

Planning Committee

14 July 2020



Application Nos.	20/00449/FUL		
Site Address	The Limes, 11A – 11B Station Crescent, Ashford, TW15 3JJ		
Proposal	Change of use from an Elderly Care Home (C2 Use) to a Children's Home (C2 Use) with associated alterations.		
Applicant	Ashford Children's Care Limited		
Ward	Ashford Town		
Call in details	The application has been called in by Councillor Gething on the grounds of the impact of the proposal upon the character of the area and residential amenity, the loss of a care home facility within the borough, and as the Use Class Order has been amended since the previous planning applications were determined at the site.		
Case Officer	Matthew Churchill		
Application Dates	Valid: 20.04.2020	Expiry: 15.06.2020	Target: Extension of time agreed
Executive Summary	<p>This application is proposing a change of use of the existing building from an Elderly Care Home to a Children's Home with associated alterations. The proposed and existing uses both fall within Use Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) and ordinarily planning permission would not be required to convert the building between proposed and existing uses. However, in this instance two restrictive planning conditions has been imposed at the site, which restrict the use of the building to an elderly care home and no other use, even if that use falls within the same C2 use class.</p> <p>The building was originally two dwelling houses (11A & 11B Station Crescent). Planning permission was granted to convert the dwelling at 11A Station Crescent into an elderly care home in 1984 (SPW/COU/84/48). Planning permission was then granted in 1993 to convert the dwelling at 11B Station Crescent into an extension of the existing elderly care home at 11A (92/00700/FUL). The applicant has stated that the care home was last occupied in February 2017, and had the capability of providing accommodation for up to 16 elderly residents. The care home provides kitchen and dining facilities for its occupiers as well as a garden area at the rear of the site.</p> <p>The application is not proposing any external alterations to the building, although there would be internal alterations, which predominantly involve changing the room uses. The children's home would provide accommodation for up to 9 children, and there would also be 2 rooms of</p>		

	<p>accommodation for the on-site carers. The children's accommodation would be situated on the first floor and the carers' accommodation would be located on the ground floor.</p> <p>The applicant has stated that the children between the ages of 5 and 13 would typically be referred to the home, although ages could vary. The home is intended to provide accommodation for children with learning difficulties. The applicant has confirmed that the children's home would be regulated by Ofsted and Surrey Children's Services.</p> <p>The site contains an existing parking area at the front of the building, which contains 5 parking spaces. The parking area would be retained following the change of use of the building.</p> <p>As planning permission would not normally be required to change the use of a building from one C2 use to another C2 use, the Council must carefully consider whether the reasons for the imposition of the restrictive planning conditions, would reasonably prevent the change of use of the site from an elderly care home to another C2 use, which would result in an unrestricted C2 use on the site.</p> <p>The proposal is considered to meet the requirements of local and national planning policies and is recommended for approval.</p>
<p>Recommended Decision</p>	<p>This application is recommended for approval.</p>

MAIN REPORT

1. Development Plan

1.1 The following policies in the Council's Core Strategy and Policies Development Plan Document (CS&P DPD) 2009 are considered relevant to this proposal:

- SP1 - Location of Development
- SP2 – Housing Provision
- SP5 – Meeting Community Needs
- SP6 – Maintaining and Improving the Environment
- HO4 - Housing Size and Type
- CO1 – Providing Community Facilities
- EN1 - Design of New Development
- EN11 - Development and Noise
- CC2 - Sustainable Travel
- CC3 - Parking Provision

- 1.2 Also relevant is the Council's Supplementary Planning Document (SPD) on the Design of Residential Extensions and New Residential Development, 2011, and the National Planning Policy Framework (NPPF), 2019.

2. Relevant Planning History

The relevant planning history of 11A & 11B Station Crescent is outlined in the table below:

Application No.	Proposal	Decision
SPW/COU/84/48	Change of use of 11A from one family home to a four-bedroomed residential home for senior citizens with registered nurse and proprietors rooms.	Approved 04.04.1984
SPW/FUL/85/537	Erection of a first-floor rear extension to form one bedroom.	Refused 28.08.1985
SPW/FUL/85/535	Erection of a detached double garage	Approved 25.09.1985
SPW/FUL/86/107	Erection of a single-storey flank extension to form three bedrooms, and an enlarged lounge to existing elderly person's home.	Approved 07.05.1986
SP/COU/90/796	(A) Change of use of 11b Station Crescent from a dwelling (Use Class C.3) to form enlarged rest home for the elderly (Use Class C.2) ,and (B) Erection of a single-storey rear extension.	Refused 21.08.1991
92/00700/FUL	Change of use of No 11b Station Crescent from a dwelling (use Class C3 to form enlarged rest home for the elderly (Use Class C2), and erection of single storey conservatory at rear to form a day room.	Approved 31.03.1993
98/00314/FUL	Erection of a first floor side extension and a hipped roof to existing 1st floor flat roof to residential care home.	Refused 22.07.1998
99/00055/FUL	Erection of a first floor side extension and a hipped roof over 1st floor flat roof to existing residential care home.	Refused 28.04.1999
08/00621/FUL	Erection of a detached single storey outbuilding in rear garden to be used as activity room, laundry room and store.	Refused 17.10.2008

3. Description of Current Proposal

- 3.1 The application site contains an Elderly Care Home (C2 Use Class), which is situated on the north-western side of Station Crescent in Ashford. The building previously formed two dwelling houses (11A & 11B Station Crescent). The street scene surrounding the site is predominately residential and contains two storey and single storey detached and semi-detached dwellings.
- 3.2 In 1984 planning permission was granted to convert one of the dwellings, 11A Station Crescent, into an elderly care home (SPW/COU/84/48). A restrictive planning condition was imposed upon the decision notice, which restricted the use of the building to an elderly care home and no other use, even if that use fell within the same XIV Use Class (of the 1972 Town and Country Planning (Use Classes) Order 1972), which today forms part of the C2 use class.
- 3.3 Planning permission was then granted in 1993, for a change of use of the second dwelling, 11B Station Crescent, also into an elderly care home, which was an extension to the existing care home at 11A. A further restrictive condition was imposed upon the decision notice, which requires that the care home at 11B Station Crescent remains ancillary to the existing care home at 11A and that it is not in any other use without prior planning consent.
- 3.4 Planning permission was granted to extend the building in 1999 (99/00055/FUL), and a restrictive planning condition was imposed upon the decision notice, limiting occupation to no more than 16 residents.
- 3.5 The care home currently contains 16 rooms of accommodation for elderly residents with accommodation located on the ground and first floors. The ground floor also contains kitchen and dining facilities. There is a garden area at the rear of the building, and a parking area is located at the front of the site which contains 5 parking spaces.
- 3.6 The application is proposing to change the use of the site from an elderly care home (C2 use class) into a children's home (C2 use class) with associated alterations which would result in an unrestricted C2 use on the site. The C2 use class (residential institutions) is for the provision of residential accommodation and care to people in need of care. It includes hospitals, nursing homes, residential schools, colleges and training centres. The application is not proposing any external alterations. However, there would be internal alterations, largely comprising changes to the internal room uses.
- 3.6 The applicant has stated that up to 9 children would be accommodated in the children's home, and there would also be accommodation for 2 carers. There would be 9 rooms of accommodation for children on the first floor, and the carers would be provided with accommodation on the ground floor. An existing staff office in the roof space would be retained, as would the 5 car parking spaces at the front of the site.
- 3.7 The applicant has stated that the children referred to the home would typically be between the ages of 5-13, although the ages may vary. The home is also intended to provide accommodation to children with learning difficulties. The applicant has confirmed that the children's home would have a Home

Manager, a Staff Supervisor as well as individual carers based upon each child's particular needs. This would include 3 staff who would be awake during the night. The applicant has confirmed that the home would be subject to governance by Ofsted and Surrey County Council.

- 3.8 Planning permission would not ordinarily be required to change the use of a building to a new use falling within the same use class (in this instance C2.) However, because of the restrictive planning conditions highlighted above, in this instance planning permission is required.

4. Consultations

Consultee	Comment
County Highway Authority	No highway requirements.
Environmental Health	No comments.
Surrey Children's Services	No comment from formal consultation. However a response dated 10/06/20 forwarded by the applicant from Surrey County Council has requested additional information to enable the property to be added to their database should SCC require placements in the future.
Surrey Police	Recommends that a Secure By Design Award is secured.

5. Public Consultation

- 5.1 The Council has consulted the occupiers of the neighbouring properties. A total of 20 letters of representation have been received and 1 letter from SCAN, which object to the proposal on the following grounds:

- There are not enough care homes in the area.
- Concerns over the application process (Officer Note: the application has been determined in accordance with the relevant planning regulations and guidance).
- A website has advertised jobs at the children's home and indicates that occupants may have emotional and behavioural difficulties (Officer Note: The attributes of future occupiers is not a planning matter, although the applicant has confirmed that the home is intended for children with learning difficulties).
- There are already HMOs in the area. (Officer Note: this proposal is not for an HMO and planning permission would be required to change the use of the building to an HMO)
- The proposal is not in keeping with this quiet residential street.

- Concerns over anti-social behaviour.
 - The future occupiers could face exploitation and abuse.
 - The proposal could put pressure on local schools.
 - The application does not give information on the type of children's services on offer.
 - The application has not provided information from Surrey Children's Services or from Surrey older people's services.
 - Other elderly care homes have been lost in the area.
 - Concerns about how the children's home would be managed and governed (Officer note: this is not a planning matter but the applicant has confirmed that the children's home will be registered with Ofsted and Surrey County Council).
 - A further condition restricting the use should be imposed upon any future permission.
 - The proposal would absorb resources such as the emergency services.
 - Concerns about criminality in the surrounding area.
 - The proposal could impact other children already in the area.
 - The village feel of Ashford has been destroyed.
 - The application will increase traffic flow in the area.
 - Concerns over the opening of children's home during the Covid 19 crisis.
 - Concerns over highway safety.
 - The proposal will result in noise, disturbance and a loss of privacy.
- The Council has also received a letter of representation from SCAN which raises concerns of disabled access to the site.

6. Planning Issues

- Planning background of the site & restrictive conditions
- The loss of Care Home spaces
- The Children's Home use
- Impact upon residential amenity
- Design and appearance
- Parking provision

7. Planning Considerations

Planning Background

- 7.1 An Elderly Care Home and a Children's Home both fall within use class C2 of Town and Country Planning (Use Classes) Order 1987 (as amended). The applicant would therefore not normally require planning permission to change the use of a site between the existing and proposed uses, as they fall within the same use class. However, in this instance, two restrictive planning conditions have been imposed at the site, which have resulted in the requirement for the applicant to obtain planning permission.
- 7.2 The application site contains a two storey building, which previously formed two dwelling houses (11A & 11B Station Crescent). In 1984 planning permission was granted for a change of use of 11A Station Crescent into a residential home for senior citizens (SPW/COU/84/48).
- 7.3 A restrictive planning condition was imposed upon the decision notice (Condition 5), which stated:

“That the premises be used only for/as residential home for senior citizens and shall not be used for any other purpose within Use Class XIV nor for any purpose within any other Use Class specified in the Schedule of the Town and Country Planning (Use Classes) Order 1972, nor for any other purpose without prior permission of the District Planning Authority.”

The condition was imposed for the following reasons:

- “(i) The enjoyment by neighbouring occupiers of their properties.
(ii) The appearance of the locality”.*

It should be noted that use class XIV, of the Town and Country Planning (Use Classes) Order 1972, was incorporated into the C2 use class (Residential Institutions) in the Town and Country Planning (Use Classes) Order 1987, which includes hospitals, nursing homes, children's homes and residential schools.

- 7.4 The condition was not imposed to retain care home spaces at the site, and instead was imposed in the interests of amenity of the occupiers of neighbouring dwellings and the interests of the character and appearance of the locality.
- 7.5 In 1993 planning permission was granted for the change of use of 11B Station Crescent, from a dwelling house into an enlarged rest home for the elderly (92/00700/FUL). A restrictive planning condition was imposed upon the decision notice (Condition 6), stating that the rest home for the elderly shall only be used for purposes ancillary to the existing rest home at 11A Station Crescent, and for no other purpose. This condition together with a further condition restricting the use of the building to no more than 15 occupants, was imposed for the following reason:

“To safeguard the amenities of the locality and to ensure that there is adequate parking provision to satisfy the Council’s Current Parking Standards”.

- 7.6 Again, this condition was not imposed in the interests of retaining the care home spaces, and instead was imposed in the interests of amenity and parking provision. A later application to extend the Care Home was granted planning permission in 1999 (99/00055/FUL), which contained a planning condition restricting occupation to 16 elderly occupants.
- 7.7 The site already benefits from planning permission to be in a C2 use, albeit that the use is restricted by condition to an elderly care home. The Council must therefore carefully consider whether the use of the site in another C2 use would cause undue planning harm.

Restrictive Planning Conditions & the NPPF

- 7.8 The restrictive planning conditions at the site, which prevent the change of use of the building to any other C2 use, must be viewed in the context of the NPPF (2019) and Planning Practice Guidance (PPG) on Conditions (updated 23 July 2019). The two planning conditions were imposed in 1984 and 1993 some considerable time before these recent government documents were issued.
- 7.9 The NPPF states that where development would be unacceptable, local planning authorities should consider whether the development could be made acceptable through the use of conditions. The NPPF and PPG both state that conditions should be kept to a minimum and should only be imposed where they meet the five tests of being necessary, relevant to planning and the development permitted, enforceable, precise, and reasonable in all other respects.
- 7.10 The PPG advises that conditions restricting the future use of permitted development rights or changes of use, as permitted through the Town and Country Planning (General Permitted Development Order) 2015 (as amended) *“may not pass the tests of reasonableness of necessity”*. In addition, the PPG makes clear that *“planning permission runs with the land and it is rarely appropriate to provide otherwise”*.
- 7.11 In this instance, the restrictive planning conditions were imposed prior to publication of the NPPF and the current PPG. However, the change of use of a building from one C2 use to another would not normally require planning permission. The Council must consider whether any planning harm would arise from the change of use of the site from an elderly care home to a children’s home, resulting in an unrestrictive C2 use.
- 7.12 The restrictive conditions were imposed in the interests of surrounding residents and the enjoyment of their homes, the appearance of the locality, to safeguard amenities, and in the interests of parking provision. The Council must therefore carefully consider whether sufficient planning harm would arise to neighbouring residents, the appearance of the area, to the amenities of the area and to parking provision, as a result of the change of use of the site from

an elderly care home to a children's home, which would reasonably prevent the change of use to an unrestricted C2 use.

The loss of care home bed spaces

- 7.13 Policy HO4 of the CS&P DPD states that the Council will ensure that the size and type of housing reflects the needs of the community, by encouraging housing designed to meet the needs of older people, including the provision of 400 units of extra care housing on suitable sites over the period between 2006 and 2026.
- 7.14 The updated Spelthorne Strategic Housing Market Assessment (SHMA) (October 2019) also identifies that there is currently a shortfall of 201 care bed spaces in the borough, which is predicted to increase to a shortfall of 589 spaces by 2035 (note there are additional requirements for housing with support and housing with care). Whilst the information in the SHMA does not form part of an adopted Council planning policy, the SHMA has been prepared as part of the evidence base for the Council's new Local Plan, and must be attributed appropriate weight.
- 7.15 There is clear and demonstrable need for new care home spaces in Spelthorne, which is predicted to increase over time. The proposed change of use to a children's care home would result in a loss of 16 care home spaces, when Policy HO4 states that 400 additional extra plan spaces are required between 2006 and 2026, and evidence gathered for the new local plan suggests that the need is likely to increase. However, the restrictive planning conditions which prevent the change of use of the building to another C2 use, were not imposed to prevent the loss of care home spaces, and the application must be determined in this context, as planning permission would not normally be required to convert the use of a building from one C2 use to another.
- 7.16 The applicant has indicated that the care home has not been occupied since February 2017. The applicant has also provided a copy of a report by the Care Quality Commission, which amongst other concerns commented that the layout was not conducive to older people moving around the building. Whilst this suggests that there are some shortfalls in the layout of the site as a Care Home, the Care Quality Commission Report falls outside the remit of planning legislation. It does, however, provide helpful information on the current application.
- 7.17 Planning permission would not normally be required to change the use of a building from an elderly care home to a children's home as both uses fall within the same C2 use class. In this instance, restrictive planning conditions have prevented the change of use to a children's home and the loss of care home spaces, without the need for planning permission. However, the conditions were not imposed to prevent the loss of care home spaces and instead were imposed in the interests of the enjoyment of neighbouring residents of their homes, the appearance of the locality, amenity, and parking provision. The application should therefore be determined in this context, and as the restrictive conditions were not imposed to prevent the loss of care home spaces, whilst there is a demonstrable need for care home spaces in

the borough, it would be difficult to reasonably justify a recommendation for refusal on the basis of the loss of care home spaces, as without the restrictive conditions, the care homes spaces could be lost without the requirement for planning permission.

Children's Home Use

- 7.18 The existing care home use falls within the C2 use class (residential institutions), albeit that the use is restricted to an elderly care home by two restrictive planning conditions. The proposed children's home would also fall within the C2 use class, which includes residential accommodation for people in need of care, hospitals, nursing homes, residential schools, colleges and training centres.
- 7.19 Local and national planning policy is extremely limited in its guidance upon children's homes. The application should instead be assessed as a general C2 use. It should also be noted that children's services fall within the remit of the County Council.
- 7.20 Whilst there is limited planning guidance on children's homes, the applicant has provided a copy of the Surrey County Council document entitled "*Surrey Placement Strategy for Looked After Children 2016 – 2019*". This is not a planning document or an adopted planning policy. However, it provides useful information on children's homes in Surrey and states that "too many" looked after children have been placed outside of Surrey because the right placement was not available within the county. It further states that 22% of looked after children are living outside of the borders of Surrey and more than 20 miles away from their originating home. The document goes on outline a commitment to placing 80% of residential children locally within Surrey.
- 7.21 The operation and regulation of the children's home is also not a planning matter and the Council must instead consider the principle of the C2 use of the site. Furthermore, should planning permission be granted, this would run with the land and not the applicant.
- 7.22 However, the applicant has stated that the children's home would provide accommodation for up to 9 children, as well as accommodation for 2 on site carers. The children that would be referred to the home for placement, would generally be between the ages of 5 and 13, although the ages could vary. The applicant intends for the home is to provide accommodation to children with learning difficulties. The home would have manager and staff supervisor, and the number carers would be dependent upon the individual needs of each occupant. The applicant has confirmed that the home would be regulated by Ofsted and Surrey County Council. The applicant has also provided the Council with the copy of an email from Surrey County Council which expresses an interest in adding the children's home to its database should it be required for future placements.
- 7.23 In terms of the suitability of the building layout, there is no planning guidance relating to the layout of children's homes and this would be a matter for the registering authority. However, it is helpful to note that the nationally described *Technical Housing Standards* (March 2015), which can be looked

at as an indicative guide, state that in order to provide one bed space a single bedroom must incorporate an internal floor area of at least 7.5m². It is considered that all of the children's rooms would meet this size.

- 7.24 The Council's planning guidance does not give requirements for minimum garden areas for children's homes and again this would be a matter for the registering authority. However, it is helpful to note that the Council's SPD on design states that for flats where amenity space is shared, 35m² of amenity space should be provided per unit for the first 5 units, and 10m² per unit should be provided for the next 5. On this basis, should the proposal have been for 9 flats (there are 9 children's rooms associated with this application) there would have been a requirement for a minimum shared garden area of 215m². The Council has calculated that the garden area at the rear of the site measures approximately 325m². The level of garden provision provided to the future occupants of the children's home is therefore considered to be acceptable.
- 7.25 The Council has received a number of letters of representation, which raise concerns over the welfare of future occupants, and concerns that they may be exploited. The Council has also received letters of representation raising concerns and speculation over how the children's home would be operated and be managed, and how the children's home would be governed. Whilst the welfare of the future occupiers of any children's home is clearly an important issue, this planning application can only consider the planning merits of the proposed use of the site as a children's home, and any welfare concerns as a result of the future management and operation of the children's home would fall outside of the remit of planning legislation.
- 7.26 As noted above, the applicant has confirmed that the site would be subject to governance by Ofsted and the applicant has also confirmed that all children's homes providers must register with Ofsted. Furthermore this planning application is only considering the planning merits of the use of the site. Planning permission runs with the land not the applicant and any speculation about future welfare concerns are a matter for other organisations.
- 7.27 The Council consulted Surrey Children's Services (SCS), which stated that it would not be making any comments on the proposals. However, the applicant has provided an email from Surrey County Council stating that it would be interested in including the children's home on its database should it be required for future placements.

The Amenity of Existing Residents

- 7.28 Policy EN1 of the CS&P DPD states that proposals for new development should achieve a satisfactory relationship with adjoining properties, avoiding significant harmful impacts in terms of noise, loss of privacy, daylight or sunlight, or an overbearing effect due to bulk, proximity and outlook.
- 7.29 The NPPF states that planning decisions should ensure that developments create places that are safe, inclusive and which promote a high standard of amenity for new and future users.

- 7.30 The application does not propose any external alterations to the building. As such, it is not considered that an objection could reasonably be sustained on the grounds that there would be an adverse impact upon light or privacy of any neighbouring or adjoining dwellings, or the proposal would have an overbearing impact.
- 7.31 It is acknowledged that the two restrictive planning conditions limiting the use of the building to an elderly care home were imposed upon previous planning permissions at the site, in the interests of the occupiers of neighbouring dwellings and the enjoyment of their properties, and in the interests of the amenities of the locality and parking provision.
- 7.32 The elderly care home was occupied by up to 16 residents, and would have been reliant upon the comings and goings of staff members to operate. There may also have been occasional visitors. A children's home by its very nature would operate in a similar manner, with comings and goings of staff members and occasional visitors. The children's home would also be occupied by fewer individuals, with 9 children and accommodation for 2 on site carers.
- 7.33 In comparison to the existing elderly care home use, which also falls within the C2 use class, the day to day operational use of the children's home is not considered to have a greater impact upon the occupiers of neighbouring and adjoining dwellings than would be reasonably expected of an elderly care home. Whilst younger individuals may be perceived to generate more noise than elderly residents during their day to day living, perceptions alone would not be a sufficient reason to justify a recommendation for refusal.
- 7.34 It is accepted that individuals occupying a children's home may exhibit different characteristics to individuals who would occupy an elderly care home. For example individuals occupying an elderly care home may have more sedentary lifestyles, whereas younger individuals occupying a children's home may be more active, although this would be entirely dependent on individual occupiers.
- 7.35 The occupiers of the children's home may also use the garden area more regularly and for more active purposes than occupants of an elderly care home. However, there would only be 9 children, whereas there could be up to 16 elderly residents in the current use. The occupiers of the children's home would also have access to indoor recreational spaces including a playroom, study room and two sensory rooms, which are not available to the elderly residents.
- 7.36 An increased use of the rear garden area that is some 325m² in area, by 9 children, is not considered to generate a level of noise above which would reasonably be expected in a residential area, and would be comparable to the garden areas of 4 new 3 bedroom dwellings which the Council's Standards would require have a minimum garden area of 70m² (note the application site previously formed two dwelling houses). Any perceptions that 9 younger individuals, may generate more noise than 16 elderly individuals, is not considered to be reason to sustain an objection on amenity grounds.

Fear of Crime & Anti-Social Behaviour

- 7.37 The Council has received a number of letters of representation, which raise concerns that the introduction of a children's home into this location would encourage an increase in crime and anti-social behaviour.
- 7.38 Local and national planning policies and guidance, is extremely limited in respect of children's homes. In regards to crime, the NPPF states that planning decisions should aim to achieve inclusive and safe places, which are safe and accessible so that crime and disorder and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 7.39 Recent appeal decisions suggest that an increase in crime and an increase in the fear of crime as a result of proposals for the development of children's homes, can be a material planning consideration, and in some instances can cause sufficient planning harm to justify a recommendation for refusal. However, the appeal decisions further suggest that this cannot be based upon perceptions of future occupants and their behaviour or upon anecdotal evidence, and instead must be founded upon evidence.
- 7.40 The Council has consulted Surrey Police, which noted that the site is located in a compact residential area subject to crime and disorder factors, which require consideration. However, Surrey Police do not object to proposal and instead have recommended that the applicant achieves a secure by design award. It is considered that this should be attached to the decision notice as an informative.
- 7.41 Whilst it is acknowledged that some residents perceive that there will be an increase in crime as a result of the proposal, given that Surrey Police have not objected to the scheme, it is not considered that there is sufficient evidence to justify a recommendation for refusal on planning grounds as a result of crime and the fear of crime.

Character & Appearance

- 7.42 The restrictive planning permission on the 1984 planning permission (SPW/COU/84/48), was imposed in the interests of the appearance of the locality.
- 7.43 The application is not proposing any changes to the external appearance of the building, other than maintenance of soft landscaping at the rear of the site. The site is already in a C2 use, and the parking area at the front of the site and the elevations would remain unchanged. The proposal is therefore considered to have an acceptable impact upon the character of the area.

Parking Provision

- 7.44 Policy CC2 of the CS&P DPD states that the Council will seek to secure more sustainable travel by only permitting traffic generating development where it can be made compatible with transport infrastructure in the area taking into account access and egress to the public highway and highway safety. Additionally, policy CC3 states that the Council will require that sufficient

provision is made for off-street parking in accordance with its Parking Standards.

- 7.45 The NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact upon highway safety or if the residual cumulative impacts on the road network would be severe.
- 7.46 The property contains 5 off-street parking spaces at the front of the site, which would be maintained following the change of use to a children's home. As an elderly care home falls within the same C2 use class as a children's home, and as there would be fewer occupants of the building, it is not considered that an objection could be sustained on the grounds of insufficient parking provision.
- 7.47 The Council's Parking Standards do not contain minimum parking requirements for a children's home. The closest use listed in the Parking Standards would be a Residential Hostel, which for single people has a minimum parking requirement of 1 space per 2 residents. In this instance there would be 9 residents. The children's home would be provided with 5 off-street parking spaces at the front of the site, which would be in adherence to this guidance.
- 7.48 It is noted that the Council has received a number of letters of representation raising concerns over highway safety, congestion and parking. The Council has consulted the County Highway Authority, which has raised no objections. The proposal is therefore considered to be in accordance with policy CC2, CC3 and the NPPF in highway terms.

Other Matters

- 7.49 In total the Council has received 20 letters of representation in objection to the proposal. Of the objections not already covered in this report HMOs in the surrounding area would not be a planning reason to recommend the application for refusal as the application is not proposing an HMO. An HMO with more than 6 residents would also require planning permission for a change of use from a class C2. Perceived interactions between the occupiers of HMOs and the occupiers of the children's home are not considered to be a planning reason to object to the scheme.
- 7.50 The Council has also received a number of letters of representation, which raise concerns that the occupiers of the children's home may have emotional and behavioural difficulties and concerns over the ages of the children that may stay in the home. This planning application is considering the planning merits of the use of the site as a children's home which would result in an unrestricted C2 use. Whilst the applicant has confirmed that future occupants are likely to have learning difficulties, the potential needs of individual occupants and their ages is not a planning matter. The Covid 19 crisis is also not a planning reason to justify for refusal.
- 7.51 The Council has also received a letter of representation from SCAN raising concerns over access to the site for individuals with disabilities. It is

recommended that the applicant's attention is drawn to the Equalities Act in the decision notice. A ramp is already provided to the front of the site and it is recommended that a condition is attached to the decision notice requiring that one disabled parking space is also provided.

- 7.52 The Council has received a further letter of representation which requests that a condition is imposed upon the decision notice restricting the use of the site from any other use even if that use falls in the same C2 use class. The C2 use class includes residential accommodation for people in need of care, hospitals, nursing homes, colleges and training centres. Planning permission would not be required to change the use of the building to one of these uses, should an unrestricted C2 use be granted at the site. Given the size and layout of the site it is not considered that condition restricting the site to a children's home would meet the tests set out in the NPPF and Planning Policy Practice, particularly in terms of necessity and reasonableness.
- 7.53 In terms of employment, whilst employment opportunities would be lost from the existing care home use, the proposal would result in employment opportunities in the new use.

Equalities Act 2010

- 7.54 This planning application has been considered in light of the Equality Act 2010 and associated Public Sector Equality Duty, where the Council is required to have due regard to the need for
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The question in every case is whether the decision maker has in substance had due regard to the relevant statutory need, to see whether the duty has been performed.

The Council's obligation is to have due regard to the need to achieve these goals in making its decisions. Due regard means to have such regard as is appropriate in all the circumstances.

It should be noted that all children would be on the first floor and there is no lift available. However, Surrey Police recommended that carers, who would be provided with onsite accommodation on the ground floor, are accommodated on a different floor to the adults. A ramp is already provided to the front of the site and it is recommended that a condition is attached to the decision notice requiring that one disabled parking space is also provided.

Whilst the property's current use is for elderly accommodation, it has not been operated or occupied in this regard for over three years.

Human Rights Act 1998

- 7.55 This planning application has been considered against the provisions of the Human Rights Act 1998.
- 7.56 Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.
- 7.57 Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, i.e. peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.
- 7.58 In taking account of the Council policy as set out in the Spelthorne Local Plan and the NPPF and all material planning considerations, Officers have concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by the approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

Finance Considerations

- 7.59 Under S155 of the Housing and Planning Act 2016, Local Planning Authorities are now required to ensure that potential financial benefits of certain development proposals are made public when a Local Planning Authority is considering whether or not to grant planning permission for planning applications which are being determined by the Council's Planning Committee. A financial benefit must be recorded regardless of whether it is material to the Local Planning Authority's decision on a planning application, but planning officers are required to indicate their opinion as to whether the benefit is material to the application or not.
- 7.60 In consideration of S155 of the Housing and Planning Act 2016, the proposal would result in no financial contributions.

8. Conclusions

- 8.1 The application site contains an elderly care home for up to 16 residents (C2 use). The proposed change of use of the site into children's home (C2 use) for up to 9 Children and 2 full time carers would not normally require planning permission. However, in this instance two restrictive planning conditions have been imposed upon the site in 1984 and 1993 that restrict the change of use of the building to any use other than an elderly care home, even if that use is in the same C2 use class (use class XIV at the time of determination in 1984).

- 8.2 The restrictive conditions must be viewed in the context of the NPPF and the current PPG, which advises that planning conditions which restrict the change of use of a building, which would otherwise not require planning permission are unlikely to meet the necessity and reasonableness tests. In addition, the PPG makes clear that “planning permission runs with the land and it is rarely appropriate to provide otherwise”.
- 8.3 The restrictive conditions were imposed in the interests of the enjoyment of neighbouring occupiers of their homes, in the interests of the appearance of the locality, amenity, and parking provision. For the reasons outlined in this report, the proposal would result in a loss in care home spaces contrary to policy HO4, when there is a demonstrable need for such spaces within the borough which is likely to increase over time. However, the proposed change of use is considered to have an acceptable impact upon the amenity of neighbouring properties, the character of the area and parking provision, and is considered to be acceptable in the context of the restrictive conditions, without which, planning permission would not be required to change the use of the building from an elderly care home to a children’s home, which would be an unrestricted C2 use.
- 8.4 The proposal is also considered to be in accordance with the objectives of policies CC2, CC3, EN1, EN11 and HO4.

Therefore, the application is recommended for approval.

9. Recommendation

To GRANT planning permission subject to following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: This condition is required by Section 91 of the Town and Country Planning Act, 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013 (Received 21.04.2020).

Reason: For the avoidance of doubt and in the interest of proper planning.

- 3 The children’s Home hereby approved shall be occupied by no more than 9 children at any one time without prior permission of the Local Planning Authority.

Reason: In the interests of the residential amenity of the occupiers of neighbouring and adjoining dwellings.

- 4 The parking space(s) and/or garage(s) shown on the submitted plan be constructed and made available for the development prior to occupation and thereafter the approved facilities together with the means of access thereto

shall be maintained as approved, and be reserved for the benefit of the development hereby permitted.

Reason: To ensure that the proposed development does not prejudice the free flow of traffic or the conditions of general safety along the neighbouring highway(s) and to ensure that the facilities provided are reserved for the benefit of the development for which they are specifically required, in accordance with policy CC3 of the Spelthorne Borough Core Strategy and Policies Development Plan Document 2009.

- 5 The children's home shall not be first occupied until a disabled parking bay measuring a minimum of 3.6 metre x 4.8metres has been marked out on site. The parking bay shall thereafter be retained unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of future users with disabilities.

INFORMATIVES TO APPLICANT

- 1 Access by the Fire Brigade
Notice of the provisions of Section 20 of the Surrey County Council Act 1985 is hereby endorsed on this planning permission. Copies of the Section may be obtained from the Council Offices or from County Hall. Section 20 of this Act requires that when a building is erected or extended, proper provision must be made for the Fire Brigade to have means of access to the building or to any neighbouring buildings. There are also requirements relating to access and facilities for the fire service contained in Part B of the Building Regulations 2000 (as amended).
- 2 The applicant's attention is drawn to the Equalities Act 2010, which requires the property to be accessible to disabled people.
- 3 The applicant's attention is drawn to the ACPO/Home Office Secured by Design (SBD) award scheme, details of which can be viewed at www.securedbydesign.com.