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Your Ref:

Our Ref: APP/K2420/X/11/2155849

Date: 8 September 2011

Dear Mr Wood

**Town and Country Planning Act 1990**
**Appeal by David Durrant**
**Site at 15 Crown Hill Road, Burbage, Hinckley, LE10 2LD**

I enclose for your information a copy of the appellant's final comments on the above appeal. Normally, no further comments, from any party, will now be taken into consideration.

Yours sincerely

Fran Littler

E221L(BPR)

*You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp*
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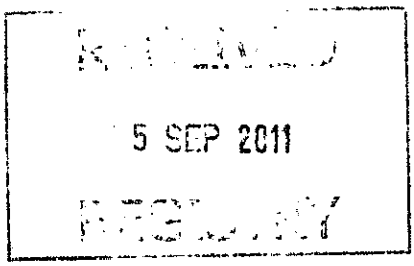


# COPY LETTER

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FAO – Fran Littler
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02 September 2011

Our Ref: PAW VT 4888-1-3
Your Ref: APP/K2420/X/11/2155849

Dear Ms Littler

**TOWN & COUNTRY PLANNING ACT 1990**
**APPEAL BY DAVID DURRANT**
**SITE AT 15 CROWN HILL ROAD, BURBAGE, HINCKLEY, LE10 2LD**

Please find below the Appellants comments on the Statement from the Local Planning Authority and also the Representations by Third Parties in respect of this appeal.

Hinckley & Bosworth Borough Council

In paragraph 7.6 of their Statement, the Borough Council suggest that "little if any useful conclusions can be drawn from these two differing interpretations as to use class to which such proposal shall fall". This is in response to Appendix 2 of the Appellants Appeal Statement which contains two Certificates of Proposed Lawful Use, one concluding that a proposed use similar to that which is the subject of the appeal was within Class C3 (b) and the other concluding that it fell within Class C2. The Local Authority are mistaken in their assertion that little useful conclusion can be drawn, and instead, I would invite the Inspector to agree that the fact that two Local Authorities have drawn different conclusions for essentially the same proposed use confirms that there is little distinction between the two use classes in cases such as this. Whether the application is C2, or C3 (b) is a matter of judgement, however the key point to draw from this is that there is no material difference between the two. As such, the change of use proposed in this case from C3 to C2 is not one which is material and therefore does not require planning permission.

The Local Authority go on to draw attention to the North Devon case that highlights that each planning decision must be based on its merits and will only be material as a matter of fact and degree in the circumstances of an individual case. It is accepted, and once against stressed that in this case, as a matter of fact and degree, there is no material change of use. Whilst the Local Authority go on at paragraph 7.15 to argue that the

planning committee was entitled to form a judgement on this matter it is clear that for them to do so reasonably, they must have had some information to justify that decision making process. No such justification is provided in the reports to the planning committee (which recommended that a Certificate be granted) or contained within the minutes of the discussion which subsequently ensued.

The facts which relate to this case are set out at paragraph 7.20 of the Council's Statement as they were in the planning committee report at paragraph 3.10. On consideration the officer of the Council who wrote that report concluded that in circumstances such as these, there would not be a material change of use.

In this case, the majority of vehicle movements take place as parts of the day time and principally at times of the school run. This is completely analogous with a C3 residential use and as such it is not considered that there will be a material increase in the number of journeys due to staff change-overs and schools trips etc than would occur in a normal C3 household.

Turning to the points raised at paragraph 9.2 in the LPA Statement, the Appellant would be prepared to consent to all of the conditions listed, save that sub-paragraph 2 should be altered to refer to children with learning "disabilities" not "difficulties" as illustrated in the Ofsted Report which the LPA attach at their Appendix 4. It is also asked that in the event that vehicles were required to attend in emergency (for example in the event of a emergency plumber being required) that the restriction on vehicle numbers would be relaxed accordingly and a revised wording of the condition should perhaps be considered as a result, should the Inspector be minded to grant the appeal.

Third Party Objections

Without exception, all of the Third Party Objectors are concerned with the history of the appeal site and in particular the previous use as a home for children with Emotional or Behavioural Difficulties. The Appellant echoes their view that this is not a suitable location for a care home for children with such issues; however, this is not the proposed intention in this appeal which is to provide a home for children with Learning Disabilities. This represents a completely different classification of person in need of care and is considered to be a suitable use in this location.

The distinction between these two classes of persons is set out in Annex A of the Ofsted Report produced by the LPA which describes children with EBD (such as those previously housed on the appeal site) as follows:

*"An emotional or behavioural difficulty is considered to be where children have a difficulty with interpersonal relationships and behaviour but it is not formally associated with mental disorder."*

By contrast it goes on to explain that children with Learning Disabilities (such as those who will be housed on site should the appeal be successful) have *"a mental impairment, which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities."* It goes on to explain that *"the impairment must affect a person's ability to carry out normal day-to-day activities..."*

Essentially a child suffering from EBD is one who is physically and mentally fit, but whose behaviour is typically anti-social in nature.

By contrast, children suffering from Learning Disabilities might, for example, suffer from a condition such as Down's Syndrome, and would not be in residential care if they did not require support to carry out basic daily living tasks. In short they have no history of anti-social behaviour and lack the capability to act in that manner.

Unfortunately, this clear distinction is one which has evidently not been understood by neighbours whose concerns are clearly shaped by their historic encounters with children suffering from EBD: experiences which will not be repeated should the appeal be granted and children with Learning Disabilities be allowed to reside at the appeal site.

The relevant consideration for the Inspector in this case is simply whether the proposed use as a care home for children with Learning Disabilities represents a material change of use from the existing C3 use. For the reasons advanced in our Appeal Statement and further set out above in response to the comments made by the Local Planning Authority, it is considered that such a use does not constitute a material change of use.

Accordingly, I would invite the Inspector to allow the appeal.

I trust that these comments will be drawn to the Inspector attention and look forward to hearing from the Inspector organising a site visit prior to the decision being issue.

Please also find enclosed with this letter a copy of the Appellant's Application for Costs, which I trust will be progressed without delaying a decision in the planning appeal. Should you have any queries or concerns, please do not hesitate to contact me.

Yours sincerely

**PAUL WAKEFIELD**
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enc.