

Planning Statement

For Keys Group Ltd | 26-375

Certificate of Lawfulness of Proposed Use to confirm that the use of the property as a residential care home (Class C2) for 4 adults would be lawful - 68 Leicester Road, Hinckley, LE10 1LT

Project: 26-375
Site Address: 68 Leicester Road, Hinckley, LE10 1LT
Client: Keys Group Ltd
Date: 14 July 2026
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Approved by: Caroline Payne

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1. Introduction

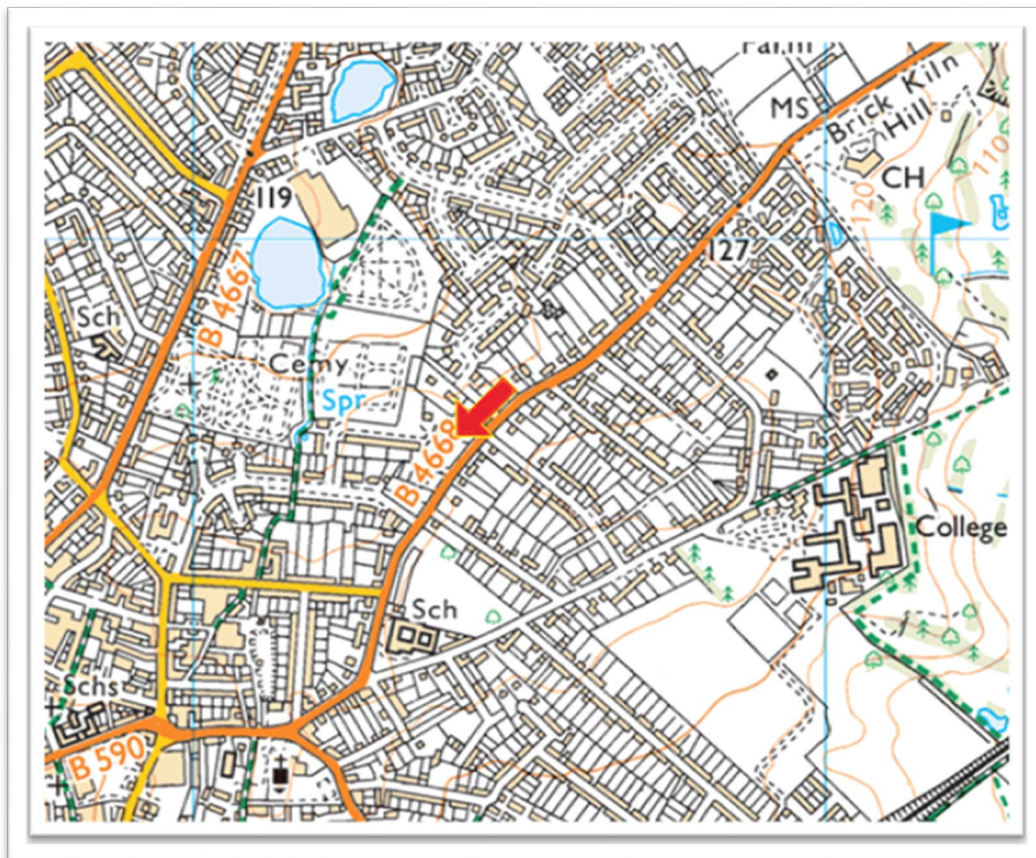
- 1.1 This statement supports an application made under Section 192 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD).
- 1.2 The application seeks confirmation that the proposed use of 68 Leicester Road as a small-scale residential home for 4 adults (Class C2), with support from 2 care staff and a manager would not be materially different to the property's current lawful use as a dwellinghouse, (Class C3).
- 1.3 A Certificate of Proposed Lawful Use was granted on 28 April 2025 for use of the property as a residential children's home providing care for 3 young people. However, the proposed home has not opened and the applicant wishes to use the property as a home providing care for adults.
- 1.4 The only difference with the certificate granted in 2025 is that the home would have 4 resident adults instead of 3 young people. These adults have Autism and differing learning needs and as such require care and support on a 24-hour basis.
- 1.5 The applicant is working closely with Leicestershire Council who are in support of this provision.
- 1.6 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.



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: 25/00190/CLP – Certificate of Proposed Lawful Development for the change of use of property to a residential home (Class C2) for up to 3 young people between the ages of 7 and 17 years. Certificate granted 28/04/2025. **The use has not been implemented.**
 - Application ref: 10/00821/FUL – extension and alterations to dwelling – Granted 15/12/2010.
 - Application ref: 07/01012/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 (land adjacent the property) – withdrawn 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 for and support a significant number of adults, children and young people.
- 3.2 Keys support more than 2,500 children, young people, adults and families across England and Wales.
- 3.3 This proposal would complement Keys' existing portfolio, showing a continued, sustainable commitment and partnership towards supporting adult care.
- 3.4 The ethos of Keys is as follows:

We inspire, encourage and support children, young people and adults to achieve great things and lead happy, healthy and successful lives.

- 3.5 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 4 adults would not require planning permission.
- 3.6 The existing property is a large, detached dwelling and it has the layout, facilities, services, and character of a dwellinghouse. The proposed use would not change this. The external appearance of the building would alter slightly as we change the garage door for a window and minor internal changes-proposed which seek to enhance the environment for each resident.
- 3.7 The home aims to provide care and support for 4 adults within an environment as close as possible to that of a traditional family home.
- 3.8 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, falls within Class C2.
- 3.9 Staff would work on a shift basis to provide 24/7 cover. Shift changes normally take place when day staff leave and night staff arrive, around 8am and 11pm, if additional support during the day was required, this would be time limited.
- 3.10 Not all staff would always be present on the site. During the day there would be 2 carers present. A registered manager would provide oversight to meet the needs of the adults and the staff team. During the night 2 care staff would provide care and support for the adults.



- 3.11 The preparation of meals would be a shared task, the adults would be encouraged and supported to develop life skills by the carers.
- 3.12 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 adults' contact arrangements and visits would be encouraged to take place away from the home.
- 3.13 Adults would be encouraged and supported to attend appropriate activities, hobbies and vocational training where appropriate and enhance social and life skills.
- 3.14 Vehicles trips for day-to-day living activities such as shopping, school runs and social outings would be undertaken by the carers and, as with any family dwelling, shopping can also be ordered online for delivery. The adults would be supported to use public transport where possible.
- 3.15 The adult occupants will not be drivers.
- 3.16 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 3 cars on the site during the day which can be easily accommodated on site and 2 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.”



5. Planning Considerations

- 5.1 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.
- 5.2 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.
- 5.3 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 or, adults living together. Alternatively, the home could comprise adult residents living together.
- 5.4 In the case of 68 Leicester Road, the adults would be resident in the dwelling house but would require all the facilities of day-to-day living. The only difference is that the carers would not be part of their family and would not live at the property as their main place of residence.
- 5.5 Whilst it was recognized in the North Devon judgment that, that when children are 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, the same applies to this application proposal. Whilst the occupants are adults, as a result of their need for additional support with day to day tasks and, given their additional needs, they would not be capable of living independently without support. For this reason, the adults would not form a household.
- 5.6 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.
- 5.7 We refer to the following appeal decisions. Whilst the nature of these appeals relates to the care of children, a similar view is taken in terms of the application proposal. Whilst the occupants would be adults, their needs are similar in that they require assistance from care staff with their day to day needs.
- 5.8 The guidance provided by Inspectors in the following appeal decisions in relation to Class C2 is relevant.
- 5.9 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 **EP1**.

- 5.10 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).

- 5.11 Again, whilst the above decision relates to children, the reference to a household that could be occupied by no more than 6 residents living together is applicable to this application.
- 5.12 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.
- 5.13 The above is applicable to the application proposal in terms of care staff not residing at the property on a permanent basis. A copy of the appeal decision is attached at Appendix **EP2**.
- 5.14 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, of relevance is the fact that the Inspector concluded that the use would fall within Class C2 because the property was not the carers' primary residence.
- 5.15 A copy of the appeal decision is attached at appendix **EP3**.



- 5.16 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.
- 5.17 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.
- 5.18 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.”
- 5.19 The Inspector recognized that, other than at shift changeovers, there would be no more than 3 carers at the premises at any one time.
- 5.20 In this case, 2 care staff would be required. Given that nature of the needs of the occupants who require full-time assistance, even with a changeover of staff this would not be materially different to the occupation of the property by 4 young adults with support from 2 parents.
- 5.21 The outcome of the *North Devon judgment*, and as applied by subsequent Planning Inspectors in the above-listed appeal decisions 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.
- 5.22 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.
- 5.23 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 4 adults operating in the same manner as a traditional family setting with care provided by 2 members of the care staff team, would result in a material change, based on the specific facts of the case.



5.24 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.

5.25 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 are applicable to this application and include:

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

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

The nature of the use

5.27 The aim of the home is to provide an environment of care and support similar to that provided in a home environment for 4 adults.

5.28 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”.

5.29 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 or, under Class C3, up to 6 people.

5.30 In the case of the application proposal, the adults would each occupy a bedroom, the kitchen, living room, dining room and shower/bathroom areas would be shared including the garden space. There is room for the adults to prepare meals with assistance from care staff. There is space for the adults to share mealtimes and socialize together. Each adult would have their own private bedroom and attached bathroom/shower facilities. The members of staff remaining overnight would do so to provide care and support through the night. A staff bedroom/office will be provided upstairs in addition to the 4 bedrooms for residents.



- 5.31 In summary, the nature of the use is such that 4 adults living together in one property with support from care staff would not be materially different to the occupation of the dwelling by up to 6 adults including a family of 2 parents and 4 adult offspring.
- 5.32 No planning impacts would arise from the use of the dwelling as a residential care home for 4 adults that would be materially different to the occupation of the property as a large dwellinghouse.

Physical changes to the building

- 5.33 No external alterations are proposed to the existing dwelling.
- 5.34 The only internal changes are minor. There are sufficient bedrooms within the property to accommodate 4 adults and 2 staff overnight where one member of staff would be on waking duty and, there is space for an office. The office is no different to a home office in a traditional Class C3 dwelling.

Vehicle trips to and from the site

- 5.35 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 older teenagers 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.
- 5.36 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.
- 5.37 There would be no 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 adult occupants would not be car drivers. Only the carers would have access to a car. The occupants would be transported to and from visits in two cars. Unlike a Class C3 use, it is likely that there would be occasional vehicle trips associated with care professionals to the site, when required.
- 5.38 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.”

- 5.39 In the case of this proposal, the adult occupants would not be car drivers. Only the care staff would be drivers and care staff would operate on shift basis.

Relevant consideration

- 5.40 A Certificate of Lawful Proposed Use for use of the property as a residential home for 3 young people with support from 2 to 3 staff and 2 staff overnight, operating on a 24-hour shift basis was granted on 28 April 2025, under application ref: 25/00190/CLP.
- 5.41 In the case of the above certificate application, the council considered that whilst the proposal involved a change of use from Use Class C3 to Use Class C2, there would be no material change to the use of the application site. The same applies in this case.
- 5.42 The only difference is that the residential care home would provide care for 4 adults rather than 3 children.
- 5.43 The above certificate application included no external changes to the property. The same applies to this proposal. The only internal changes are minor and do not require planning permission. There would be no material change in terms of the character and appearance of the property.
- 5.44 As stated in the officer’s report for the above application:

“As a Use Class C3 dwelling, the property can be occupied by up to six residents who receive care and live as a single household.” Whilst the care is provided by staff who do not reside at the property and for this reason, the use would fall under Class C2 because the staff do not form a household, notwithstanding the use class that applies, the fact is that a property is expected to be occupied by up to 6 people.

- 5.45 This is relevant to the application proposal with 4 adult occupants and care provided by 2 members of care staff. The only difference with the Certificate granted in 2025 is that the occupants would be adults and not young people and, whilst there would be one additional resident, the numbers of staff would not be dissimilar to 2 parents in a traditional family.
- 5.46 As with the above decision, similarly, care would be provided by staff on a shift basis and staggered to minimize vehicle movements to and from the site.



5.47 The officer's report for the above Certificate stated that the use of the property for 3 young people, with 2 to 3 care staff would not be materially different to the existing use of the property. The same conclusions should be reached for this proposal, based on 4 adult residents and 2 care staff at any one time.

5.48 A copy of the officer's report for the above is attached at Appendix **EP4**.



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 4 adults where care is provided by 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 and the appeal decisions referred to in this statement 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 are in support of this provision.
- 6.4 The proposed use of the home for 4 adults with additional needs supported by 2 care staff is no different to the use of the property as a children's home for 3 children with support from 2 to 3 staff, as accepted under application ref: 25/00190/CLP.
- 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



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

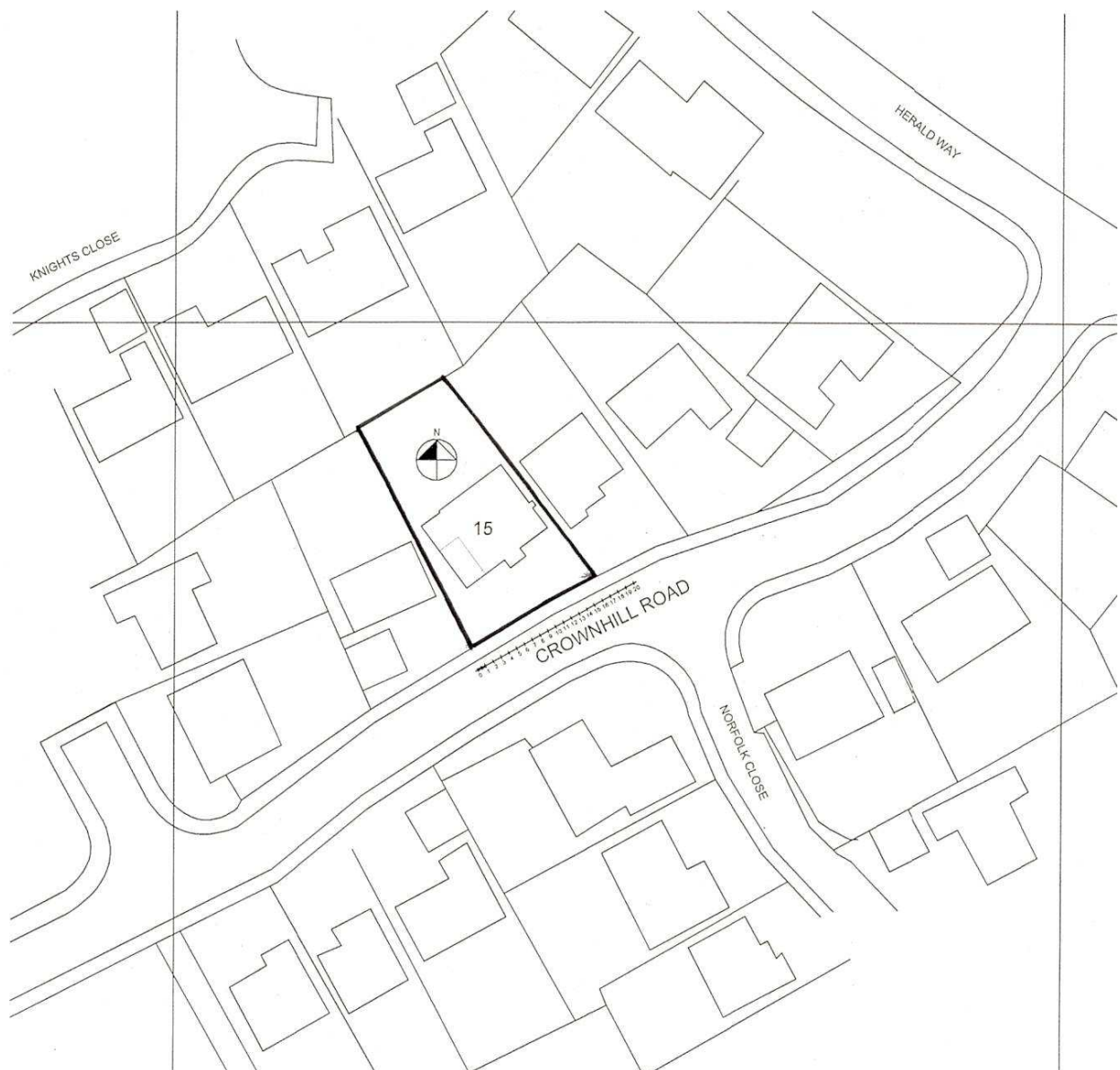
This is the plan referred to in the Lawful Development Certificate dated: 7 November 2011

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



EP2



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

EP3



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

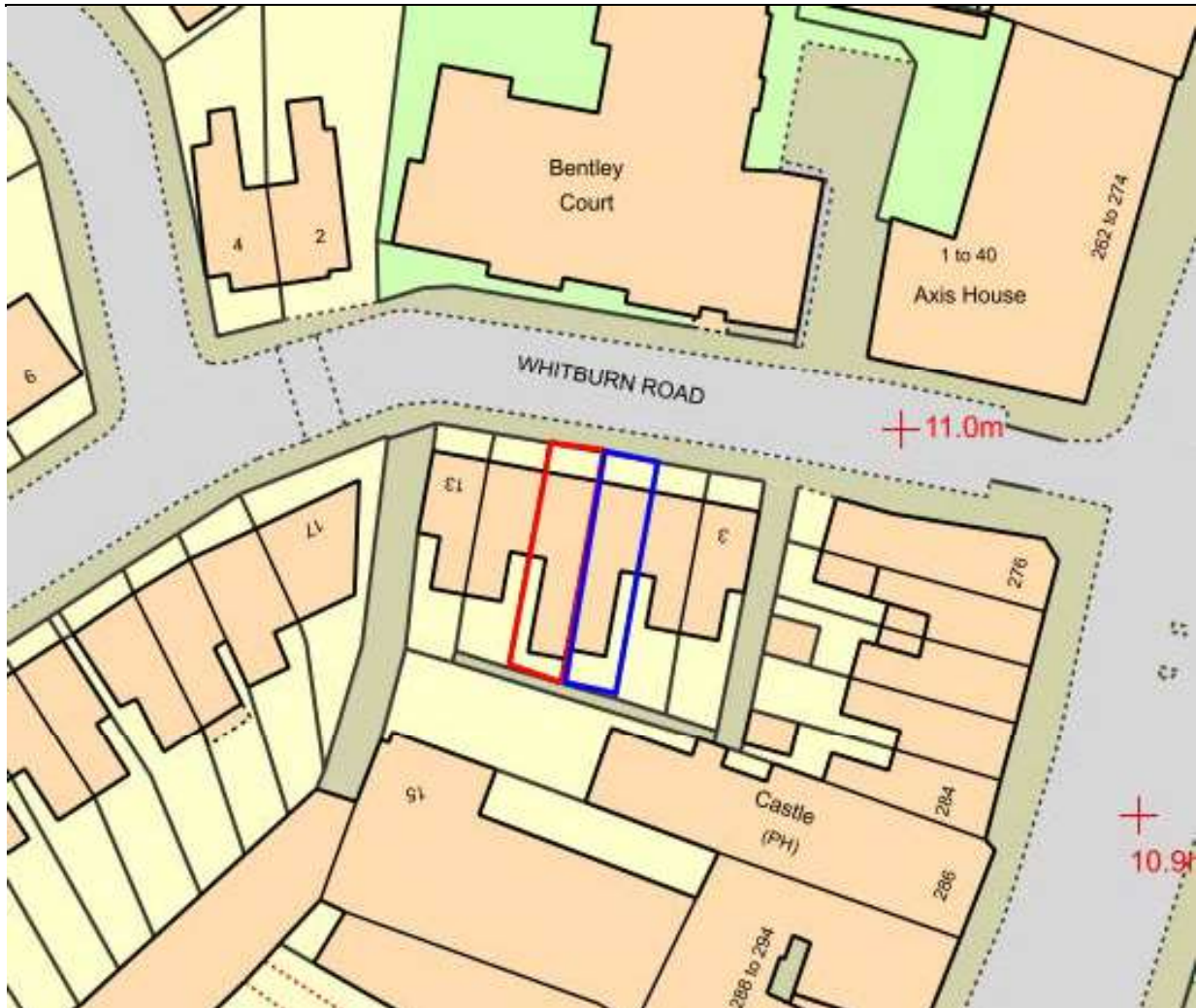
This is the plan referred to in the Lawful Development Certificate dated: [27 January 2023]

by Zoë Franks Solicitor

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

Reference: APP/C5690/X/22/3299351

Scale: Not to Scale



EP4

Delegated Report

Planning Reference: 25/00190/CLP
Applicant(s): Keys Group Ltd
Ward: Hinckley DeMontfort



Hinckley & Bosworth
Borough Council

Application Site: 68 Leicester Road, Hinckley, Leicestershire

Proposal: Certificate of proposed lawful development for the change of use of property to a residential home (Class C2) for up to 3 young people between the ages of 7 and 17 years.

Case Officer: Sullivan Archer (Senior Planning Officer)

1. Recommendations

1.1. Grant Certificate of Lawful Proposed Development

2. Planning Application Description

- 2.1. This application seeks a Certificate of Lawful Proposed Development to confirm that the change of use of a Use Class C3 dwelling to a residential home (Use Class C2) for up to three young people between the ages of seven and seventeen at 68 Leicester Road, Hinckley constitutes lawful development. No internal or external works are included within this proposal.
- 2.2. To facilitate this change of use, two to three staff shall be on site during the day and two members of staff shall be present during the night to provide care for the children at all times. Staff shall be employed on 24-hour shifts and shift changeover times shall take place between 10 AM and midday on a staggered basis to minimise the impact of shift changes on the young residents and to reduce vehicle movements to and from the site.

3. Description of the Site and the Surrounding Area

- 3.1. The 0.06ha application site is located to the northeast of, but within the settlement boundary of, Hinckley on the western side of Leicester Road. Leicester Road is an adopted and classified 'B' road ('B4668') that is subject to a 30mph speed limit. The surrounding area is wholly residential in character and predominantly features detached dwellings. Due to the wide variety of styles and designs, there is not a discernible unique character to the area.
- 3.2. The application site consists of 68 Leicester Road, which is a two-storey, detached, four-bedroom residential property that has an attached garage. The property is predominantly white rendered but includes a low-level red brick finish along the front elevation of the dwelling.

4. Relevant Planning History

- 4.1 There is no relevant planning history.

5. Publicity and Consultation

- 5.1. There is no statutory requirement to consult third parties on an application for a lawful development certificate. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is a good reason to believe they possess relevant information about the content of a specific application.
- 5.2. Notwithstanding this, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question are irrelevant when determining the application.
- 5.3. In this instance, letters were sent out to neighbouring properties.
- 5.4. One member of the public responded to the application, who objected to the proposed off-street parking arrangements and the potential highway safety impacts of the development. It was suggested within this response that the application should limit the number of cars allowed on the property to a maximum of four.
- 5.5. Leicestershire County Council's Children and Family Services made comments in support of the application as they have entered into a contract with the Applicant for the delivery of a three-bedroom children's home to support vulnerable children.

6. Policy

- 6.1 Section 192 of the Town and Country Planning Act 1990.

7. Appraisal

- 7.1 Section 192 of the Town and Country Planning Act 1990 enables any person with the opportunity to ascertain whether any proposed use of buildings or other land, or any operations proposed to be carried out in, on, over or under land would be lawful.
- 7.2 The statutory framework covering, 'lawfulness,' for lawful development certificates is set out in Section 191(2) of the Town and Country Planning Act 1990. Section 191(2) of the Town and Country Planning Act 1990 confirms that uses and operations are lawful at any time if:
- (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

- 7.3 Paragraph 55(1) of the Town and Country Planning Act 1990 defines, 'development,' as the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land.
- 7.4 National Planning Practice Guidance (NPPG) confirms that 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.
- 7.5 Given the above, NPPG states that the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable to a local planning authority to understand exactly what is involved. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. However, this does not preclude another application being submitted later on if more information can be produced.
- 7.6 Ultimately, NPPG highlights 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 particular application.

Use Classes

- 7.7 There are no provisions within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) that enables a Use Class C3 dwellinghouse to be converted into a Use Class C2 residential institution via Permitted Development Rights.
- 7.8 The Town and Country Planning (Use Classes) Order 1987 defines Use Class C3 uses as:

"Use as a dwellinghouse, as a sole or main residence and occupied for more than 183 days in a calendar year by–

- (a) A single person or by people to be regarded as forming a single household; or*
- (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)."*

- 7.9 On the other hand, Use Class C2 uses are defined as:

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

- 7.10 Paragraph 5.6 of the Applicant's Planning Statement confirms that only the children shall live at the property and the care staff for the children would not be permanent residents of the premises.

- 7.11 Whilst Government Guidance confirms that the law does not confirm an age when you can leave children on their own, it is an offence to leave a child alone if it places them at risk. The Applicant has referred to the case of *North Devon District Council v the First Secretary of State (Queen's Bench Division)* (2003), which confirms at Paragraph 16 that:

“Children need to be looked after... 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.”

- 7.12 This justification was utilised at Paragraph 8 of the allowed appeal decision at 15 Crownhill Road, Burbage against the refusal of application 11/00279/CLU. Paragraph 8 of this Appeal Decision states that:

“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 be regarded as living together in a household. The concept of living together as a household means that in the context of Class C3(b), that a proper functioning household must exist.”

- 7.13 By virtue of these factors, the Council agree with the Applicant's views expressed at Paragraph 5.7 of their Planning Statement that the proposed use of the property does not fall within the definition of a Use Class C3 use. Therefore, the proposal is considered to represent a change of use from a Use Class C3 use to a Use Class C2 use as a residential institution for the care of children.

Material Change of Use

- 7.14 The Applicant has stated that whilst the proposal involves a change of use from Use Class C3 to Use Class C2, the development does not consist of development as there is no material change to the use of the application site.

- 7.15 To support this, the Applicant has referred to the Governmental Statement *‘Planning for accommodation for looked after children’* made by the Minister of State for Housing and Planning on 23 May 2023.

7.16 The 2023 Ministerial Statement confirms that:

“Planning permission will not be required in all cases of development of children’s homes, including for changes of use from dwellinghouses 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.”

7.17 In addition to this, the Applicant has referred to a barrister’s opinion, case law from 2003, six planning appeal decisions, one of which is within the Hinckley and Bosworth Borough at 15 Crownhill Road, Burbage, and two planning application decisions, including one within the Hinckley and Bosworth Borough at 56 Applebee’s Meadow, Hinckley.

7.18 No external or internal alterations are proposed to the property. Therefore, the proposal is not considered to result in a material change to the character and appearance of the property.

7.19 As a Use Class C3 dwelling, the property can be occupied by up to six residents who receive care and live as a single household. The proposal is for a residential care home for up to three children, with a maximum of three members of staff on site during the day. Therefore, the proposed use predominantly features the occupation of the property by six persons, which does not exceed the limitations of a property utilised for a Use Class C3 use. Shift changes are also staggered to minimise vehicle movements to and from the site.

7.20 Ultimately, Paragraph 12 of the allowed appeal decision against the refusal of 11/00279/CLU at 15 Crownhill Road, Burbage did not consider the vehicle movements of three members of staff to be:

“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”

7.21 Whilst visits may take place to the site from family, social workers and other professionals, Paragraph 3.10 of the Applicant’s Planning Statement confirms that these would be short and infrequent, and all family visits are pre-planned and take place off-site.

7.22 Given the above, it is not considered that such visits to a use of this capacity would materially depart from that of a typical Use Class C3 dwellinghouse.

7.23 By virtue of these factors, whilst the proposal is considered to be a Use Class C2 Use, the scheme does not result in a material change to the use of the premises as a Use Class C3 use. Therefore, the proposed change of use in these site-specific circumstances is not considered to amount to development for which planning permission is required.

- 7.24 As a result, it is considered that a Lawful Development Certificate for the change of use of property at 68 Leicester Road, Hinckley to a residential home (Class C2) for up to 3 young people between the ages of 7 and 17 years should be granted.

8. Equality Implications

- 8.1 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; and
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 8.2 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.

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

- 8.4 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).

9. Conclusion

- 9.1 Based on the facts of the case and the relevant planning law, the change of use of property at 68 Leicester Road, Hinckley to a residential home (Class C2) for up to 3 young people between the ages of 7 and 17 years does not represent a material change in the use of the application site and therefore the Lawful Development Certificate should be granted for the proposed use in these site-specific circumstances. This conclusion is made on the basis of details provide by the Applicant, and as shown on the following documents received by the Local Planning Authority:

- Application Form (submitted: 28.02.2025)
- Existing Ground Floor & First Floor Plans Dwg No 01 (submitted: 28.02.2025)

- Planning Statement (submitted: 28.02.2025)
- Site Location Plan (submitted: 28.02.2025)

10. Recommendation

10.1 Grant Certificate of Proposed Lawful Development