

Planning Statement

For Keys Group Ltd | 25-088

Certificate of Lawfulness of Proposed Use to confirm that the use of the property as a residential care home (Class C2) for up to 3 children would be lawful - 68 Leicester Road, Hinckley, LE10 1LT

Project: 25-088
Site Address: 68 Leicester Road, Hinckley, LE10 1LT
Client: Keys Group Ltd
Date: 24 February 2025
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Contents

1.	Introduction	1
2.	Context	2
3.	The application	4
4.	Legislative and procedural context	6
5.	Planning Considerations	10
6.	Summary	18

Appendices

- EP1.** Barrister’s opinion
- EP2.** Judgment in North Devon District Council and the First Secretary of State [2003] JPL 1191
- EP3.** Briar Cottage, Wrexham Road, Bickerton, Malpas, Cheshire appeal decision (ref: APP/K0615/X/05/2004825)
- EP4.** Ty Rhos Bach, Hel Senni, Brecon, Powys appeal decision (ref: APP/P9502/X/13/2205394)
- EP5.** 15 Crownhill Road, Burbage, Hinckley (ref: APP/K2420/X/11/2155849 (dated 07/11/2011)
- EP6.** 3 Sandpiper Lane, Mickleover, Derby (ref: APP/F1040/X/21/3283867)
- EP7.** 9 Whitburn Road, London (ref: APP/C5690/X/22/3299351)
- EP8.** 29 Cedar Avenue, Kirby in Ashfield (ref: APP/W3005/X/24/3338913)
- EP9.** Decision notice and officer report - 56 Applebees Meadow, Hinckley.
- EP10.** Decision notice and officer report - 45 Jackson Road, Bagworth, Coalville



1. Introduction

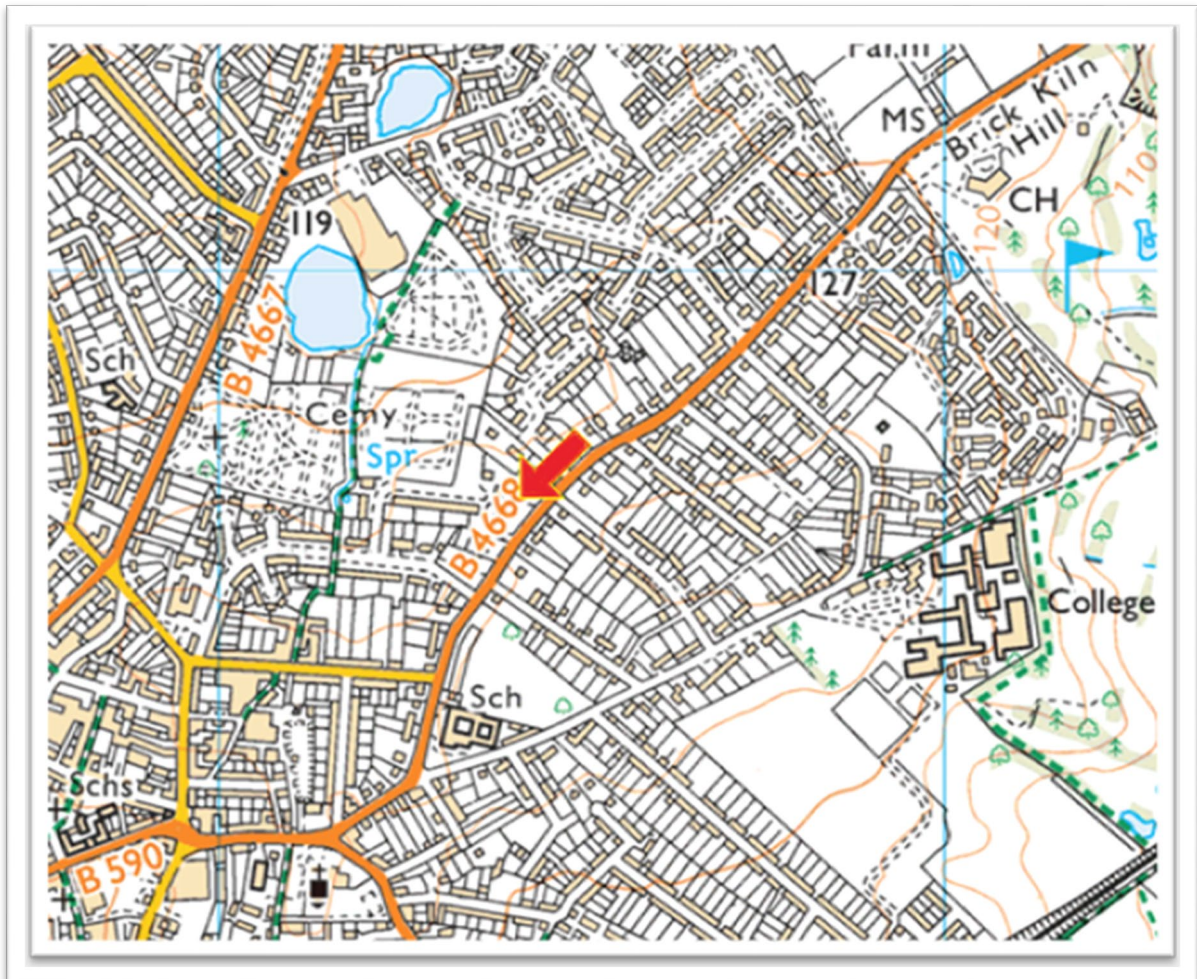
- 1.1 This statement supports an application made under Section 192 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD).
- 1.2 The application seeks confirmation that the proposed use of 68 Leicester Road as a small-scale residential home for up to 3 young people between the ages of 7 and 17 years (Class C2), with support from 2 to 3 care staff would not be materially different to the property's current lawful use as a dwellinghouse, (Class C3).
- 1.3 The applicant is working closely with Leicestershire Council who have requested this provision. The applicant is therefore working with the authority to keep looked after children within the local area.
- 1.4 This statement demonstrates that, whilst the proposed use does not fall within the same Use Class as the property's existing lawful use, there is no material difference in planning terms between the two uses. Therefore, planning permission would not be required for the proposed use, as no material change of use (and consequently no development) would occur.
- 1.5 In addition, the Government is committed to supporting homes for children as set out in the Ministerial Statement titled "*Planning for accommodation for looked after children*", published by The Minister of State for Housing and Planning on 23 May 2023.



2. Context

Site location and description

- 2.1 The application site lies within the residential area of Hinckley, to the north-east of Burbage. Nuneaton lies to the west of Hinckley and the city of Leicester lies to the east, accessible from the M69 or by train.
- 2.2 The application site lies within the settlement boundary of Hinckley and within walking distance of a range of shops and services including schools, a college, a library, a hospital and, bus and train stations, all located within the town centre.
- 2.3 The application site is shown outlined in red on the submitted location plan and is indicated on the extract from Street Map below.



Extract from Street Map



- 2.4 The application site comprises an area of some 0.06 ha in size. The property is a large, detached 4 bed property set within a large plot with a detached garage and off-road parking at the front.
- 2.5 There is ample amenity space including a large, fully enclosed rear garden with mature landscaping and fencing on the site boundaries.

Relevant planning history

- 2.6 A search of Hinckley & Bosworth Council's online planning application records has identified the following:
- Application ref: 10/00821/FUL – extension and alterations to dwelling – Granted 15/12/2010.
 - Application ref: 07/001012/FUL – erection of one dwelling (on land adjacent the property) – Granted 26/10/2007.
 - Application ref: 06/01382/OUT – Erection of one bungalow and replacement garage – withdrawn (land adjacent the property) 04/04/2007.
- 2.7 In addition, council tax records indicate that the property is in residential use with the current tax band taking effect from 1993.
- 2.8 From the above, there is no evidence to suggest that the property has been used for any other purpose other than as residential.



3. The application

- 3.1 The applicant, Keys Group Limited has an established relationship with Leicestershire County Council and its key stakeholders in terms of residential placements. As such, Keys currently care and support a significant number of children and young people within the area.
- 3.2 This proposal would complement Keys' existing portfolio, showing a continued, sustainable commitment and partnership towards support for children.
- 3.3 This application seeks formal confirmation under Section 192 of the Town and Country Planning Act 1990 (as amended) that the proposed use of 68 Leicester Road as a small-scale residential care home for 3 children aged between 7 and 17 years would not require planning permission.
- 3.4 The existing property is a large, detached dwelling and has the layout, facilities, services, and character of a dwellinghouse. The proposed use would not change this. The external appearance of the building would not change and no internal changes would be necessary.
- 3.5 The home would aim to provide 3 children with an environment as close as possible to that of a traditional family home.
- 3.6 The use of the property would not fall within Class C3 as there would not be any adults living at the property as their main place of residence. Care workers would work on a shift basis and, as the property would not be their home, it would not be occupied by a "single household". The proposed use would therefore, whilst not being materially different to a Class C3 use, fall within Class C2.
- 3.7 Staff would work on a shift basis to provide 24/7 cover. Shift changes normally take place between 10am and 12 midday with staff working a 24 hour shift on a staggered basis. The purpose of staggering shift changes is to minimise the impact of shift changes on the young residents and to reduce vehicle movements to and from the site.
- 3.8 Not all staff would always be present on the site. During the day there would be 2 or 3 carers present. A registered manager would provide oversight to meet the needs of the children and the staff team. During the night 2 care staff would be present to provide care and support for children should they wake during the night.
- 3.9 The preparation of meals would be principally undertaken by the carers; however, the children would be encouraged to assist. Both carers and children would eat their meals together at the dining table and children would socialise together.



- 3.10 In addition to carers, there may be short and infrequent visits from social workers and other support professionals. Family visits are rare but where appropriate, the visits would be pre-planned in accordance with the child's contact arrangements and would take place off-site. The children would attend a local school or a school run by the applicant.
- 3.11 Vehicles trips for day-to-day living activities such as shopping, school runs and social outings for the children would be undertaken by the carers and, as with any family dwelling, shopping can also be ordered online for delivery.
- 3.12 The application site has sufficient off-road parking with space for at least 5 cars and outdoor amenity space for the proposed use. Typically, there would be approximately 4 cars on the site during the day which can be easily accommodated on site and 2 or 3 cars overnight.



4. Legislative and procedural context

Town and Country Planning Act 1990 (as amended)

- 4.1 Part III of the Town and Country Planning Act 1990 (as amended) (hereafter referred to as “the 1990 Act”) relates to Control over Development. For the purposes of the 1990 Act, “development” is defined in Section 55(1) and includes operational development or “*the making of any material change in use of any buildings or other land*” (emphasis added).
- 4.2 The early court decision of *East Barnet UDC v British Transport Commission 1962* set out that not every change is material as “material” means material for planning purposes. In *Palsar v Ginling 1948* it states that for a material change of use to have occurred, the new activity must be “substantially different” from that that preceded it (our emphasis).
- 4.3 Section 192 of the 1990 Act provides that an application may be made to the local planning authority (LPA) to ascertain whether any proposed use of land or buildings would be lawful. If such an application contains information to satisfy the LPA that the proposed use would be lawful if begun at the time of the application, it shall issue a certificate to that effect.

Town and Country Planning (Use Classes) Order 1987 (as amended)

- 4.4 The Town and Country Planning (Use Classes) Order 1987 (as amended) (hereafter referred to as the “Use Classes Order”) classifies land uses and identifies certain uses which do not fall within any of the specified classes.
- 4.5 The classes of the Order relevant to this application are Class C2 (residential institutions) and Class C3 (dwellinghouses).
- 4.6 Class C3 reads as follows:

“Class C3. Dwellinghouses

Use as a dwellinghouse (whether as a sole residence) by:

- (a) a single person or by people to be regarded as forming a single household.
- (b) no 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).”



4.7 The Use Classes Order thus differentiates between dwellinghouses where residents live together in different circumstances as a single household, including small houses in multiple occupation (which are not included in Class C4) and specifically, includes separate reference to a household of 6 or fewer people where care is provided for residents (Class C3b). Whilst the Order identifies three different types of dwellinghouse use, the subdivisions remain within the overall Class C3.

4.8 Consequently, planning permission is not required for a change between any of the subdivisions of the Class.

4.9 Class C2 (residential institutions) is defined as:

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

4.10 It should be noted that Classes C3 and C2 are not affected by the changes introduced by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

National Planning Practice Guidance

4.11 Of relevance to this application, is the effect that planning can make to create healthier communities, not just healthier lifestyles but by providing wider healthcare. Para 001 Reference ID: 53-001-20190722 states:

“..... Planning and health need to be considered together in two ways: in terms of creating environments that support and encourage healthy lifestyles, and in terms of identifying and securing the facilities needed for primary, secondary and tertiary care, and the wider health and care system (considering the changing needs of the population).”

4.12 At para 003 Reference ID:53-003-20191101, it states:

“A healthy place is one which supports and promotes healthy behaviours and environments and a reduction in health inequalities for people of all ages. It will provide the community with opportunities to improve their physical and mental health, and support community engagement and wellbeing.

It is a place which is inclusive and promotes social interaction.

It meets the needs of children and young people to grow and develop, as well as being adaptable to the needs of an increasingly elderly population and those with dementia and other sensory or mobility impairments.”

4.13 Guidance on lawful development certificates is provided at para 001 (reference ID: 17c-001-20140306). This states that a local planning authority can grant a certificate confirming that:



“..b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.”

- 4.14 It goes on to say that if a local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate as set out in the Town and Country Planning Act 1990.
- 4.15 Paragraph 005 (Ref ID: 17c-005-20140306) of Planning Practice Guidance states that an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. However, the paragraph goes on to say that this does not preclude another application being submitted later if more information can be produced.
- 4.16 Paragraph 009 states 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 application process.
- 4.17 In terms of the interpretation of Use Classes, Planning Practice Guidance (PPG) provides little guidance.
- 4.18 There is no guidance on the use of a dwelling as a care home of any kind. Paragraph ref: 13-011-20410306 (issued 06-03-2014), refers to the circumstances when a change of use would occur and states:

“A change of use of land or buildings requires planning permission if it constitutes a material change of use. 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.”

Circular 05/2010 (withdrawn)

- 4.19 Circular 05/2010, although withdrawn on 7th March 2014, provides useful guidance on the interpretation of the Use Classes Order. It has not been replaced by more recent detailed guidance (except as above). Some of its content remains useful in interpreting the scope of the use classes. We consider that the following paragraphs are of assistance in this case.
- 4.20 In respect of Class C3, the Circular noted at paragraph 17 that the term “single household” is not defined in the legislation (and this remains the case).
- 4.21 Paragraph 19 notes that the limit on the number of people in a household for the purposes of Class C3(b) is no more than six. However, paragraph 34 emphasises that although the control limit of 6 persons defined the scope of the C3 dwelling house Class, this did not imply that any excess of that number must



constitute a breach of planning control. A material change of use will only occur where the total number has increased to the point where it can be said that the use has intensified to become different in character, or the residents no longer constitute a single household.

4.22 Paragraphs 20 and 21 noted that supported housing schemes such as for people with disabilities or mental health problems continued to fall within Class C3(b), but that in small residential care homes or nursing homes, staff and residents would probably not live as a single household and the use would therefore fall into the Class C2 Use Class regardless of the size of the home.

4.23 Paragraphs 23 to 25 note that the term “dwelling house” is not defined within this part of the Use Classes Order. Whether a particular building is a dwelling house would therefore depend on the facts of the case. The common feature of all premises that could be described as dwelling houses is that they are buildings that afford the facilities required for day-to-day private domestic existence. The criteria for determining whether premises could be classified within Class C3 include both the manner of the use and the physical condition of the premises. Two specific characteristics of a Class C3 dwellinghouse are identified in paragraph 25, where a building is:

- a single, self-contained unit of occupation which can be regarded as being a separate “planning unit” distinct from any other part of the building containing them; and
- designed or adapted for residential purposes and containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house.”

Ministerial Statement – May 2023

4.24 The Government recognises the need for accommodation for looked after children, as set out in the Ministerial Statement titled “*Planning for accommodation for looked after children*” published by The Minister of State for Housing and Planning on 23 May 2023. It is fully supportive of children’s homes.

4.25 In terms of the application procedure the Statement confirms the following:

“Planning permission will not be required in all cases of development of children’s homes, including for changes of use from dwelling houses 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. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate.” (our emphasis)



5. Planning Considerations

- 5.1 To set out the context for consideration of this application, we have attached at Appendices EP1 to EP5 the following relevant documents:
- barrister’s opinion prepared by Mr J Barrett of Kings Chambers, Manchester (**EP1**);
 - case law: *North Devon District Council and the First Secretary of State (Queen’s Bench Division, 30th January 2003)* [2003] JPL 1191 (**EP2**); and
 - appeal decisions: Briar Cottage, Malpas, Cheshire (**EP3**), Ty Rhos Bach, Brecon (**EP4**), 15 Crownhill Road, Burbage, Hinckley (**EP5**), 3 Sandpiper Lane, Mickleover, Derby (**EP6**), 9 Whitburn Road, London (**EP7**) and 29 Cedar Avenue, Kirby in Ashfield (**EP8**).
- 5.2 The above documents provide very useful indicators for the determination of this application. In addition, the specific circumstances of this case are a primary consideration.
- 5.3 In terms of an assessment of whether No 68 Leicester Road could properly be regarded as a dwellinghouse, the physical appearance and layout of the premises accord with the characteristics outlined in paragraphs 24 and 25 of the former Circular 05/2010. In addition, the property has been used as a single dwelling for many years. The council tax records indicate that the property has been under the current tax band since 1993.
- 5.4 The property would retain all the elements for day-to-day private domestic existence when in use as a care home. In terms of its physical condition, the premises retains all the characteristics of a dwellinghouse.
- 5.5 The classification of premises as Class C3 should include the manner of its use as well as its physical condition. In terms of the occupation of a dwelling house in Class C3(a), a household may comprise adults and children living together, with the children being cared for by either their parents or foster parents.
- 5.6 In the case of 68 Leicester Road, the children would be resident in the dwelling house and would require all the facilities for day-to-day living. The only difference is that the carers would not be part of their family and would not be resident at the premises. We acknowledge, as determined in the attached judgment in North Devon that, as only the children would be resident at the property, they would not constitute a “household” because even with assistance they would not be legally capable of taking on the responsibilities arising from living as a household.
- 5.7 A property must be occupied by a single household for it to be classified as Class C3. We therefore acknowledge that the proposed use does not fall within Class C3 but falls within Class C2. This classification has been accepted on appeal by many Inspectors and is now accepted by the Government in the publication of their Ministerial Statement, as referred to in paragraphs 4.24 and 4.25.



- 5.8 In an appeal for 15 Crownhill Road, Burbage, Hinckley (appeal ref: APP/K2420/X/11/2155849) the Inspector granted approval for an LDC for the use of a dwelling as a residential care home. The Inspector concluded that the use would fall within Class C2 and relied on the North Devon judgment as providing the overriding authority on the matter. The Inspector also assessed the particulars of the case in terms of whether a change from Class C3 to Class C2 was material or not. Again, the North Devon judgment provided the basis for the inspector's assessment that the change would not be material. A copy of the appeal decision is attached at **EP5**.
- 5.9 For 3 Sandpiper Lane, Mickleover, Derby (ref: APP/F1040/X/21/3283867) a Certificate of Lawful Use was submitted by Apsley Care for a residential care home for 2 children with up to 6 support staff (where 3 staff would be working at any one time) and granted in 2022. Although the Certificate was submitted on the basis of a proposed change of use from C3a) to C3b), the Inspector correctly asserted that,
- “ A children's home run on shift patterns by carers could not be considered to fall within Class C3(a) because it would not be occupation of a dwelling house by a single person or people living together as a family. Class C3(b) refers to “use as a dwelling house by not more than six residents living together as a single household, (including a household where care is provided for residents).” If No 3 was to be run on that basis, with children being looked after by a permanent occupant or occupants of the dwelling, it would not need planning permission. Where support staff come and go on shifts, the use cannot be considered to fall within Class C3(b). Use of No 3 as a children's home would fall within Class C2 of the Order (Residential Institutions).
- 5.10 The Inspector then considered whether or not the proposed activity would be materially different to the existing lawful C3 use. The Inspector concluded that the house and curtilage would retain the look and character of neighbouring houses and the use and associated activity, including comings and goings of care workers would be unlikely to cause a greater level of disturbance or amenity harm than would be expected by a C3 use of a large family home. On this basis the decision found that no material change of use would occur. A copy of the appeal decision is attached at Appendix **EP6**.
- 5.11 Another example of an LDC that was granted for the use of a dwelling as a residential care home for up to 3 children with 2 full-time resident carers working on a rota basis and sleeping overnight, is set out in the appeal decision for 9 Whitburn Road, London (appeal ref: APP/C5690/X/22/3299351), dated 27 January 2023. Again, the Inspector concluded that the use would fall within Class C2 because the property was not the carers' primary residence.
- 5.12 A copy of the appeal decision is attached at appendix **EP7**.
- 5.13 In the case of Whitburn Road, the staffing numbers included 6 carers in total, operating on a rota basis. A manager working as a third carer and would visit during the working day.



- 5.14 The Inspector correctly set out the approach to be taken in the assessment of a change of use from C3 to C2. This includes the starting point that it is a question of fact and degree in each case as to whether a change of use amounts to a material change of use. Secondly, it is for the appellant to prove '*on the balance of probabilities*' that there is no material difference between the current and proposed uses and therefore no development that would require planning permission.
- 5.15 The Inspector concluded the following:
- “Whilst there will be some additional comings and goings associated with the use as a residential care home, there is no evidence before me to dispute the appellants case that the use will not give rise to a greater level of disturbance than could be generated by the lawful use as a C3 dwellinghouse. The additional comings and goings identified by the appellant and Council are at a sufficiently low level to remain within the parameters of what could be usually expected of a family home and not therefore materially different so as to change the character of the property.”
- 5.16 The Inspector recognized that, other than at shift changeovers, there would be no more than 3 carers at the premises at any one time.
- 5.17 The outcome of the *North Devon judgment*, and as applied by subsequent Planning Inspectors in the above-listed appeal decision as well as many others, is that despite there being a change between Class C3 and Class C2; that change was not material and planning permission was therefore not required in the context of Section 55(1) of the 1990 Act.
- 5.18 Mr Justice Collins made it clear in *North Devon* that his judgment was based on the individual facts of the case, and that whether a change is material, is a matter of fact and degree. The Inspector in the above appeal case also notes that each case is based on its own facts.
- 5.19 Therefore, in respect of 68 Leicester Road, it must be determined whether the change of use from a single, family dwelling to a small care home for children operating in the same manner as a traditional family setting would result in a material change, based on the specific facts of the case.
- 5.20 Notwithstanding the changes in national planning policy context since the North Devon Judgment, there has been no material change that would suggest the Judgment is no longer applicable. On this point it is notable too that despite the wide-ranging changes to the Use Classes Order that have been introduced, there has been no changes around the respective use classes relevant here and certainly no additional use class or clarification around this particular use which is now common within the childcare environment.
- 5.21 However, it must be noted that the recent Ministerial Statement clearly supports residential care homes for young people and sets out that an application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful.



Until further guidance is issued, the above-listed appeal decisions give an indication of some of the factors that Inspectors have considered when assessing whether a material change of use would occur. These include:

- the nature of the use;
- physical changes to the building; and
- vehicle trips to and from the site.

5.22 We look at the characteristics of the proposed use below, referring to each of these factors.

The nature of the use

- 5.23 The aim of the home is to provide an environment as close as possible to a traditional family home for looked after children who are in need of support and care.
- 5.24 With the exception of care staff not being resident at the home (which, as described in this statement, would not have any materially different planning impacts), it would operate in a very similar way to a Class C3 dwellinghouse, as described in the section of the statement titled “The application”.
- 5.25 The property has 4 large bedrooms and ample accommodation. A Class C3 use of the property as a dwellinghouse could therefore be expected to be occupied by a family comprising 3 or more children and 2 adults.
- 5.26 The children residing at the proposed care home would likely be subject to greater levels of supervision than children in a typical family home. For example, with the proposed use, it is unlikely that children would be left unsupervised at any point, whereas in a “traditional” family home, older teenagers may be left unsupervised from time to time. It is therefore unlikely that any noise or disturbance would be materially different than could be expected if the dwelling were occupied by a family with potentially up to 4 children.
- 5.27 In the Ty Rhos Bach and Briar Cottage appeals, the Inspectors considered whether there were any inherent characteristics of the young people likely to occupy the proposed care homes that would result in materially different impacts in relation to noise and disturbance, and fear of crime.
- 5.28 In the Briar Cottage appeal, one of the reasons for refusal advanced by the LPA was that the concentration of occupants with behavioural problems would have a materially different impact on the surrounding community through increased fear of crime.



- 5.29 The Inspector refers in his decision to the Judgment in Smith v First Secretary of State & Mid-Bedfordshire District Council [2006] JPL 386. That Judgment confirms that the basis of fear of crime must be from the character of the use and not just from the behaviour of some individual occupants. As confirmed in the Briar Cottage appeal decision, there is no evidence that young people taken into care intrinsically exhibit differing patterns of behaviour to children in a “traditional” family home.
- 5.30 It should be stressed that the children in this case will have been taken into care for a variety of reasons, but mainly because they are unable to live with their natural parents and are simply not able to live by themselves due to their age, there is not necessarily any behavioural reason why they may be in care.
- 5.31 In summary, the nature of the use is such that no planning impacts would arise from the use of the dwelling as a small residential care home for 3 children that would be materially different to the occupation of the property as a large dwellinghouse, that could be occupied by 3 or more children.

Physical changes to the building

- 5.32 No alterations are proposed to the existing dwelling. There are sufficient bedrooms within the property to accommodate 3 children and, ample space for staff as it is usual practice for two members of staff to sleep overnight.

Vehicle trips to and from the site

- 5.33 The existing detached dwelling can accommodate a large family, for example 4 or more adult house-sharers living as a single household in accordance with Class C3; or perhaps a family of two adults and 3 or 4 children of varying ages. The property has 4 bedrooms and generous living accommodation so this level of occupancy is a realistic expectation. As with many modern households, if it was an all-adult household, for example if the children were still living at home, it could be expected that many, if not all house-sharers have their own private car, and use it daily for commuting, shopping, social or other journeys.
- 5.34 If a family with 4 children were resident, it could be the case that there would be 6 cars if all of the offspring were of driving age and each owned a car including their parents’ cars. Again, these vehicles could be used daily for the above-mentioned journeys, as well as the school/college run. A typical household is likely to generate several such trips a day. There may also be numerous visitors to the site if it remains in Class C3 use, many of whom may travel by car.
- 5.35 There would be little material difference with the number of vehicle trips that could be associated with the proposed use, in fact the number of cars on the site would be less than the maximum suggested above. In this case, the children would not be car drivers. Only the carers would have access to a car. Children



would be transported to and from school by carers in one car. Unlike a Class C3 use, it is likely that there would be occasional vehicle trips associated with social visitors to the site.

- 5.36 Whilst recognising that each case must be treated on its own merits, some useful comments are provided by an Inspector in the appeal for 2 Erw Las, Llwynhendy, Llanelli, Wales in December 2020. The Inspector's comments on vehicle trips and movements at paragraph 6 of the decision state:

"The proposal would provide residential care for three young people with 4 staff members. Two staff would always be present at the property with a staff changeover taking place every 12 hours. Given that this substantial building could be accommodated by a large family the occupancy level of the proposal would not materially change the volume or flow of traffic to or from the site.....there is no evidence that general activity from a small-scale children's residential home would be significantly in excess of that of a family household. I concur that as opposed to a C3 use there would be a greater propensity for visits from various service providers, however, families can also generate delivery and service traffic and are not exempt from visits from care professionals or emergency services." (Our emphasis).

- 5.37 In the appeal against the refusal of an LDC at 15 Crownhill Road, Burbage, referred to earlier in this statement, the Inspector noted that the number of staff was not materially different from what might be expected of a large family house where teenagers/young adults would live together and, each use a car to get to work or college or for socialising. The Inspector stated:

"Transport associated with school and weekend outings would not be an untypical occurrence in a family house. Up to two vehicles departing from the property late at night would not, on its own, be a sufficient basis for determining that a materially different character of use would be taking place."

- 5.38 In the Briar Cottage appeal decision (see paragraph's 8 to 9) and the above decisions, given the size of the existing dwelling and the number of vehicle trips that could be generated by its Class C3 use, the number of vehicular trips associated with the proposed use, would not be materially different and would not have a material impact on the character of the building / site.

- 5.39 A similar conclusion was also reached in the Ty Rhos Bach appeal decision (paragraphs 21 and 22).

- 5.40 As a recent example, an appeal against the refusal of Ashfield District Council to grant a Certificate application for the change of use of an existing dwelling to a children's care home for 3 children at 29 Cedar Avenue, Kirby in Ashfield is relevant. The Inspector concluded as follows:

"The use of the house as a large family home generated a variety of traffic movements and a substantial demand for parking facilities. I do not envisage that its use as a children's care home for three children will make a significant difference to the effect this use had on the level of activity, trip generation and overall comings and goings,



particularly as the children will either be too young to drive or be unlikely to have the use of a car if they have reached driving age. The role of carers would not be significantly different to that of parents looking after children in a family home.”

- 5.41 The Inspector concluded that, as a matter of fact and degree, there would not be a material change of use and the appeal was allowed on 3 December 2024. A copy of the appeal decision is attached at Appendix **EP8**.

Relevant example cases

- 5.42 The assessment of whether the proposed Class C2 care home would be materially different to the existing Class C3 dwellinghouse use of the property must be made on the facts each case. However, it is useful to refer to some examples of similar CLOPUD applications that have been granted for a residential home for children, by Hinckley and Bosworth Council.
- 5.43 A Certificate of Proposed Lawful Use (ref: 23/01198/CLP) for 56 Applebees Meadow, Hinckley proposed the use of a terrace property from a Class C3a) dwelling to a Class C3b) dwelling for 2 children, aged between 8 and 18 with up to 3 staff working in the day and 2 staff working overnight. A maximum of 6 people would occupy the property at any one time (3 carers, 2 children and 1 manager) with a minimum of 4 people (2 carers and 2 children).
- 5.44 In the proposal for 68 Leicester Road, the use would fall within Class C2, not Class C3b) only because care staff would work on a shift basis and would not live at the property as their main place of residence however the total numbers of staff would be less than the maximum number of staff referred to in the above example. The above Certificate was granted on the basis that the proposed use would not be materially different to the existing use. A copy of the officer report and decision notice is attached at Appendix **EP9**. The decision was granted on 9 February 2024. Based on the details provided in this statement, the proposed use would not be materially different to the existing use.
- 5.45 In another example for a Certificate of Proposed Lawful Use at 45 Jackson Road, Bagworth, Coalville, the application proposed the use of the property as a children’s home for up to 3 children between the ages of 9 and 17 with non-resident care staff working on a 48-hour shift. There would be 3 adult carers at the property at any one time. The application varied an earlier proposal by increasing the numbers of staff from 2 to 3. The certificate was granted on 21 April 2015. The decision notice confirms that, whilst a change of use from Class C3 to Class C2 would occur, it would not amount to a material change of use and therefore no development requiring planning permission would be required. A copy of the decision notice and officer report are attached at Appendix **EP10**.



5.46 Notwithstanding the above, our position is very clear that in this case, because of the specific characteristics of the proposed use, it would not be materially different to the current lawful use of the premises.



6. Summary

- 6.1 This statement supports an application under Section 192 of the 1990 Act for a CLOPUD to confirm that there would be no material change of use between the proposed Class C2 residential care home use for up to 3 children between the ages of 7 and 17 years where care is provided by up to two carers, and the property's current lawful use as a Class C3 dwellinghouse.
- 6.2 By virtue of the case law presented in the *North Devon* Judgment, the appeal decisions referred to in this statement and the enclosed Barrister's opinion, the proposed use would not have any land use consequences that would lead to the conclusion that a material change of use would occur. Because there would be no material change of use, the proposed change from a Class C3 use to the specific use proposed (which falls within Class C2) would not be development and, would not therefore require planning permission in the context of Section 55(1) of the 1990 Act.
- 6.3 The applicant is working closely with Leicestershire Council who have requested this provision. The applicant is therefore working with the authority to keep looked after children within the local area.
- 6.4 In addition, the Government's emphasis is clearly that local authorities should support children's homes as set out in the Ministerial Statement of May 2023.
- 6.5 We therefore respectfully request that a CLOPUD is issued to confirm that there would be no material change of use and planning permission would not be required for the specific Class C2 use proposed.







EP1

RE: TOWN AND COUNTRY PLANNING ACT 1990

RE: LAND AT [REDACTED]
OLD TUPTON, CHESTERFIELD

RE: KEYS CHILDCARE LIMITED

OPINION

- 1 I am asked to advise Keys Childcare Limited ("KCC") who are providers of residential care and private education specifically focusing upon children.

Factual Background

- 2 KCC provide care for children in residential properties that are used for the care of children in small groups. Up to four children with care provided by two care workers over 24 hour per day by non-resident staff.
- 3 KCC are seeking guidance on whether a material change of use would occur from C3 to C2 of the Use Classes Order 1987 in respect of a residential property in Chesterfield. However KCC are seeking guidance that can be applied in a more general manner for properties that they are considering acquiring.

All ground floor facilities would be shared. The preparation of meals would be undertaken by the carers and the persons present would eat at the same time. Due to other legal requirements, all bedrooms would be fitted with locks. However the carers would have a key to each room. The carer's room at first floor would comprise a bed, a wardrobe and a desk in order to allow paperwork to be completed. In addition, a small office is anticipated to be provided at ground floor for general paperwork and other associated uses.

- 8 The children would be aged in the region of 7 to 17 years. They would be neither mentally nor physically disabled and would be housed on a permanent basis. The children involved may have been taken into care due to fears as to their physical wellbeing or in the unfortunate position of having no available guardians.
- 9 At all times, two carers would be at the premises with the children. The carers on site would comprise a Team Leader and a Residential Care Worker. Two non-resident staff would be on duty at all times. However the house may be under the supervision of a team of up to 6 or 7 adult carers who operate 8 hour shifts. The shift patterns can be amended to improve the service provided. In addition, at times of introduction of a new child to the premises a third care worker may visit the premises as a visitor. The Team Leader and Residential Care Worker would work on a shift basis with a half hour overlap between the new RCW or TL to be briefed on any

The Proposed Activities

- 4 The subject property [REDACTED] is a residential dwelling (C3). It is the intention to use this property as a children's care home. The premises will be vacated by the owners on completion of the purchase.
- 5 The property currently comprises at ground floor reception room, lounge, kitchen, utility room, ground floor shower room/WC, a family room/bedroom. At first floor it comprises a galleried landing and four further bedrooms, (some en suite) and a family bathroom. Outside the property the dwelling is set within a large site with a double garage and parking for several cars.
- 6 KCC proposes to carry out general works of repair and maintenance together with general alterations to the internal layout that may include the sub-division of a larger bedroom. It is not anticipated that the works would render the building not to benefit from the general facilities associated with a typical residential dwelling. No works to the external appearance (save for general repair and maintenance) are proposed.
- 7 The premises for the care of children would comprise the following accommodation at ground floor: living, dining room, kitchen, utility room and office/study. The first floor accommodation would be altered and would comprise 4 bedrooms for the children, a bedroom for the carer on duty and a bathroom.

new issues that have arisen on the previous shift. The changes of shift would be staggered.

- 10 The RCW 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 carer is able to assist. The night shift would allow the RCW to attend to domestic chores such as ironing and tidying up. No noisy activities such as vacuuming would take place. The RCW 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. The carers would care for the children and cook, and all meals would be taken together in a family environment.

- 11 I am informed that KCC are looking for a number of sites throughout the UK. It is anticipated that they would be used in a similar manner; that is, two carers provided for up to 4 children. It is anticipated that providing the level of care and the requisite accommodation, properties that would be used would be large 5 bedroomed properties with sufficient space at ground floor for a study/office for the carers to use. In addition all such sites would have off-street parking or the use of a double garage so as to discourage parking on the highway.

A Statutory Framework

- 12 Section 55(1) of the Town and Country Planning Act 1990 defines development as including the "making of any material change of use"

subject to a number of exceptions. Section 55(2)(f) excludes from being a material change of use buildings or land used for the purpose of any Class specified in an Order made by the Secretary of State. The relevant Order is the Use Classes Order 1987.

- 13 Within that Order, Classes C2 and C3 are described in the following terms:

"Class C2. Residential Institutions. Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (Dwelling Houses))
..."

A dwelling house is dealt with in Class C3 which is defined as follows:

"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 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)."

- 14 "Care" is defined in paragraph 2 as meaning:

"Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class C2 also includes the personal care of children and medical care and treatment".

- 15 The effect of Section 55(2)(f) is that a change of use from a conventional dwelling house as a family home to use for not more than 6 residents living together as a single household (including a household where care is provided for residents) will not constitute development. The Use Classes Order 1987 was accompanied by a ministerial circular 13/87 when introduced. Paragraph 37 of 13/87 states:

"The new dwelling houses class groups together the use as a dwelling house - whether or not as a sole or main residence - by a single person or any number of persons living together as a family, with use as a dwelling house by no more than 6 people living together as a single household. The key element in the use of the dwelling house for other than family purposes is a concept of a single household. In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class, regardless of the size of the home. The single household concept will provide

more certainty over the planning permission of small group homes which play a major role in the Government's community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community. Local Planning Authorities should include any resident care staff in their calculation of the number of people accommodated. The class includes not only families or people living together under arrangements for providing care and support within the community but also other groups of people such as students, not necessarily related to each other, who choose to live on a communal basis as a single household."

Legal Authorities

- 16 The application of Class C2 and C3 to a situation where occupants of a house are in receipt of full-time care was considered in **North Devon District Council v. First Secretary of State** [2003] JPL 1191. In that case the property in question was to be occupied by two children under the supervision of a team of non-resident adult carers operating shifts so that there were two non-resident staff on duty in the house at all times. Collins J held that that situation did not fall within Class C3. At paragraph 16 of his Judgment he stated:

"It seems to me that the Inspector's approach was, in this respect, correct inasmuch as he was regarding the

household as meaning more than just children. Children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home. Sometimes, of course, one recognises that they are forced to do so, but 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. It seems to me that in the context "household" means more than merely the bodies. You have to consider whether the bodies are capable of being regarded in the true sense as a household. The same would apply to those who suffer, for example, from physical or mental disability and who need care in the community. They, if they are not capable of looking after themselves, would not be regarded as a household, hence the need for the carer, hence the need for that addition to make it a household within the meaning of the relevant class."

17 He continued at paragraph 17:

"One has to have regard to the need that they be living together as a single household. The question then arises whether carers who do not live but who provide, not necessarily through the same person, continuous

24 hour care can be regarded as living together. In my view, the answer to that is "no". consistent with the approach indicated by the Circular, what is required is indeed residential care with the carer living in full-time and looking after those in the premises who would otherwise be unable to live as a household."

- 18 Mr Justice Collins then expressed disagreement with the Judgment of Popplewell J in *R v. Bromley London Borough Council ex parte Sinclair* [1991] 3 PLR 60. That case involved three mentally handicapped persons who lived in a household and were supervised by Social Workers. The use, it was concluded, could properly be determined as Class C3(b) use. In the *Sinclair* case, Popplewell J had concluded that there was not a requirement within the 1987 Order that the staff had to be living together with the residents. Collins J in the *North Devon* case disagreed with that approach. He stated:

"A proper functioning household must exist, and, in the context of a case such as this, that must mean that the children and the carer must reside in the premises. Otherwise, as it seems to me, it clearly falls within Class C2."

- 19 Having concluded on the facts of that case, that the use fell within Class C3 rather than Class C2, Collins J held (on the basis of the

Inspector's findings of fact) that even if it was a Class C2 use, the change of use was not "material" and therefore did not constitute development requiring the grant of planning permission.

- 20 The **North Devon** case has been revisited in **R (on the application of Crawley Borough Council) v. Secretary of State for Transport and the Regions** [2004] EWHC 160 (Admin). This particular case concerned the use of a dwelling house for persons under a mental disability where non-residential care was provided. Richards J in his Judgment at paragraph 29 in referring to the **North Devon** case stated:

"It is not said, for example, by Collins J that the provision of full-time care by non-resident carers necessarily precludes a finding of occupation as a single household. What it does is focus, first, on those who are in occupation and ask whether they themselves do constitute a household. It holds, for reasons set out in the Judgment, that children cannot by themselves be regarded as constituting a household. Whether or not that is right is not something that I need to decide, because that is not this case. This case is not concerned with children, and what is said by Collins J in respect of children does not govern this case."

- 21 He continued at paragraphs 30 and 31:

"The observations he makes at the end of paragraph 16 of his Judgment do indeed appear to go wider, but for my part I would be very reluctant to read them as purporting to lay down a principle that those who suffer from disability and who need care in the community can never by themselves constitute a household, that is to say that the reasoning applied to children necessarily and invariably applies to them too. If the observations are intended to lay down such a principle, they are obiter, I do not need to follow them and I would decline to follow them.

In my judgement the correct position is that in every case the judgement to be made in the application of the criteria in Class C3 depends upon the specific facts of the individual case. There may indeed be cases where, having regard to the nature of the disability suffered and the degree of care required, persons resident in a house cannot sensibly be said to constitute a household. But there will be other cases, and in my judgement this is one of them, where persons resident in a house can sensibly be said to constitute a household notwithstanding that they have some disability and need care. That is so even if the need is for full-time care. I would reject any suggestion that in a case where care is needed for those under a disability Class C3 can apply only if the carers are in residence in the same property as those for whom they are caring. That would seem to me to run counter to the language of Class C3 itself and the underlying policy."

- 22 Richards J drew upon the case of *R (Hossack) v. Kettering Borough Council* [2002] JPL 1206 and *Simmons v. Pizzey* [1979] AC 37 as demonstrating the proposition that "household" used to be determined as a question of fact and degree.

Application of Law and Policy

- 23 The assessment that is required involves a two-stage process:
- (a) A determination whether the residents live together as a single household; and
 - (b) In the event that it was concluded that the residents were **not** living together as a single household whether there was a material change of use of the relevant premises.
- 24 The **North Devon** case has clearly been the subject of significant criticism in the **Crawley Borough Council** case. It is my view that the proper question to be asked, in the first instance, is whether the residents are living together as a single household. Paragraph 29 of the Judgment of Richards J seems to me to leave open the question as to whether or not, depending on the facts of an individual case, children cannot by themselves be regarded as constituting a single household. Richards J expressly declined to decide that particular issue, as it was not necessary

for the purposes of the case before him. However, he plainly rejected the notion that persons resident in a house in need of full-time care are necessarily precluded from constituting a household. On that basis, it will be necessary on a case by case basis to determine whether the proposed occupants (the children, in this particular case) could not be regarded as capable of forming a single household.

25 However, it is plainly anticipated in my Instructions that the probability is that the proposed occupants (ie. the children in this particular case) would not be regarded as capable of forming a single household.

26 In that eventuality, the question posed at (b) above needs to be addressed. It will be recalled that in the **North Devon** case itself, Collins J upheld the Inspector's finding that no material change of use was involved on the facts of that particular case. On this analysis, there would have occurred a change from Class C3 to Class C2. This, of itself, can be an indication that a material change had taken place but is far from conclusive. It is axiomatic that whilst the statute makes clear that changes within a Class are not development, it does not state that a change from one Class to another will be deemed to be material and therefore require an express grant of planning permission as representing development within the meaning of the 1990 Act.

27 It would therefore be necessary to make an informed judgement as to whether any change would be material in the use of premises giving rise to the need for a grant of planning permission.

28 As set out above, Section 55 of the 1990 Act includes within the definition of "development" a "material change of use". With considerable understatement the Encyclopaedia of Planning states:

"Assessing what constitutes a "material" change in use is not entirely straightforward."

29 Plainly 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 on local amenity and proper land use considerations: **East Barnett UDC v. British Transport Commission** [1962] QB 484. Some guidance is derived from the House of Lords case in **Westminster City Council v. British Waterways Board** [1985] AC 676. The Council in that particular case were alleging that a use of an area of premises was limited to that of a "street cleaning depot", the use to which the premises had been put historically. Lord Bridge stated:

"Those uses (operated from the site) as already indicated, included workshops, offices, stores, messing facilities and parking for a variety of vehicles, both under cover and in the

open. This is just such a mixture of uses as would be required by a wide variety of undertakings whose business was the operation of some kind of vehicular transport and who required a base from which to operate. Whether, in any particular case, the proposed use of the premises by such an undertaking would involve a material change of use would depend on the detailed nature of the proposal. But it would be of no relevance that the use of the premises to enquire for what purpose the vehicles parked there were to be used when they left their base."

- 30 In this particular case, the outward appearance of the building would remain unchanged. The internal arrangements within the building would be entirely consistent with that of a conventional family home. The essential question to determine is what, if any, actual changes would occur as a result of the use proposed and, if change can be identified, whether that would be material in land use planning sense.

It would seem, at least on a cursory analysis, that the operation of the rota system and its associated "comings and goings" could constitute a "change". However, in view of the Class C3 definition of dwelling house as 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, it 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 are derived from the consequence of the provision of care.

31 In short, it is my analysis that it would be unlikely that up to four 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 for up to four children and non-resident carers operating a rota at the property would not give rise to land use changes that could be regarded as "material", thereby triggering the requirement to obtain planning permission.

32 Whether the property enjoys the General Permitted Development Order 1995 rights to enlargement, improvement or other alteration is debatable. The Permitted Development Rights apply to a "dwellinghouse". The current burden of authority is that premises in, for example, mixed use, do not benefit from Permitted Development Rights: **Scurlock v. Secretary of State for Wales** [1976] JPL 431.

By analogy in this particular case, the property is not being used as a dwellinghouse but a use that would fall within Class C2 of the 1987 Order. Insofar as a residential care home (of whatever size) does not enjoy Permitted Development Rights, so too, applying the same logic, the property would not, in my view, enjoy such rights under the 1995 Order.

Practical Consequences

- 33 The burden of this Advice is that it is, in all cases, a question of fact and degree as to whether planning permission would be required.

Given the significant financial outlay in acquiring property, these considerations must be in the forefront of KCC's mind when proceeding with any acquisition:

- (a) An application, wherever possible, under Section 192 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of Proposed Use or Development should be made. This is an application whereby a detailed description of the proposed activity is submitted formally to the Local Planning Authority for their determination as to whether it constitutes development and whether planning permission is required for it. In the event of a determination that no planning permission is required for the proposal (in accordance with this Advice) the Certificate effectively grants immunity from any enforcement proceedings by the Local

Planning Authority based upon the factual premise that lies at the heart of the application for a Certificate; or

- (b) At the very least, prior to completion of any transaction, the informal view of the professional officers of the relevant Local Planning Authority should be sought. Whilst this would **not** provide the same degree of assuredness as a Certificate as indicated above, it would, in my view, give a degree of comfort to KCC in proceeding with their transaction. It is unlikely, on the state of current authority, that KCC would be entitled in the legal sense to rely upon the advice of the professional officer as binding the Local Planning Authority to the view expressed. Even taking that on board, it is still a sensible and prudent approach to adopt.

Overall Conclusion

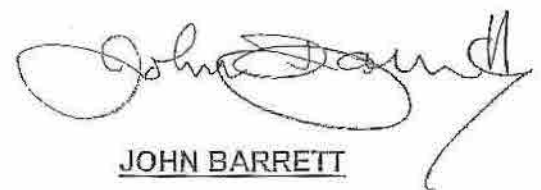
34 For the reasons I have set out above, my Opinion is as follows:

- (a) In light of the current authority, there is an obligation to consider whether the children themselves could constitute a single household
- (b) Whilst I consider, on the current information, it is unlikely that a conclusion could be reached that the resident children could constitute a household, it is then necessary to consider whether a "material change of use" has occurred.

- (c) On the information currently available to me and consistent with the *North Devon* case, the proposal here is unlikely to have land use consequences that lead one to the conclusion that a "material change of use" has occurred.
- (d) If so, no development within the meaning of Section 55 of the Town and Country Planning Act 1990 has occurred with the consequence that planning permission is not required.
- (e) I do not consider that Permitted Development Rights would apply in respect of the proposed use.
- (f) Prior to acquisition of a property, it would be prudent to make an application for a Certificate of Lawfulness of Proposed Use and Development in accordance with the 1990 Act.

35 I believe I have dealt with all the matters raised, but if I can assist further, do not hesitate to contact me.

Kings Chambers
36 Young Street
MANCHESTER M3 3FT
and
5 Park Square East
LEEDS LS1 2NE



JOHN BARRETT

29th January 2007

EP2

Inspector Those reasons were (i) the absence of any substantive objections from English Heritage and Lambeth's conservation officer; (ii) whilst a symmetrical central archway would be preferred, there were highways reasons why this was not possible, although there were other significant constraints which also affected the design of the access/egress arrangements; (iii) the inclusion of the archway was the best achievable solution and would not materially diminish the scheme's overall benefit to the conservation area; (iv) consequently the Secretary of State agreed that the proposals as a whole constituted a well considered scheme of refurbishment and new development that would enhance the character and appearance of the conservation area.

44. I do not consider that the decision can be faulted for lack of reasoning. The Secretary of State was entitled to take into account the specialist advice of English Heritage and the specialist advice of the conservation officer from the local planning authority. It was appropriate for him as decision maker to reach the view that, taking into account these constraints, this solution would not materially diminish the overall benefit that the scheme had to offer to the area. The reasoning is clear, adequately detailed, and intelligible, and it is not suggested that immaterial considerations were taken into account.

45. The challenges by Wandsworth therefore fail.

Comment. It is surprising that this matter reached the Court of Appeal as Lawrence Collins J.'s decision appeared to me to be unimpeachable. And so it proved to be. Having lived close to Balham Hill for ten years I was a little surprised to see Wandsworth argue that it was not a neighbourhood or local centre or that the impressive but somewhat dilapidated South London Hospital for Women was not well and truly within the centre of Balham Hill.

Commentary by Martin Edwards.

North Devon District Council v The First Secretary of State (Queen's Bench Division, January 30, 2003)⁶

Dwelling house used as residential home for two children—non-resident carers—whether use fell within Class C2 or Class C3(b) of the Use Classes Order 1987—material change of use

The premises in question comprised a semi-detached 3 bedroom dwelling-house in a residential area. In February 2000, a company called Southern Childcare Limited (Childcare) began to use the premises to provide residential care for two children aged between 10 and 17. Outside the house looked like any other house in the street. Internally, there was a small office downstairs, otherwise it was laid out as an ordinary house. The children slept in individual bedrooms and there were the usual kitchen and bathroom facilities. Two non-resident staff were on duty at all times and the house was under the supervision of a team of 6 or 7 adults carers who operated 8 hour shifts. The children were never unsupervised while in the building. Childcare applied under s.19 of the Town and Country Planning Act 1990 for a certificate of lawful use. North Devon District Council (the Council) refused the application. Childcare appealed and an Inspector determined the appeal in Childcare's favour. The Inspector found that the household included both children and carers, but that carers did not need to be resident carers.

The Council appealed against that decision. The question for determination was whether the situation in this case fell within Class C2 or Class C3(b) of the Use Classes Order 1987. There was a subsidiary question whether even if it was within Class C2, there was a material change of use from its Class C3 use as a dwelling-house.

Held,

1. There was no doubt that unless the circumstances in this case meant that it fell within Class C3, the activity in question would clearly fall within Class C2, because it was use for the provision of

⁶ D. H. Fletcher (North Devon District Council); M. Gibbons (Treasury Solicitor).

residential accommodation and care to people in need of care. The definition of "care" which was applicable to Class C2 included care of children. So unless it fell within Class C3(b), it clearly fell within Class C2. There were certainly not more than 6 residents. But were they living together as a single household, including a household where care was provided for the residents? The parenthesis to Class C3(b) did not directly apply because care did not include care of children. Thus it was not a household where care was provided for residents. The question was what was the meaning in the context of Class C3(b) of "household"?

2. Children needed to be looked after. They could not run a house. They could not be expected to deal with all the matters that went to running a home. The whole point of these homes was that the children were 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 operated as it should. In the context "household" meant more than merely bodies. One had to consider whether the bodies were capable of being regarded in the true sense as a household. One had to have regard to the need that they be living together as a single household. The question then arose whether carers who did not live but who provided, not necessarily through the same person, a continuous 24 hour care could be regarded as living together. The answer to that question was no. What was required was residential care with a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household. The concept of living together as a household meant a proper functioning household had to exist and, in the context of a case such as this, that meant that the children and a carer had to reside in the premises. Otherwise, the case fell within Class C2.
3. Notwithstanding that this case could fall within Class C2 rather than Class C3, planning permission may not have been required if the change of use was not a material change of use. If an Inspector was satisfied that the use fell within Class C2 rather than C3, then it would appear that there was *prima facie* a change of use. Nonetheless, the Inspector was entitled to consider whether that change of use was material. It would only be material if, as a matter of fact and degree in the circumstances of an individual case, the change of use was material. On the facts of this case (and limited to the facts of this case), the Inspector was correct to decide that there was no material change of use in the circumstances.
4. Appeal dismissed.

The following judgment was given.

Mr Justice Collins:

1. This appeal raises a short but not at all easy point of construction of two classes set out in the Use Classes Order of 1987. The two classes are contained in Part C and are: Class C2, which is headed "residential institutions", and Class C3 which is headed "dwelling houses". The question is whether the situation in this case fell within C2 or C3. There is a subsidiary question relating to whether even if it was within C2, nonetheless there was a material change of use from its C3 use as a dwelling house. That, of course, is a question which depends entirely on the facts of this individual case.
2. The facts are straightforward and, indeed, are agreed. The premises in question are an address in Barnstaple in North Devon. They comprise a semi-detached 3 bedroom dwellinghouse in a residential area. A company called Southern Childcare Limited runs a business operating registered children's homes. Since 2000, as a result of provisions contained in s.40 of the Care Standards Act 2000, which amended s.63 of the Children Act 1989, children's homes which provide for three or less children are required to be registered. That was not the position before that change in the law.
3. I gather from the information before me that there are a number of such small homes, that is to say homes catering for three children or less, which have sprung up. The reason for that is not entirely clear. It may have something to do with a lack of foster parents, or with the increased concern about the welfare of children and the need for them to be looked after in small units rather than in the larger

children's homes that used to be in existence in the past. In any event, the local planning authority, in this case North Devon District Council, are concerned about the effect on residential areas of these homes, and are concerned that there should be the possibility of planning control to deal with applications to set up these homes in residential areas.

4. In February 2000 Southern Childcare Limited began to use the premises to provide residential care for two children aged between 10 and 17. The Inspector who eventually had to decide on the issue described the premises. Outside was a semi-detached 3 bedroom house which looks like any other house in the street. Internally, it is in good decorative order; there is a small office downstairs, otherwise it is laid out as an ordinary house. The children sleep in individual bedrooms. There is the usual kitchen and bathroom facilities.

5. Southern Childcare Limited provide in the premises residential care for two children placed in their care by various local authorities. Two non-resident staff are on duty at all times and the house is under the supervision of a team of 6 or 7 adult carers who operate 8-hour shifts. The result is the children are never unsupervised whilst in the building. That means of course that the various carers will come and leave at the beginning and end of their shifts but otherwise the building is to all intents and purposes used as any other family house would be with two children there: shopping trips are needed; children have to be taken to school; the children assist to an extent in the preparation of meals and so on.

6. Because there was a question raised as to whether the use required planning permission, Southern Childcare Limited applied under s.191 of the Planning Act for a certificate of lawful use. That application was refused by the local planning authority. Southern Childcare Limited appealed and an inspector determined the appeal in their favour on August 5 of last year. Against that decision the Council appeals to this court.

7. I should go straightaway to the relevant provisions in the Use Classes Order. The purpose behind the Use Classes Order is well-known and is conveniently set out in Circular 13/87, issued by the Department in May 1987 when the Use Classes Order was about to come into effect. The purpose is set out in paragraph 3, and it is there indicated:

"The aim of the new Order is twofold:

- (i) to reduce the number of classes while retaining effective control over changes of use which, because of environmental consequences or relationship with other uses, need to be subject to specific planning applications and;
- (ii) to ensure that the scope of each class is wide enough to take in changes of use which generally do not need to be subject to specific control.

It serves no-one's interest to require planning permission for types of development that generally do not damage amenity. Equally, the Secretaries of State are in no doubt that effective control must be retained over changes of use that would have a material impact, in land-use planning terms, on the local amenity or environment."

That is doing no more in reality than setting out the general approach to planning control, but it helpfully indicates the rationale behind the Use Classes Order. By s.55 of the Act, provided that a use falls within a particular designated class, then no planning permission is needed for any change which falls within the same class.

8. The two classes are C2 and C3. C2 reads:

"Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))."

Use as a hospital or nursing home.

Use as a residential school, college or training centre."

C3 reads:

"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)."

It will be noted that there is reference to care in both C2 and C3. Care is in fact defined in paragraph 2 (the interpretation clause of the Order) this:

"'care' means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment."

It is to be noted that that definition appears to exclude the personal care of children from the definition of care except in class C2. In class C3 there is reference (in the parenthesis to C3(b)) to care provided for residents. That care will not by the definition clause include care of children. Of course if the children happen to be disabled or to suffer from mental disorder, then care for them will fall within class C3(b), but it is not suggested that the children with whom this case is concerned would fall within that category. They are children who, for whatever reason, have been put into the care of the local authority, and the local authority is required to find somewhere for them to live and to be cared for during their minority.

9. The application by Southern Childcare Limited was "use as a dwelling providing care for up to 3 children living together as a single household with care provided by up to two non-resident staff." So it appears that the application was based on the contention that the children would constitute the single household living together and thus fall within C3(b), and that the non-resident staff would provide care but would not be regarded as part of the household because that would not be necessary.

10. When the matter came before the Inspector he considered the correct construction of the Order between paragraphs 12 and 19 of his determination. I do not propose to read them in any detail, but some parts I shall cite because they indicate the way in which the Inspector approached his task. In paragraph 16 he said:

"Living together incorporates dining together, sharing the kitchen, lounge and garden etc. A functioning family (parents and children/adopted children/foster children) is almost by definition a caring unit. Whilst clearly a husband and wife with two foster children would be considered as falling within Class C3(a) of the UCO, there is a close similarity with the situation on the appeal site except that the carers (guardians) whilst present all the time, are not resident in the same way as a husband and wife. The dictionary definition of a household is 'the occupants of a house regarded as a unit'. Although the care element in a household is less than that for a family there are joint shared responsibilities, the security of the house, the buying of food, the preparation of meals, the paying of bills and the maintenance of the property are some examples. There has to be a thread of care running through a household for it to function effectively."

In paragraph 19 he states:

"If one includes the children and the adults on the appeal premises, there are then four residents

living together as a single household. The High Court judgment in the case of *R. v Bromley London Borough Council Ex p. Sinclair* [1991] 3 P.L.R. 60 has accepted that staff providing care for residents need not themselves be resident. 'Care' as defined in Art 2 does not come into play on the appeal site and I find that the use is within the constraints of Class 3(b) of the UCO; namely the use as a dwellinghouse by not more than six residents living together as a single household."

It seems to me that the natural meaning of what the Inspector says in paragraph 19 is that he is regarding (and what he sets out in paragraph 16 supports this conclusion) the household as being the children plus the carers. But, in his view, the case of *Sinclair* means that carers need not be resident carers, in the sense that they need not have the premises as their residence, and live there as well as the children. That, in his view, is not necessary; provided they are present on the premises then they can be regarded as part of the household. It is true that when he came to give the lawful development certificate it was in these terms:

"The use of the premises as a dwelling house providing care for up to two children living together as a single household with care provided by up to two non-resident staff."

That, of course, is more consistent with the way in which the application was framed. Nonetheless the natural meaning of paragraphs 16 and 19 seem to me to point clearly in the direction that the Inspector is finding that the household includes both children and carers, but that carers do not need to be resident carers.

11. Mr Fletcher contends that that is wrong, and that insofar as *Sinclair* may appear to support that approach it is wrongly decided. He submits that the purpose behind the division of classes C2 and C3, insofar as it applies in the circumstances of this case, is that small homes used for care in the community should not be regarded as falling outside the class as a dwellinghouse merely because there are carers, provided that those carers are resident. He submits that if one looks at the natural meaning of the words used in the Use Classes Order and couples that with the guidance given by the Circular, that conclusion is inevitable. The Circular in paragraph 5 states:

"The new Order is also intended to clarify the circumstances in which the establishment of small community care homes and hostels will require planning permission. For example, it provides that development is not involved when a dwellinghouse becomes used as a small community care home, provided that all the residents live together as a single household and that they number no more than 6 including resident staff."

That certainly on its face appears to me to be more consistent with the approach that Mr Fletcher submits is the correct one.

12. In paragraphs 25, 26, and 27 the Circular deals specifically with classes C2 and C3. In discussing C2 in paragraph 25 it states:

"The residential institutions class combines classes XX11 and XIV of the 1972 Order. Apart from educational establishments, the characteristic of the uses contained in this class that sets them apart from those in the hotels and hostels and dwellinghouses classes is, in the case of the former the provision of personal care and treatment, and in the case of the latter that the residents and staff do not form a single household."

In paragraph 27, which deals with class C3, it is said:

"The new *dwellinghouses* class groups together use as a dwellinghouse—whether or not as a sole or main residence—by a single person or any number of persons living together as a family, with use as a dwellinghouse by no more than 6 persons living together as a single household. The key

element in the use of a dwellinghouse for other than family purposes is the concept of a single household. In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class, regardless of the size of the home. The single household concept will provide more certainty over the planning position of small group homes which play a major role in the Government's community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community . . . Local planning authorities should include any resident care staff in their calculation of the number of people accommodated. The class includes not only families or people living together under arrangements for providing care and support within the community, but also other groups of people such as students, not necessarily related to each other, who choose to live on a communal basis as a single household."

That again, Mr Fletcher submits, and I agree, points in the direction of resident care staff and small residential homes and, indeed, the reference to the need for certainty over the planning position of small group homes playing a major role in the Government's community care policy, gives a clue why the definition of "care" as not including children should be applicable to C2 and not to C3 because children do not fall into the community care policy because they are not disabled or mentally disordered.

13. It seems to me that it is essential that all the words of the Order are given some meaning. There is no doubt that unless the circumstances here mean that it falls within C3, the activity in question would clearly fall within C2, because it is use for the provision of residential accommodation and care to people in need of care. The definition of "care" which is applicable to C2 includes care of children. So unless it falls within Class C3, it clearly will fall within C2. The question, therefore, is whether it does fall within C3.

14. It is not contended that it falls within C3(a) and the Inspector did not so find. Clearly, it is not being used by people living together as a family. The question therefore is whether it falls within C3(b). There are certainly not more than 6 residents. But are they living together as a single household, including a household where care is provided for residents? The parentheses does not directly apply because care does not include care of children. Thus, it is not a household where care is provided for residents. The first question, as it seems to me, is what is the meaning in the context of C3(b) of "household"?

15. It is submitted by Mr Gibbon that the children can constitute the household. The children are living together as a single household and, therefore, it is a dwellinghouse. The parenthesis does not apply and, on the straightforward meaning of the words, you have here not more than 6 residents living together as a single household. Of course if any of the carers were resident, then they would have to be brought into account, but there would be no problem because obviously a resident carer would be properly regarded as part of the household, but the absence of a resident carer does not prevent it being a household.

16. It seems to me that the Inspector's approach was, in this respect, correct, inasmuch as he was regarding the household as needing more than just children. Children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home. Sometimes, of course, one recognises they are forced to do so, but 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. It seems to me that in the context "household" means more than merely the bodies. You have to consider whether the bodies are capable of being regarded in the true sense as a household. The same would apply to those who suffer, for example, from physical or mental

disability and who need care in the community. They, if they are not capable of looking after themselves, would not be regarded as a household, hence the need for the carer, hence the need for that addition to make it a household within the meaning of the relevant class.

17. One has to have regard to the need that they be living together as a single household. The question then arises whether carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care can be regarded as living together. In my view, the answer to that is no. Consistent with the approach indicated by the Circular, what is required is indeed residential care with a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household.

18. Now that I recognise is an approach which may well not accord with that set out by Popplewell J in the *Sindair* case, which I have already mentioned. In that case the Council proposed to use a house as a family home for three mentally handicapped persons. Twenty-four hour a day supervision was to be provided by social workers attending on a rota basis. They would not be living at the property although a room would be used as a bedroom by the care assistant who was there at night.

19. An application for judicial review of the decision that the proposed use was within Class C3(b), and so did not require planning permission, was made by a local resident. Permission had been refused on paper and the matter came before Popplewell J as a renewed application for permission to apply for judicial review. He cited Class C3(b), the relevant parts of paragraphs 25 and 27 of the Circular and went on at page 62B:

"The order does not say that the staff have to live together as a single household. It says the residents 'living together as a single household'. The residents here are the three residents and the staff come in from time to time. I do not find anything in the order which takes into account the presence of the staff as being involved in the concept of a single household. The bracketed words are simply '(including a household where care is provided for residents).'

I do not take the view that the staff have to be living together with the residents. I am of the view that this can properly be determined as a Class C3(b) case."

I am afraid I cannot agree with that approach. It seems to me that the concept of living together as a household means that, as I have put it, a proper functioning household must exist and, in the context of a case such as this, that must mean that the children and a carer must reside in the premises. Otherwise, as it seems to me, it clearly falls within Class C2. It is apparent that the size of the institution is irrelevant for the purposes of C2. If it falls within that definition it is not to be regarded as a dwellinghouse, then whether there are 1, 2, 10 or 15 children makes no difference to the Class. It does, however, clearly make a difference in planning terms when one considers the second point, which is whether there was, in the context of this case, a material change of use.

20. Although it may sound somewhat illogical, it is accepted by both Mr Fletcher and Mr Gibbon that, notwithstanding that this may fall within Class C2 rather than Class C3, nonetheless planning permission may not be required if the change of use was not a material change of use. I am bound to say that if an Inspector is satisfied that the use falls within C2 rather than C3, then it would appear that there is *prima facie* a change of use. Nonetheless, the Inspector is entitled, as indeed are the local planning authority, to consider whether that change of use was material. It will only be material if, as a matter of fact and degree in the circumstances of an individual case, the change of use was material.

21. The Inspector understandably deals with this very briefly. In paragraph 20 he states:

"In the alternative, the Council state that the change of use is a significant factor which when

weighed with other changes to the character of the use of the premises amounts to a material change of use. Since I have found that the use is as a dwelling house, the alternative does not fall to be considered. There is nevertheless no indication from my consideration of all the representations and from my detailed inspection of the site and the surroundings, that there has been a change of use from a dwelling house which could, as a matter of fact and degree, be considered as being a material one."

Mr Fletcher attacks that on the basis that it is unreasoned, and the Inspector appears to be saying from the use of the word "could" that there is not even an arguable case that there has been a change of use.

22. The parties put forward extensive submissions to the Inspector and he clearly had them before him and had regard to them. The Council dealt with materiality over some four pages of its submissions. It set out what it submitted were the principles referred to and cases in support, in particular in paragraph 6.9 of its submissions. It made the point that the case law established that whether there had been a material change was a question of fact and degree and the fact that, in the broadest sense, the property continued to be used for residential purposes did not mean that there could not have been a material change of use. The court in the case of *London Borough of Richmond upon Thames v Secretary of State* [2001] J.P.L. 84 indicated that matters which could be planning considerations might include the effects on the residential character of the area, strain on the welfare services and reduction on the stock of private accommodation available for renting. Points were made about traffic movements and various other factors were put forward.

23. True it is that the Inspector dealt very briefly with those matters. But it is plain that he had before him all the relevant submissions and all the relevant representations. He had inspected the site and he had considered all the issues. He sets out at the beginning of his determination a description of the site and surroundings and of the background. It would have been better, no doubt, had he referred in more detail to the submissions which had been made and explained why he rejected them. Nevertheless, it is, in my view, clearly implicit in what he says that he had considered them and that he had rejected them as being matters which indicated a material change of use.

24. Mr Fletcher accepts that it would have been open to the Inspector to have decided that the change of use was not material but he should, if he was to reach that conclusion, have indicated more clearly why. I do not dissent from that proposition in the sense that I too would have preferred that he had indicated more clearly why. But one has to be careful in accepting a reasons challenge. It seems to me that if, in reality, it is plain that the Inspector has considered the matters and has reached a decision, which in law was open to him, then it would take a very strong case to quash that purely on the ground that the reasons were not as extensively set out as they should have been.

25. The only matter which has given possible cause for concern is the use of the word "could." But, in my view, it does not bear the construction which Mr Fletcher suggests is the possible one. All that the Inspector is saying is that in his judgment the matters put forward do not mean that the change of use is a material one. It is true he does not express himself as happily as he might, but as a matter of pure English reading that sentence does not, in my view, lead one to conclude that he had misdirected himself in approaching it on the basis of arguability rather than fact.

26. Accordingly, in my view, the Inspector was wrong to regard this as falling within C3(b) rather than C2, and that the Council's contentions are and were correct. C3 does require at least one residential carer, together with of course those who are being cared for. On the facts of this case, and I emphasise limited to the facts of this case, the Inspector was correct to decide that there was no material change of use in the circumstances.

27. Accordingly, although it may be expressed slightly unhappily in the context of my decision, and indeed in the way the Inspector approached it in his decision, the use for up to two children, with care provided by up to two non-resident staff at these premises, and only at these premises, is, in the circumstances, a lawful use.

28. Accordingly, for those reasons, I dismiss this appeal.

Comment. For a discussion of the implications of this decision see [2003] J.P.L. 790.

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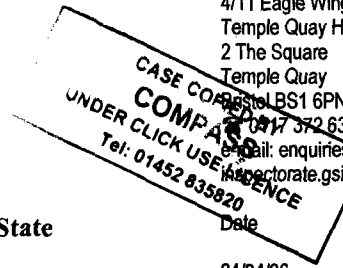
Appeal Decision

Site visit made on 28 March 2006

by **Derek Thew DipGS MRICS**

an Inspector appointed by the First Secretary of State

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24/04/06

Appeal Ref: APP/K0615/X/05/2004825

Briar Cottage, Wrexham Road, Bickerton, Malpas, Cheshire

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Sedgemoor Ltd. against the decision of Crewe & Nantwich Borough Council.
- The application ref. P05/0380, dated 7 April 2005, was refused by notice dated 31 May 2005.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use of the property as a children's home.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

The Application

1. The submitted application form does not specify the precise nature of the proposed use. Rather it just states that both the existing and the proposed uses are Class C3, as defined in the Town and Country Planning (Use Classes) Order 1987, and it refers to an attached statement in support of the application. Paragraph 3 of that statement describes the proposed occupancy as follows:

" 4 children between the ages of 11 and 17 years; minimum of 2 adult carers, 7 days per week on an 8-hour shift rota basis 24 hours per day".

2. The Council's notice of refusal describes the proposal as:

"Use of the Property for Children's Home within Class C3 as described in the application".

The Basis of the Appeal

3. The appellants now accept that the proposed use is not a use as a dwellinghouse as defined in Class C3 of the Order. Rather they now accept that proposed use is use as a residential institution, as defined in Class C2 of the Order. There is a duty on the Secretary of State on appeal to issue a certificate of lawful use in respect of the premises applied for where a lawful use is demonstrated, and, if the facts so require, to modify the description of that use from that described in the application (see Panton & Farmer -v- SSETR & Vale of White Horse District Council (1999) JPL 461). In the light of the factors set out above, it seems to me that the proposed use should now be described as:

“Use of the property as a children’s home for 4 children between the ages of 11 and 17 years, with a minimum of 2 adult carers, within Class C2 of the Town and Country Planning (Use Classes) Order 1987”

4. Planning permission is required for development, which includes the making of a material change in the use of a building or land. The Use Classes Order operates by prescribing a number of classes of use and by specifying that a change of use within each class is outside planning control. However, the effect of the order is permissive and development (requiring planning permission) is not necessarily involved just because a new use would fall within a different class from the existing use. What I need to determine in this appeal is whether the proposed Class C2 use would be materially different from the lawful Class C3 use, such as to amount to development requiring planning permission.

Consideration

5. Briar Cottage is a very substantial 7-bedroom detached house standing in a large garden. It is situated in the open countryside, some distance from the nearest settlement. The lawful use of the premises is use as a dwellinghouse as defined in Class C3 of the Use Classes Order. Class C3 defines use as a dwellinghouse as use by an individual or people living together as a family (Class 3(a)); or by up to 6 residents living together as a single household, including a household where care is provided (Class 3(b)).
6. It is proposed that 4 children would live at the premises and they would be looked-after by a minimum of 2 adult carers at any one time. The children would each have their own private bedroom and 2 bedrooms would be available for use by the carers. All normal domestic duties, such as cooking, cleaning and gardening, would be shared by the children and the carers. No staff would be employed specifically for those tasks. There are no proposed substantial physical alterations to the premises.
7. If Briar Cottage were to be lived in by a family of 2 adults and 4 children then there would be no dispute it was being used as a dwellinghouse (Class C3). If it were to be lived in by a single household comprising 4 children with 2 adult carers permanently resident at the same address, then it seems to me the use of the premises would still amount to use as a dwellinghouse (Class C3). However, on the basis of the judgement North Devon District Council -v- The First Secretary of State (2004) JPL 1396, in a situation such as that now proposed, where there would be 4 resident children and 2 carers who are not permanently resident, then the occupants would not be living together as a family or single household and, consequently, the use would be outside the definition of a dwellinghouse for the purposes of Class C3. On this basis it seems reasonable for me to ask the question, in what physical ways would the fact that the carers are not permanently resident materially alter the character of the proposed use of Briar Cottage?
8. In land use terms, it seems to me that one of the most likely effects of the carers being non-resident could be an increase in the number of comings to and goings from the premises, and I am mindful of the Council’s concern that the proposed use would be likely to lead to “*more and different patterns of activity, transport and disturbance*”. Details submitted in May 2005 on behalf of the appellants estimated that with the proposed use there would be 14.5 vehicle movements to and from the property each day, and that 12 of those movements would be the carers arriving and departing every 8 hours, at the beginning and end of their shifts. In the appellants’ statement of case for this appeal, vehicle movements are estimated

at 10 - 14 a day, but the basis for this estimate is markedly different from that of May 2005. It is now claimed that the current practice is for carers to work shifts of 24 – 48 hours, thereby eliminating the regular 8-hourly staff changes. The principal components of the estimated 10 – 14 vehicle movements a day appear to be 2 - 4 trips associated with the comings and goings of carers at the beginning and end of their shifts, plus other trips for school-runs, shopping and outings, as well as those made by people visiting the children at Briar Cottage. The May 2005 figure did not make any significant allowance for trips other than those made by carers when starting and ending their shifts. As such, I think the latest estimate provides a better balanced assessment of the range of reasons for vehicle movements. But, just as working practice for carers has changed over the last twelve months, I think it reasonable to bear in mind that, at some point in the future, working practice could change back to a situation where each carer works just an 8-hours shift. This would have implications for both the total number trips to and from the premises each day (possibly increasing them to as much as 20 vehicle movements) as well as the pattern of those comings and goings.

9. In principle I accept that 10 – 14 vehicle movements a day (as estimated by the appellants) would be more than what might be expected as part of the normal day-to-day usage of an average dwellinghouse. As such, up to 20 trips in one day would be significantly above normal day-to-day usage of an average dwellinghouse. However, Briar Cottage is not an average dwellinghouse. It is a very large, modern property with ample parking and considerable garaging space. As a dwelling, I could well imagine it attracting a family with a high-level of car ownership and usage. For such a property to be in use as a children's home attracting 10 – 14 vehicle movements a day would not be likely, in my view, to have any material effect upon the character of these specific premises. Furthermore, even if the number of vehicle movements were to increase to about 20, spread over, say, a 16-hours day, then I would still not be able to conclude that such an increase would have any material effect upon the particular character of Briar Cottage.
10. The fact that the carers would not be resident may have some effect on the way they relate to the children in their care and their ability to control the actions of those children. In this context it is apparent that children living at other premises in Cheshire operated by Sedgemoor Ltd have been a cause of considerable concern to local residents because of unruly and anti-social behaviour. It is, therefore, not surprising that residents living within walking-distance of Briar Cottage are concerned that they would experience similar problems with the proposed use. The Council's fifth reason for refusal states:

“the use will give rise to a concentration of occupants with behavioural problems that would not occur in a normal household. This will have an impact on the surrounding community and emergency services. The proposed change of use would therefore have a material impact on local amenity and environment.”

In addition, a legal opinion obtained by various residents in Bickerton advises that the use would place a strain on welfare, education and police services in the area.

11. Having read the submitted evidence I accept that these concerns are not without foundation. The fear of crime is capable of being a material consideration in determining the planning merits of a scheme, as is clear from the West Midlands Probation Committee -v- SSE and Walsall MBC (1997) JPL 323. On this basis I think it reasonable for fear of crime to be a material consideration in determining whether or not a change of use amounts to

development. But, having regard to both the West Midlands case and Smith -v- FSS & Mid-Bedfordshire District Council (2006) JPL 386, I consider the basis of that fear must be the character of the use and not just the behaviour of some of the occupants. Children are taken into care for a variety of reasons, of which abuse and neglect are recorded in the Children Act Report 2001 as being the most common. From this same Report it is apparent that only a small percentage of children are classified as being in need because of socially unacceptable behaviour. Furthermore, the submitted evidence indicates that children taken into care can demonstrate differing patterns of behaviour not all of which are unruly and anti-social. Accordingly, it seems to me that it is not inherent in the character of a children's care home that the proposed use of Briar Cottage would have an adverse impact upon the local community and welfare services.

12. For each of the above reasons, I consider the fact that the carers are not resident would not result in the proposed use of Briar Cottage being materially different in character from its lawful use as a dwellinghouse.
13. The Council's sixth reason for refusing to issue a certificate of lawfulness refers to the fact that the building would contain office facilities and be fitted with a fire alarm system, fire doors and emergency lighting. I acknowledge that such facilities within a building are more typical of an institutional use than a dwellinghouse. But it is only proposed that one room in Briar Cottage be used as an office. It is not uncommon for one room in a dwellinghouse to be used as an office/study and, bearing in mind the size of this particular property, the use of one room as a records office would be most unlikely to have any material effect upon its character. Similarly I am not persuaded that the installation of the proposed safety facilities would materially alter the character of the premises.
14. One institutional aspect of the proposed use is the fact that there would be written rules governing referral and admission criteria, and behaviour management within the premises. It would be unusual for a family home to have a similar set of written rules. But it would not be unusual for a family to have its own set of un-written rules with which its members would be expected to comply and, to my mind, simply producing those rules in written form does not indicate a material change in the character of the use.
15. In the preceding paragraphs I have considered a number of factors individually and found that none of them are sufficient to lead me to the conclusion that the proposed use of Briar Cottage would result in material change of use of those premises requiring planning permission. I have also had regard to the probable cumulative effect of these factors but, as a matter of fact and degree, I do not find there to be a sufficient basis upon which to conclude that their combined effect would result in material change of use of the appeal premises.
16. The submitted details refer to there being a "*minimum of 2 adult carers*" at the premises at any one time. If two is the minimum number of carers then theoretically there is the potential for there to be substantially more than two. I understand that the normal arrangement would be for two carers to be on duty at any one time and I have seen no substantial evidence to suggest that the number of carers would usually exceed two. However, the inclusion of the word "minimum" introduces uncertainty into the description of the proposed use. Furthermore, if there were to be more than two carers at the premises on a regular basis, then this could either itself lead to a change in the character of the use or

be indicative of other changes in the character of the use. I therefore intend to delete the word "minimum" from the description of the use.

Conclusions

17. For the reasons given above and having regard to all other matters raised, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of Briar Cottage was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

18. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed use which I consider to be lawful.

A handwritten signature in black ink, reading "Derek Thew". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Inspector

Lawful Development Certificate

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT
PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 7 April 2005 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would not result in a material change of use of the premises from their lawful use as a dwellinghouse as defined in Class C3 of the Town and Country Planning (Use Classes) Order 1987.



Derek Thew
Inspector

Date 24/04/06

Reference: APP/K0615/X/05/2004825

First Schedule

Use of the property as a children's home for 4 children between the ages of 11 and 17 years, with 2 adult carers, within Class C2 of the Town and Country Planning (Use Classes) Order 1987.

Second Schedule

Land at Briar Cottage, Wrexham Road, Bickerton, Malpas, Cheshire

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in my decision dated:

by **Derek Thew DipGS MRICS**

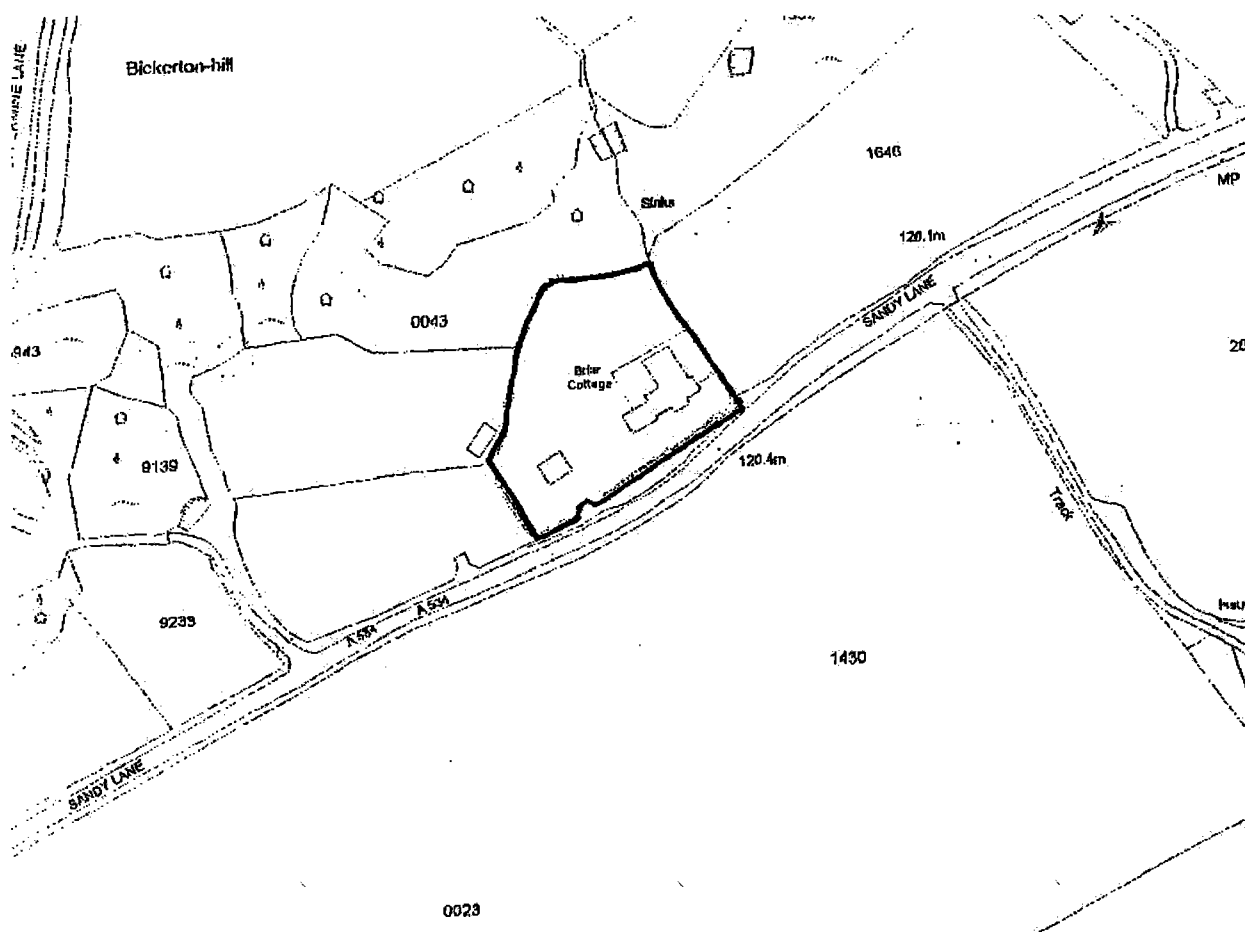
**Land at: Briar Cottage, Wrexham Road, Bickerton,
Malpas, Cheshire**

Reference: APP/K0615/X/05/2004825

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
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Scale:

24/04/06



EP4

Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 17/12/13

Site visit made on 17/12/13

gan James Ellis LLB (Hons) Cyfreithiwr
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 18 Chwefror 2014

by James Ellis LLB (Hons) Solicitor
an Inspector appointed by the Welsh Ministers
Date: 18 February 2014

Appeal Ref: APP/P9502/X/13/2205394

Site address: Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mac McHugh against the decision of Brecon Beacons National Park Authority ("the Authority").
- The application Ref 12/08756/CPL, dated 12 December 2012, was refused by notice dated 15 August 2013.
- The application was made under section 192(1) (a) of the Act.
- The use for which a certificate of lawful use or development is sought is proposed use as community home for young children.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful. This relates to most, but not all, of the land the subject of the application for the reasons given in paragraph 8 below.

Procedural matters

2. The application form dated 12 December 2012 does not specify what the proposed use the subject of the application is. However, the supporting statement submitted with the application refers to the proposed use of Ty Rhos Bach as a community home for young persons and the Authority made its decision on this basis. Again, the appeal form refers to such proposed use. The supporting statement makes no reference to the number of children who would be resident at the community home at any time, but documentation submitted in support of the appellant's case at appeal clearly indicates that there would be no more than 5 children. Accordingly, I will make my determination on the basis that the proposed use the subject of the appeal is as a community home for no more than 5 young persons.
3. When the Authority made its decision on the application, it did so in respect of a smaller area of land at Ty Rhos Bach than was shown on the site plan submitted with the application. In effect, the Authority limited its consideration to an area shown as Ty Rhos Bach and the curtilage of the building when it was granted planning permission a number of years ago. I queried this with the parties. In the light of

responses received from the parties, I shall need to refer to the curtilage of Ty Rhos Bach in my reasoning set out below.

Background

4. Ty Rhos Bach is a six bedroom detached dwelling. There is a large area of tarmac to the side of the dwelling which provides off street parking and access to a detached double garage which is located at the rear of the dwelling. The dwelling is bounded to its south-west by an activity centre and to its north-west and north-east by fields. However, there are residential properties on the opposite side of the road fronting the property. There is no dispute between the parties that the existing lawful use of the Ty Rhos Bach and its original curtilage is as a family dwelling constituting a dwellinghouse within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended ("the UCO").
5. The proposed use would involve the property being used as a home for up to 5 children in care (aged 11 to 17), though I am told that the property has been registered for 3 children. The children would live there for periods of typically 6-12 months under the supervision of adults, some of whom would sleep in at the property. I am told that 2 staff are likely to be in the building every night with one of them 'sleeping in', as back up. The 'sleeping in' would be on a shift basis, with shifts including nights between waking duties. There would be no more than 6 persons (adults and children) resident at the home at any time.
6. It is intended that those children resident at the home would live together as a group, learning skills necessary for family life, and that staff would seek to provide a stable 'family' environment. Part of the package would involve the children receiving schooling from the adults. It is envisaged that this would take place in a room within the garage building. Most of the ground floor of the main building would provide accommodation for day to day living, although a small room would be likely to be used as an office. Six bedrooms would be located on the first floor and within attic space.

Main Issues

7. The main issues are: whether the proposed use would fall within Class C3 or Class C2 of the Schedule to the UCO; and, if it falls within Class C2, whether the change of use from a family dwelling to a community home for no more than 5 young persons would be material.

Reasons

8. It appears that the land within the area shown on the site plan is now within the curtilage of Ty Rhos Bach. However, from the evidence before me, I am not satisfied that the part of the current curtilage outside that which originally received planning permission has lawful use for residential purposes. The appellant's arguments in this case are predicated upon the appeal site having a current lawful use as a family dwelling and there is no suggestion that land without lawful use for residential purposes can be used for the purposes of the proposed use as a community home for young persons. I cannot therefore grant a certificate of lawful use or development in respect of that part of the appeal site falling outside the original curtilage and will now consider the respective arguments of the parties in the context of Ty Rhos Bach and its original curtilage.

Whether the proposal would fall within Class C3 or C2 of the Schedule to the UCO

9. I shall start by referring to the wording of the UCO, and to what I consider to be the most relevant of the case law drawn to my attention by the parties. Following this, I shall then examine whether the proposal would fall within Class C3 or Class C2.
10. Class C3 of the Schedule to the UCO (as it applies to Wales) is: 'Use as a dwellinghouse (whether or not as a sole or main residence) by – (a) a single person or by people living together as a family, or (b) by not more than six residents living together as a single household (including a household where care is provided for residents)'.
11. Class C2 (which refers to residential institutions) is: 'Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college or training centre'.
12. 'Care' is defined in Article 2 of the UCO and means 'personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class 2 also includes the personal care of children and medical care and treatment'.
13. The case of *North Devon DC v First Secretary of State* [2003] EWHC 157 (Admin) is authority for the fact that children cannot, by themselves, constitute a household. *North Devon* has been relied on in a previous appeal decision¹ where the Inspector found that the use before him fell within Class C2 rather than Class C3 and said that *North Devon* 'provides authority for the view that children cannot, as a matter of law, form a household'.
14. It has been suggested that the reference to personal care of children in Class C2 means that where children are receiving such care, their home could not fall within Class C3 (b). I do not accept this. Clearly, children needing care living in a home without resident adults could not form a household (following *North Devon*) and would therefore fall within Class C2. However, where there are resident adults living in a home, the use would not necessarily be precluded from Class C3 (b). It seems to me that the determinative issue of whether the proposal would fall within Class C3 (b) is whether residents of the home (including adults) would be living together as a 'single household', irrespective of whether one or more of the children would be receiving care, including personal care. I shall now look at the proposal in the context of this.
15. At this stage, I consider it appropriate to quote extracts from paragraphs 16 and 17 of the judgement in *North Devon* as follows: "...Children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go into running a home....the whole point of these homes is that 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. It seems to me that, in the context, "household" means more than merely bodies. You have to consider whether the bodies are capable of being regarded, in the true sense, as a household.... One has to have regard to the need that they be living together as a single household. The question then arises as to whether carers who do not live but who provide, not necessarily through the same person, continuous 24-

¹ Appeal decision Ref: APP/U5930/C/11/2151319 and A/11/2146559.

hour care can be regarded as living together. In my view, the answer to that is no.... What is required is indeed residential care with a carer living in full time and looking after those in the premises who otherwise would be unable to live as a household."

16. In *North Devon* and in Appeal decision Ref: APP/U5930/C/11/2151319 and A/11/2146559, the houses were under the supervision of teams of adult carers who worked shifts, but who did not 'sleep in' at the premises. The Court in *North Devon* and the Inspector in the previous appeal decision therefore found that in those cases there was no household to bring the use in Class C3 (b). With the proposal, there would be carers 'sleeping in' at the premises. However, this would be on a shift basis (albeit shifts lasting a number days), with those carers being there as back up at night, whilst another carer was at the premises. To my mind, this is more akin to a 'household' than the situation in *North Devon* and the previous appeal decision. Nevertheless, on balance, I am not satisfied that the 'sleeping in' arrangements would demonstrate that there would be a single household. This is because the shift system suggests to me that carers would not be resident at the property 'full time' and, in any event, primary responsibility for looking after the children at night time would fall to carers other than those 'sleeping in'.

17. I therefore conclude that the proposal would fall within Class C2 of the Schedule to the UCO, rather than Class C3 (b).

Whether the change of use would be material

18. I now need to consider whether the change of use from a family dwelling to a community home for no more than 5 young persons would be 'material'. This is a matter of fact and degree and depends upon the particular circumstances of each case. Established case law provides that it is necessary to look at whether the change gives rise to planning considerations which can include the effects of the change on local amenity.

19. The proposal would display many features of a family dwelling. For example, most of the accommodation on the ground floor would be used for day to day living. It is also intended that staff would seek to provide a stable 'family' environment for those in care. However, in appeal decision Ref: APP/U5930/C/11/2151319 and A/11/2146559, the Inspector identified a number of characteristics of a children's care home which could distinguish it from a family dwelling. These include: possible noise and disturbance arising from incidents of extreme behaviour of residents (with consequential visits from regulatory agencies); the presence of fire alarms, reinforced fire doors and locks on bedroom doors; the property having an office; and the cumulative level of activity, traffic movements and requirement for parking given the comings and goings of staff over a 24 hour period, and the visiting of residents by family and friends. I shall now look at the proposal in light of these points and also others raised by the Authority

20. The grounds of appeal lodged by the appellant refer to the fact that, due to their background, some of the children may be in receipt of 'care' that goes beyond the care normally associated with bringing up a child or adolescent. It is possible that such children could make more noise and create more disturbance than children associated with a typical family dwelling, but I note that the proposal is small in scale (with no more than 5 children at any time) and that Ty Rhos Bach is a detached house (which could reasonably be occupied by a family with more than 5 children) and not bounded by other residential properties. This was not the case with the house the subject of the previous appeal decision which was an end of terrace dwelling where

noise could be heard by the occupiers of the adjoining property. In my view, any change to the character of the Ty Rhos Bach arising from noise and disturbance emanating from the intended occupiers of the proposal would not be significant and would not have a material impact on local amenity.

21. Staff would work on a shift basis with some staff working on extended shifts over a number of days. The website for Fairview Care (UK) Ltd (which would operate the home) suggests that at other homes run by it there is a minimum of one to one staffing throughout the day. However, I am advised that whilst one to one care may be provided on occasion, this does not necessarily result in a rotation of three staff per child. There would be visits by the Care and Social Services Inspectorate Wales and also, possibly, by other agencies. However, visits by friends and relatives would not be encouraged and would not be likely given the remote location of Ty Rhos Bach.
22. Ty Rhos Bach is a sizeable family home set in a rural location, where there is every likelihood that family members of appropriate age would have their own vehicles. Again, visitors to a family occupying the property would be likely to arrive by car. I also understand that, in the past, bed and breakfast accommodation has been provided at the property. The evidence suggests to me that whilst the traffic movements associated with the proposal may be more than those associated with the existing lawful use, the increase is not likely to be significant. From what I saw on my site visit, the existing parking area should be able to accommodate parking associated with the proposal without there being a change in the character of the property.
23. The property already has fire alarms and fire safety doors which remain from when it provided bed and breakfast accommodation. Doors to the bedrooms have locks on them, but it is intended that only the staff bedroom be locked. The small size of the ground floor office is such that it is unlikely that it would be used for meetings. The office would be locked at times but, in my experience, it is not unusual for this to happen at 'home offices'. There would be activity associated with the 'classroom' in the garage but home education is an option available to the parents of any children and, in my view, the level of activity associated with the building is unlikely to be significantly more than that associated with a hobby room/games area at a large family home. The 'classroom' would also have supervised access. However, it is again not unusual for unsupervised access to certain rooms or outbuildings at family homes to be restricted, particularly where they might contain dangerous tools or materials.
24. The Authority has suggested that the proposal would result in the loss of a residential dwelling in a small community, but has given no detailed explanation as to how this could impact on the community. The proposal would, however, be used as living accommodation throughout the year with residents making use of local facilities and adding to activity levels in the community. I consider this to be positive in an area where residential properties are used as holiday homes.
25. After taking all the evidence before me (including the case law and previous appeal decisions cited by the parties) into account, I find, on the balance of probability, that the proposal would not result in a significant change in the character of the existing lawful use at Ty Rhos Bach and that it would not have a material impact on local amenity. It follows that the change of use from a family dwelling to a community home for no more than 5 young persons would not be material and that, as such, it would not require planning permission.

Conclusion

26. For the reasons given above, I conclude, on the evidence now available, that the Authority's refusal to grant a certificate of lawful use or development in respect of the proposed use of Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU as a community home for not more than 5 young persons was not well-founded, insofar as it relates to Ty Rhos Bach and land within its original curtilage and that the appeal should succeed in this respect. I will exercise the powers transferred to me under section 195(2) of the Act.

James Ellis

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 12 December 2012 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in green on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

'The change of use of the land from a family dwelling (within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended) to a community home for no more than 5 young persons (within Class C2 of the Schedule to the 1987 Order) would not constitute a material change of use and would not, therefore, require planning permission'.

Signed

James Ellis
Inspector

Date: 18 February 2014
Reference: APP/P9502/X/13/2205394

First Schedule

The use of the land as a community home for no more than 5 young persons

Second Schedule

Land at Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was/were not liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.
4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

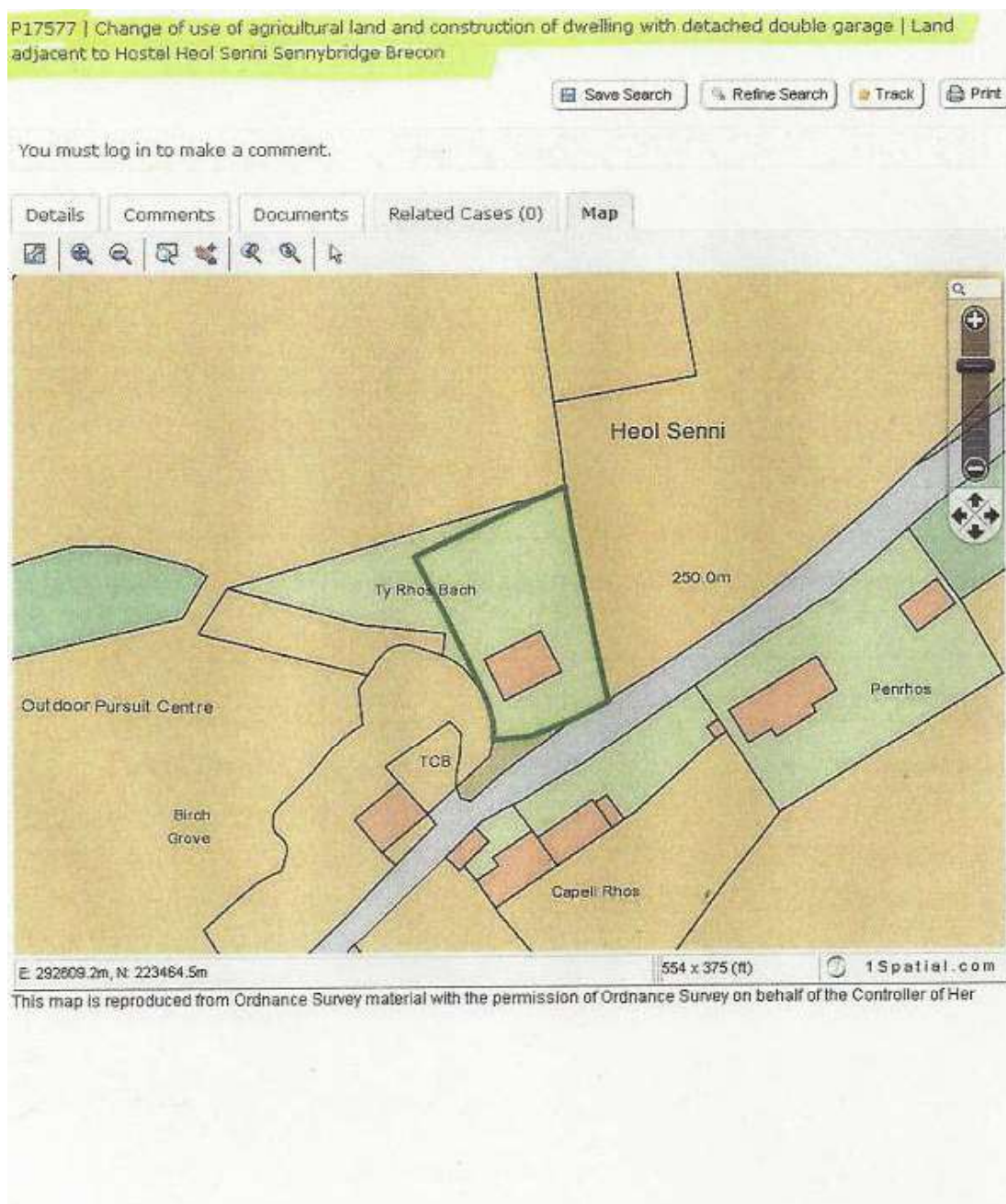
This is the plan referred to in the Lawful Development Certificate dated:

by James Ellis LLB (Hons) Solicitor

Land at: Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU

Reference: APP/P9502/X/13/2205394

Scale: Not to scale



EP5



Appeal Decision

Site visit made on 25 October 2011

by Chris Hoult BA BPhil MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 November 2011

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

15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Chartwell Care Limited against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00279/CLU, dated 24 March 2011, was refused by notice dated 6 June 2011.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a certificate of lawful use or development is sought is the use of a dwellinghouse as a children's care home.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Application for costs

1. An application for costs was made by the appellants against the Council. This application is the subject of a separate decision.

Preliminary matter

2. The description of the proposed use on the application form refers the reader to a statement from the appellants. I adopt the shorthand description on the Council's decision notice.

Main issue

3. The single main issue for consideration is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. The appeal property is a large modern detached house with an open frontage to the street on a residential estate on the southern edge of Burbage. It is proposed to operate it as a care home for children/young people between the ages of 9 and 17 with learning disabilities, in which the age range at any one time would be no more than 3 years¹. Although the evidence indicates that the property was previously in use as a care home for children, the parties are agreed that its lawful use is as a dwellinghouse in Use Class C3 of the Use

¹ Although the initial application referred to children between the ages of 10 and 18 with an age range of 5 years at any one time, these figures were revised in a subsequent e-mail to the Council from the appellants dated 20 May 2011.

Classes Order². The appellants contend that the proposed use could be argued to fall within part (b) of Class C3. In the alternative, if the use were to fall within Use Class C2 (residential institutions), any change of use from Class C3 would, they argue, not be a material change of use and would not therefore amount to development for purposes of the 1990 Act.

5. Under the Order, Class C3 includes use by "...*(b) not more than six residents living together as a single household where care is provided for residents*". Care homes more typically fall under Class C2 as use "*for the provision of residential accommodation and care to people in need of care*". The definition of "care" as set out in Article 2 of the Order includes, in Class C2, the personal care of children. There is therefore some overlap between classes C2 and C3 in so far as they relate to care homes, a point which the appellants emphasise in making their case. For a change of use from a use in Class C3 to a use in Class C2 to amount to development, and thereby require planning permission, the change of use has to be material³. That applies to the overall character of the use not just to certain aspects of it.
6. No alterations are proposed to the appeal property. A previous application for a LDC, made in November 2010, was refused by the Council on the basis of insufficient information. The Council took the view that, in the absence of evidence to the contrary, a material change of use from a C3 use to C2 requiring planning permission would occur. The current application seeks to demonstrate by reference to details of the operation that it would amount to a use of a character which would be largely the same as if the property were used as a family dwelling (Class C3). Any change of use to use in Class C2 would not therefore be material and would not amount to development. In refusing to grant a LDC, the Council refers to the number of staff required to operate the home as a basis for its view that the proposal would "materially alter the character of the property" (as it is put in the reason for refusal).
7. I deal firstly with which Use Class the use should fall into before going on, in the event that it falls into Class C2, to consider whether any change of use would be material.

Whether C2 or C3(b)

8. The home would provide for care for up to 3 children, administered by non-resident care staff who would work in shifts, thereby providing round-the-clock care. The appellants give details in the application of the numbers involved and the pattern of working. The case of *North Devon DC v FSS and Southern Childcare Ltd* [2003] EWHC 157 Admin provides authority for the view that use as a care home for children, where carers are non-resident, falls within Class C2. 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 not be regarded as living together in a household. The concept of living together as a household means, in the context of Class C3(b), that a proper functioning household must exist.
9. The facts of this case align with those of *North Devon* and, while the appellants refer me to an appeal decision from 1992 which comes to a contrary view, any authority deriving from it must be regarded as being superseded by that case.

² The Town and Country (Use Classes) Order 1987 as amended.

³ See s55(1) of the 1990 Act wherein "development" is defined as (among other things) "...the making of any material change in the use of any buildings or other land." (My emphasis)

In the light of this, I conclude that the proposed use falls into Class C2 and that a change of use from a use in Class C3 has taken place.

Whether material change of use

10. By way of a forerunner, it may be noted that, in *North Devon*, the Inspector determined that, although the use fell within Class C2, the change from Class C3 use was not material. *North Devon* therefore provides authority for the two-stage assessment process which I have outlined. The appellants explain that the model of care provided seeks to replicate, as far as possible, typical family life in an ordinary local community. It is emphasised that young people with emotional and behavioural difficulties would not be cared for.
11. At any one time, and excluding short-term changeover periods in the early mornings and mid-afternoons, there would be up to three children and three carers present. The pattern of working means that vehicle movements to and from the property would peak at the following times: (a) 07.00 to 08.00 – two staff and the manager arriving and one night staff departing; (b) 14.30 to 15.00 – three staff arriving and two departing; and (c) around 22.00 – two staff departing. To these movements should be added school transport and transport related to outings etc. at weekends and during school holidays. The appellants give assurances that no activity involving vehicle movements would occur before 07.30 or after 22.00.⁴
12. In refusing a LDC, staff numbers are cited by the Council as the sole cause for concern. However, looking at the numbers involved, they are not 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. Peak daytime vehicle movements, setting aside the potential for the use of car sharing or public transport by staff, coincide broadly with school run periods when there would be similar activity associated with neighbouring properties and the locality in general. Transport associated with school and weekend outings would not be an untypical occurrence in a family house. Up to two vehicles departing from the property late at night would not, on its own, be a sufficient basis for determining that a materially different character of use would be taking place.
13. I acknowledge that the Council, in its statement, highlights that these figures are qualified by reference to “normally” and that the potential exists for greater staff numbers to be at the property to deal with particular difficulties. However, this should be regarded as an exception and not part of the typical day-to-day operation of the home. As regards the Stockport appeal decision which is referred to by the Council⁵, that can be distinguished from this case as it appears to involve young people with a history of behavioural difficulties.
14. A number of arguments are put forward by neighbouring residents in support of a view that a material change of use would occur. However, there is no reason to suppose that suppliers and visitors would be attending on a 24-hour basis. The appellants explain that parents are unlikely to visit the home as the care will, to an extent, be respite care for their benefit. There are two parking spaces, with the possibility of more on the gravelled area alongside them and ample safe on-street parking close by. The appellants have given assurances

⁴ See e-mail from appellants to Council dated 20 May 2011.

⁵ Appeal Ref. APP/C4235/X/10/2132351 – 73 The Crescent, Stockport, SK3 8SL

that not more than three cars would be parked at any one time at the property. The garage would be converted to a sensory room and there are no proposals for office facilities or the holding of meetings. Much of the objection stems from a mistrust of assurances given by the appellants in the light of residents' previous experience of a home for young people with behavioural difficulties.

15. In bringing matters to a conclusion, the nature of a LDC and the relatively narrow remit of the decision-maker should be borne in mind. Planning merits are not for consideration. The application relates to a use taken in a snapshot in time, which is capable of being described in precise terms. The lawfulness of the use relates to the use as so described and it is lawful only so long as it conforms to the description on the LDC. It is incumbent on the applicant to describe precisely the proposed use for this very reason. Given this, and in the light of a fact and degree assessment, I conclude that the proposed use would not, as a use within Class C2, amount to a material change of use from Class C3 use as a dwellinghouse. The change of use would not therefore amount to development for which planning permission would be required.
16. For these reasons, I conclude, on the available evidence, that the Council's refusal to grant a LDC in respect of the use of a dwellinghouse as a children's care home was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

Decision

17. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

C M Hoult

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 24 March 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Although a change of use from a use in Use Class C3 dwellinghouse to Use Class C2 residential institutions would occur, it does not amount to a material change of use and no development requiring planning permission would therefore take place.

Signed

C M Hoult

INSPECTOR

Date 7 November 2011

Reference: APP/K2420/X/11/2155849

First Schedule

The use of a dwellinghouse as a children's care home pursuant to the Children's Act 2000 for children who fall within the Ofsted registration for children with learning disabilities, in which:

- (1) no more than three children are receiving care at any one time;
- (2) the children in care are aged from 9 to 17 years' old with an age range of no more than three years at any one time;
- (3) the home at no time provides care for children with emotional and/or behavioural difficulties;
- (4) there are no more than (a) two staff on duty between 07.00 and 08.00 to prepare the children for school or between 14.30 and 22.30, unless

exceptionally a further member of staff is required to meet individual needs (b) no more than three staff on duty at weekends and during school holidays, and (c) normally no more than one waking staff at night to provide support to the children with a further member of staff sleeping in who would be available should further assistance be required;

- (5) no parental visits to children normally take place;
- (6) no room is used as an office and no business meetings of any kind take place;
- (7) no more than three vehicles are parked at or around the home at any one time;
- (8) no activity in relation to staff vehicle movements takes place before 07.30 or after 22.00.

Second Schedule

Land at 15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

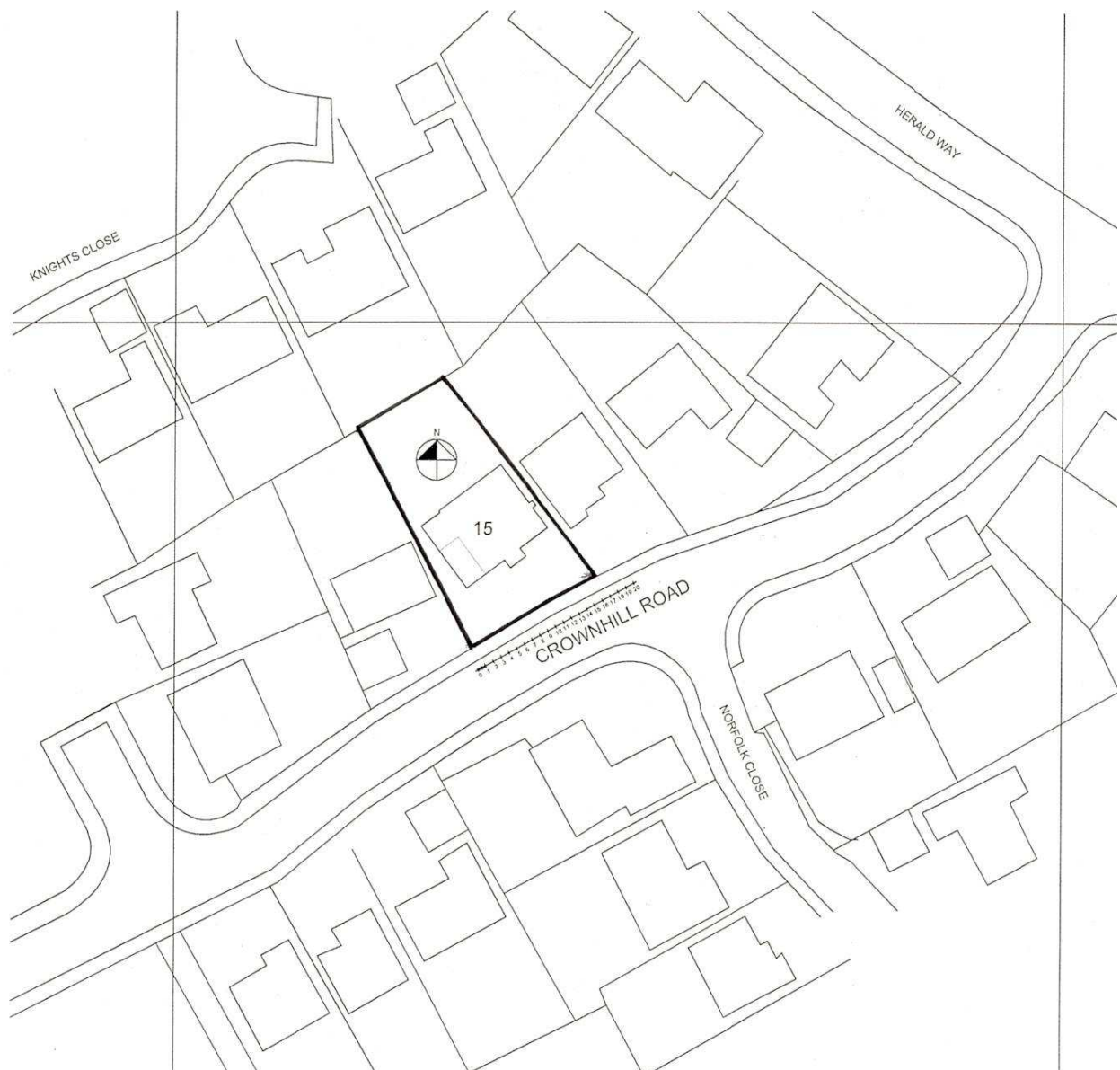
This is the plan referred to in the Lawful Development Certificate dated: 7 November 2011

by C M Hoults BA BPhil MRTPI MIQ

Land at: 15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

Reference: APP/K2420/X/11/2155849

Scale: not to scale



EP6



Appeal Decision

Site visit made on 6 April 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 21 April 2022

APP/F1040/X/21/3283867

3 Sandpiper Lane, Mickleover, Derby DE3 0UU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the failure of South Derbyshire District Council to determine an application for a certificate of lawful use or development within the prescribed period.
- The appeal was made by Apsley Care.
- The application, reference DMNP/2021/0799, was accepted as valid on 13 May 2021. The Council failed to issue a decision on the application within the prescribed period.
- The development for which a certificate of lawful use or development was sought was for the change of use from a residential dwelling (use Class C3a) to a children's care home (use Class C3b) at 3 Sandpiper Lane, Mickleover, Derby DE3 0UU.
- The application was made under section 192(1)(a) of the Act for a certificate of lawfulness for the proposed use as a children's care home (use Class C3b).

Summary of decision: A certificate of lawfulness is issued.

Appeal property

1. No. 3 Sandpiper Lane is a 2 storey detached house situated in a residential part of the village of Mickleover. It was said to have a lounge, kitchen, dining room, small utility room and a w.c. on the ground floor. Upstairs, there are 4 bedrooms, one of which has an en-suite bathroom, another has an ensuite w.c. There is also a shared bathroom on this floor. The dwelling has a front forecourt with a car parking space and an integral single garage. It has an enclosed rear garden.

Proposal

2. The Appellants, Apsley Care, proposed to change the use of No. 3 Sandpiper Lane from a residential dwelling, (use Class C3 to the Town and Country (Use Classes) Order 1987 as amended), to a children's care home, (use Class C3b). Up to 2 children/young people, between the ages of 10 and 18 years, would live at the property as their main residence. They would need additional support to live within the community.
3. Facilities in the house would be shared. Each young person would have their own bedroom. Bedrooms would be fitted with locks to meet legal requirements, including human rights legislation. Support workers would have a key to each room.

4. The total number of support staff would be 6, with 2 on shift plus a senior member at any given time. During the day there would be about 3 members of staff on site. There would be 2 staff members present at night. In addition to support workers, there would be short and infrequent visits from social workers and other support professionals. The support workers would not be part of the family and would not be resident at the premises. The Applicants accepted that, following the judgement in the case *North Devon DC v FSS & Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 since only young people would be resident at the property, they would not constitute a "household". They acknowledged that the proposed use would not fall within Class C3(a) but submitted it would be within Class C3(b).
5. I agree with the Applicant's assessment that the new use would not fall within Class C3(a). The young people would need looking after at No. 3 but their carers would come and go and not live in. In the *North Devon* case, Mr Justice Collins said that children *"... need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing fulltime 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."* That judgement confirmed it is unrealistic to expect children to look after themselves in a single household. It also clarified that carers who provide 24 hour care but were not resident could not be regarded as living together in a household. It was accepted that those living at No. 3 Sandpiper Lane would not constitute a household.
6. I do not, however, agree with the Applicants that the new use of the house at No. 3 would be within Class C3 (b) of the Order. Use Class C3 (Dwelling houses) includes: Use as a dwelling house (whether or not as a sole or main residence) by — (a) a single person or by people to be regarded as forming a single household; (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). The present proposal would be a children's home in Class C2, where the Order defines the use, including: use for the provision of residential accommodation and care to people in need of care, (other than a use within Class C3 (dwelling houses)).
7. A children's home run on shift patterns by carers could not be considered to fall within Class C3(a) because it would not be occupation of a dwelling house by a single person or people living together as a family. Class C3(b) refers to "use as a dwelling house by not more than six residents living together as a single household, (including a household where care is provided for residents)." If No. 3 was to be run on that basis, with children being looked after by a permanent occupant or occupants of the dwelling, it would not need planning permission. Where support staff come and go on shifts, the use cannot be considered to fall within Class C3(b). Use of No. 3 as a children's home would fall within Class C2 of the Order (Residential institutions).

8. It may be, however, that the change of use here from the C3 lawful use to a C2 use may not amount to a material change of use and thereby not amount to development which requires planning permission. That is, to conclude that no material change of use has occurred where there is no material difference in activity to that which may be anticipated in the normal residential use of a house.
9. The application proposal is for no more than 2 children to be looked after at No. 3. It is likely that the house and its curtilage would retain the look and character of neighbouring houses; that of a normal residential dwelling. The use and associated activity, including comings and goings of care workers would be unlikely to cause a greater level of disturbance or amenity harm than could be expected by a C3 use of this large family home. In my view, that would be such that no material change of use would occur. The new use would not constitute development. The new use would not be a Class C3(b) use as applied for. It would be a C2 use. However, as a change of use from a C3 use to a C2 use normally requires planning permission, it would be inappropriate for the certificate of lawfulness to describe the new use as a C2 use. I also consider it necessary to set out the limit of 2 children living at No. 3. That was the level of use sought by the Applicants and is the basis of the assessment of the materiality of the change of use.

FORMAL DECISION

10. For the reasons given above, I conclude that the Council's failure to decide on the application to grant a certificate of lawful development for the proposed change of use from a residential dwelling (use Class C3) to a children's care home for 2 children at No. 3 Sandpiper Lane, Mickleover, Derby DE3 0UU was inapt and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the relevant plan.

John Whalley

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 13 May 2021 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, would be lawful within the meaning of section 192(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use from a residential dwelling (use Class C3) to a children's care home at No. 3 Sandpiper Lane, Mickleover, Derby DE3 0UU would not constitute a material change of use that would require planning permission.

John Whalley

INSPECTOR

Date: 21 April 2022

Reference: APP/F1040/X/21/3283867

First Schedule

The change of use from a residential dwelling (use Class C3) to a children's care home for 2 child residents.

Second Schedule

The dwelling at No. 3 Sandpiper Lane, Mickleover, Derby DE3 0UU.

IMPORTANT NOTES OVERLEAF
NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule would be lawful, on the certified date and, thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

Appeal reference: APP/F1040/X/21/3283867 Date: 21 April 2022

The dwelling at No. 3 Sandpiper Lane, Mickleover, Derby DE3 0UU



Plan attached to the Lawful Development Certificate – Scale as shown

John Whalley

INSPECTOR

EP7



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/C5690/X/22/3299351

9 Whitburn Road, LONDON, SE13 7UQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Nigel Kennedy, Kennedy Elliott Partnership against the decision of London Borough of Lewisham.
 - The application ref DC/22/126014, dated 17 March 2022, was refused by notice dated 19 May 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of premises as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Preliminary Matter

2. A site visit was not necessary in this case as it would not aid the decision-making process, and the parties were informed of this before the appeal was determined.

Main Issue

3. The main issue is whether the Council's decision to refuse the LDC application was well-founded. It is agreed that the proposed use as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight constitutes a change from the current lawful use as a Use Class C3 dwellinghouse. I accept that, because the carers work on a rota basis and the property is not their primary residence, the proposed use would fall within Use Class C2 as a residential care home.
4. It is a question of fact and degree in each case as to whether a change from a use falling within one class to a use falling within a different class amounts to a material change of use. It is for the appellant to prove on the balance of probabilities that there is no material difference between the current and proposed uses, and therefore no development which would require planning permission

Reasons

5. The property comprises of a large kitchen/dining room, a lounge and 4 bedrooms. Three children or young people would live at the house, with two carers working on a rota basis sleeping overnight. Six carers would operate on

a rota of 48 hours on and 48 hours off, or 60 hours on and 60 hours off. A manager would be on site during weekdays from 9 am to 5pm. The manager's role would be as a third carer, together with administrative work relating to the home. Locks would be included on the bedroom doors and fire doors would be located at the kitchen.

6. The Council refused the application on the basis that the proposed development would result in a material change to the use and character of the property. The factors they identified which they say will change the character of the use are the increased comings and goings, the increase in level of disturbance and refuse arising from an increase in the number of people at the property, the use of a room as an office by someone who does not live at the property and the provision of locks on the bedroom doors.
7. In particular the Council disputes the levels of comings and goings of the previous and proposed use provided by the appellant. The Council say that the increase in total movements including the carers arriving and departing on a shift basis, the manager coming to the site during the working week, specialist care counselling and teaching required onsite and parental visits are highly likely to lead to a material increase in comings and goings which will have a cumulative material impact on the character of the property.
8. The appellant argues that the property would be operated in a way that is very similar to a typical family home. Up to three children would live at the house, with two carers working on a rota basis sleeping overnight. Other than changeover times, there would be no more than three carers on the premises at any one time. There would be one changeover of the overnight care staff per day, usually 8am each morning, lasting for around ten minutes. A manager, also a carer, would usually visit the site at some point during the working day.
9. Any home schooling would take place online and there would not be specialist staff visiting the premises, as the carers will provide for all of the residents' needs, and parental visits will take place away from the property. Social Services and Ofsted will need to visit the property but this is only several times each year. The Council have not provided conclusive evidence as to why or whether specialist or clinical staff will need to visit (to contradict the appellant's case), and indeed most households are likely to have a variety of visitors from time to time, if not frequently.
10. The next door property (7 Whitburn Road) was granted an LDC in 2019 for a C3 use with a carer living in the property as his main residence. There is disagreement in the information before me as to how this property is now being used but this is not directly relevant to the appeal in this case.
11. Taking the Council's case at its highest, there could be up to 7 people at the property during a week day (if all of the children were being home-schooled) which is not an unexpectedly large number of people to be found in a 4 bedroomed family house. Whilst there would be one staff changeover a day this is not in itself enough to materially change the character of the property. The use of the office by the manager to deal with matters associated with the running of the property is also not materially different in terms of impact on the character of the house to the use of a room in a C3 dwellinghouse as a home office. Locks are not typically found in a C3 dwellinghouse but this will

not alter the external appearance of the property, or change the character of the property in the locality in a way which is material.

12. Whilst there will be some additional comings and goings associated with the use as a residential care home, there is no evidence before me to dispute the appellant's case that the use will not give rise to a greater level of disturbance than could be generated by the lawful use as a C3 dwellinghouse. The additional comings and goings identified by the appellant and Council are at a sufficiently low level so as to remain within the parameters of what could be usually expected of a family home and not therefore materially different so as to change the character of the property. Similarly the number of people who will be typically present at the property, and therefore the associated waste generated, is not significantly higher than could be expected with its current lawful use.
13. I have considered the previous appeal decisions provided to me by the parties but as each case turns on its own facts these are of limited assistance in assessing whether there would be a material change of use here. The appellant has provided sufficient information to show that on balance there would not be a significant difference in the character of activities at the appeal property from what has gone on previously.
14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Zoë Frank's

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 March 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

There would not be a material change of use.

Signed

Zoë Franks

Inspector

Date: [27 January 2023]

Reference: APP/C5690/X/22/3299351

First Schedule

Use of premises as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight.

Second Schedule

Land at 9 Whitburn Road, LONDON, SE13 7UQ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

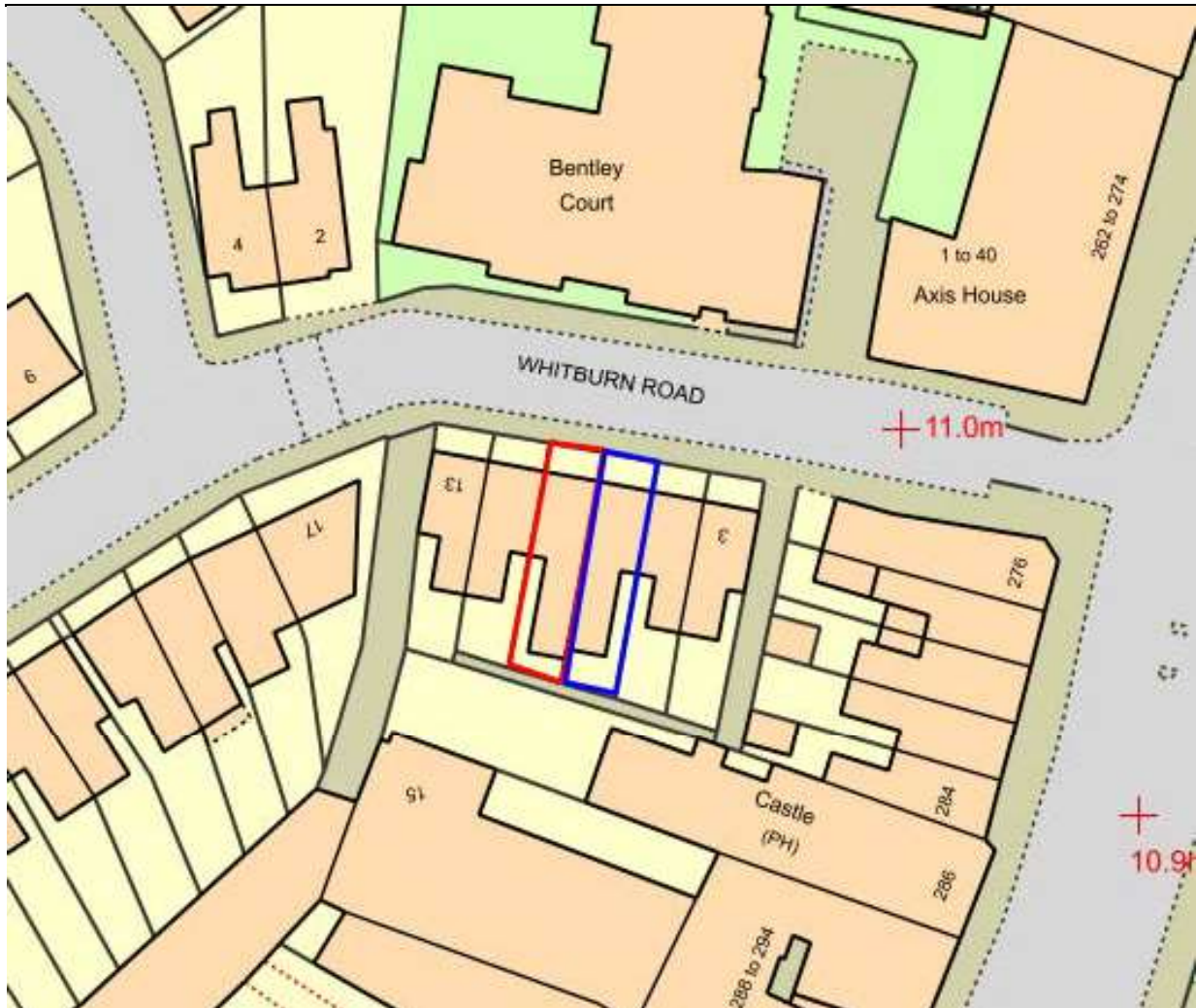
This is the plan referred to in the Lawful Development Certificate dated: [27 January 2023]

by Zoë Franks Solicitor

Land at: 9 Whitburn Road, LONDON, SE13 7UQ

Reference: APP/C5690/X/22/3299351

Scale: Not to Scale



EP8

Appeal Decision

Site visit made on 31 October 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2024

Appeal Ref: APP/W3005/X/24/3338913

29 Cedar Avenue, Kirkby in Ashfield, Nottinghamshire NG17 8BD

- The appeal is made by David Price of One Home UK Ltd under section 195 of the Town and Country Planning Act 1990 against a refusal by Ashfield District Council to grant a lawful development certificate.
 - The application Ref: V/2023/0719, dated 22 December 2023, was refused by notice dated 2 February 2024.
 - The application was made under section 192(1)(a).
 - The development for which the certificate is sought is "Change of Use of Existing 5no. Bedroom Dwellinghouse (C3 Use) to Children's Care Home for 3no. children (C2 Use)".
-

Application for costs

1. The appellants' application for costs against the Council is dealt with by a separate decision.

Appeal decision

2. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the use described in the application, which I consider would be lawful if instituted at the time of the application.

Reasons for the appeal decision

3. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the proposed use at the time of the application. The planning merits of the proposed use are not relevant to the appeal and there is no planning application before me.
 4. The Council refused the application for the following reason: -

"The proposed change of use from use class C3 to use class C2 is considered to constitute a material change of use due to the comings and goings associated which would be outside what would reasonably be expected under a C3 Use."
 5. At the time of the application, 29 Cedar Avenue was in use as a Class C3 Dwellinghouse. Class C3(a) includes use as a dwellinghouse by people to be regarded as forming a single household – in other words, a family home (see 'Interpretation of Class C3' in the Order and refer to section 258 of the Housing Act 2004).
-

6. The proposed use of the house is as a children's care home for three children, who could live there from the age of seven to the age of seventeen. This use would be within Class C2 and not within Class C3, because (i) the personal care of children is placed in Class C2 by Article 2 of the Order and (ii) the children would not form a household, on account of their age and their dependence on carers who were not residents but would stay in the home on a rota basis.
7. The change of use from a family home to a children's care home for three children will not require planning permission if it does not amount to a material change of use for planning purposes. For this to occur there must as a matter of fact and degree be some significant changes in the character of the activities from the use as a family home that result in an impact on the use of land and buildings.
8. The appellants propose to manage the children's home as if it were a family home in all respects apart from the presence of staff carers. There would be a maximum of four staff at the home at any one time, with one member of staff sleeping at the home overnight. Parking for the 'pool' car would be required but staff would be encouraged to use public transport or cycle to work.
9. The Council have explained why in their opinion there would be a material change of use due to the level of comings and goings associated with the proposed use being beyond what could reasonably be expected in a C3 use. The appellants have explained in detail why they consider this would not occur. Both parties have supplied copies of other appeal decisions in support of their contentions. It is not possible to draw a consistent conclusion from these decisions, except to say that every case should be treated on its merits having regard to the specific circumstances arising on each occasion.
10. 29 Cedar Avenue is a large detached five-bedroom house on three floors, with a single-storey rear extension, ample garden space and a substantial forecourt parking area that can accommodate up to five cars. On-street parking is permitted here. Local amenities and public transport are reasonably accessible.
11. The use of the house as a large family home generated a variety of traffic movements and a substantial demand for parking facilities. I do not envisage that its use as a children's care home for three children will make a significant difference to the effect this use had on the level of activity, trip generation and overall comings and goings, particularly as the children will either be too young to drive or be unlikely to have the use of a car if they have reached driving age. The role of the carers would not be significantly different to that of parents looking after children in a family home.
12. For the above reasons, I have concluded that there would not as a matter of fact and degree be a material change of use. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and the certificate has been granted.

D.A.Hainsworth

INSPECTOR

Certificate of Lawful Use

APPEAL REFERENCE APP/W3005/X/24/3338913
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39 & SCHEDULE 8

IT IS CERTIFIED that on 22 December 2023 the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown edged in black on the plan attached to this certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990, for the following reason:

No enforcement action could then have been taken in respect of the proposed use since it would not have involved development within the meaning of section 55(1) of the Town and Country Planning Act 1990.

D.A.Hainsworth

INSPECTOR

Dated: 3rd December 2024

First Schedule

The change of use of the house from a use within Class C3 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 to a care home for three children within Class C2 of Part C of Schedule 1 to the Order.

Second Schedule

29 Cedar Avenue, Kirkby in Ashfield, Nottinghamshire NG17 8BD

Notes

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the specified date and, therefore, would not have been liable to enforcement action under Part VII of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use that is materially different from that described or which relates to any other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is qualified by section 192(4) of the Act, which states that the lawfulness of the use is only conclusively presumed where there has been no material change, before the use is instituted, in any of the matters relevant to determining such lawfulness.

Costs Decision

Site visit made on 31 October 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2024

Costs application relating to Appeal Ref: APP/W3005/X/24/3338913 29 Cedar Avenue, Kirkby in Ashfield, Nottinghamshire NG17 8BD

- The application is made by David Price of One Home UK Ltd under the Town and Country Planning Act 1990, sections 195 and 322 and Schedule 6, and the Local Government Act 1972, section 250(5), for a full award of costs against Ashfield District Council.
 - The appeal was against the refusal to grant a lawful development certificate for “Change of Use of Existing 5no. Bedroom Dwellinghouse (C3 Use) to Children’s Care Home for 3no. children (C2 Use)”.
-

Costs decision

1. The application is refused.

Reasons for the costs decision

2. The Government’s planning practice guidance (“the guidance”) indicates that the parties to an appeal are expected to behave reasonably to support an efficient and timely process and that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, the party may be subject to an award of costs.
 3. The applicants base their claim on three allegations: (1) that the Council failed to co-operate with their agent during the processing of the application, (2) that the Council made vague, generalised or inaccurate assertions about the proposal’s impact, which were unsupported by any objective analysis, and (3) that the Council acted contrary to or did not follow well-established case law. As a result, the applicant claims that they have incurred unnecessary or wasted expense in commissioning an experienced chartered town planner to prepare and lodge the appeal.
 4. The Council deny that they have behaved unreasonably. They maintain that: (1) it was the applicants’ responsibility to provide sufficient information to support the application and the information provided was sufficient for the Council to determine the application without seeking further evidence, (2) the Council’s decision was based on the staff rota and trip generation table provided by the applicants and (3) the Council took into account case law and came to a conclusion that they could support by reference to other appeal decisions.
-

5. My assessment of the three issues raised is as follows. (1) It might have been useful if there had been more contact, but the Council's position is defensible by reference to established procedures. (2) The Council's assessment became somewhat sidetracked by the so-called 'ambiguity' of the spare room and by their obvious preference for a planning application, but their decision was based on their own analysis of the staff rota and trip generation table provided by the applicants. I did not find their conclusions convincing but they were able to support them sufficiently in their appeal representations. (3) I agree with the Council. Both parties supplied copies of other appeal decisions in support of their contentions. I concluded that it was not possible to draw a consistent conclusion from these decisions, except to say that every case should be treated on its merits having regard to the specific circumstances arising on each occasion.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the guidance, has not been demonstrated and that an award of costs is not justified.

D.A.Hainsworth

INSPECTOR

EP9

Hinckley & Bosworth Borough Council

Town and Country Planning Act 1990 Section 192
Town and Country Planning (Development Management Procedure)
(England) Order 2015

CERTIFICATE OF LAWFUL PROPOSED USE

Name and Address of Applicant

Ms Caitlyn James
Alpine4care Services
56 Applebees Meadow
Hinckley
Leicestershire
LE10 0FL

Name and Address of Agent (if any)

Part I - Particulars of Application

Date of Application

11 December 2023

Application No.

23/01198/CLP

First Schedule

Description of Development

Lawful development certificate for change of use from dwelling [Class C3(a)] to a single household of not more than 6 residents where care is provided [Class C3(b)]

Second Schedule

56 Applebees Meadow Hinckley Leicestershire LE10 0FL



Part II - Particulars of decision

The Hinckley & Bosworth Borough Council hereby certify:

That on 11 December 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red line on the plan attached to this certificate, would be lawful within the meaning of section 192 of the Town and Country Planning Act 1990 for the following reason:-

A handwritten signature in grey ink that reads "C. Brown."

Christopher Brown MRTPI
Head of Planning

Date : 9 February 2024

NOTES

1. This certificate is issued solely for the purposes of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations/matter specified in the First Schedule taking place on the land described in the Second Schedule would be lawful on the specified date and, therefore, would not be liable to enforcement action under Part 7 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use/operations/matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is/are materially different from that/those described or which relate(s) to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use or operation are begun, in any of the matters relevant to determining such lawfulness.

CLUPNOTES (23/04/15)

Delegated Report

Planning Ref: 23/01198/CLP
Applicant: Alpine4care Services
Ward: Hinckley Clarendon



Hinckley & Bosworth
Borough Council

Site: 56 Applebees Meadow, Hinckley, Leicestershire

Proposal: Lawful development certificate for change of use from dwelling [Class C3(a)] to a single household of not more than 6 residents where care is provided [Class C3(b)]

1. Recommendations

Grant Certificate of Proposed Lawful Use

2. Planning application description

- 2.1. The proposal is for a change of use from Class C3 (a) to Class C3 (b) at an end of terrace property within the settlement boundary of Hinckley. There would be no exterior works.

3. Description of the site and surrounding area

- 3.1 56 Applebees Meadow is an end of terrace two storey dwelling located within the settlement boundary of Hinckley. The immediate streetscene is uniform, featuring a range of two-storey terraced and semi-detached properties, finished with red brick or white render.

4. Relevant planning history

None.

5. Publicity

- 5.1. Not required for this application type.

6. Consultation

- 6.1. Not required for this application type.

7. Policy

- 7.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

8. Appraisal

- 8.1 The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 confirms in Part B of the Schedule that uses falling within Class C3 'Dwellinghouses' comprise of three subsections wherein uses can be interchangeable whilst remaining within this class.
- 8.2 The property therefore currently falls within a Class C3(a) use but under these provisions could change to a Class C3(b) use to enable up to six persons to live together as a single household receiving care.
- 8.3 The applicant proposes to operate the premises as a residential institution use which falls within Class C3(b) which would provide accommodation for two children aged 8-18, up to three staff working in the day and two sleeping in the night.

8.4 At any time a maximum of six persons (3 carers, 2 children and 1 manager) would be present at the property and a minimum of four persons (2 carers and 2 child). This falls within the 6 person criteria as set out in Class C3(b).

8.5 The proposed change of Lawful Use falls under The Town and Country Planning Order 2015 and is considered acceptable.

9. Equality implications

9.1 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;
 - (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.

9.2 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.

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

9.4 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).

10. Conclusion

10.1 The proposed change of use of to a Class C3(b) from its current use as a Class C3(a) would not result in a material change of use and a certificate of lawfulness can be issued.

11. Recommendation

11.1 Grant Certificate of Proposed Lawful Use

Reasons:

1. The application has been determined with consideration to the following submitted documents:
 - Block Plan. Received 11/12/2023
 - Site Location Plan. Received 11/12/2023

Notes to applicant

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at buildingcontrol@hinckley-bosworth.gov.uk or call 01455 238141.

EP10

Hinckley & Bosworth Borough Council

A Borough to be proud of

**Town and Country Planning Act 1990 Section 192
Town and Country Planning (Development Management Procedure
(England) Order 2015: article 39**

CERTIFICATE OF LAWFUL PROPOSED USE

Name and Address of Applicant

Horizon Care And Education Group
Venture House
12 Prospect Park
Longford Road
Cannock
Staffordshire
WS11 0LG

Name and Address of Agent (if any)

Mr Roger Potton
The Boundary
Seymour Plain
Marlow
Bucks
SL7 3DA

Date of Application

2 March 2015

First Schedule

Description of Development

Application No.

15/00201/CLUP

Certificate of proposed use to change the property from a residential dwelling (Use Class C3) to a children's care home (Use Class C2) subject to:- i) there being no more than three children in residence at any one time; ii) the age range of the children being between the ages of 9 years and 17 years; iii) there being no more than three adult carers in attendance at the premises at any one time and iv) that no room is used as an office and no business meetings of any kind take place at the premises.

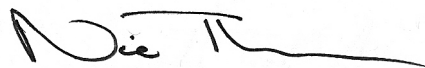
Second Schedule

45 Jackson Road Bagworth Coalville Leicestershire LE67 1HL

The Hinckley & Bosworth Borough Council hereby certify:

That on 2 March 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would be lawful within the meaning of section 192 of the Town and Country Planning Act 1990 for the following reason:-

1. Having regard to the submitted application details, although a change of use from a use in Use Class C3 (dwelling-house) to a use in Use Class C2 (residential institutions) would occur, it does not amount to a material change of use and no development requiring planning permission would therefore take place.



NIC THOMAS

CHIEF PLANNING AND DEVELOPMENT OFFICER

Date : 21 April 2015

NOTES

1. This certificate is issued solely for the purposes of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations/matter specified in the First Schedule taking place on the land described in the Second Schedule would be lawful on the specified date and, therefore, would not be liable to enforcement action under Part 7 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use/operations/matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is/are materially different from that/those described or which relate(s) to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use or operation are begun, in any of the matters relevant to determining such lawfulness.

DELEGATED REPORT

Reference:- 15/00201/CLUP

Parish:- Bagworth Parish Council

**Applicant:- Horizon Care And Education Group
Venture House
12 Prospect Park
Longford Road
Cannock
Staffordshire**

Location:- 45 Jackson Road Bagworth Coalville Leicestershire

Proposal:- Certificate of proposed use to change the property from a residential dwelling (Use Class C3) to a children's care home (Use Class C2) subject to:-

- i) there being no more than three children in residence at any one time;**
- ii) the age range of the children being between the ages of 9 years and 17 years;**
- iii) there being no more than three adult carers in attendance at the premises at any one time and**
- iv) that no room is used as an office and no business meetings of any kind take place at the premises.**

Introduction:-

This is an application for a certificate of lawful proposed development for use of 45 Jackson Road, Bagworth as a children's care home for up to 3 children between the ages of 9 and 17. The home would be administered by non-resident care staff working in 48 hour shifts with up to three adult carers in attendance at the premises at any one time and changeovers occurring at a sociable hour (between 8.00am and 18.00pm). There are to be no meeting rooms, no locked rooms and no external alterations to the property.

There is already a Certificate of Lawful Use (ref. 13/0145/CLUP) relating to the premises for use as a children's care home (Use Class C2). The assessment of the application concluded that from the information submitted, although a change of use from a use in Use Class C3 dwelling-house to a use in Use Class C2 residential institutions would occur, it did not amount to a material change of use and no development requiring planning permission would therefore take place. This decision was based on the following information being provided at that time:-

- i) there being no more than three children in residence at any one time**
- ii) the age range of the children being between the ages of 9 years and 17 years**
- iii) there being no more than two adult carers in attendance at the premises at any one time**
- iv) that no room is used as an office and no business meetings of any kind take place at the premises.**

The current application has been submitted to address a requirement to vary iii) above to enable an increase in the number of adult carers in attendance at the premises at any one time from two to three in order to provide one-to-one care for the three children during the daytime shifts. This is in response to an Ofsted inspection report which stated that the restriction of two adult carers at the premises would 'impinge on your ability to provide flexible care for three children'.

The application relates to a large, modern detached property with an open frontage to the street and a private rear garden located within a residential estate in Bagworth.

Relevant Planning History:-

13/01045/CLUP	Certificate of Proposed Use to change the property from a residential	Approved
12.02.13		
	dwelling (Use Class C3) to a children's care home (Use Class C2)	

Consultations:-

Not relevant.

Development Plan Policies:-

The Town and Country Planning (General Permitted Development) Order 1995 (as amended)

Other material considerations:-

North Devon v First Secretary of State and Southern Childcare (2003)

HBBC v Chartwell Care Limited (2011)

Appraisal:-

The main issues for consideration are whether the use of the premises would change from Class 3 (Dwelling) use to a Class C2 (Residential Institution) use and, if so, whether any change would be a material change of use to a degree such as to require an application for permission.

Class C3 or Class C2

In assessing the previous application for a certificate consideration was given to the aforementioned cases (North Devon v First Secretary of State and Southern Childcare (2003) and HBBC v Chartwell Care Limited (2011)). The Crownhill inspector at paragraphs 8 and 9 of his decision letter, where he cited the North Devon case, concluded, on the basis of that case, that carers who provide 24-hour care, but who are not resident, cannot be regarded as living together in a household. He therefore concluded that the proposed use was a Class C2 use and not a Class C3 use. The same conclusion was reached in respect of the previous application at the application premises and therefore there would, on the face of it, be a change of use requiring planning permission. The current proposal to allow a third adult carer would not change or diminish this conclusion.

However, the Inspector also asked the question as to whether the change was a material change of use such as to require an application for planning permission. As always that question is a matter of fact and degree.

Material Change of Use

It is considered that it is the numbers of children and the proposed details of supervision in terms of car access and change-over frequency and times which should be assessed against a 'normal' households use of the property rather than the category of children to be housed or their age range. The children proposed to be housed at Jackson Road would be up to three children in care between the ages of 9 and 17 years with up to three adult carers on the premises at any one time. The addition of a third adult carer 'as and when necessary' following Ofsted recommendation is not considered to be a significant or material change of use of the premises.

Conclusion

The proposed use would not, as a use within Class C2, amount to a material change of use from Class C3 use as a dwelling-house. The change of use would not therefore amount to development for which planning permission would be required. It is therefore recommended that a certificate of lawful use describing the proposed use of the premises as a children's care home as set out by the applicant in the submission.

The proposed operations described above would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):-

- 1 Having regard to the submitted application details, although a change of use from a use in Use Class C3 (dwelling-house) to a use in Use Class C2 (residential institutions) would occur, it does not amount to a material change of use and no development requiring planning permission would therefore take place.

Contact Officer:- Richard Wright

Ext 5894