

REPORT TO DEVELOPMENT MANAGEMENT COMMITTEE

12 February 2025

REFERENCE: HW/FUL/24/00388

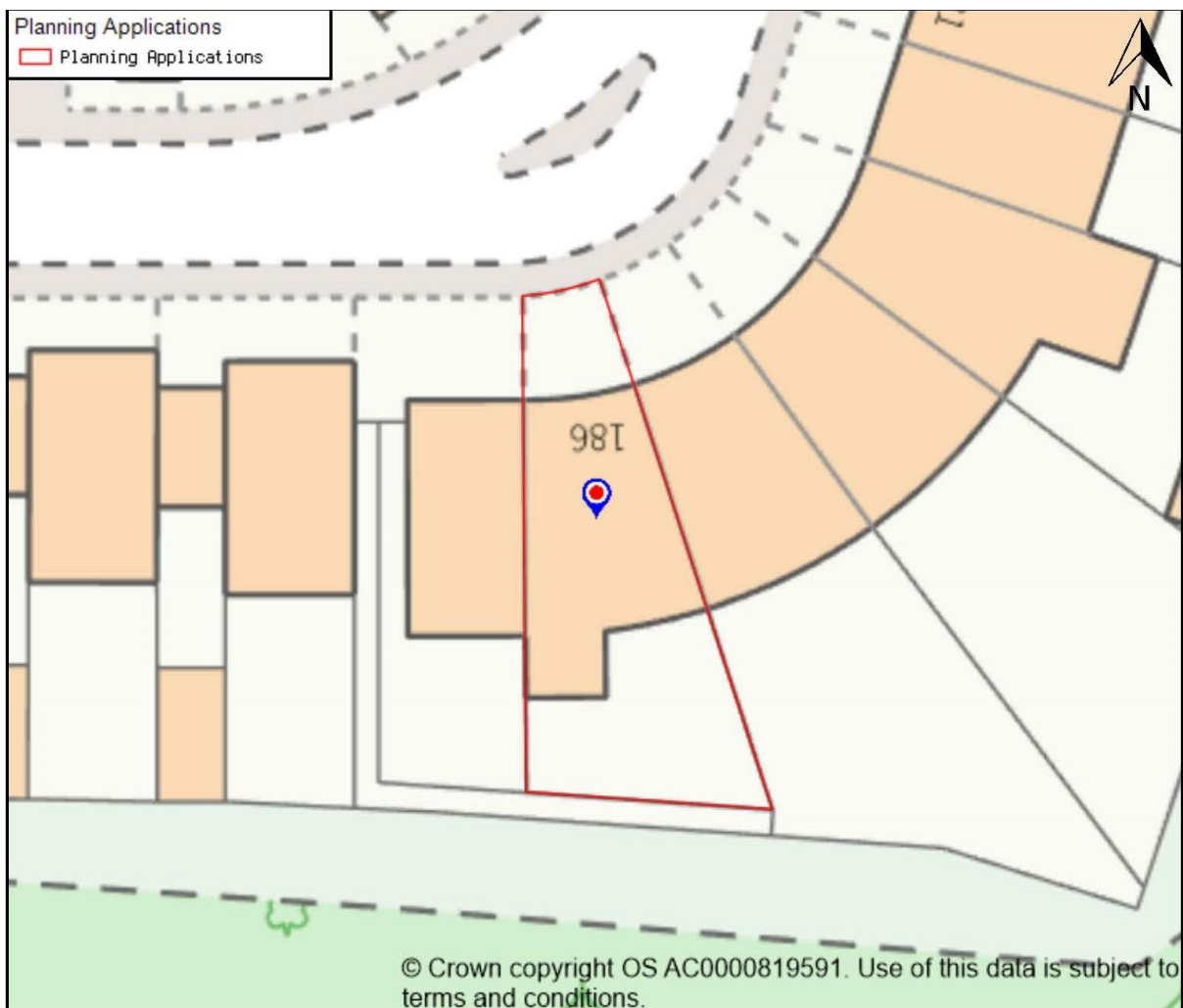
OFFICER: Chris Walter

APPLICANT: Mr John Quick

LOCATION: 186 Malkin Drive
Harlow
Essex
CM17 9HL

PROPOSAL: Change of Use from Existing Use Class C3 (Dwellinghouse) to Use Class C2 (Children's Residential Care Home)

LOCATION PLAN:



Reason for Committee Referral

More than two letters of objection have been received which are contrary to officer recommendation. The application is also of significant local interest.

Recommendation

The proposal seeks permission for the change of use from single dwellinghouse (Class C3) to children's care home (Class C2). No external alterations are proposed to the dwelling. The proposed use is found to be acceptable in terms of character and appearance, residential amenity and parking/highways considerations. It complies with the relevant policies within the HLDP and supplementary documents and is recommended for approval accordingly.

Details of the Proposal

This application seeks full planning permission for the change of use from single dwellinghouse (Class C3) to children's care home (Class C2). It would facilitate the provision of residential accommodation for a maximum of three residents aged between 8 and 17.

The applicant has set out that there would be seven members of full-time equivalent staff, operating on 12-hour shift pattern arrangements between 7 and 10. There would be a minimum of two staff members at any given time, with one site manager.

No external alterations are proposed to the dwelling.

Site and surroundings

The application site relates to 186 Malin Drive, a mid-terraced townhouse located within a residential area of Church Langley. It shares a boundary to the east with No. 185 and one to the west with No. 187. The site is not located within a conservation area, or within the setting any heritage asset.

The existing dwelling house benefits from five bedrooms, integral garage, single parking space and rear garden.

There are no Traffic Regulation Orders (parking restrictions) on Malkin Drive.

RELEVANT PLANNING HISTORY

There is no relevant planning history.

CONSULTATIONS

Internal and External Consultees

Essex County Council – Children Residential Strategy

Supportive. ECC has a residential plan to facilitate better access to the local residential sector to keep and support our 'Children in Care' locally. They wish to continue finding innovative ways of partnering with providers, which is inclusive and dynamic and provide opportunities for new providers to work with ECC as a placing authority.

Essex County Council - Highways

No Objections. Having reviewed the proposal it is expected that the operations on site in highway terms will be much more akin to that of a family home (as per the existing situation) rather than a traditional care home. No more than two-three adults and three children are expected on site at one time. As such, the existing level of parking is considered appropriate, and the proposal is not expected to have a detrimental effect in terms of highway safety, capacity and/or efficiency.

Harlow Council – Environmental Health

No Objection.

Harlow Council – Cleansing & Environment

No Comment Received.

Neighbours and Additional Publicity

Number of Letters Sent: 30

Total Number of Representations Received: 57

Date Site Notice Expired: 10 December 2024

Date Press Notice Expired: 12 December 2024

Summary of Representations Received

Objections 37 from 20 separate properties have been received

Support: 20 received

Objections

The following objections were raised that are material to the determination of this planning application:

- Parking/Highway Safety: will exacerbate local parking stress; traffic generation; most properties only have one parking space so park on the road; how will staff being encouraged to use public transport be enforced/monitored; Malkin Drive is not served by public transport; there are no parking restrictions; access issues for emergency vehicles and residents; hazard for pedestrians/cyclists
- Amenity: noise generation; disturbance; altered street dynamics caused by staff turnover and activity; erosion of sense of local community; loss of privacy
- Character & Appearance: conversion into children's care home not suitable within a residential area; overdevelopment/intensification of property; degradation; estate is a family-oriented development
- Planning History: Reference HW/ST/01/00088 states the garage or parking area shall be provided and maintained for the benefit of occupiers of the attached residential accommodation for the parking of vehicles and no trade or business shall be carried out therefrom
- Environmental Health Concerns: waste disposal and storage; odour; and

- Poor access to open space/play areas

Officer Comment: The material matters raised are addressed in the assessment below.

The following objections were raised that are not material to the determination of the planning application:

- Submission of additional documents after initial application;
- Staffing – recruitment details; high turnover if agency; poor relationship with children; Will be run as a business and for profitability;
- Perceptions of crime, vandalism, drugs; theft; antisocial behaviour;
- Devaluation of house prices;
- Will the council be cross-referencing the comments from the electoral role as those that actually live on Malkin Drive & in close proximity of the care home will be most impacted;
- People who support the application do not live in the area;
- Regulatory compliance: building regulations; fire safety; and
- Will set a concerning precedent

Support

The following expressions of support were raised that are material to the determination of this planning application:

- Will give vulnerable children a safe, caring, secure, inclusive and supportive home/environment;
- Provide life and social skills to help support transition to adulthood; educational and emotional support;
- High demand for service; will be a great asset; and
- Located near services and schools..

The following expressions of support were raised that are not material to the determination of the planning application:

- Comments have been raised without substance or value and written with malice and spite; character defamation; children in care are tarnished with bad behaviour, reckless attitudes & are apparently a threat/danger to society; and
- Likely have lower occupancy compared to the five-bedroom house (with less cars)

Officer Comment: The material matters raised are addressed in the assessment below.

PLANNING POLICY

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “*where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise*”.

The Local Plan in this instance is the Harlow Local Development Plan (2020).

Harlow Local Development Plan 2020

Planning law requires that proposals should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The Development Plan for the site consists of the Harlow District Council (HDC) Harlow Local Development Plan 2020 (HLDP), Essex County Council (ECC) Essex and Southend-on-Sea Waste Local Plan 2017 and ECC Essex Minerals Local Plan 2014.

The HDLP is prepared in the context of the National Planning Policy Framework (NPPF). It is important to note that this is a very recently adopted and therefore ‘up to date’ plan in terms of NPPF Para.12.

Policies of most relevance to the proposal are:

- PL1 – Design Principles for Development
- PL2 – Amenity Principles for Development
- PL8 – Green Infrastructure and Landscaping
- PL9 – Biodiversity and Geodiversity Assets
- IN1 – Development and Sustainable Modes of Travel
- H4 – Loss of Housing
- N2 – Impact of Development on the Highways Network including Access and Servicing
- IN3 – Parking Standards

National Planning Policy Framework (NPPF) (2024)

The Development Plan is prepared taking account of the National Planning Policy Framework (NPPF) (as extant at the time - the NPPF is regularly updated; currently in its 2023 version) and the associated Planning Practice Guidance (PPG) (first published in March 2014 but also regularly updated with the NPPF). The NPPF is a material consideration in the determination of applications.

Supplementary Planning Documents

The following s are material planning considerations in the determination of applications and appeals:

HDC Design Guide SPD (2011)

Design Guide Addendum SPD (adopted December 2021).

Essex Parking Standards (2009)

HGGT Guidance

Harlow and Gilston Garden Town (HGGT) is a designated ‘Garden Community’ under the Government’s Garden Communities Programme.

The NPPF provides the national policy context for Harlow and Gilston Garden Town (HGGT) as a location for larger scale (housing) development. Of particular note is the emphasis on; existing or planned investment in infrastructure, the area’s economic potential and the scope

for net environmental gains..... plus; clear expectations for the quality of development and how this can be maintained (such as by following garden city principles).

The HGGT (Local Authorities) Partnership has published a series of documents that set the standards expected for developments in the Garden Town and are therefore relevant to this application.

The HGGT Vision elaborates on the HGGT's interpretation of garden city principles and sets expectations for high quality development to accord with the principles.

The HGGT Design Guide requires consideration of design quality in a garden city principles sense and draws attention to specific local issues.

SUMMARY OF MAIN ISSUES

The key planning matters assessed in the determination of this application are as follows:

- Principle of Development
- Character & Appearance
- Residential Amenity
- Parking & Highway Safety

Principle of Development

Policy H4 of the Local Plan (2020) relates to the loss of housing and seeks to resist the loss of buildings in residential use. Although of a different use class to a C3 dwelling house, the proposed children's home would still provide a residential function, albeit the children would likely be unrelated and receive care/support from adults who are not their parents. As the proposed change of use would see one form of housing substituted for another, it is thus considered consistent with this policy.

No external alterations to the building are proposed and reversion to a family home in the future if circumstances change is not precluded.

The supporting statement explains the rising demand for child support services and includes an expression of support from the Essex County Council Placement Services – Children's Residential Care Strategy Team, who state there is a need for additional children's homes in Essex – *'Essex County Council (ECC) support service development to increase the sufficiency of residential placements in Essex'*.

Overall, there is no in principle objection to proposed development, subject to detailed assessment of other planning policies and considerations.

Character & Appearance

Policy PL1 of the HLDP requires a high standard of urban and architectural design for all development and must meet the criteria set out within the policy. This requires development to demonstrate design rationale; provide local distinctiveness; respond to scale, height, massing and architectural details; provide legibility; provide a logical and legible layout, form inclusive development; provide flexibility and create a safe and secure environment.

Concerns have been raised by residents that the proposed C2 use would be uncharacteristic of the surrounding area. Although of a different use class to a C3 dwelling house, the

proposed children's home would still provide a residential purpose, albeit the children would likely be unrelated and receive care/support from adults who are not their parents.

With no physical alterations proposed, the property would not be readily distinguishable as a children's home within the street scene. As such, there would be no unacceptable harm to the character and appearance of the area.

The proposal therefore accords with policy PL1 of the HLDP.

Impact on Residential Amenity

Policy PL2 of the Local Plan (2020) seeks to protect the amenities of residents.

The proposal would not result in any physical alterations to the external appearance of the existing building. As such the proposed development would not give rise to additional impact in terms of loss of light or overlooking to immediately adjoining properties

The application, however, has raised considerable objection from residents with concerns relating to the potential of anti-social behaviour. The issue has been raised due to the proposed housing of vulnerable children who may suffer from behavioural difficulties that are related to deprivation or adverse childhood experiences.

While all issues raised are noted within the determination of a planning application, there can only be great weight attached to those 'material considerations' that relate to town planning matters. The strength of feeling from the residents in respect of this proposal is fully understood however, issues such as perceived behavioural matters, vulnerable tenants, anti-social behaviour, substance abuse or several similar uses within the area are not recognised as material considerations in planning law. These are controlled by other bodies, such as Ofsted, the police and other bodies of Harlow Council.

Although beyond the scope of this application for planning permission and covered by separate legislation requirements, the home would be monitored through Ofsted, the Care Quality Commission and Essex County Council regulations. The applicant would be required to follow specific guidance and legislation to ensure the day to day running of the home and legislative requirements are fulfilled - this includes all areas of health and safety for the individuals, staff and environment both internally and externally. This would be demonstrated through rigorous and on-going risk assessment, monitoring, regular audit and local delegation procedures overseen by the organisations monitoring tools. These processes would also allow any potential threats or risks to the home or wider environment to be captured at an early stage, enabling appropriate mitigation measures to be implemented.

The application is seeking to change the existing use from C3 (Dwellinghouse) to C2 (Children's Care Home. Use class C3(b) is defined within Class C3. "Dwellinghouses" in the Schedule to the Town & Country Planning (Use Classes) Order 1987. Classes C3(a) and (b) are set out as follows:

"Use as a dwellinghouse (whether or not as a sole or main residence) -

(a) by a single person or by people living together as a family, or

(b) by not more than 6 residents living together as a single household (including a household where care is provided for residents) ..."

A children's care home, therefore, could fall within the existing Use Class C3(b) (Dwellinghouses) where the total number of residents does not exceed six and the carers and the cared-for live as a single household. The definition within 3(b) does not refer to

'personal care' and parents provide care for their own children as a household, this is the same function as a shift care worker. The current application proposes accommodation for three residents and the employment of up to seven full-time equivalent staff, taking it beyond the requirements under Class 3b as a dwellinghouse and therefore, the application could possibly be considered as permitted development if the number of carers was reduced.

Permitted development however, under use class 3(b) provision has given rise to debate in case law, particularly where carers do not permanently live at the premises, but operate on a shift basis. The consensus is that constantly changing supervising adults cannot be considered part of a household. For a household to be created there would need to be at least one permanent adult living on the premises with the children. Whilst care homes in general are of a similar function to a dwelling house, the additional activity of shift changing and cars may also provide a material change of use.

In the case *between North Devon District Council v The First Secretary of State (2004)*, it was held that where the carers did not live permanently within the premises, the occupants would not be living together as a single household and consequently would not fall within Class C3. The main issue, however, was whether the lack of any carers 'living' within the property materially changed the character of the property as a dwellinghouse. It was the inspector's opinion that it did not. Although when carers visiting the site would increase activity, this would not disturb residents or affect the character of the area. Additionally, although residents were fearful about the children committing anti-social acts or increasing crime levels, he decided that it was not inherent in the character of a children's care home that the proposed use of the property would have an adverse impact upon the local community and welfare services. Consequently, this was not a factor which would materially alter its basic character as a dwellinghouse. The children would be supervised and must obey a set of written rules but in his view, it was not uncommon for a family to have its own set of unwritten rules.

In summary, there is debate within different examples of case law on whether small scale children care homes should be considered a C2 or C3 use class, however, there is a consistent judgement, including a decision from the Secretary of State, that care homes for a small number of children would not have a material change to the character and function of a dwellinghouse. Although applications are assessed on a case-by-case basis, it was determined that the level of activity to care for a small number of children, would not provide significant disturbance than that of a household within a large dwelling in a suburban location where levels of activity alter within different households.

Based on identified case law, there should not be significant weight afforded to the fear and perception of antisocial behaviour, without any evidence. The scheme would provide supervised valuable living accommodation for a vulnerable needs group that require support and have the right to live in safe conditions to improve their welfare and future upbringing.

The existing dwelling benefits from five bedrooms and thus provides a relatively large home. Given the small scale of the proposed children's home and the age of the children, it is not considered that the proposed use would be significantly different to the activity generated as a five-bedroom dwellinghouse operating as a family unit. Any additional vehicular movements caused by shift changeovers, which are to be carried out between the hours of 7 and 10, or visitors would unlikely generate undue levels of noise or disturbance.

In the interest of maintaining the amenities of neighbouring properties, it is recommended that a condition be placed on any grant of consent to restrict the number and ages of children who reside at the property.

Taking the above into account, the proposal accords with policy PL2 of the HLDP.

Parking and Highways

Policy IN1 of the HLDP requires developments to provide appropriate cycle infrastructure and electric vehicle charging points (“EVCPs”).

Policy IN2 requires that developments meet the following criteria:

- (a) it would not cause a severe residual cumulative impact on highway congestion and movement;*
- (b) it would not cause a detrimental impact on the safety of all highway users including pedestrians, cyclists and horse-riders;*
- (c) the development provides for adequate, safe and convenient loading and servicing arrangements, access points and drop-off areas and consideration has been given to the movement and turning of emergency vehicles and refuse vehicles.*

Policy IN3 states vehicle parking must be provided in accordance with the adopted Essex vehicle Parking Standards, unless otherwise indicated elsewhere in the Local Plan and/or supporting evidence.

Concerns have been raised from residents in respect to highway safety issues with insufficient parking, poor and unsafe access for emergency vehicles and increased vehicular movements. Essex Highways, however, were consulted and raised no objections to the application in respect of both the level of provision and impact on the highway.

Following officer site visits and a review of the representations received in response to this application, it is clear parking is a sensitive issue for residents of Malkin Drive. While most dwellings benefit from integral garages or single driveways, kerb parking is common and there are no TRO’s in situ to restrict such.

Nevertheless, it is considered that activities on site would not be materially different from that of the existing situation as a five-bedroom dwellinghouse. With the staff shift patterns and third-party visits arranged by appointment, it is unlikely that the car parking arrangements would exacerbate local parking stress or result in issues of highway safety.

The applicant explains that efforts would be made to minimise car trips through car sharing and sustainable modes of transport. A travel plan demonstrating/promoting the planned use of sustainable, non-motorised travel would be appropriate in this case and is recommended as a condition.

A condition is also recommended to implement cycle storage provision prior to occupation as a children’s care home.

While the supporting information explains existing refuse arrangements, a condition is recommended to secure sufficient storage and for these to be retained at all times.

On this basis, the application would comply with policies IN1, IN2 and IN3 of the HLDP.

Equalities

Section 149 of the Equality Act 2010, which came into force on 5th April 2011, imposes important duties on public authorities in the exercise of their functions, including a duty to have regard to the need to:

- “(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.”

For the purposes of this obligation the term “protected characteristic” includes:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

The above duties require an authority to demonstrate that any decision it makes is reached “in a fair, transparent and accountable way, considering the needs and the rights of different members of the community and the duty applies to a local planning authority when determining a planning application.” Officers consider that the application does not give rise to any concerns in respect of the above.

Conclusion

The concerns of the objectors have been fully considered in the assessment of this proposal. In view of the material planning considerations the Local Planning Authority can attach weight to, it is considered that the proposal is of an appropriate design and represents an appropriate form of development that would not have a significant adverse impact on the street scene, or the amenity of nearby residents. The application has been assessed and found to be acceptable in relation to its impact upon highways. The application complies with the relevant policies within the HLDP and supplementary documents and is recommended for approval accordingly, subject to the planning conditions set out below.

RECOMMENDATION

That Committee resolve to GRANT PERMISSION subject to the following conditions:

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

REASON: In order to comply with Section 91(1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The property/site shall only be used as a children's homes and for no other purpose, including any use otherwise permitted within Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (including any Order revoking or re-enacting that Order, with or without modification), or such uses ordinarily incidental to the use hereby permitted.

REASON: To enable the Local Planning Authority to retain adequate control over such uses, in the interests of the amenity of nearby neighbouring properties and the wider locality.

3. The children's home hereby permitted shall be occupied by no more than three children at any one time, who shall be between the ages of 8 and 17 only.

REASON: To ensure the occupation of the children's home is in accordance with the details as assessed by the Local Planning Authority and in the interests of the amenity of neighbouring properties and the wider locality.

4. Prior to first occupation as a children's care home, a Travel Plan shall be submitted to and approved in writing by the local planning authority. The approved Travel Plan shall thereafter be adhered to for the lifetime of the development.

REASON: To maximise active and sustainable travel modes and reduce dependency on the car for access to the site.

5. Prior to first occupation as a children's care home, details of covered and secure cycle parking shall be submitted to and approved in writing by the Local Planning Authority and the cycle parking shall have been implemented in accordance with the approved details and shall thereafter be retained for that purpose for the lifetime of the development.

REASON: To ensure that appropriate cycle parking is provided to provide a sustainable transport option.

6. Prior to first occupation as a children's care home, details of waste storage facilities including location and capacity shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be implemented in accordance with the approved details and shall thereafter be retained for that purpose for the lifetime of the development.

REASON: To ensure that adequate servicing of the site and to safeguard the amenities of neighbouring residents.

7. The development hereby permitted shall be carried out in accordance with the approved plans as shown listed in the table below.

REASON: For the avoidance of doubt and in the interests of proper planning

<u>Plan and Document Reference</u>	<u>Date Received</u>
Site Location Plan	23.10.2024
7000 Existing Floor Plans	04.11.2024
7001 Proposed Floor Plans	04.11.2024

INFORMATIVES

1. The Local Planning Authority has assessed the proposal against all material considerations including planning policies and any comments that may have been received. The planning application has been approved in accordance with the objectives of the National Planning Policy Framework and local plan to promote delivery of sustainable development and to approach decision taking in a positive way.

Elizabeth Beighton
Development Manager

Chris Walter
Contributing Officer