

Delegated Report

Planning Reference: 25/00190/CLP
Applicant(s): Keys Group Ltd
Ward: Hinckley DeMontfort



Hinckley & Bosworth
Borough Council

Application Site: 68 Leicester Road, Hinckley, Leicestershire

Proposal: Certificate of proposed lawful development for the change of use of property to a residential home (Class C2) for up to 3 young people between the ages of 7 and 17 years.

Case Officer: Sullivan Archer (Senior Planning Officer)

1. Recommendations

1.1. Grant Certificate of Lawful Proposed Development

2. Planning Application Description

2.1. This application seeks a Certificate of Lawful Proposed Development to confirm that the change of use of a Use Class C3 dwelling to a residential home (Use Class C2) for up to three young people between the ages of seven and seventeen at 68 Leicester Road, Hinckley constitutes lawful development. No internal or external works are included within this proposal.

2.2. To facilitate this change of use, two to three staff shall be on site during the day and two members of staff shall be present during the night to provide care for the children at all times. Staff shall be employed on 24-hour shifts and shift changeover times shall take place between 10 AM and midday on a staggered basis to minimise the impact of shift changes on the young residents and to reduce vehicle movements to and from the site.

3. Description of the Site and the Surrounding Area

3.1. The 0.06ha application site is located to the northeast of, but within the settlement boundary of, Hinckley on the western side of Leicester Road. Leicester Road is an adopted and classified 'B' road ('B4668') that is subject to a 30mph speed limit. The surrounding area is wholly residential in character and predominantly features detached dwellings. Due to the wide variety of styles and designs, there is not a discernible unique character to the area.

3.2. The application site consists of 68 Leicester Road, which is a two-storey, detached, four-bedroom residential property that has an attached garage. The property is predominantly white rendered but includes a low-level red brick finish along the front elevation of the dwelling.

4. Relevant Planning History

- 4.1 There is no relevant planning history.

5. Publicity and Consultation

- 5.1. There is no statutory requirement to consult third parties on an application for a lawful development certificate. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is a good reason to believe they possess relevant information about the content of a specific application.
- 5.2. Notwithstanding this, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question are irrelevant when determining the application.
- 5.3. In this instance, letters were sent out to neighbouring properties.
- 5.4. One member of the public responded to the application, who objected to the proposed off-street parking arrangements and the potential highway safety impacts of the development. It was suggested within this response that the application should limit the number of cars allowed on the property to a maximum of four.
- 5.5. Leicestershire County Council's Children and Family Services made comments in support of the application as they have entered into a contract with the Applicant for the delivery of a three-bedroom children's home to support vulnerable children.

6. Policy

- 6.1 Section 192 of the Town and Country Planning Act 1990.

7. Appraisal

- 7.1 Section 192 of the Town and Country Planning Act 1990 enables any person with the opportunity to ascertain whether any proposed use of buildings or other land, or any operations proposed to be carried out in, on, over or under land would be lawful.
- 7.2 The statutory framework covering, 'lawfulness,' for lawful development certificates is set out in Section 191(2) of the Town and Country Planning Act 1990. Section 191(2) of the Town and Country Planning Act 1990 confirms that uses and operations are lawful at any time if:
- (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

- 7.3 Paragraph 55(1) of the Town and Country Planning Act 1990 defines, 'development,' as the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land.
- 7.4 National Planning Practice Guidance (NPPG) confirms that there is no statutory definition of 'material change of use;' however it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.
- 7.5 Given the above, NPPG states that the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable to a local planning authority to understand exactly what is involved. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. However, this does not preclude another application being submitted later on if more information can be produced.
- 7.6 Ultimately, NPPG highlights that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is, or would be, lawful. Planning merits are not relevant at any stage in this particular application.

Use Classes

- 7.7 There are no provisions within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) that enables a Use Class C3 dwellinghouse to be converted into a Use Class C2 residential institution via Permitted Development Rights.
- 7.8 The Town and Country Planning (Use Classes) Order 1987 defines Use Class C3 uses as:

"Use as a dwellinghouse, as a sole or main residence and occupied for more than 183 days in a calendar year by–

- (a) A single person or by people to be regarded as forming a single household; or*
- (b) Not more than six residents living together as a single household where care is provided for residents; or*
- (c) Not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)."*

- 7.9 On the other hand, Use Class C2 uses are defined as:

“Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (Dwellings, used as sole or main residences)). Use as a hospital or nursing home. Use as a residential school, college, or training centre.”

- 7.10 Paragraph 5.6 of the Applicant's Planning Statement confirms that only the children shall live at the property and the care staff for the children would not be permanent residents of the premises.

- 7.11 Whilst Government Guidance confirms that the law does not confirm an age when you can leave children on their own, it is an offence to leave a child alone if it places them at risk. The Applicant has referred to the case of *North Devon District Council v the First Secretary of State (Queen's Bench Division)* (2003), which confirms at Paragraph 16 that:

“Children need to be looked after... As a matter of principle and approach the whole point of these homes is that the children are regarded as needing full-time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should.”

- 7.12 This justification was utilised at Paragraph 8 of the allowed appeal decision at 15 Crownhill Road, Burbage against the refusal of application 11/00279/CLU. Paragraph 8 of this Appeal Decision states that:

“Children need to be looked after and could not, on their own, be regarded in the true sense as a household without the presence of a carer. Carers who provide 24-hour care but who are not resident could be regarded as living together in a household. The concept of living together as a household means that in the context of Class C3(b), that a proper functioning household must exist.”

- 7.13 By virtue of these factors, the Council agree with the Applicant's views expressed at Paragraph 5.7 of their Planning Statement that the proposed use of the property does not fall within the definition of a Use Class C3 use. Therefore, the proposal is considered to represent a change of use from a Use Class C3 use to a Use Class C2 use as a residential institution for the care of children.

Material Change of Use

- 7.14 The Applicant has stated that whilst the proposal involves a change of use from Use Class C3 to Use Class C2, the development does not consist of development as there is no material change to the use of the application site.

- 7.15 To support this, the Applicant has referred to the Governmental Statement *‘Planning for accommodation for looked after children’* made by the Minister of State for Housing and Planning on 23 May 2023.

7.16 The 2023 Ministerial Statement confirms that:

“Planning permission will not be required in all cases of development of children’s homes, including for changes of use from dwellinghouses in Class C3 of the Use Classes Order 1987 where the children’s home remains within Class C3 or there is no material change of use to Class C2.”

7.17 In addition to this, the Applicant has referred to a barrister’s opinion, case law from 2003, six planning appeal decisions, one of which is within the Hinckley and Bosworth Borough at 15 Crownhill Road, Burbage, and two planning application decisions, including one within the Hinckley and Bosworth Borough at 56 Applebee’s Meadow, Hinckley.

7.18 No external or internal alterations are proposed to the property. Therefore, the proposal is not considered to result in a material change to the character and appearance of the property.

7.19 As a Use Class C3 dwelling, the property can be occupied by up to six residents who receive care and live as a single household. The proposal is for a residential care home for up to three children, with a maximum of three members of staff on site during the day. Therefore, the proposed use predominantly features the occupation of the property by six persons, which does not exceed the limitations of a property utilised for a Use Class C3 use. Shift changes are also staggered to minimise vehicle movements to and from the site.

7.20 Ultimately, Paragraph 12 of the allowed appeal decision against the refusal of 11/00279/CLU at 15 Crownhill Road, Burbage did not consider the vehicle movements of three members of staff to be:

“Materially different from what might be expected of a large family house in which, say, a parent and two teenagers or young adults live together, and each uses a car to get to work or college and for socialising”

7.21 Whilst visits may take place to the site from family, social workers and other professionals, Paragraph 3.10 of the Applicant’s Planning Statement confirms that these would be short and infrequent, and all family visits are pre-planned and take place off-site.

7.22 Given the above, it is not considered that such visits to a use of this capacity would materially depart from that of a typical Use Class C3 dwellinghouse.

7.23 By virtue of these factors, whilst the proposal is considered to be a Use Class C2 Use, the scheme does not result in a material change to the use of the premises as a Use Class C3 use. Therefore, the proposed change of use in these site-specific circumstances is not considered to amount to development for which planning permission is required.

- 7.24 As a result, it is considered that a Lawful Development Certificate for the change of use of property at 68 Leicester Road, Hinckley to a residential home (Class C2) for up to 3 young people between the ages of 7 and 17 years should be granted.

8. Equality Implications

- 8.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; and
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 8.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

- 8.3 There are no known equality implications arising directly from this development.

- 8.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

9. Conclusion

- 9.1 Based on the facts of the case and the relevant planning law, the change of use of property at 68 Leicester Road, Hinckley to a residential home (Class C2) for up to 3 young people between the ages of 7 and 17 years does not represent a material change in the use of the application site and therefore the Lawful Development Certificate should be granted for the proposed use in these site-specific circumstances. This conclusion is made on the basis of details provide by the Applicant, and as shown on the following documents received by the Local Planning Authority:

- Application Form (submitted: 28.02.2025)
- Existing Ground Floor & First Floor Plans Dwg No 01 (submitted: 28.02.2025)

- Planning Statement (submitted: 28.02.2025)
- Site Location Plan (submitted: 28.02.2025)

10. Recommendation

10.1 Grant Certificate of Proposed Lawful Development