EP
Planning Partnership

4 South Park Court
Hobson Street
Macclesfield
Cheshire SK11 8BS

T: 01625 433881
F: 01625 511457
E: info@epp-planning.com
W: www.epp-planning.co.uk

07/01374/CU.

Our Ref: L2-7468-PB-mh

20 November 2007

DEVELOPMENT SERVICES
21 NOV 2007
RECEIVED

Hinckley & Bosworth Borough Council
Development Control
Council Offices
Argents Mead
Hinckley
Leicestershire
LE10 1BZ

Dear Sir/Madam

RE: APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR A PROPOSED USE OR DEVELOPMENT TO CERTIFY THAT THE USE OF A DWELLING FOR THE CARE OF 3 CHILDREN WITH 2 NON-RESIDENT STAFF DOES NOT INVOLVE A MATERIAL CHANGE OF USE FROM C3 AT WISEACRES, LEICESTER LANE, DESFORD, LEICESTERSHIRE LE9 9JJ.

Please find attached an application for a certificate of lawfulness for the proposed use as described above.

Attached to this application are the following documents in support.

- EPP1 – Application forms;
- EPP2 – Location plan /site plan;
- EPP3 – Aerial photograph of the site;
- EPP4 – Photographs of site;
- EPP5 – Existing floor plans;
- EPP6 – Barristers opinion prepared by Mr J Barrett of Kings Chambers, Manchester; and
- EPP7 – Case law: North Devon District Council and the First Secretary of State (Queens Bench Division, 30th January 2003) – [2003] J.P.L.1191;
- A cheque for £135.00 is for the application fee.

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

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. The site

Wiseacres ("the site") is a dwelling comprising the following accommodation:-

- 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.

It is large enough to accommodate at least 6 people. The dwelling 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 works proposed would retain the living accommodation of a 'normal' dwelling. No works to the external appearance are proposed. None of the works proposed would 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 principle 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.

At all times, 2 carers would be on the premises when the children are in residence. The carers on site would comprise a team leader ("TL") and a residential care worker ("RCW"). In addition, at times of introducing a new child to the premises, or on other exceptional circumstances, a third carer may be on site in the capacity as a visitor.

The TLs and RCWs would work on a shift basis with a half hour overlap allowing the new RCW or TL to be briefed on any issues that may have arisen from the previous shift. The changes of shift would be staggered. A team of up to 12 adult care workers

would work shifts, however, only 2 of these carers would be working on site at one time, albeit having regard to the above situations.

The RCW on night duty would be awake while the TL and the children sleep, if any matters arise, such as a problem with one of the children, the TL is able to assist. The night shift would also allow the RCW to attend to domestic chores, such as ironing and tidying up, but no vacuuming. The RCWs would not sleep at the site, however, the TL could work either a 12 or 24 hour shift and so therefore may need to sleep at the premises; similar to the circumstances of a hospital doctor when on call. There would of course be flexibility built into the shift pattern in cases of emergencies or sickness.

4. History of the site

When the property was purchased by KCC it had been used as a dwelling. The property has been extended in the past, however, there are no conditions attached to the former consent that prohibit its use for the care of children.

5. Planning policy and legislation

We rely upon the definition of Class C3 of the Town & Country Planning (Use Classes) Order, which is:

> *"Use as a dwelling house (whether or not as a sole or main residence) –*
>
> *a) by a single person or by people living together as family; or*
>
> *b) by not more than 6 residents living together as a single household (including household where care is provided for residents)."*(our emphasis)

Class C2 relates to accommodation for people requiring personal care.

6. Relevant Case Law

We attach at Appendix EPP6, 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 scheme 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 EPP7) 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."

Therefore, with regard to the North Devon case and the opinion; the evidence submitted clearly demonstrates that the use of the property for the care of 3 children, by 2 carers, would not give rise to land use changes that could be regarded as constituting a material change of use. Therefore, planning permission is not required.

Summary

Having regard to the North Devon case and the opinion submitted, the use of a moderate dwelling house with five plus bedrooms for the care of 3 children by 2 non-resident care staff is unlikely to have land use consequence that could lead one to conclude that a material change of use would occur. Accordingly, the use of premises proposed would not result in a material change of use.

Therefore in accordance with Section 192(1), and by virtue of case law presented in North Devon District Council -v- the First Secretary of State [2002] JPL1191; a material change of use would not occur for the use of the premises for the care of up to 3 children by 2 non-resident staff.

In considering applications for certificates of lawfulness, the Secretary of State advises local planning authorities, in Circular 10/97, that:-

a) the relevant test is the balance of probability and if they have no evidence of their own to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a Certificate "on the balance of probability";

b) the application should be determined solely on matters of fact and law, planning merits of the operation, use or activity, are not relevant to the consideration for purely legal issues which are involved in determining such an application.

We conclude that in accordance with the said statutory framework, a certificate of lawfulness should be issued for the proposed use of the property.

Should you wish to discuss this application further, please do not hesitate to contact the writer.

Yours faithfully
EMERY PLANNING PARTNERSHIP

pp Jane Lewis

Paul S Bottomley BA (Hons) MA MRTPI
Senior Consultant

Enc.

Cc. Client