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14 May 2008

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EPP ref: L9-7468-JN-nh

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DEVELOPMENT SERVICES
16 MAY 2008
RECEIVED

Dear Sir or Madam

RE: APPLICATION FOR CHANGE OF USE OF DWELLING TO A CARE HOME FOR THREE CHILDREN AT WISEACRE, LEICESTER LANE, DESFORD, LEICESTERSHIRE, LE9 9JJ

Please find attached an application for change of use of the above property from a dwelling to a small children's care home (Class C2).

The application is submitted entirely without prejudice to our belief that the change of use as proposed is not material and therefore does not require planning permission. However, the application is submitted following the refusal of Hinckley and Bosworth Borough Council to grant a positive certificate of lawfulness for the change of use. It is our opinion that the submission of planning application is likely to achieve a positive outcome for the applicant, within a shorter timescale than making an appeal against the refusal of the certificate of lawfulness.

We attach the following appendices to the application:-

- EPP1 – Application forms
- EPP2 – Location plan / site plan
- EPP3 – Aerial photograph of the site
- EPP4 – Photographs of the site
- EPP5 – Existing floor plans
- EPP6 – Decision notice ref 07/01374/CLU
- EPP7 – Counsel's opinion, North Derbyshire site: Mr J Barrett of Kings Chambers, Manchester
- EPP8 – North Devon District Council and the First Secretary of State (Q.B. Division 30 January 2003) - (2003) JPL 1191
- A cheque for £335.00 as the application fee

We should be grateful if you would give full consideration to the above enclosures and to the matters set out below.

16 MAY 2008

1. The applicant

Keys Child Care Ltd ("KCC") currently operates a number of homes throughout the country that provide specialist care for children. The proposed use would operate in the same manner as the other homes.

2. Site location and description

Wiseacre is located on the B582, Leicester Lane, approximately 1.2 miles from Desford. It is set within a ribbon of development either side of Leicester Lane, but is outside of the settlement policy boundary of Desford.

The dwelling currently accommodates the following:-

- at ground floor – lounge, games room, dining room, kitchen diner, sitting room, 2 studies, 3 bedrooms, one of which is en-suite, bathroom, bathroom, utility room, conservatory, hall and porch.

- at first floor – 3 bedrooms, family bathroom, a 'jack and jill' bathroom.

Wiseacre is large enough to accommodate at least 6 people. It is set within a substantial curtilage, with spacious front and rear gardens. In addition there is a double garage and a car parking area capable of accommodating over 5 vehicles to leave the site in a forward gear.

3. The Use

KCC propose to carry out general works of repair and maintenance, together with general alterations including the installation of fire doors and the reorganisation of the internal layout. The alterations proposed would retain the living accommodation of a 'normal' dwelling. The works would involve no change to the external appearance of the dwelling and therefore in themselves would not require planning permission.

The proposal would comprise the following accommodation:

- ground floor:- 2 bedrooms, kitchen/diner, dining room, games room, lounge, television room, conservatory, utility room, bathroom, hall, office and porch.

- first floor:- 2 bedrooms, bathroom and carers bedroom.

All ground floor facilities would be shared, albeit the office would be reserved for the carers use only. The preparation of meals would be principally undertaken by the carers, however, the children would be encouraged to assist. The carers and children would eat their meals together at the dining table as a family.

All bedrooms would be fitted with locks to meet legal requirements including human rights legislation; however, the carers would have a key to each room. A carer's room, at first floor, would comprise a bed, wardrobe and a desk to allow paperwork to be completed.

The children would be aged between 7 and 17 years. The property would constitute their principal residence. They may have been taken into care due to fears for their physical

wellbeing and/ or may be in an unfortunate position that they have no suitable guardians. The children would not suffer from physical or mental disability.

1 to 3 carers would be at the home when the children are in residence. The structure of the team is made up of a Registered Manager, senior residential workers and residential care workers. At times of introducing a new child to the premises, or in other exceptional circumstances, an additional carer may be temporarily required. A team of up to 12 adult care workers would work shifts; however, only 1 - 3 of these carers would be working on site at one time, albeit having regard to the above situations. There would of course be flexibility built into the shift pattern in cases of emergencies or sickness.

The shift patterns are generally eight hour shifts, with a short overlap at changeover times. The exception to this is when a residential worker will complete a 24 hour shift with a sleep in. In this circumstance, the shift ends at 11pm and then starts again at 7am the next morning whilst a waking night, who will arrive on duty at approx 10pm, is available if required by the young people. The waking night would also complete household chores that would not disturb or affect the young people and paperwork.

4. History of the site

When the property was purchased by KCC it had been used as a dwelling. In the 1980s and 90s the dwelling was extended following grant of planning permission.

Planning permission was refused in 1988 for use of the property as a boarding kennels.

Our application for a certificate of lawfulness of proposed use or development (CLOPUD) to certify that the use of a dwelling for the care of three children with two non-residential staff does not involve a material change of use from Class C3, was refused on 21st January 2008 (reference 07/01374/CLU). The decision notice is attached at Appendix EPP6.

5. Planning policy

National policy and development plan policies are summarised in this section.

PPS7: Sustainable Development in Rural Areas (2004) makes reference at paragraph 17 to the reuse of buildings in the countryside. This indicates that economic re-use is preferred to residential use. It advises that local planning authorities should set out in local development documents their policy criteria for permitting building conversions in the countryside. In doing so they should take account of the following criteria:

- potential impact on the countryside;
- specific local economic and social needs and opportunities;
- settlement patterns and accessibility to service centres;
- the suitability of the building for re-use;
- the need to preserve buildings of historic or architectural importance.

There are no saved policies within the **Leicestershire, Leicester and Rutland Structure Plan 1996 – 2016** that are relevant to this application.

The **Hinckley and Bosworth Local Plan** (adopted February 2001) contains policies relating to development in the countryside and residential care and nursing homes that are relevant to this application.

Policy NE5 permits the change of use, re-use or extension of existing buildings, particularly those of historic value within the countryside. This is subject to provisos that it does not have an adverse effect on the appearance or character of the landscape; it is in keeping with the scale and character of existing buildings and the surroundings; it is effectively screened where necessary; and it will not generate traffic likely to exceed the capacity of the highway network or impair road safety.

Policy CF8 states that planning permission will be granted for residential care homes where:

- the proposal complements and enhances the character of the surrounding area and does not have a detrimental impact on the occupiers of nearby properties;
- the premises are of a suitable size and type;
- adequate gardens are provided to protect and enhance the amenity of residents;
- there is satisfactory car parking and areas for service vehicles;
- the future residents will have easy access to shops, public facilities and public transport; and
- the design of the buildings should accommodate easy access by the elderly and infirm.

The council also has a guidance note on residential care homes, adopted as part of an overarching Supplementary Planning Guidance document in 1997. This identifies private care homes for the elderly, the disabled, and people with dependence on drugs, alcohol or with mental disorder as being a growth sector for which it is important to provide clear guidelines. No mention is made of children's care homes.

The guidance states that its aims are:

- to guide residential care homes to suitable sites;
- to ensure there is adequate provision of space around the building to protect the amenity of residents;
- to ensure satisfactory provision of parking and treatment of plot features;
- to control the size of extensions to protect the amenity of adjoining residents.

The guidance states that care homes should be located in residential areas where they can blend in, without involving significant change to boundary treatments or loss of trees. It is noted that care homes for the elderly in particular should be located within walking distance of local services. The guidance states that large detached properties are generally most suited for this type of use and that the local planning authority may impose conditions restricting the number of residents. It sets standards for private amenity space and parking requirements. $10m^2$ per resident, of private amenity space is required and one car space for

every 3 bedrooms plus 1 car space for every member of staff on site is the required car parking standard.

6. Relevant Case Law and Counsel's opinion

We attach at Appendix EPP7, Counsel's opinion (Mr Barrett of Kings Chambers, Manchester) for a site in North Derbyshire to be used for the care of 4 children and cared for by 2 non-resident staff. The proposal is similar to the proposal in the current application and is therefore relevant to the determination of this application.

We draw attention to paragraph 29 of the opinion:

> *"A change is not material if it is **'de minimis'** or merely a change in the person conducting the use. The correct approach, in my view, is to judge materiality in land use consequences, having regard to the effect of the local amenity in proper land use considerations – this is Barnet UDC v British Transport Commission [1962] QB484."*

The essential question to determine is what, if any, actual changes would occur as a result of the use proposed. If the change can be identified, could that change be material in land use planning sense. Counsel considers this matters at paragraph 30 and states:

> *"It would seem, at least on a cursory analysis, that the operation of the rota system and its associated "comings and goings" could constitute "change". However, in view of the Class C3 definition of dwelling house is capable of including 6 residents living together as a single household (for example students), the associated level of activity is not likely to constitute any significant (or even measurable) change .The difference, seems to me, relates to the provision of care, that difference, whilst constituting a change, is not the equivalent of a "material change" unless and until it is demonstrated that some land use consequence in planning terms occurs as a consequence of that change. For my part, I have been unable to identify any land use consequences that have arrived from the consequence of the provision of care."*

Consistent with Mr Justice Collins' view in the North Devon case, (attached at Appendix EPP8) Mr Barrett concludes:

> *"In short, it is my analysis that it would be unlikely that up to 4 children could be regarded, in the circumstances proposed in this case, as living together as a single household. Nevertheless, I consider on the current evidence that the proposed use would be unlikely to constitute a "material change of use" and therefore constitute development. The change from a conventional dwelling house to the limited care provision that is referred to up to 4 children and non-resident carers operating a rota that the property would not give rise to the land use changes that could be regarded as "material", thereby triggering the requirement to obtain planning permission."*

When considering our application for the certificate of lawfulness reference 07/01374/CLU the council were not persuaded by the above arguments and considered that the change of use would, "on the balance of probability lead to planning consequences and would therefore be material". No indication was given of what the planning consequences could be.

In submitting the current application for planning permission for a change of use, it is material to consider the fall back position of use of the property as a dwelling within the definition of Class C3 of Town & Country Planning Use Classes Order 1987.

7. Planning implications of the change of use

As noted above, in refusing to grant a certificate of lawfulness the council did not specify what the likely consequences were considered to be of the change of use from the current Class C3 use to he proposed Class C2 use.

At this point it should be made clear that the applicant would be prepared to accept a condition restricting permitted development rights to restrict use of the property to that of a children's care home and not for any other purpose within Class C2. This would limit the impact of any permission to that of the care home applied for.
Below I assess the potential impacts of the proposed use in so far as they relate to land use planning issues, including in relation to relevant development plan policies.

Physical fabric of the building

The council's decision notice specifies that certain physical changes to the building including the installation of fire doors, locks to bedroom doors and also the use of various rooms that would not be consistent with family use of the dwelling. None of these changes would have any consequence of the physical fabric of the building or its future use for either a care home or a dwelling house. The changes would affect the fittings of the building and would be of no planning consequence.

Visual amenity

No changes are proposed to the external appearance of the property, or to its curtilage. The building would maintain the appearance of a dwelling. Its curtilage would be maintained as a garden for use by the resident children. To all intents and purposes, the property would maintain the appearance of a family house. In this respect, the change of use would have no planning consequence.

Residential amenity

As a Class C3 dwelling house, the property could be occupied by a large family with several children, or an extended family containing more than the typical number of adults. For a dwelling that currently has 6 bedrooms, the potential family occupancy could reasonably be expected to be 6-8 persons.

This occupancy would be likely to generate a significant level of comings and goings at various times.

In terms of the proposed use, the occupancy would be less than might be expected for a dwelling house of this size. Each child would occupy an individual bedroom with no shared bedrooms. Since care is offered to children only up to the age of 17, the resident children would not be car drivers.

Staff arriving at and leaving the property would be no more intrusive than the comings and goings of resident adults and their visitors to a Class C3 dwelling house.

The curtilage of the property would be retained as a garden to provide outdoor play and relaxation space for the resident children. The children would not suffer from mental or physical disability and their use of the garden would be no different than that of a typical

family. In reality there are likely to be fewer children resident at the care home than in a family house of this size.

The proposal would therefore have no significant impact on the amenity of neighbouring residents as compared with family occupancy of the property.

In terms of the amenity of the future occupiers of the property, it is most beneficial for children in these circumstances to be provided with amenity space and a living environment away from urban areas. Wiseacre would provide the ideal environment and location for this type of use, being also accessible to nearby local facilities within Desford.

Highways

As discussed above, for a dwelling of this size it is quite likely that more than 2 car drivers could be in residence. The adopted car parking requirement for a dwelling of more than 4 bedrooms is 3 curtilage car parking spaces.

The local plan makes no reference to any parking requirement for children's care homes. Parking requirements for Class C2 uses are sub-divided into nursing homes or residential homes for the elderly with communal facilities.

On the basis of the requirements stated in the Supplementary Planning Guidance, 3 curtilage parking spaces should be provided for this use. This is on the basis of the guideline of 1 space per 3 bedrooms being a maximum, as advised by PPG13.

Existing parking provision within the site exceeds the requirement for both the Class C3 and Class C2 uses.

The proposed C2 use would result in no intensification of use of the property and there is no reason to suppose that the volume of traffic movements to and from the property should be any greater with the proposed use than with single family occupancy of the property.

The proposal therefore has no significant implication in terms of highway issues.

Economy

It is anticipated that as far as possible care workers employed at the premises would be sourced from the local community. The proposed development would therefore benefit the local economy by providing new employment opportunities.

PPS7

The Hinckley & Bosworth Local Plan, pre-dates the release of PPS7, and the PPS7 criteria relating to the re-use of rural buildings are not therefore reflected in the local plan. The local plan does however include at Policy NE5, most of the criteria identified in PPS7. Within this letter, the criteria identified in PPS7 are addressed, and there is no conflict with the thrust of the policy or the guidance to local authorities in terms of what development plan policy should take into account.

Local Plan Policy

The change of use of rural buildings is allowed by Policy NE5 subject to the four criteria summarised in Section 5 of this letter. The proposal would have no adverse effect on landscape character and would be in keeping with its surroundings. Existing landscaping within the site would be retained and there would be no highways implications. The proposal would therefore accord with Policy NE5.

The criteria identified in Policy CF8 are addressed below:

- There would be no change to the character of the surrounding area as discussed above; there would be no significant impact on the occupiers of nearby properties.
- The premises are of an ideal size to provide the required care within the community which benefits the children concerned, rather than larger institutional care.
- The existing generous gardens are of more than adequate size for the proposed use.
- Desford is only 1.2 miles away and is accessible by cycle and walking for older children and staff. The site is on a bus route (services 152 and 153).
- The proposal does not require specific adaptation with the elderly or infirm, however there are living, sleeping and washing facilities on the ground floor within the building.

The proposed development therefore accords with relevant local plan policy.

Supplementary Planning Guidance

Most of the relevant requirements of the SPG have been discussed above as part of other policy considerations. Much of the guidance is not applicable to the proposed use as a children's care home. The property is detached and would provide the appropriate amenity space, car parking and living environment, as identified in the SPG.

8. Summary

The proposed development would provide accommodation for children in need of specialist accommodation and who for a variety of reasons cannot be cared for by their parents. The proposal has been considered against relevant planning policy and the following conclusions have been reached:

- The proposal is not materially different in planning terms to the lawful use of the property as a Class C3 dwelling house.
- The appearance and use of the property would be akin to a Class C3 dwelling house.
- There would be no harm or impact on the character of the countryside.
- There would be no harm or impact on the amenity of neighbouring residents.
- There would be no implication in terms of highways or car parking issues.
- There would be economic benefits to the local community in terms of job opportunities.
- The property would provide appropriate living conditions for future residents.

The proposal accords with national planning guidance, development plan policy and supplementary planning guidance. There are no material considerations that indicate that the proposal should be determined otherwise than in accordance with the Development Plan.

Permission should therefore be granted in accordance with s.38 (6) of the Planning and Compulsory Purchase Act 2004.

Should you wish to discuss the application further, or if you require any additional information, please do not hesitate to contact me.

Yours faithfully
EMERY PLANNING PARTNERSHIP LTD

Jill Naylor BA (Hons) BPl MRTPI
Senior Consultant

Enc: application

Copy to: Client