of the commissioned service provide information and where appropriate provide a declaration from the applicant's legal representatives confirming that there are no restrictions or encumbrances that would could potentially affect the commissioned service. This proposal will need further discussion and agreement with the relevant departments and commissioning officers before it can be implemented.

There is no difference between this residential institution and a normal domestic and family setting:

The Action Group are claiming that the proposed use is in direct breach of the restrictive covenant that exists, in that a home for the children (ages 8 to 19) occupied on shift patterns by carers cannot fall within Use Class C3(b) of the Town & Country Planning Use Classes Order 2015(as amended) i.e. not occupation of a house by a single person or residents living together as a family.

The applicant proposes to use the premises for the care of children, with a maximum number of 5 residents living as one single household, comprising 3 children (aged 8 – 19) and two adult carers at any one time. Care needs would typically relate to learning difficulties and sensory impairments.

The supporting statement on behalf of Nature Childcare Services states; emotional, behavioural and social difficulties. In the context of assessing the proposed use, the term is not considered to materially differ from the term; learning disabilities or sensory impairment. Notwithstanding this, the precise definition of care / residents needs is not material to the outcome of the lawful development certificate application – only the requirement for care needs to be stated.

The Action Group contend that there has been a change of use in relation to the proposed use notwithstanding the restrictive covenant placed on the property, and as such, they argue the lawful development certificate should not have been granted, and as such be revoked. With reference to determination of the application, it is the considered view of the local planning authority that the change of use of the property from a C3 Use (Single Dwelling) to a C2 Use (Residential Institution) is not material. This is very much a site specific conclusion based on the size of the property and its ability to accommodate adequate off-street parking, together with the number of children / carers that will be present at the property. In this particular case there will be no more than three children and two adult carers in the property at any one time. It is considered that the activities associated with the proposed use would not be materially different from those typically associated

with a large family dwelling. This position is supported by relevant Case Law and examples of lawful development certificates granted by other Local Authorities for the same use.

5. POLICY IMPLICATIONS

None

6. FINANCIAL IMPLICATIONS

None

7. LEGAL IMPLICATIONS

Part 7 of the Council's Constitution relates to Petitions. This is considered to be an 'ordinary' petition as it is signed by at least 6 local people. This Part also sets out the general parameters of the potential responses or feedback formats that the Council ought to consider in response. This report's recommendation is considered under Part 7 to be an appropriate form of response to formally consider the substantive application.

8. RESOURCE IMPLICATIONS

None

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision.

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision.

10. CONSULTATIONS

None

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

CONTACT OFFICER:	Gavin Prescott, Planning Manager (Development Management)
DATE:	4 th August 2020
BACKGROUND PAPER:	Appendix 1 – copy of petition and covering letter.