

Hinckley and Bosworth Borough Council

**My Ref:** HDC-001

**Your Ref:** Subject of letter

**Date:** 19<sup>th</sup> April 2023

Dear Sir/Madam,

**RE: APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR A PROPOSED USE - CHANGE OF USE OF A DWELLINGHOUSE TO CHILDREN'S CARE HOME**

**16 Hardy Close, Hinckley, Leicestershire LE10 1PF**

Please find enclosed an application for a Lawful Development Certificate pertaining to the above proposed use on behalf of our client, Changing Lives Care Group.

For context, Changing Lives Care Group provide residential placements for children and young people aged between eight and eighteen years. They are approved, registered and inspected by Ofsted. Changing Lives Care Group only provide long-term placements and as such do not provide temporary or respite care.

16 Hardy Close is a detached residential property and is in an area characterised by similar detached dwellings. In terms of the internal layout, in brief, the property comprises of 4 bedrooms, 2 bathrooms, lounge/diner, a kitchen and utility room. No internal changes are proposed. In terms of the exterior, the property features an enclosed garden to the rear with off road parking to the front, which can accommodate up to 5 cars.

According to the classifications provided in the Town & Country Planning Act Use Classes Order (as amended), the existing use of 16 Hardy Close to which the application relates is use class C3 - dwellinghouse. It is proposed to change the use of the property to a children's care home (use class C3(b)).

### **Proposed Development**

#### Proposed Use

It is proposed that the property be used as a Children's Care Home, accommodating up to a maximum of three children at any one time (aged between eight and eighteen years old). The registered use of the house would be as a children's care home pursuant to the Children's Act 2000 for children who fall within the Ofsted registration for children with Emotional and/or Behavioural Difficulties."

The home will be a 'settled care project' and will aim, as far as possible, to present as a normal family home. There will be no physical changes to the external appearance of the property, with no signs or notices erected, and formal parking areas. The property will continue to present itself externally and internally as a typical dwelling house.

The children to be cared for will be those currently in the long-term care of the local authority and therefore may be experiencing some mild emotional and behavioural difficulties. The home will

provide accommodation for these children on a long-term basis, ideally until they are ready to move to semi-independent homes or return home to their families. The home will not at any time provide emergency care.

The daily presence of up to three adults and up to three children in our view closely replicates normal family life in a residential area. The children would be taken to school by the staff members, just as any parent would.

Information about the emotional/behavioural difficulties of the children, their healthcare professional needs and their schooling requirements.

Changing Lives Care Group would like to offer some information on the various types of Ofsted registrations in order to lend some further clarity with regards to the emotional and/or behavioural difficulties of the children.

Ofsted registrations fall primarily into five main categories:

- children with emotional and/or behavioural difficulties (EBD)
- children with physical disabilities (PD)
- children with learning disabilities (LD)
- children with mental disorders, excluding learning disability (MD)
- children with sensory impairment (SI)

Statistically the vast majority of children's homes registered fall into the category of children with emotional and/or behavioural difficulties (EBD); this is the type of provision that Changing Lives Care Group has a significant track record and specialises in. It is worth noting that children that become looked after through the care system are placed into care through no fault of their own, there is a multitude of reasons for them being looked after such as a lack of parental guardianship, or concerns raised about parental capacity etc.

There is a certain aspect of children/young people growing up that gives rise to emotional difficulties along the journey to adulthood, as is the same with every child; however, can you imagine the emotional toil that is experienced by a child/young person being in care? as such the child/young person may be experiencing mild emotional and/or behavioural difficulties, however they may not be displaying any at all, but would be accommodated in an EBD residential home as they do not fit within the categories of the other registration classes. Through Changing Lives Care Group numerous years of experience in the sector, they are able to confidently affirm in the majority of circumstances the fundamental aspect in providing the child/young person a positive route of development is through providing a normal family setting, engrained with role models, values and a support system that assists in developing and meeting the exhibited potential of each young person into a capable and successful adult life. This is our aim for every young person with whom we have been entrusted.

Children placed at the home will be offered life opportunities that most of them would not otherwise enjoy. The location was chosen intentionally, to provide a life-changing opportunity for children who have suffered or are likely to have suffered significant harm because of early adverse childhood experiences.

The location would provide a sustainable environment for the home, with access to good schools, health and leisure activities, shops, and community facilities, and given the nature of

the proposal of being up to three resident children, the home would not make a claim on those local resources, beyond that made by any household in a comparable four-bedroomed property with up to three children.

Changing Lives Care Group truly believe that it takes a community to raise children, especially children who for no fault of their own, have had difficult early life experiences.

The Children would visit healthcare professionals off-site as per a normal family environment i.e. (GP's, opticians and dentists). The children would attend local schools within the area, either mainstream schools or specialist education provisions. There will be no requirement for home schooling and the carers will take the children to and from school, akin to every family environment.

#### Typical shift patterns

Three children would reside at the property and there would be a maximum of three carers present in the day (07:00 to 22:00) and two carers at night (22:00 to 07:00). This shift pattern would provide key continuity of care and create a family environment and bonding. The site manager would normally visit the property between 09:00 and 17:00 on various days of the week in order to provide leadership oversight. There will no more than three carers in the premises at any one time.

Children would attend the local schools in the area, be that mainstream schools or specialist schools; carers will take these children to and from school in the normal fashion.

#### Visitation

Visitation will be minimal. These children do not require regular visits from social workers and clinicians, with most of these meetings, if they are required, taking place away from the home. All training and meetings would also be arranged off-site as it is felt that this is not conducive to a family environment. Ofsted inspectors would typically visit twice a year.

Given the nature of the children and the safeguarding requirements, these children are often those that have been removed from the family household and therefore any visits would be arranged to meet in a neutral location or at the family home with carers in attendance. Family visits are not typically a regular occurrence in order to provide a consistent care environment for the children and also in order to avoid upsetting the other children; this would take place on rare occasions, with the children generally visiting the homes of their family and friends' houses instead.

Changing Lives Care Group do not hold any professional meetings on-site as they believe this is not conducive to the family environment that they instill. There will not be any deliveries apart from the occasional supermarket grocery shopping delivery - just the same as any household.

#### Training requirements for staff

Changing Lives Care Group provide a comprehensive and industry leading induction programme that has been commended by both Ofsted and partner agencies. The training programmes provided are tailored to each individual and role, on average this encompasses forty areas of

specialism that are individually certificated; including all Ofsted regulatory training requirements and mandatory as stipulated by the organisation. Ongoing development is also an area of significant priority whereby the organisation offers fully funded apprenticeship Level 4 and QCF Level 5 qualifications. A fundamental importance is placed on ensuring that each staff member is both highly skilled and confident in their role and responsibility.

An example of the courses undertaken are: Designated Safeguarding Lead (DSL), Level 6 (FHEQ) Understanding Autism, Asperger's and ADHD, RQF QA Level 3 Pediatric First Aid, Positive identity and self-esteem, Therapeutic parenting etc.

As set out above, all training would be arranged off-site as Changing Lives Care Group feel that this is not conducive to a family environment.

#### Details of where records would be kept and where paperwork would take place

The only storage required would be a small lockable filing cabinet, this is because the vast majority of the reports and related documents are completed via a laptop and are contained within an internal cloud-based storage system.

#### Traffic Movements and Parking

Traffic movements will mostly coincide with other properties on the street with people going to work/school, and any mid-afternoon and night-time movements will happen at a typically quiet time of the day.

In terms of car parking, the property has the potential to accommodate up to 5 vehicles within its curtilage, which would exceed Changing Lives Care Group's needs. Furthermore, Hardy Close and surrounding streets have no parking restrictions. As such, there is ample provision for on street parking in the immediate environ.

#### **Lawful Development Certificate Consideration**

The key consideration in this case is whether the proposed use would constitute a Change of Use from a dwelling house to a residential institution and, fundamentally, whether this Change of Use would be material (and therefore require Planning Permission).

In our view, there is a Change of Use occurring in this proposal, but the Change of Use is not material and therefore should not require Planning Permission. Our reasons are set out in the following paragraphs.

We have therefore carried out a careful assessment of Government advice and case law. This leads us to conclude that by virtue of the working arrangements and shift pattern of the carers that a change of use would occur in this case (case law suggests a change of use would in this case mainly be based upon the working arrangements of the carers). However, the circumstances of this case and the content of recent case law indicates strongly that, whilst there is a change of use, the change would not be material, as the intensity of the use would not be significantly greater than a family home, and, therefore, Planning Permission would not be required for this level of change.

In coming to this view, we have considered carefully the approach being taken to the use of this property and set that against recent approvals for Changing Lives Care Group by Leicester City Council (Application no's: 20201064 and 20210071 – Appendix A), which is the same operation as proposed by this application and operated by Changing Lives Care Group.

Further consideration is an appeal decision including award of costs (Appendix B) that we judge to be a material consideration in this case. This appeal decision by the Planning Inspector, Chris Hoult BA BPhil MRTPI MIQ, upholds an appeal against a refusal to grant a Certificate of Lawful Use or Development by Hinckley & Bosworth Borough Council for the use of a dwelling house as a children's care home. Although each case should be judged on its merits, we consider that there are some important comparisons to be drawn between this case and our client's intentions for 16 Hardy Close. Also, we have taken account that this appeal decision has had specific regard to earlier appeal decisions in England.

It is our view that the care being provided, and the housing arrangements are aimed at providing these children with a household environment that would be very similar to a typical family home. The daily presence of three adults (and up to three children maximum) in our view closely replicates normal family life in a residential area. The external appearance and layout of the property will remain the same as the dwelling house use. The internal layout and accommodation would be no different from any other family home.

The Use Classes Order and the need for Planning Permission to be obtained for certain changes of use from one category to another is based upon the nature of the use, levels of intensity and potential scale of the use and therefore the potential impacts that might result from certain uses. The change that we have considered in this case involves so little change in nature or increase in intensity/scale beyond the use of a typical family home cannot be considered a material change in use.

Overall, the property would not have an institutional layout or character and would retain the character of a residential dwellinghouse, with the carers providing care for three children occupying the property, not dissimilar to that of a family unit, sharing facilities and living communally within the house.

In light of the above, it is considered that the proposed use, as detailed in this supporting letter, would fall within Use Class C3(b) of The Town and Country Planning (Use Classes) Order 1987 (as amended). Planning permission is not required to change between Use Class C3(a) and Use Class C3(b) and therefore it is considered that the proposed use is lawful.

Changing Lives Care Group have a proven track record in successfully operating developments of this nature. The organisation is happy to comply with any regulations in relation to obtaining this certificate.

We trust that the advice set out above is clear and the case law reference provides you with sufficient supporting evidence that Planning Permission is not needed in this case.

If you have any queries or require any further information please do not hesitate to contact us.

Yours sincerely,



Liam Toland  
**Liam Toland Planning**

## Appendix A – Leicester City Council Decisions

## CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT

**Applicant:**

Mrs Rajshri Odedra  
Office 7  
35-37 Ludgate Hill  
London  
EC4M7JN

**Agent (if any):**

Mr Joel Jessup  
Heatons  
9 The Square  
Keyworth  
Nottingham  
NG12 5JT

**PART 1 - PARTICULARS OF APPLICATION - no: 20201064**

DATE OF APPLICATION: 18 June 2020  
LOCATION OF PROPOSAL: 18 Treetops Close  
DETAILS OF PROPOSAL: Use as dwelling house (Class C3(b)) where care is provided for residents

### PART 2 - PARTICULARS OF DECISION

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

Leicester City Council hereby certify that on the Date of Application specified in Part 1 above, and in respect of the land specified as 'Location of Proposal' in Part 1 above and EDGED on the plan attached to this Certificate, the 'Details of Proposal' as described in Part 1 above WOULD HAVE BEEN LAWFUL within the meaning of Section 191 of the Town & Country Planning Act 1990 (as amended), for the following reasons:

#### NOTES FOR APPLICANT

1. 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 Emotional and/or Behavioural Difficulties (previous wording: "children with learning disabilities"), and that:
  - (1) no more than three children are receiving care at any one time;
  - (2) the children in care are aged from 8 to 18 years old;
  - (3) with the exception of shift changeover there are no more than
    - (a) three staff on duty between 07:00 and 08:00 to prepare the children for school or between 17:00 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

Date: 27 August 2020



Head of Planning

- The Council has granted a Certificate Of Lawfulness of Proposed Use Or Development.

This Certificate applies only to the extent of the use/operations/matter and to the land specified in Part 1, 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.

The effect of the Certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, 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 is instituted or the operations begun, in any of the matters determining such lawfulness.

  
Head of Planning

## CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT

**Applicant:**

c/o Heatons  
Changing Lives Care Group  
9 The Square  
Keyworth  
Nottingham  
NG12 5JT

**Agent (if any):**

Mr Liam Toland  
Heatons  
9 The Square  
Keyworth  
Nottingham  
NG12 5JT

**PART 1 - PARTICULARS OF APPLICATION - no: 20210071**

DATE OF APPLICATION: 12 February 2021  
LOCATION OF PROPOSAL: 63 Aylestone Drive  
DETAILS OF PROPOSAL: Certificate of proposed development for Use as dwelling house (Class C3(b)) where care is provided for residents

## PART 2 - PARTICULARS OF DECISION

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

Leicester City Council hereby certify that on the Date of Application specified in Part 1 above, and in respect of the land specified as 'Location of Proposal' in Part 1 above and EDGED on the plan attached to this Certificate, the 'Details of Proposal' as described in Part 1 above WOULD HAVE BEEN LAWFUL within the meaning of Section 192 of the Town & Country Planning Act 1990 (as amended), for the following reasons:

### NOTES FOR APPLICANT

The Council has granted a Certificate Of Lawfulness of Proposed Use Or Development.

This Certificate is issued solely for the purpose of Section 191/192 of the Town and Country Planning Act 1990 (as amended). It certifies that the use/operations/matter specified in Part 1 as "Details of Proposal", proposed to take place on the land specified in Part 1 as "Location of Proposal" would have been lawful on the Date of Application, and thus would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.

This Certificate applies only to the extent of the use/operations/matter and to the land specified in Part 1, 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.

The effect of the Certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, 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 is instituted or the operations begun, in any of the matters determining such lawfulness.

Date: 30 April 2021



Head of Planning

Date: 30 April 2021



Head of Planning

Please quote the application number in any correspondence, which should be sent to: Leicester City Council, Planning, City Hall, 115 Charles Street, Leicester LE1 1FZ. Email: [planning@leicester.gov.uk](mailto:planning@leicester.gov.uk). Telephone (0116) 454 1000.

## Appendix B – Appeal Decision

## **Appendix B – Appeal Decision**



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# 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**

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**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.**

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## 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 years<sup>1</sup>. 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

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<sup>1</sup> 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 Order<sup>2</sup>. 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 material<sup>3</sup>. 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.

<sup>2</sup> The Town and Country (Use Classes) Order 1987 as amended.

<sup>3</sup> 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.<sup>4</sup>
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 Council<sup>5</sup>, 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

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<sup>4</sup> See e-mail from appellants to Council dated 20 May 2011.

<sup>5</sup> 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



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# 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

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**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

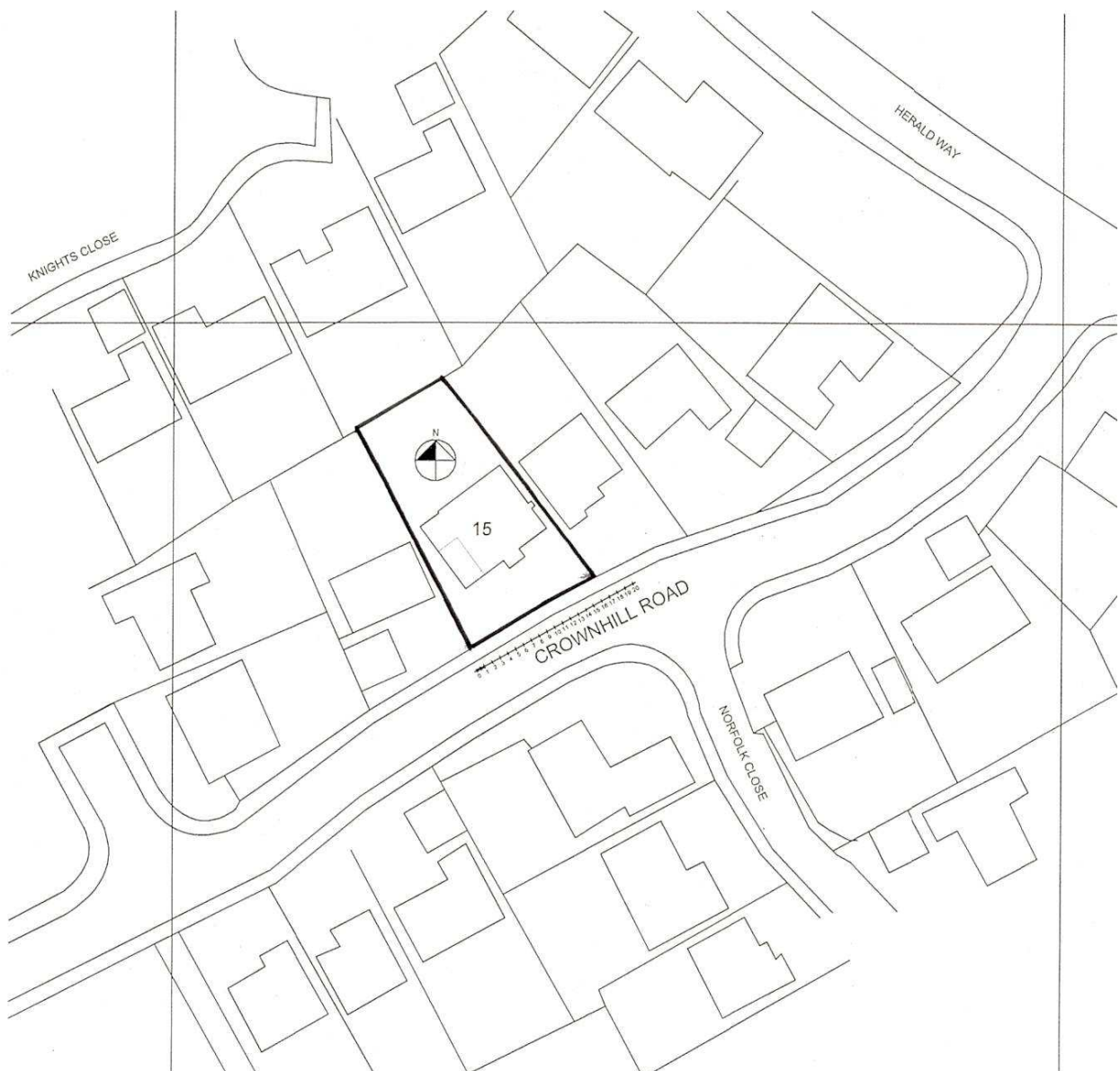
This is the plan referred to in the Lawful Development Certificate dated: 7 November 2011

**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





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## Costs Decision

Site visit made on 25 October 2011

**by Chris Houlst BA BPhil MRTPI MIQ**

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

**Decision date: 7 November 2011**

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### **Costs application in relation to Appeal Ref: APP/K2420/X/11/2155849 15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD**

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
  - The application is made by Chartwell Care Limited for a full award of costs against Hinckley & Bosworth Borough Council.
  - The appeal was against the refusal of a certificate of lawful use or development (LDC) for the proposed use of a dwellinghouse as a children's care home.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. Paragraph A12 of Circular 03/2009 says that costs will normally be awarded where the party against whom the award is sought has acted unreasonably and the unreasonable behaviour has caused the party applying to incur unnecessary or wasted costs in the appeal process.
3. The issue relating to whether the Council behaved unreasonably revolves around the requirements of paragraph B20 of the Circular. It says that planning authorities are not bound to accept the recommendations of their officers. However, if they are not followed, they will need to show reasonable grounds for taking a contrary decision and produce relevant evidence on appeal (my emphasis) to support the decision in all respects.
4. I start by acknowledging that officers were clear in their advice to Members that planning merits are not for consideration in a LDC application and that, in their view, a material change of use of the property would not occur. I accept that, as set out in its appeal statement, the Council mounts a cogent defence of its decision to refuse to grant a LDC. No issue is taken with the Council's view in its response to the costs application that matters of judgment are involved in a s192 application, since the evidence on the ground is not before the decision-maker. However, regarding the overturning of the officers' recommendation, the evidence needs to be examined as to the reasons for it and therefore on what basis a LDC was refused. This relates to the "reasonable planning grounds" to which paragraph B20 refers and to which the Council's evidence at the appeal should relate.
5. The appellants' account of the sequence of events in the lead-in to and at the Planning Committee meeting which resulted in the recommendation being overturned is not disputed by the Council. At the meeting, the Committee had to hand a "late items" report which clarified certain aspects of the operation of

the home and summarised a series of objections from local residents. All the objections appear to relate to the planning merits of the use not to its lawfulness or otherwise. In the light of the points raised, officers considered it necessary to remind the Committee of its remit in dealing with an application of this kind. Nevertheless, the minutes of the meeting record that, first and foremost, Members had concerns about the impact on local residents, given problems which had occurred previously, which relates to the planning merits and indicates that they had their objections uppermost in their minds.

6. A discussion on the regulatory framework for the home is then recorded, followed by reference to Members' concerns that *"the planning system is at fault in suggesting that planning permission wasn't required for such changes of use"*. A request for representations to the Government is made. The wording which I have highlighted is ambiguous and no explanation of what is meant by it is given by the Council in its response to the costs application. Taking it at face value, it appears to relate to a concern that a use which can have the severe impacts claimed by local residents could nevertheless under the planning system not require planning permission. If that is so, it indicates that Members' concerns about the planning merits were again to the fore.
7. Finally, it is recorded that Members considered that the proposed use would be a material change of use. No reason for coming to this view is given. In responding to the costs application, the Council had an opportunity to explain its position. However, no explanation is forthcoming. At paragraphs 18 and 19 of its response, the Council skips from a description of those items which were before the Committee to the content of the Decision Notice without explaining how the one follows the other. The minutes make no reference to a concern regarding staff numbers let alone mount an explanation of why that led to a view that a material change of use was involved. A reference in paragraph 20 to the Stockport appeal decision is irrelevant to any understanding of how the decision was reached, as it was not anyway before the Committee.
8. In the light of this, I am inexorably drawn to the conclusion that the Council has behaved unreasonably. Reasonable planning grounds have not been shown for a decision taken contrary to officers' clear and repeated advice. The Council has not produced relevant evidence to support the decision in all respects. It is not enough for it to refer to the scope open to it for the exercise of judgment without explaining in what way it was exercised. While its appeal statement focuses on some uncertainty regarding staff numbers, there is no evidence that this played any part in the decision to refuse a LDC.
9. Furthermore, at the meeting, Members appear to have accepted without qualification objectors' claims regarding the impacts. If that is so, the Council appears also to have acted unreasonably having regard to the requirements of paragraph B21 of the Circular. This relates to the weight to be accorded to local opposition where it is not founded on valid reasons or supported by substantial evidence on the strict question of the lawfulness of the use.
10. Had the Council exercised its powers in line with the legislative provisions and officers' advice relating to LDC applications, it would have limited its considerations to questions of lawfulness. Any concern that a proposed use might have the potential for some or all of the impacts outlined by objectors and yet still be lawful could still have been the subject of a representation to the Government. However, all the evidence indicates that the Council attached undue weight to the objections and the ensuing concerns and made its decision

on an unreasonable basis. The appellants were therefore required to incur the cost of pursuing the matter to appeal for a determination by an Inspector, a course of action which would not have been necessary had the Council applied its judgment in accordance with the legislative provisions.

11. I therefore find, on the available evidence, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Hinckley and Bosworth Borough Council shall pay to Chartwell Care Limited the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Hinckley and Bosworth Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*C M Hoult*

INSPECTOR