



Compass Children's Homes

19 Fisherfield, Rochdale

Supporting Statement

December 2023

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1.0 Introduction

- 1.1 This Supporting Statement has been prepared by Alder King Planning Consultants on behalf of Compass Children's Homes in connection with an application for a lawful development certificate for the proposed use of 19 Fisherfield, Rochdale as a home for up to three looked-after young persons.
- 1.2 The statement describes the application site and the proposed use of the property, sets out the procedural basis for determining the application, and then assesses the proposed use against the relevant procedural provisions.
- 1.3 It is noteworthy that planning for accommodation for looked-after children was the subject of a Ministerial Statement in June 2023. The statement is included at **Appendix 1**. It confirms that the planning system should not be a barrier to providing homes for the most vulnerable children in society.
- 1.4 Importantly, the statement also addresses the form of application being made here, where a lawful development certificate is sought for the use of a dwelling as a small children's home where there is no material change of use involved:

"Planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate."

2.0 Site Description

- 2.1 The application site is located on the south side of Fisherfield, Rochdale at its junction with Burdett Avenue (see Figure 1 below).
- 2.2 The property comprises a large four-bedroom dwellinghouse with associated front and rear gardens, and forecourt parking.
- 2.3 In terms of the surrounding context, the application site is located in a primarily residential area, with other residential properties located to the front, rear and side.



Figure 1: Site Location Plan

- 2.4 The property has a lawful planning use as a dwellinghouse (Class C3) and, given its location, size and layout, would be expected to provide for occupation by a large family.

3.0 Proposed Use

- 3.1 This application seeks a lawful development certificate for the proposed use of the property as a home for up to three looked-after young persons aged between 7-18 years. The home will be operated and managed by Compass Children's Homes, an independent provider of high-quality supported living for young people.
- 3.2 Compass prides itself on ensuring that the homes they provide are welcoming and warm places to live which encourage young people to flourish and grow by undertaking education, hobbies and leisure activities.
- 3.3 The property will provide a 'family home' to the up to three young persons in its care, rather than an institutional setting. This approach is favoured by the statutory regulator, Ofsted, which has been encouraging providers to move away from the more traditional institutional model, having recognised that 'institutionalised' persons can then have difficulty transitioning effectively to independent living and the workplace.
- 3.4 The proposed use is as a 'family home' for up to three young persons as their main residence. They will be in full time education and will have a normal day to day routine as would be expected for any child. This will include, for example, making and eating breakfast with the carer(s), attending school, taking part in activities outside the home. In the evening, the young persons will have dinner with the carers and engage in normal household activities before going to bed in their own bedroom.
- 3.5 The young people will be cared for on a shift basis, with two carers on-site overnight. During the day, and if three young people are at the house, there will normally be three carers present. However, there will also be times in the day when there may be no carers present – e.g. while the children are at school.
- 3.6 The carers will be responsible for all care and welfare and will support the young people in going about their daily routines. They essentially fulfil a parental role, and the site will, in practical terms, operate like a family home.
- 3.7 As with most family homes, there may be other occasional visitors, such as delivery persons and maintenance trades or gardeners. However, the young persons will not require professional visitors, and family visits (where required) will take place off-site.
- 3.8 Overall visits and associated vehicular movements will be no different to that which would be generated by either family occupation or an adult care home within Class C3, both existing lawful uses of the property.
- 3.9 No external works are proposed and, in terms of its physical attributes, the property will remain a dwellinghouse.

3.10 In light of the above, a certificate of proposed lawful use is sought in the following terms:

“The use of 19 Fisherfield, Rochdale as a home for up to three looked-after young persons between the ages of 7-18.”

4.0 Procedural Basis for Determining the Application

- 4.1 The lawful use of the application property is a dwellinghouse (Class C3).
- 4.2 A care home may fall within Use Class C3 where the total number of residents does not exceed six and the carers and the cared-for live as a single household. Specifically, the Town and Country Planning (Uses Classes) Order 1987 as amended by the 2020 amendment regulations describes Class C3(b) as *‘Up to six people living together as a single household and receiving care e.g., supported housing scheme such as those for people with learning disabilities or mental health problems’*.
- 4.3 Thus, the starting point here is the concept of the ‘household’, which would have to be satisfactorily met for a children’s care home to fall within Class C3. In *North Devon District Council v First Secretary of State and Southern Childcare* [2003], involving the use of a house to provide residential care for two children, it was held that the concept of what constituted a ‘household’ meant more than simply the number of people. It was necessary to assess whether they could truly be regarded as living as a household and this would probably not be the case where carers do not live there all the time.
- 4.4 Since the 2003 ruling this matter has been the subject of many appeal decisions and the generally established position is that where the staff of a children’s home work on a shift basis there will not normally be a ‘household’ formed and, therefore, the use may not fall within Class C3(b).
- 4.5 However, and as has been consistently confirmed over many years since, even if a proposed children’s home does not operate in a way that means that it squarely falls within Class C3, there still needs to be a full assessment as to whether such use would involve a material change of use requiring planning permission. This has been tested many times at appeal and requires a case-by-case assessment.
- 4.6 The two-step approach for assessing whether a certificate should be issued, as set out in the North Devon case, is referenced in the Brecon Appeal decision provided at **Appendix 2** with the Inspector stating at paragraph 7:

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

- 4.7 At paragraph 7 of the Hinckley appeal decision at **Appendix 3**, the Inspector states:

“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.”

4.8 The Inspector goes on to conclude at paragraph 15 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.”

4.9 The Wolverhampton appeal decision that is provided at **Appendix 4** also clearly sets out the two-step process of assessing what use class the proposal would fall within before then considering whether the proposed use would result in any material change of use from the lawful use.

4.10 Based on the above approach, a substantial number of both decisions on applications by LPAs and appeal decisions across the country have subsequently confirmed that a small children's home would not normally be materially different from a dwellinghouse in terms of activity levels and the nature of use. Indeed, many of these cases relate to children's homes with more residents than is being proposed here.

4.11 As noted in the introduction, the very recent central government Ministerial Statement (**Appendix 1**) on such matters also states:

‘Planning permission will not be required in all cases of development of children’s homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children’s home remains within Class C3 or there is no material change of use to Class C2.’

4.12 In this case, and based on the above, the basis for determining this application for a lawful development certificate is whether the proposed small home for up to three looked-after children would result in a materially different use than the existing lawful use as a dwellinghouse (which also includes use by adults living as a household and in receipt of care without the need for planning permission) and not what use class the proposed use falls within.

4.13 Accordingly, the correct process for determining the application is that set out by the Courts in the *North Devon District Council v First Secretary of State and Southern Childcare [2003]* case. This is now a long-established process, which has been consistently applied by both LPAs and Planning Inspectors dealing with appeals.

4.14 The legally enshrined and necessary process, therefore, here is:

1. to first consider what Use Class the proposed use falls within, and
2. then, if that is a different Use Class to the current lawful use, to consider whether any change of use that would occur is material.

5.0 Assessment of Lawfulness

- 5.1 The application property is clearly an existing single, self-contained unit of accommodation designed for residential purposes and containing facilities for cooking, eating, sleeping and living, which are normally and typically associated with use as a dwellinghouse. Such use falls within Use Class C3 of the Use Classes Order 1987, as amended.
- 5.2 The proposed use of the property as a home for up to three looked-after children can, and will, be accommodated with no changes to its external appearance. Therefore, the proposed use of the property would not result in the property appearing to be anything other than a family home.
- 5.3 The resident young persons will be in full time education and will have a normal day to day routine as would be expected for any young person. This will include, for example, making and eating breakfast as a household, attending school, having trips out and being responsible for day-to-day tasks as would be expected within a typical household.
- 5.4 The young persons will normally be cared for by three carers during the day, with two carers present overnight. As noted above, staff might work with the residents on daily living skills, like washing clothes, learning to cook or other activities, helping with homework, organising games or taking them off-site for recreational purposes.
- 5.5 There will also be times in the day when no carers may be present – e.g. while the children are at school.
- 5.6 There would be no shift changes during unsociable hours. The carers will be responsible for all care and welfare and will support the resident young people in going about their daily routines. Visitors to the property are not anticipated to be of any different scale or nature than under occupation by a family, an adult single household in receipt of care, or a similarly configured foster home, all being Class C3 uses. Family visits would usually take place off-site, rather than at the property, and there will be no requirement for regular professional visits of any kind.
- 5.7 In light of the above, it will be clear that activity levels at the site and the general scale and nature of the use will not be materially different than if the property was occupied by a Class C3 use – e.g. by a large family.
- 5.8 Use of the property will specifically be arranged to mirror the routine of a normal home, as this is the best means of providing the focused care needed to the residents. The property will be the young persons' permanent place of residence and they will have a 'traditional' family routine (eating meals together, attending school, going on trips, etc.). The residents and small number of carers will essentially create a family setting which provides continuity and assists in maintaining the residential character (as would be expected for a Class C3 use).

- 5.9 Family occupation of this dwelling would involve a range of daily movements for work, shopping, education, and leisure, and involve children and adults using the external amenity areas. The level of, for example, vehicular movements associated with the proposed use are likely to be no different than with a family occupying the property.
- 5.10 In addition, use of the property by adults living as a single household and in receipt of care, also a Class C3 use, would generate activity levels similar or greater to that envisaged under the proposed use.
- 5.11 Following the required two-step assessment process here, it is concluded that:
- The proposed use falls within Class C2; but,
 - No material change in use would result.
- 5.12 Appended to this supporting statement are a number of appeal decisions and lawful development certificates issued by LPAs, dealing with the matter of whether a material change of use would result from using a dwellinghouse as a small children's home. There are many other examples that could also be provided.
- 5.13 The selection provided demonstrates both the consistency of approach in dealing with such matters (i.e., the two-step process) and confirms that across a wide geographical area and period of time a similar approach is being taken in assessing whether a change of use is material or not.
- 5.14 Furthermore, almost all of the examples refer to more intensive uses of dwellings (i.e. four children) than is being proposed in this case.
- 5.15 We would draw your attention to the following points with reference to the various appendices:
- **Appendix 2 – Brecon**: This appeal related to a dwellinghouse and its proposed use as a children's home for up to five young persons with two overnight staff. The Inspector concluded that such use would not result in a significant change in the character of the existing lawful use and, therefore, would not be a material change of use.
 - **Appendix 3 – Hinckley**: This appeal related to a modern detached house on a residential estate and its proposed use as a children's home for three residents supported by three carers. There were three staff shift changeovers in any 24-hour period. The Inspector concluded that no material change of use was involved and awarded costs against the Council for declining to issue a lawful development certificate.
 - **Appendix 4 - Wolverhampton**: The subject of this appeal was a modern detached house on a residential street and its use as a children's home for two residents with emotional and behavioral difficulties with 24-hour care. Again, it was concluded by the Inspector that no material change of use was involved.

- **Appendix 5 - Mansfield:** Paragraphs 24 and 25 confirm that the appeal use here involved five residents and eighteen members of staff, with a maximum of five staff on site at any one time. Indeed, that use involved five staff being on site almost all day and every day, because one-to-one care was involved. Such use was found by the Inspector to be a lawful use of a Class C3 dwellinghouse because it did not involve any material change of use.
- **Appendix 6 – Worthing:** This decision relates to a proposed use of four resident young persons, two overnight staff and additional staff members during the day. The LPA confirmed that the proposed use did not involve a material change of use.
- **Appendix 7 – Holmfirth:** This decision again relates to a proposed use as a home for four young people and two carers, with additional carers in the day. The LPA again confirmed that the proposed use did not involve a material change of use.
- **Appendix 8 - Lydden, Kent:** This decision from November 2020 confirms that the property's use as a care home for up to four resident young people between the ages of 8-18 with up to two overnight carers and up to three additional carers during the day was lawful and did not involve a material change of use.
- **Appendix 9 – Coseley:** This decision from January 2021 confirms that the property's use as a care home for up to four resident young people between the ages of 8-18 with up to two overnight carers and up to four additional carers during the day did not constitute a material change of use.
- **Appendix 10 – Maiden Bradley:** This decision issued by Wiltshire Council in June 2021 confirms that the use of a dwellinghouse as a residential care home for a looked after young person with up to three members of care home staff did not constitute a material change of use.
- **Appendix 11 – Highworth, Swindon:** This decision from August 2021 confirms that Swindon Borough Council agreed that the use of this dwellinghouse as a care home for a maximum of four children between the ages of 8 – 18 years is lawful and does not amount to a material change of use.
- **Appendix 12 – Thetford:** This decision from September 2021 relates to the proposed use of the dwellinghouse as a small home for looked after children. As with the examples above, the LPA confirmed that the proposal would not constitute a material change of use.
- **Appendix 13 – Churchfield, Haydon Wick:** This decision also confirms that the use of this dwellinghouse as a care home for four young persons would not involve a material change of use.

- **Appendix 14 – Croydon:** This decision from August 2022 confirms that the use of the property as a care home for two looked after children was considered lawful by the London Borough of Croydon.
- **Appendix 15: Harriseahead, Stoke-on-Trent:** This recent decision of Newcastle-under-Lyme Borough Council confirmed that the use of the dwellinghouse as a care home for up-to 4 young persons would not constitute a material change of use and as such was lawful.
- **Appendix 16: Hull Road, Cottingham:** This very recent decision of East Riding of Yorkshire Council confirmed that the occupation of a dwelling as a home for up to 4 looked after young persons would be lawful.
- **Appendix 17: Oaktree Corner, West Berkshire:** This very recent decision of West Berkshire Council confirmed that the occupation of this dwelling as a home for three looked-after young persons would be lawful.
- **Appendix 18: Keepers Lane, Wolverhampton:** This decision from March 2023 confirms that the use of the property for two young people whilst falling within Class C2, would not result in a material change of use.
- **Appendix 19: Belmont Road, Ipswich:** This recent decision from June 2023 confirms that the use of the property as a home for up to four looked-after young persons would be lawful.
- **Appendix 20: Herstmonceux:** This decision from August 2023 confirmed the occupation of the dwelling house as a home for up to four young persons within Class C2 would not constitute a material change of use.
- **Appendix 21: Kettering:** North Northamptonshire Council issued a LDC in April 2023 confirming that the use of 19 St Mary's Road, Kettering (a dwellinghouse) as a children's home for up to four children was lawful.
- **Appendix 22: Todmorden:** Calderdale Metropolitan Borough Council issued a LDC in May 2023 confirming that the use of a dwellinghouse at 1 Shore New Road, Todmorden as a children's home (Class C2) for four children was lawful.

5.16 The decisions referred to above clearly indicate that, on any reasonable assessment of the current application, a lawful development certificate for the proposed use should be issued on the basis that '*on the balance of probability*' no material change of use is involved and, therefore, planning permission is not required.

6.0 Summary & Conclusion

- 6.1 The existing lawful use of 19 Fisherfield, Rochdale is as a dwellinghouse (Class C3). The application seeks a lawful development certificate for the proposed use of the property as a home for up to three looked-after young persons.
- 6.2 It will be clear from the above that the proposed scale and nature of the proposed use of the application property will not give rise to any activity levels or character/nature of use that would be materially different than that which could occur under this property's occupation by a family or by adult residents living as a single household and in receipt of care – both existing lawful uses of the property.
- 6.3 Under such circumstances, no material change of use results and planning permission is not required for the proposed use. Therefore, we trust that a lawful development certificate for the proposed use of the application property will be issued in the terms sought.

Appendix 1: Ministerial Statement of 23 May 2023

Written questions, answers
and statements

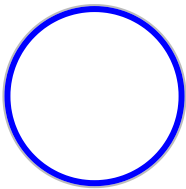
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Planning for accommodation for looked after children

Statement made on 23 May 2023

Statement UIN HCWS795

Statement made by



Rachel Maclean

Minister of State for Housing and Planning

Conservative

Redditch

>

Commons

Statement

I, with the support of my Rt Hon colleague the Secretary of State for Education, wish to set out the Government’s commitment to support the development of accommodation for looked after children, and its delivery through the planning system.

The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children’s communities. These need to be the right homes, in the right places with access to good schools and community support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love.

Today we use this joint statement to remind Local Planning Authorities that, as set out in paragraph 62 of the National Planning Policy Framework, local planning authorities should assess the size, type and tenure of housing needed for different groups in the community and reflect this in planning policies and decisions. Local planning authorities should consider whether it is appropriate to include accommodation for children in need of social services care as part of that assessment.

Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country. It is important that prospective applicants talk to local planning authorities about whether their service is needed in that locality, using the location assessment (a regulatory requirement and part of the Ofsted registration process set out in paragraph 15.1 of the Guide to the Children’s Homes Regulations) to demonstrate this.

To support effective delivery, unitary authorities should work with commissioners to assess local need and closely engage to support applications, where appropriate, for accommodation for looked after children as part of the authority's statutory duties for looked after children. In two tier authorities, we expect local planning authorities to support these vital developments where appropriate, to ensure that children in need of accommodation are provided for in their communities.

Children’s homes developments

Planning permission will not be required in all cases of development of children’s homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children’s home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate.

Statement from

Department for Levelling Up, Housing and Communities

Linked statements

This statement has also been made in the House of Lords

Department for Levelling Up, Housing and Communities

Planning for accommodation for looked after children

Baroness Scott of Bybrook

Minister for Faith and Communities

Conservative, Life peer

Statement made 23 May 2023

HLWS780

Lords

Appendix 2: Brecon Appeal Decision
PINS Ref: APP/P9502/X/13/2205394

Penderfyniad ar yr Apêl

Appeal Decision

Ymweliad â safle a wnaed ar 17/12/13

Site visit made on 17/12/13

gan James Ellis LLB (Hons) Cyfreithiwr

by James Ellis LLB (Hons) Solicitor

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 18 Chwefror 2014

Date: 18 February 2014

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

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

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

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

Decision

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

Procedural matters

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

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

Background

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

Main Issues

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

Reasons

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

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

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

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

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

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

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

Whether the change of use would be material

18. I now need to consider whether the change of use from a family dwelling to a community home for no more than 5 young persons would be 'material'. This is a matter of fact and degree and depends upon the particular circumstances of each case. Established case law provides that it is necessary to look at whether the change gives rise to planning considerations which can include the effects of the change on local amenity.
19. The proposal would display many features of a family dwelling. For example, most of the accommodation on the ground floor would be used for day to day living. It is also intended that staff would seek to provide a stable 'family' environment for those in care. However, in appeal decision Ref: APP/U5930/C/11/2151319 and A/11/2146559, the Inspector identified a number of characteristics of a children's care home which could distinguish it from a family dwelling. These include: possible noise and disturbance arising from incidents of extreme behaviour of residents (with consequential visits from regulatory agencies); the presence of fire alarms, reinforced fire doors and locks on bedroom doors; the property having an office; and the cumulative level of activity, traffic movements and requirement for parking given the comings and goings of staff over a 24 hour period, and the visiting of residents by family and friends. I shall now look at the proposal in light of these points and also others raised by the Authority
20. The grounds of appeal lodged by the appellant refer to the fact that, due to their background, some of the children may be in receipt of 'care' that goes beyond the care normally associated with bringing up a child or adolescent. It is possible that such children could make more noise and create more disturbance than children associated with a typical family dwelling, but I note that the proposal is small in scale (with no more than 5 children at any time) and that Ty Rhos Bach is a detached house (which could reasonably be occupied by a family with more than 5 children) and not bounded by other residential properties. This was not the case with the house the subject of the previous appeal decision which was an end of terrace dwelling where

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

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

Conclusion

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

James Ellis

Inspector

Lawful Development Certificate

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

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

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

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

Signed

James Ellis

Inspector

Date: 18 February 2014

Reference: APP/P9502/X/13/2205394

First Schedule

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

Second Schedule

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

Appendix 3: Hinckley Appeal Decision
PINS Ref: APP/K2420/X/11/2155840



Appeal Decision

Site visit made on 25 October 2011

by Chris Hoults 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



The Planning
Inspectorate

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.



The Planning
Inspectorate

Plan

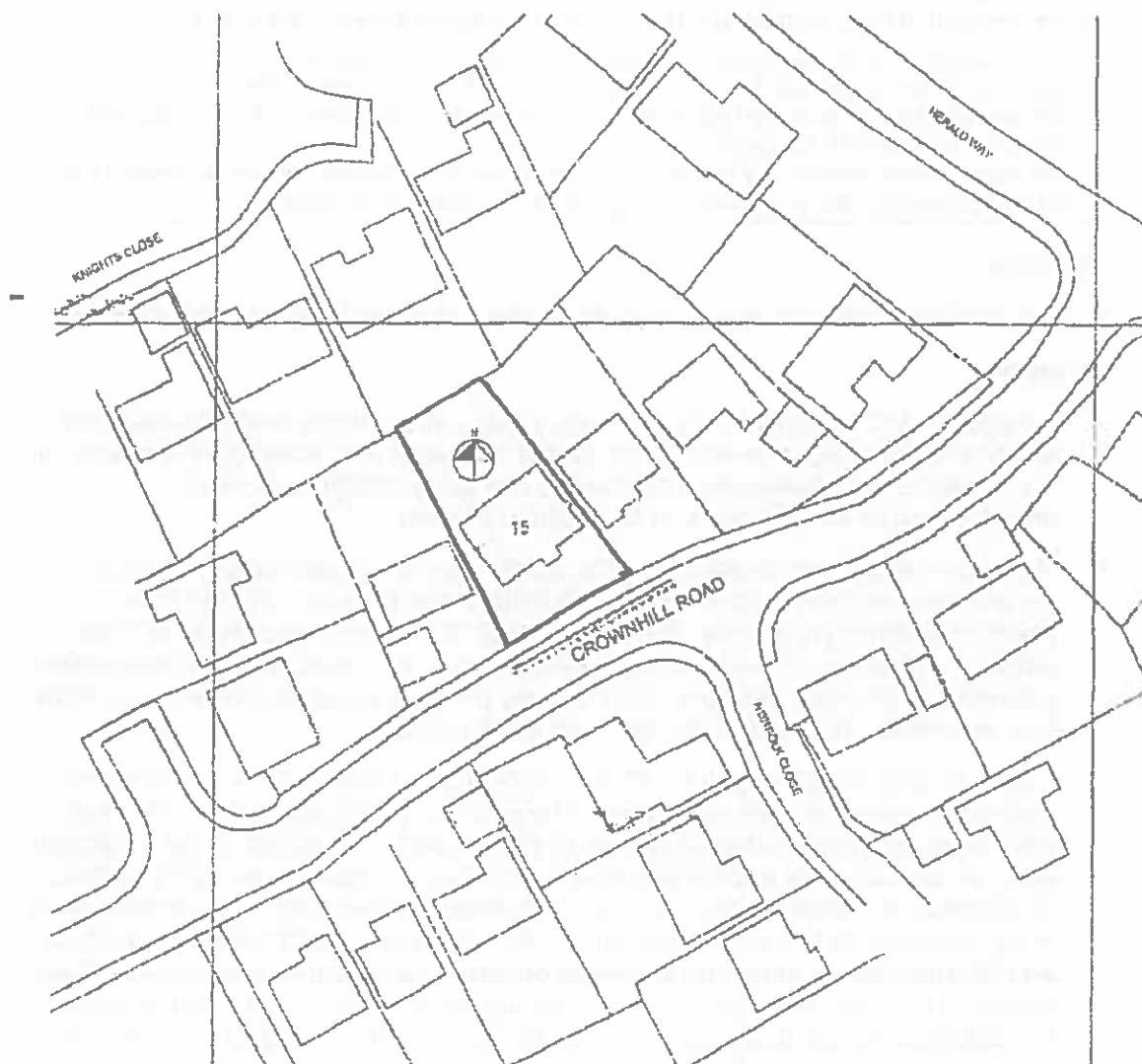
This is the plan referred to in the Lawful Development Certificate dated: 7 November 2011

by C M Hoult BA BPhil MRTPI MIQ

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

Reference: APP/K2420/X/11/2155849

Scale: not to scale





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

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.
-

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

Appendix 4: Wolverhampton Appeal Decision

PINS Ref: APP/D4635/X/06/2013826



Appeal Decision

Site visit on 29 August 2006

by Alan Upward BA(Hons) MCD MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date

15 Sep 2006

Appeal Ref: APP/D4635/X/06/2013826

1 Craven Street, Parkfields, Wolverhampton WV2 2EN

- 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 Mrs S S Perrin against the decision of Wolverhampton City Council.
- The application Ref 05/2073CE/R, dated 6 December 2005, was refused by notice dated 27 April 2006.
- 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 "TO USE THE 3 BED DETACHED HOUSE AS A SMALL, FAMILY STYLE 2 - BED UNIT FOR CHILDREN AGED BETWEEN 10 - 16 WITH EMOTIONAL + BEHAVIOURAL DIFFICULTIES. (NO SCHEDULE 1 OFFENDERS) 24 HOUR CARE WILL BE PROVIDED AT THIS RESIDENTIAL CHILDREN'S HOME. A SHIFT WILL BE 15 HRS + SLEEP IN. STAFF CHANGE OVER WILL THEREFORE ONLY OCCUR ONCE EVERY 48 HOURS. THIS WILL MEAN MINIMAL MOVEMENT TO + FROM THE PROPERTY."

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

The appeal site

1. No.1 Craven Street is a modern detached 2 storey house within a short residential street to the north of Parkfield Road, a distributor road within the city classified as A4039. The street is suburban in pattern with a variety of 2 storey dwellings, those on the western side being terraced and semi-detached. Off-street parking facilities appear mainly to be within front garden spaces.
2. Plans accompanying the application showed the layout of number 1 with a kitchen and 2 living rooms on the ground floor, and 3 bedrooms and a bathroom on the first floor. The house is built closely up to its northern boundary with 1a, a further detached house. On the southern side is a driveway of single vehicle width passing alongside the building. This was said to be able to accommodate 3 parked cars with a fourth in the garage at the site. Relatively close to the driveway is the principal rear elevation of a larger house, number 43, which faces towards Parkfield Road.

Clarification of the proposal

3. The appeal was on the basis that use as a residential children's home in the detailed manner specified would not amount to a material change of use of the property from a dwellinghouse last occupied by a family of 2 adults and 2 children. The application had explained in greater detail proposed staffing arrangements as part of the intention to model a 2 child, 2 parent family. External interventions in the form of educators and therapists would be minimal. The majority of therapy would be carried out by staff rather than external therapists. There would be nothing to distinguish the property from a dwelling as there would be no signage or external alterations to the building. In the appeal it was said that references to educators and therapists had been made on a "worse case scenario" as therapy away from the home would be the norm, as more effective, and following discussions with the LPA in March 2006 it had been agreed that all education would take place away from the home in a mainstream setting.
4. The proposal was therefore regarded as falling within the same Use Class C3 as a dwellinghouse, that being the last and lawful use of the property. There would be no material change of use as the impact upon local amenities would not differ from the former occupation by a household of 2 parents and 2 children. The additional presence at the site of the home manager as a third adult would not be a material change by comparison to the former tenants who had had family



WR100-044-775

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members from abroad staying with them for long periods of time, and who had employed a child carer. The maximum number of cars parked on the driveway on a daily basis at 3 vehicles would have been the same as proposed. Regular family visits to the site would not be the norm. Communication with social workers would be largely by telephone, very rarely via a physical home visit. Integration of children into mainstream education would be the norm, with no regular visits by educators to the home.

Appraisal

5. In relation to the claim that the use would fall within Use Class C3(b), this involves *Use as a dwellinghouse by not more than six residents living together as a single household (including a household where care is provided for residents)*. Within the detailed description of the appeal proposal it is referred to as a "residential children's home". Children residing at the property would expressly require care, and could not on their own be regarded in the true sense as a household without the presence of a carer. The concept of "living together as a household" would require a proper functioning household to exist, and in the context of this appeal this would mean that the 2 children and a carer or 2 carers must reside in the premises. Although 24 hour care was to be provided with 2 adult carers present at all times, they would not be resident as such. They would be staff working a shift pattern and then leaving the premises at the end of each shift. They could not therefore be regarded as living together with the children in a household.
6. The use would therefore not fall within C3(b). Having regard to the wording of Class C2 *Residential institutions*, and the interpretation of "Care" at Article 2 of the UCO 1987, it is clear that the proposed use would be one for the provision of residential accommodation and care of 2 children within Use Class C2. That would of course not be the end of the matter, as it is necessary to assess whether in terms of its detailed operation it would amount to a material change of use of the property from that as a C3 dwelling, last used as a family house by 2 parents with 2 children.
7. The residential accommodation of 2 children "WITH EMOTIONAL AND BEHAVIOURAL DIFFICULTIES (NO SCHEDULE 1 OFFENDERS)" would not automatically result in a use of a materially different character. This would depend upon the detailed operational and management measures applied at the home and their likely impact in practice. These effects would need to be compared with what had happened when the property was last used and what might generally be expected to occur in association with family occupation of a 3 bedroomed detached house in this locality. No physical external alterations were being proposed.
8. Modifications of proposed working arrangements between the application and latest appeal representations are capable of affecting the overall character of the use in terms of the numbers of persons visiting the premises and the extent of such activity. This would apply to off-site mainstream education and current intentions that most therapy would either take place off-site or involve only resident carers. On this latter subject the situation appeared not to be sufficiently clear cut to allow it to be formally incorporated into the description of the use, although the probability is that it would lead to fewer external visitors coming and going at the property. The Council appear to have assumed that children might stay for between 1 month and 12/18 months. More recent representations from the Appellant indicated that the home would be required by the Commission for Social Care and Inspections [CSCI] to focus on medium to long term provision with placements normally of between 6 months and up to 2 years. This would have the effect of reducing activity explicitly associated with 'changes-over', and involve a more stable pattern of residential occupation.
9. On the overall question of whether activity would affect the amenity of the neighbourhood to a greater degree than a family dwelling, many aspects of occupation would be similar to a dwelling use. Day to day activity associated with occupation of the premises would be of the same kind, and matters such as household cleaning and maintenance, shopping for food and its preparation were intended to follow the pattern which a family household would operate without external agencies.
10. Arrivals and departures of residents, staff and visitors would be an important element of activity requiring comparison, particularly where cars were used and parked at or around the site. The maximum of 3 employee cars likely to be parked at the site would not differ materially from what

was recorded as having happened in the recent past or what might be expected at a dwelling of this kind in a suburban location. As with residential occupiers, not all employees might bring cars to the site. Such a level of parking could be accommodated within the site. Although involving more off-road space than most houses along Craven Street, the parking of 3 cars on the driveway, some of which would be placed at the side of the house rather than in front of its street building line, would not materially alter the character of the street as a residential road. Shift changes could be associated with a number of extra vehicle movements, including the moving around of cars between the street and driveway. On the basis of the shift pattern being proposed, these would be relatively few in number.

11. Trips undertaken by staff to take children to school by car would probably differ little from the choices made by parents living in a family household. In their use of local amenities there would be no clear reason why resident children and carers should operate differently from a parent and child household in terms of the choice of car use or walking. There would be some visits by external agencies such as CSCI and social workers, but on the evidence these would be few in number per annum. Nothing suggests that these and other visitors to the property would be of a magnitude likely to impact materially upon the neighbourhood or affect the overall character of the use.
12. Concerns expressed by a third party over the promotion of ant-social behaviour around the home would clearly be capable of affecting the amenity of local residents if realised on a significant scale. The scope for such problems would depend upon the quality of management of the home. Having regard to the extent of staff presence at the site on a 24 hour basis, the physical relationship of the dwelling to the street and its neighbours, and the small scale of the facility involving only 2 children, I do not consider that incidents of the kinds feared would be an inherent part of the use bearing on its overall character. A similar conclusion would apply to the Council's fears that the emotional and behavioural difficulties of the children may result in outbursts triggering visits by professionals or emergency services, particularly at unsociable hours. I doubt that such events would be of a magnitude, frequency or impact to affect neighbours materially.
13. So long as management of the home was to the standards anticipated by the Appellant, it would be unlikely that incidents of the above kinds would materially change the local living environment by comparison with occupation by a family.
14. Drawing matters together, I consider that the use being proposed would not be of a materially different character to the lawful use of the property as a 3 bedroomed dwellinghouse. The Council's refusal was not therefore well-founded. I shall allow the appeal, and grant an LDC on the basis of the express terms sought. Child numbers, ages, periods of residence, staff numbers, shift patterns and educational arrangements will be specified in the LDC to define more precisely the use which is found to be lawful.

Formal Decision

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

Alan Upward

INSPECTOR



Lawful Development Certificate

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

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

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

IT IS HEREBY CERTIFIED that on 6 December 2005 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would not constitute a material change of use of the land from its lawful use as a dwellinghouse within Use Class C3.

Signed

Alan Upward

INSPECTOR

Date 15 Sep 2006

Reference: APP/D4635/X/06/2013826

First Schedule

Use as a residential children's home for a maximum of 2 children, aged between 10 - 16 years, with emotional and behavioural difficulties but not Schedule 1 offenders. The use would involve the placement of children at the premises for durations of not less than 6 months and for up to 2 years, with resident children being educated off-site. Two adult carers would work at the premises at any one time rotating on a shift pattern involving changes-over on a 48 hour basis. A third carer (the Manager) would be present between the hours of 0900 - 1700 hours. No alterations would be made to the internal layout of the premises from that shown on the plans accompanying the application.

Second Schedule

Land at 1 Craven Street, Parkfields, Wolverhampton, WV2 2EN.

NOTES

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



Plan

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

by Alan Upward BA(Hons) MCD MRTPI

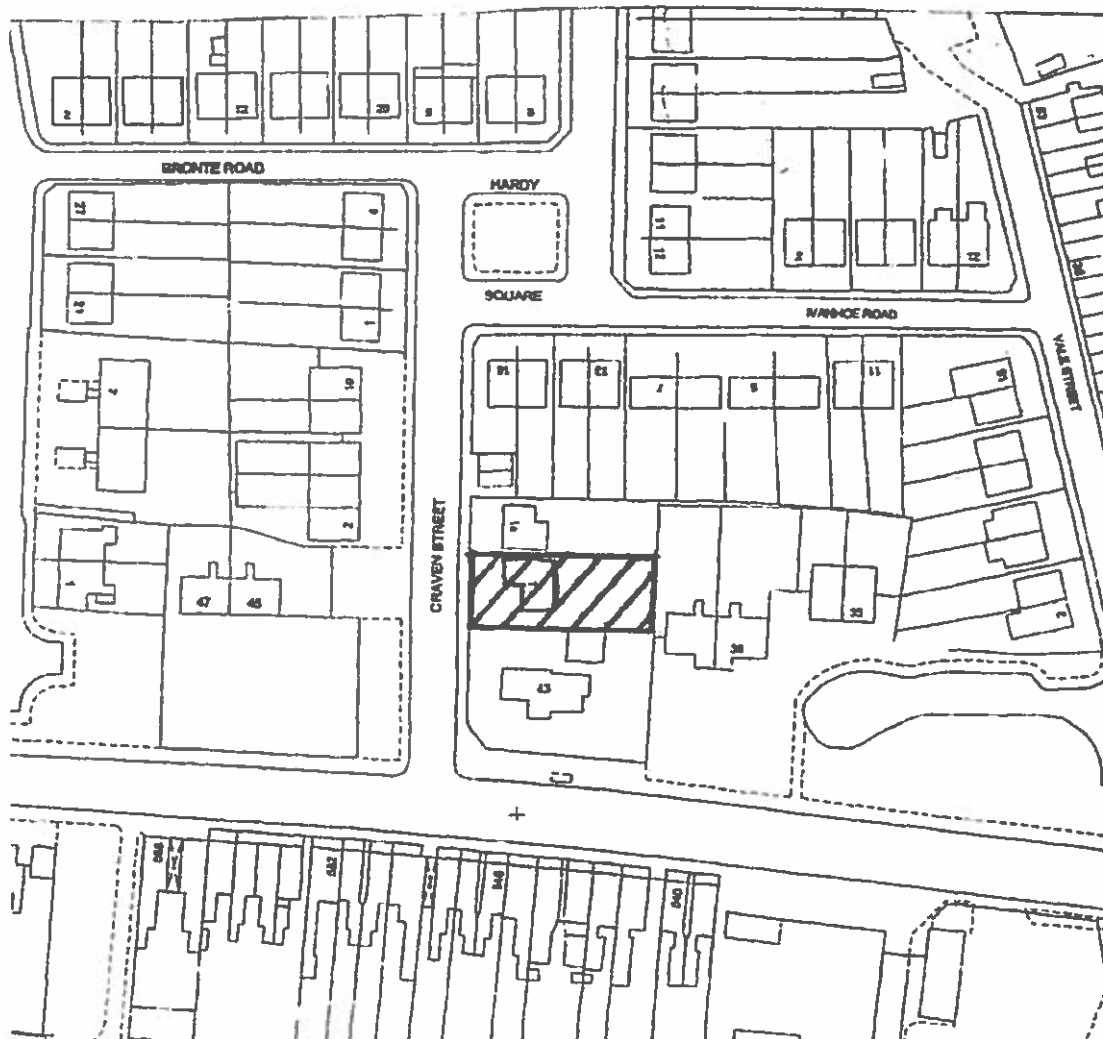
Land at: 1 Craven Street, Parkfields,
Wolverhampton WV2 2EN

Reference: APP/D4635/X/06/2013826

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Scale: 1/1250

15 Sep 2006



Appendix 5: Mansfield Appeal Decisions
PINS Ref: APP/3025/X/15/3003794 & 3006355



Appeal Decisions

Hearing held on 24 February 2016

Site visit made on 24 February 2016

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 01 April 2016

Appeal A: Appeal Ref: APP/X3025/C/15/3006355

11 Lindhurst Lane, Mansfield, Nottinghamshire NG18 4JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr David Harrison (Heathcotes Care Ltd) against an enforcement notice issued by Mansfield District Council.
 - The Council's reference is 2014/0002/ST.
 - The notice was issued on 09 February 2015.
 - The breach of planning control as alleged in the notice is: without planning permission, the change of use from dwelling house (C3) to residential care home (C2).
 - The requirements of the notice are: Stop using the premises as a residential care home (C2).
 - The period for compliance with the requirements is 12 weeks after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)[a, c, e and g] of the Town and Country Planning Act 1990 as amended.
-

Appeal B: Appeal Ref: APP/X3025/X/15/3003794

11 Lindhurst Lane, Mansfield, Nottinghamshire NG18 4JE

- 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 Mr David Harrison (Heathcotes Care Ltd) against the decision of Mansfield District Council.
 - The application Ref 2014/0002/ST, dated 05 January 2014, was refused by notice dated 01 August 2014.
 - The application was made under section 191(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 described on the application form as: LDC for an existing use – 5 residents living together as a single household and receiving care as permitted by use class C3(b).
-

Decisions

Appeal A:

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.
-

Appeal B:

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

Preliminary Matters

3. Two appeals have been submitted, one against the Council's decision to serve an enforcement notice regarding the alleged change of use and the other in relation to their decision to refuse to grant a certificate of lawful use for the existing use of the premises, under section 191 of the Town and Country Planning Act. I shall deal with both appeals within this decision letter.
4. An accompanied site visit was carried out by another Inspector, Mr George Mapson, on 06 October 2015. Further to that site visit, the Planning Inspectorate wrote to the parties on 19 November 2015 stating that a Hearing was considered to be the most appropriate procedure. Subsequently, I held a Hearing into both appeals on 24 February 2016. My decisions are based on the written information before me and the evidence put forward at the Hearing. I have not discussed the appeals, or their respective merits, with Mr Mapson.
5. At the accompanied site visit on 06 October, a number of minor discrepancies were noted between the original layout plan submitted in relation to Appeal B and the actual layout of the property. Following that visit an amended layout plan has been submitted by the appellant showing the layout of the property as it currently exists¹. I have taken account of that revised plan in reaching my decisions and am satisfied that no party will be prejudiced by my decision to do so.

Reasons

Appeal A

6. The appeal was brought on grounds (a), (c), (e) and (g). However, the appellant also questioned whether the Head of Planning and Regulatory Services (the Head of Planning), who signed and authorised the service of the enforcement notice, did, in fact, have the delegated authority to do so. Extracts of the Council's scheme of delegation were provided with the appellant's statement of case and the Council provided me with a full copy at the Hearing.
7. The scheme of delegation formed part of the Council's constitution and was approved on 19 April 2011, with subsequent changes on 20 September and 13 December of the same year. The Council noted at the Hearing that the scheme has been amended since the enforcement notice was served but I have not been provided with copies of the current version. In any event, for the purposes of this appeal, it is the scheme of delegation, as it existed at the time the enforcement notice was issued that is relevant. The Council confirmed that the version provided was the approved scheme at that time.
8. In support of their case that the Head of Planning had delegated authority to sign the notice the Council referred me to paragraph 1.25 on page 93 of the scheme. That paragraph falls under section 13.04 which is entitled 'Corporate Directors and Heads of Service'. The introductory sentence to that section

¹ Drawing number 1209M 9 Revision A

states that all delegated powers set out in the scheme which come under the responsibility of their service area shall be exercised at any time by the Corporate Directors and Heads of Service. The specific delegated powers for each Head of Service are subsequently listed and the powers of the Head of Planning, Community Safety and Regulatory Services are listed at section 13.10.

9. Paragraph 1.25 of section 13.04 authorises the Corporate Directors or Heads of Service to *'authorise any particular named officer to carry out inspection and enforcement duties where this is (i) authorised by law and (ii) necessary in the performance of any function or duty of the department'*. In effect, that paragraph would permit a Corporate Director or Head of Service to delegate those particular responsibilities to a named officer. However, in this case, the notice was signed by the Head of Planning and Regulatory Services himself and the decision was not taken by another named officer. Consequently, it is necessary to examine whether the decision of the Head of Planning and Regulatory Services fell within the scope of the powers delegated to him by the scheme of delegation, as listed at section 13.10.
10. Section 13.10 includes an extensive list of delegated powers, separated into sections (a) to (d). Sections (a) and (b) relate to the determination of 'applications' made to the Council and are not directly relevant to enforcement proceedings. Section (d) relates to building control matters and, likewise, is not relevant to enforcement under the Town and Country Planning Act 1990 (the Act). Section (c) lists a number of 'other development control functions delegated to the Head of Planning, Community Safety and Regulatory Services, Development and Building Control Manager and Principal Development Control Officers'. The listed powers are very specific and include, at paragraph 1.35, the authority to serve Planning Contravention Notices and Breach of Condition Notices. However, the power to serve enforcement notices under the Act is not listed. I cannot speculate as to whether that was an oversight or a deliberate omission but, whatever the background to the scheme, it is clear that the authority to serve enforcement notices is not listed within the powers delegated to the Head of Planning and Regulatory Services.
11. The Council suggest that the terms of paragraph 1.25 of section 13.04 were broadly drawn to enable a named individual to carry out any 'enforcement duties'. At the Hearing, the Council accepted that the term 'enforcement duties' was somewhat unclear and that it was difficult to be certain whether that was intended to relate to the service of an enforcement notice. In any event, as set out above, I consider that the terms of paragraph 1.25 were to enable specific enforcement duties to be delegated to a particular named officer. The delegated powers of the Head of Planning and Regulatory Services are fully set out within the scheme of delegation and do not include the power to authorise and serve enforcement notices under the terms of the Act. In my view, the terms of paragraph 1.25 of section 13.04 did not extend the delegated powers of that individual beyond those listed at section 13.10.
12. In view of the above, having considered the scheme of delegation in detail, I am not satisfied, on the balance of probabilities, that the Head of Planning and Regulatory Services had the proper authority to issue the enforcement notice. To my mind, a notice issued without proper authority must be ultra-vires and a nullity; without an authorised signature it cannot be an enforcement notice at all. For those reasons, I conclude that the notice is a nullity and take no

further action in connection with Appeal A. This does not prevent the Council from exercising its power under section 171B(4)(b) of the Act to issue another notice if it considers it expedient to do so and, of course, Appeal B remains to be considered.

Appeal B

Background and Main Issue

13. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal.
14. The burden of proof regarding decisive matters of fact rests on the appellant. He has asserted that the development is lawful and thus immune from enforcement action. An appellant must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).
15. Thus, the main issue in relation to Appeal B is whether the Council's decision to refuse to grant a certificate of lawful use was well founded.

Reasons

16. No. 11 Lindhurst Lane is a detached dormer bungalow, which is located close the junction with Berry Hill Lane. The character of the surrounding area is predominantly residential. The original building has been altered and extended by the addition of a single storey extension at the rear and a dormer to the front, which has provided first floor living space.
17. The property has four bedrooms on the ground floor and one bedroom on the first floor. Four bedrooms have en-suite shower and toilet facilities; the other is adjacent to the communal ground floor bathroom. The rest of the accommodation comprises a kitchen, living room, dining room, laundry room, hall and manager's office. Visitors to the premises enter through the front door where they are required to sign a register.
18. Aside from the locks on the bedrooms the layout of the property is largely what one would expect of any family home, with a communal lounge, kitchen and garden area. Locks are provided on bedroom doors to provide privacy and security but that, of itself, does not dictate that the residents do not form a single household, having regard to the prevailing sense of communal living, as described above. At the time of the site visit of Inspector George Mapson a small section of the garden was fenced off to provide a private area immediately to the rear of one of the ground floor bedrooms. I understand that the fencing was erected taking account of the needs of a particular resident who, on occasion, would benefit from a quiet space within the garden. That fencing had been removed at the time of my site visit. Taking account of the shared use of facilities within the house, it appears to me that the fencing

within the garden was not indicative of a separate unit of occupation or any significant sub-division.

19. A small manager's office contains a computer, paperwork and a store for prescription medicines. In proportion to the scale of the building as a whole the office is small and its presence is not unexpected in a home where care is provided. It seems to me that the inclusion of the office does not affect the way in which the residents interact with one another, nor does it alter the influence that they have on running the household including the communal tasks involved. Thus, there is nothing inherent within the layout of the property that would suggest that the use would fall outside Use Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order).
20. Class C3(b) is defined as the use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents. Having regard to the evidence presented, the fundamental question is whether the residents of the property form a single household. I have been referred to a number of appeal decisions and court judgements with regard to the question of whether residents in need of care are capable of forming a single household. In the '*North Devon*' judgement² it was held that children were not capable of forming a single household in the absence of a live-in carer on the basis that children are not generally capable of running a household themselves. In reaching his judgement Collins J held that the same would apply to adults who suffer from mental or physical disability who need care in the community. However, that judgement was considered in detail in the '*Eve Helberg*' case³. In reaching his judgement on that case Mr Justice Richards noted that he would be reluctant to read the comments of Collins J as laying down a principle that those who suffer from disability or are in need of care can never constitute a household.
21. He concluded that the correct position is that a judgement needs to be made based upon the specific facts of each individual case noting that '*there may indeed be cases where, having regard to the nature of the disability suffered and the degree of care required, persons resident in a house cannot sensibly be said to constitute a household. But there will be other cases, and in my judgement this is one of them, where persons resident in a house can be sensibly said to constitute a household, notwithstanding that they have some disability and need care. That is so even if the need is full-time care. I would reject any suggestion that in a case where care is needed for those under a disability, Class C3 can only apply if the carers are in residence in the same property as those for whom they are caring. That would seem to me to run counter to the language of Class C3 and to the underlying policy.*

If the carers are resident the question is whether they, together with other residents, constitute a single household. But if they are not resident, there remains a perfectly sensible question whether those who are resident, that is to say those in receipt of care, themselves constitute a single household. That is a question to be answered on the facts.'
22. Therefore, it is a matter of fact and degree, based upon the circumstances of any given case, as to whether residents are capable of forming a household.

² North Devon District Council v First Secretary of State [2003] JPL 1191

³ R (on the application of Crawley Borough Council) v FSS and Eve Helberg (Trading as the Evesleigh Group)

The fact that care is necessary does not preclude residents from forming a single household, in fact, the concept of care is an inherent part of Use Class C3(b).

23. In this case, the property contains shared facilities including the kitchen, lounge and external space. At the Hearing, the appellant confirmed that the residents themselves take responsibility for everyday household tasks, including cooking, cleaning and shopping, with assistance from carers when required. At my visit to the property I observed a rota posted on the fridge door which identified which resident was responsible for preparing dinner on specific days of the week. I understand that the residents eat communally and also undertake shopping trips together. Whilst not related to one another, the residents have formed friendship bonds and the communal living arrangements and the way in which household tasks are undertaken indicates to me that they are living as a single household.
24. At the date of the LDC application the property was occupied by five adult residents, who are described as having learning difficulties and mental health issues and require care by a team of carers 24 hours a day. That care is provided by a manager, who works on weekdays between 09.00 and 17.00; three day-support workers and two night-support workers. Care is provided on a shift basis such that none of the care workers are resident at the property and the night support workers undertake a 'waking shift' during the night.
25. In all eighteen members of staff are employed to offer general supervisory and personal care but the maximum number of staff on site at any one time would be five, including the manager. One resident requires personal care. The four other residents do not require personal care and are able to take a shower or bath or use the toilet on their own.
26. From the evidence presented it seems to me that the purpose of the carers is largely to assist the residents in day to day tasks as opposed to undertaking those tasks themselves on behalf of the residents. This was described as 'supported living' by the appellant at the Hearing. The appellant also explained the way in which those in need of care are assessed in terms of determining their suitability for being accommodated within an assisted living environment. The premises is not a 'secure' institution and those residing at the property are assessed as being suitable for living in the community with support from care workers.
27. The Council and interested parties have referred to disturbances related to the property and the Council have appended a witness statement from a Police Community Support Officer which was produced following a request for information under the Freedom of Information Act. That statement records 33 incidents at the property between 06 February 2013 and 20 March 2015. One arrest was made on 14 June 2014 on the charge of criminal damage and assault in relation to the actions of a resident who caused damage within the property. 16 of the 33 incidents related to situations where residents had 'absconded' from the premises. Those calls are generally logged by the Police as 'missing persons' or 'concern for safety' and the incidents were generated by care staff who were concerned for the welfare of the individual who had left the premises. There is nothing to indicate that the people in question were any danger to the wider public.

28. A number of calls were also logged under the heading of 'anti-social behaviour' and those incidents included situations where neighbouring residents have reported banging and disturbances within the premises but also outside the premises including incidents where the gates have been slammed and one incident where a resident was hitting fencing, gates, cars and the bus stop with a plastic 'swing-ball bat'. The appellant suggested that the incidents were examples of autistic traits and suggested that the majority related to a particular resident. In the view of the appellant, the incidents do not indicate that residents of the home are a danger to the public and drew the distinction between secure institutions, such as the St Andrew's Care Home, which has been referred to by interested parties, and the lower level of care required at the appeal premises.
29. Whilst I accept that there is nothing to suggest that the residents pose any danger to the public I have no doubt that the recorded incidents of noise and disturbance and anti-social behaviour would cause significant unease amongst neighbouring residents. Behaviour that may seem perfectly understandable to a professional who is used to caring for those with mental disorders could no doubt appear intimidating or disturbing for residents who are not trained in such matters.
30. However, notwithstanding that point, the incidents referred to do not dictate that the use of the premises falls outside Class C3(b) of the Order. Class C3(b) is defined as the use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents. The term 'care' is defined at Article 2 of the Order and means; *'personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class C2 also includes personal care of children and medical care and treatment'*.
31. Thus, it is inherent within the terms of the Order that those with mental disorders may fall within Class C3(b). It is reasonable to expect that the behaviour of those with such disorders will reflect their particular individual circumstances, whether that be autistic behaviour as described by the appellant, or other behavioural traits. Therefore, whilst I acknowledge that the behaviour may seem unusual or intimidating to neighbouring residents, the incidents recorded by the Police do not indicate that the residents are incapable of forming a household for the purposes of Class C3(b).
32. Fundamentally, the evidence suggests the residents take a full part in running the household, with assistance from carers, and that those residents live communally and have formed friendships with each other. Therefore, taking account of the *Eve Helberg* judgement, and the specific circumstances of the case before me, I conclude, on the balance of probability, that the way in which the property operates falls within Use Class C3(b).
33. The Council suggest that the overall level of activity generated by the use is such that a material change of use has occurred. As set out above, the terms of Class C3(b) explicitly include up to 6 residents living together as a household where care is provided. The definition of 'care' within the Order refers to 'personal care' which, to my mind, suggests that the Order envisages care packages tailored to the individual. In this case, five residents live at the premises with a maximum of up to 5 members of staff on site at any one time,

effectively providing one to one 'personal' care during the daytime. The numbers will generally be lower in the evening when the manager is not on the premises and two night staff are employed. To my mind, the level of care in this instance falls within what could reasonably be expected within Class C3(b), taking account of the terms and definitions within the Order.

34. Consequently, I am satisfied that the level of activity is not at a level where a change of use outside Class C3(b) has occurred. Full details have not been provided but the case in Bath and North-East Somerset would appear to be of a much greater scale than that before me, noting that the Inspector commented that up to 18 cars were parked outside the premises in that case. In this case, the maximum number would be 6.
35. It is clear, upon reading relevant judicial authority, including *Hossack*⁴ and *Eve Helberg*, that decisions of this nature are not straightforward and that each case must be determined on its individual merits. Levels of care, the number of residents, the particular circumstances of those residents, the layout of the property, and the level of activity associated with a use could all be subject to change depending on the specific circumstances of the case. The Council and the appellant have referred to various decisions relating to cases elsewhere in the country. Without full knowledge of those cases it is difficult to draw comparisons with the appeal before me and I have determined the appeal on the basis of the information presented in writing and the oral evidence gathered at the Hearing.

Conclusion

36. For the reasons given above I conclude that, at the time the application was made, the property was in use as a dwellinghouse as defined by Class C3(b) of the Order. As such, no material change of use had taken place from the previous use within Class C3(a) and, on the evidence now available, the Council's refusal to grant a certificate of lawful use or development in respect of an existing use consisting of 5 residents living together as a single household and receiving care as permitted by use class C3(b) was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Chris Preston

INSPECTOR

⁴ R. (on the application of Yvonne Hossack) v Kettering Borough Council 7 English Churches Housing Group [2002] EWC Civ 886

Appendix 6: Worthing LDC AWDM/0463/20



WORTHING BOROUGH COUNCIL

Nick Pleasant
NJL Consulting
Park House
Park Square West
Leeds
LS1 2PW

CERTIFICATE OF PROPOSED LAWFUL USE OR DEVELOPMENT

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (AS AMENDED)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)(ENGLAND) ORDER 2015; article 39

Application Number: AWDM/0463/20

The Worthing Borough Council; hereby certify that on 16/03/2020 (reference AWDM/0463/20), the matter described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan submitted with this application, would be lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:-

01. It has been accepted that on the balance of probability that the proposed use would constitute a change of use from Use Class C3(a) dwellinghouses to C2 Residential Institutions, however it does not amount to a material change of use and no development requiring planning permission would therefore take place under Section 55(2) of the Town and Country planning Act 1990 (as amended).

This certificate relates only to 66 Arundel Road as outlined in red on the submitted site plan and floor plan received on the 27th May 2020 and the precise use referred to below and within the supporting information:

The use of a dwellinghouse as a childrens home for up to 4 young persons (aged 8-18) with 2no. 24-hour carers.

The use is not liable to enforcement action under Section 172 of the Act. However, if any further development/intensification and change in circumstance is carried out subsequent to the issue of this certificate, it may be liable to formal enforcement action by the Local Planning Authority.

This certificate only makes lawful the uses referred to above and does not provide immunity from enforcement for any other use.

This decision is based on the following submitted plans/documents for avoidance of doubt.

Reference/Drawing Number	Version	Date Rec
FLOOR PLAN		27.05.2020
COVER LETTER & APPENDICES OF EVIDENCE	Dated 11.03.2020	16.03.2020
SITE LOCATION PLAN	Drg: Plan-01	16.03.2020

First Schedule

Application for Certificate of Lawfulness for proposed childrens home for up to 4no. young persons with 2no. 24 hour carers

Second Schedule

66 Arundel Road Salvington Worthing West Sussex

Worthing Borough Council, Development Management, Economy Directorate,
Portland House, 44 Richmond Road, Worthing, West Sussex, BN11 1HS
Tel: 01903 221065 Email: planning@adur-worthing.gov.uk
Web: www.adur-worthing.gov.uk

G Peck

Gary Peck
Planning Services Manager Date: 30.06.2020

Notes

- a) This certificate is issued solely for the purposes of section 192 of the Town and Country Planning Act 1990 (as amended).
- b) It certifies that the matter specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful, on the specified date, and thus, would not have been liable to enforcement action under section 172 of the 1990 Act on that date.
- c) This certificate applies only to the extent of the matter described in the First Schedule and the land specified in the Second Schedule and identified on plan submitted with the application. Any matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
- d) 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 relevant to determining such lawfulness.

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015; article 39**

YOUR ATTENTION IS DIRECTED TO THE FOLLOWING NOTES FROM THE ABOVE ORDER. THEY ARE FOR INFORMATION ONLY AND DO NOT PRETEND TO SET OUT THE WHOLE OF THE LAW ON THE SUBJECT. IT WOULD BE WELL FOR YOU TO CONSULT YOUR SOLICITOR IF YOU ARE IN ANY DOUBT

1. If the applicant is aggrieved by the decision of your Local Planning Authority to refuse a Certificate of Lawful Use or Development, whether in whole or in part (including a case in which the Authority modify the description of the use, operations or other matter in the application or substitute an alternative description for that description), the applicant may appeal to the Secretary of State in accordance with Sections 78 of the Town and Country Planning Act 1990 within six months of the date of this notice.
2. If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within:
28 days of the date of service of the enforcement notice,
or within 6 months (12 weeks in the case of a householder appeal) of the date of this notice, whichever period expires earlier
3. Further correspondence about this application should quote the application number.
4. Where this notice conveys the granting of a certificate, please note that the decision does not purport to convey planning permission nor any consent or approval which may be required under the Public Health Acts, the Building Regulations, or any other legislation.
5. Appeals must be made on a form which is obtainable from the Planning Inspectorate at Customer Support Unit, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel 0117 372 6372) or can be downloaded from www.planning-inspectorate.gov.uk. The Secretary of State has power to allow a longer period for the giving of notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances, which excuse the delay in giving notice of appeal.

Appendix 7: Holmfirth LDC 2020/CL/90820/W



KIRKLEES COUNCIL

**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 2015: ARTICLE 39**

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Application Number: 2020/CL/90820/W

To: Nick Pleasant,
NJL Consulting
Park House
Park Square West
Leeds, LS1 2PW

For: Compass Community Ltd

FIRST SCHEDULE CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OF
PREMISES AS CHILDREN'S HOME

SECOND SCHEDULE TUDOR HOUSE, MIRY LANE, THONGSBRIDGE,
HOLMFIRTH, HD9 7SW

**KIRKLEES COUNCIL HEREBY CERTIFY THAT ON 11-MAR-2020 THE USE
DESCRIBED IN THE FIRST SCHEDULE THERETO IN RESPECT OF THE LAND
SPECIFIED IN THE SECOND SCHEDULE HERETO AND EDGED RED ON THE
PLANS ATTACHED TO THIS CERTIFICATE WOULD BE LAWFUL WITHIN THE
MEANING OF SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED), FOR THE FOLLOWING REASONS:**

On the balance of probability the occupation of the building known as Tudor House, Miry Lane, Thongsbridge, Holmfirth, HD9 7SW by up to a maximum of four young people between the ages of 8-18 with up to two carers on 24 hour shift basis including sleeping in overnight, would not constitute a material change in the use of this building and as such is not considered to amount to development as defined within Section 55 of the Town and Country Planning Act 1990 (as amended) and would therefore be lawful pursuant to section 192 of the Act.

Plans and specifications:-

Plan Type	Reference	Date Received
Application form	-	11/3/2020
Location Plan	Plan-01	11/3/2020
Covering Letter	2020-012	11/3/2020

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The Case Officer sought some additional clarification to the points raised and these were confirmed via e-mail.

Development within a Coal Mining Area

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

If the application has been publicised by notice(s) in the vicinity of the site. It is respectfully requested that the notice(s) now be removed and responsibly disposed of to avoid harm to the appearance of the area

NOTES:

- (1) This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
- (2) It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule would be lawful on the specified date and, thus, was not liable to enforcement action under Section 172 of the 1990 Act on that date.
- (3) This certificate applies only to the extent of the use 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 other land may render the owner or occupier liable to enforcement action.

- (4) The effect of the certificate is also qualified by the proviso in Section 192 (4) of the 1990 Act, 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 relevant to determining such lawfulness.
- (5) If the applicant is aggrieved by the decision of the Local Planning Authority to issue a certificate of lawfulness of development, for any part development applied for (including any modification or substitution of the description of the use), s/he may appeal to the Secretary of State in accordance with Sections 195 and 196 of the Town and Country Planning Act 1990 (as amended). Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at <https://www.gov.uk/planning-inspectorate>. Further information on the Planning Appeal process can be found online at the Planning Inspectorates website <https://www.gov.uk/government/organisations/planning-inspectorate>.

An important part of improving our service is to review your feedback on the way that we have dealt with your planning application(s). Please take a couple of minutes to email your comments to dc.admin@kirklees.gov.uk so that we can work on continually improving our customer service. Thank you.

Dated: 15-May-2020

Signed:



Karl Battersby
Strategic Director Economy and Infrastructure

Address to which all communications should be sent:-

Planning
Investment & Regeneration Service
PO Box B93
Civic Centre 3
Huddersfield
HD1 2JR

Appendix 8: Lydden LDC 20/01090



Compass Children's Homes Ltd
c/o WYG
90 Victoria Street
Bristol
BS1 6DP

Dover District Council
Planning
Council Offices
White Cliffs Business Park
Dover
Kent CT16 3PJ

Telephone: (01304) 821199
Website: www.dover.gov.uk

Application Reference: 20/01090

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

**TOWN AND COUNTRY PLANNING (Development Management Procedure) (England) Order
2015 (As Amended): ARTICLE 39**

GRANT OF CERTIFICATE OF LAWFUL USE (PROPOSED)

The Dover District Council hereby certifies that the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged and hatched black on plan no.069/20 attached to this Certificate, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):

The occupation of the property known as 96 Canterbury Road, Lydden CT15 7ET as a dwelling house by a maximum of four resident young people between the ages of 8-18 with up to two overnight carers and up to three additional carers during the day, would not constitute a material change in the use of this building from an existing use falling within Use Class C3 of Town and Country Planning (Use Classes Order) and as such is not considered to amount to development as defined within Section 55 of the Town and Country Planning Act 1990 (as amended) and would therefore be lawful pursuant to section 192 of the Act.

Signed

For: Lois Jarrett
Head of Planning, Regeneration and Development

Date: 13/11/2020

First Schedule: The use of 96 Canterbury Road, Lydden CT15 7ET as a dwellinghouse for use by a maximum of four resident young people between the ages of 8-18 with up to two overnight carers and up to three additional carers during the day in accordance with Application Form and supporting statement received 22nd September 2020

Second Schedule: Woodlands, 96 Canterbury Road, Lydden, Dover

**YOUR ATTENTION IS DRAWN TO THE NOTES AND ANY LETTER ACCOMPANYING THIS
DECISION NOTICE.**

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 specified in the First Schedule to take place on the land described in the Second Schedule would be lawful and, would not be liable to enforcement action under Section 172 of the 1990 Act (as amended) 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 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 before the use is instituted of the operations begun, in any of the matters relevant to determining such lawfulness.

Appendix 9: Coseley LDC P20/1823

TOWN & COUNTRY PLANNING ACT 1990 (as amended)
TOWN & COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015

Deposited on: 07 December 2020

Application number: P20/1823

Applicant:
THE OCCUPIER
90, VICTORIA STREET
BRISTOL
BS1 6DP

Agent:
WYG
90, VICTORIA STREET
BRISTOL
BS1 6DP

PARTICULARS OF PROPOSED DEVELOPMENT (first schedule):

**APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE FOR THE PROPOSED
CHANGE OF USE FROM DWELLINGHOUSE (USE CLASS C3(B)) TO RESIDENTIAL
CHILDREN'S CARE HOME (USE CLASS C2) FOR ACCOMMODATION FOR A MAXIMUM
OF FOUR YOUNG PEOPLE WITH UP TO TWO FULL TIME OVERNIGHT CARERS AND UP
TO FOUR CARERS DURING THE DAY.**

SITE: (second schedule)

BEACONHURST CARE HOME, 1, GORGE ROAD, COSELEY, DUDLEY, DY3 1LF

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT FOR:
LAWFUL DEV CERT (SECTION 192)

The Dudley Metropolitan Borough Council hereby certify that on 7 December 2020 the development described in the first schedule (above), in respect of the land specified in the second schedule (above) as edged red on the plan attached to this certificate, would be lawful within the meaning of section 192 of the Town & Country Planning Act 1990 (as amended), for the following reason(s):

1. The proposed change of use from dwellinghouse (Use Class C3(b)) to residential children's care home (Use Class C2) for accommodation for a maximum of four young people with up to two full time overnight carers and up to four carers during the day as described in the First Schedule and in the applicant's submissions would not constitute a material change of use.

Helen Martin

Helen Martin
Director of Regeneration & Enterprise

Notes:

1. This certificate is issued solely for the purpose of section 192 of the Town & Country Planning Act 1990 (as amended).
2. It certifies that the development specified in the first schedule taking place on the land described in the second schedule would be lawful on the specified date and, thus, would not be liable to enforcement action under section 172 of the 1990 Act on that date
3. This certificate applies only to the extent of the development described in the first schedule and the land specified in the second schedule and identified on the attached plan. Any development which are materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, 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 relevant to determining such lawfulness.

This is not a Decision under the Building Regulations or other Legislation

APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions then you can appeal to the secretary of state:
 - a) Under Section 78 of the Town and Country Planning Act 1990 (non-householder)
 - b) under section 78 of the Town and Country Planning Act 1990 (householder)
 - c) in the case of Listed Building Consents under Sections 20 and 21 of the Planning (Listed Buildings and Conservation Areas) Act 1990
 - d) in the case of Certificates of Lawful Use or Development under Sections 195 and 196 of the Town and Country Planning Act 1990 (as amended)
 - e) in the case of advertisements under the Town and Country Planning (Appeals)(Written Representations Procedure)(England) and (inquiries Procedure) Rules 1974.
- If you want to appeal, then you must do so within 6 months of the date of this notice in respect of appeals referred to in paragraphs a) and c) above, within 12 weeks of this notice in respect of appeals referred to in paragraph b) above, or within 8 weeks in respect of appeals referred to in paragraph e). There is no time limit in respect of appeals referred to in paragraph d) above. Appeals must be made using a form which can be obtained online at www.planningportal.gov.uk/pcs or from The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. **N.B. Only the applicant has the right to appeal.**
- The Secretary of State can allow longer periods for giving notice of an appeal, but he will not normally be prepared to use his power unless there are special circumstances which excuse the delay in giving notice of the appeal.
- The secretary of state need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions it imposed, having regard to statutory requirements, to the provisions of any development order and to any directions given under a development order. In practice, the secretary of state does not refuse to consider appeals solely because the local planning authority based its decision on a direction given by him.
- You have the right to appeal to the secretary of state where consent to fell or lop trees is refused or if you object to any conditions attached to your consent. The appeal must be made within 28 days of receiving the decision on your application. The secretary of state may allow or dismiss an appeal or vary the original decision by the authority in any respect. As in any case of orders to which there are objections, the appeal will normally be decided on the basis of written representations but both the applicant and the authority have the right to a public local enquiry or hearing. To appeal a decision made on an application relating to trees, you should contact the Planning Inspectorate, The Environment Team, Room 4/04, Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN.

PURCHASE NOTICE

- If either the local planning authority or the secretary of state refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonable beneficial use in its existing state nor render the land capable of a reasonable beneficial use, by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act, 1990.
- This decision is given under the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (General Permitted Development) Order 1995 (amended).
- You are reminded of the need to ensure due compliance with the Building Regulations 1991 (as amended), with other Public General Enactments relating to the development (in particular the Public Health Act 1936 and 1961, Clean Air Act 1993 the Highways Acts 1959, 1971 and 1980, the Control of Pollution Act 1974, the Planning (Hazardous Substances) Act 1990, the Environmental Protection Act 1990, and with the Local Enactments for the time being in force in the Borough. Nothing herein contained is to be regarded as dispensing with such compliance beyond the extent (if any) herein specified. The permission specified does not modify or affect any personal or restrictive covenant applying to the land or any right of any person entitled to the benefit thereof.
- Should the development result in the provision of a building or premises to which the public are admitted or in which persons are to be employed, the applicant is reminded of the need to observe Sections 4, 7 and 8A of the Chronically Sick and Disabled Persons Act 1970 (as amended) and the codes of practice "Design of buildings and their approaches to meet the needs of disabled people" (BS 8300).
- If the development will result in the provisions of an educational building then the applicant is reminded of the need to observe Sections 7 and 8 of the Chronically Sick and Disabled persons Act 1970 and DfES constructional standards.
It is advisable that this notice be carefully retained, possibly with the deeds of the property

Appendix 10: Maiden Bradley, Wiltshire LDC PL/2021/03929



The Town and Country Planning Act 1990
Certificate of Lawful Use or Development - Proposed Use
Application Reference Number: PL/2021/03929
Decision Date: 15 June 2021

Applicant: Wessex College Ltd
Atria, Spar Road, Bolton, BL1 4AG

Particulars of Development: Certificate of lawfulness for proposed use of a dwellinghouse as a residential care home for a looked-after young person

At: 2 Newmead Cottages, Kingston Lane, Maiden Bradley, Wiltshire, BA12 7HJ

Wiltshire Council hereby certify that on the operative date of 15th April 2021, the operations described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this Certificate and edged red 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 reasons:

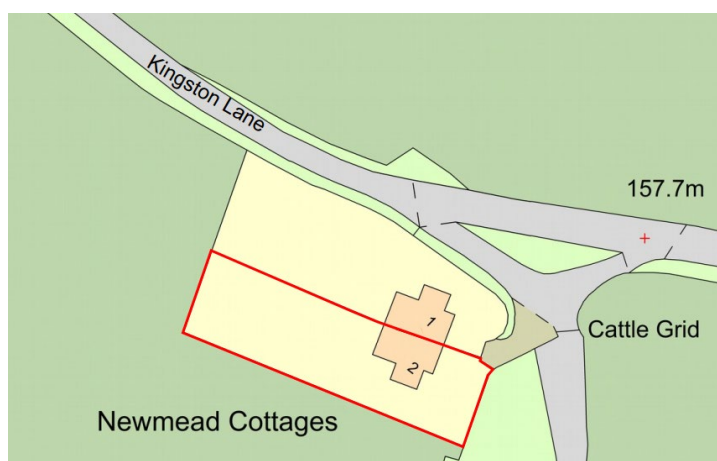
It is accepted that, on the balance of probabilities, the proposed change of use from a dwelling (within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended) to a residential care home for one young person with up to three members of care home staff (within Class C2 of the Schedule to the 1987 Order) would not constitute a material change of use and no development requiring planning permission would therefore take place under Section 55 of the Town and Country Planning Act 1990 (as amended) and would therefore be lawful pursuant to Section 192 (1) (a) of the Act.

First Schedule

The use of the dwellinghouse as a residential care home for one young person, with up to three members of care home staff.

Second Schedule

No.2 Newmead Cottages, Kingston Lane, Maiden Bradley, BA12 7HJ



Informative:

For the avoidance of doubt, the application documentation (email from Tetrattech received 15/6/21) refers to a young person as being within the ages of 9-19 years.

Signed

Sam Fox - Director Economic Development & Planning

Notes -

- 1. This Certificate is issued solely for the purpose of Section 192 of the Town & Country Planning Act 1990 (as amended).**
- 2. It certifies that the use or development specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and thus would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.**
- 3. This Certificate applies only to the extent of the proposed use or development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or development which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.**
- 4. The effect of the Certificate is also qualified by the proviso in Section 192 (4) of the 1990 Act, as amended. This 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 manner relevant to determining such lawfulness.**
- 5. Your attention is drawn to the rights of appeal you have against the Council's decision, contained in Section 195 of the Town and Country Planning Act 1990 (as amended). Any appeal must be lodged within 3 months of the date of this decision.**

Appendix 11: Highworth, Swindon



CERTIFICATE OF LAWFUL DEVELOPMENT

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

**Application
Number:**S/LDP/21/0804/RACH

Ward:Blunsdon And Highworth
Parish: Highworth

First Schedule: Certificate of Lawfulness (Proposed) for the change of use of dwellinghouse to childrens home (maximum 4 children between ages of 8-18 years).

Second Schedule: 20A Cherry Orchard, Highworth Swindon SN6 7AU

Agent:
Alder King
Pembroke House
15 Pembroke Road
Bristol
BS8 3BA

Applicant:
Compass Children's Homes Limited
C/o Agent.

Swindon Borough Council as Local Planning Authority, under the provisions of Part III of the Town & Country Planning Act (as amended) **DO HEREBY GRANT A CERTIFICATE OF LAWFUL USE OR DEVELOPMENT.** This certificate is in respect of the **PROPOSED** development described above in the first schedule in respect of land specified in the second schedule and in respect of drawings detailed in the informatives section below.

Reason(s)

1. It has been accepted that on the balance of probability that the proposed use at 20A Cherry Orchard would constitute a change of use from Use Class C3(a) dwellinghouses to C2 Residential Institutions, however it does not amount to a material change of use and no development requiring planning permission would therefore take place under Section 55(2) of the Town and Country planning Act 1990 (as amended).

Informatives

1. This certificate relates only to 20A Cherry Orchard as outlined in red on the submitted Unnumbered Location Plan received 5 May 2021 and Existing and Proposed

Floor Plan received 18 June 2021.

2. This certificate relates only to the use of a dwellinghouse as a children's home for up to 4 young persons (aged 8-18) with 2no. 24-hour carers.

**Authorised by Richard Bell,
Director of Strategic Development**

Decision Dated: 12th August 2021

A handwritten signature in black ink that reads "Richard Bell". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

Notes

- (a) This certificate is issued solely for the purpose of Section 192 of the Town & Country Planning Act 1990 (as amended) and does not include any consent or approval under any other enactment, byelaw, order or regulation. In particular approval under the Building Regulations, please contact Building Control on 01793-466128 for more information.
- (b) This certificate applied only to the extent of the development described above. Any development which is materially different from that described or which relates to other land, may render the owner or occupier liable to enforcement action.
- (c) The effect of this certificate is also qualified by the provision in Section 192 (4) of the 1990 Act, as amended, which states that the lawfulness of the described development is only conclusively presumed where there has been no material change, before the development has commenced in any of the matters relevant to determining such lawfulness.
- (d) This certificate has been issued on the basis of the plans, application form and other supporting evidence accompanying the application.

Appendix 12: Thetford LDC 3PL/2021/0920/LU

Reference Number:

3PL/2021/0920/LU



TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as Amended by
Section 10 of the Planning Compensation Act 1991)
Town and Country Planning (Development Management Procedure)(England)
Order 2015: Article 39
(or Any Order or Statutory Instrument revoking or re-enacting that Order)

CERTIFICATE OF LAWFULNESS OF PROPOSED WORKS

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Mrs Nicola Sully
Pembroke House
15 Pembroke Road
Bristol
BS8 3BA

Applicant:

Compass Children's Homes Ltd, C/o agent c/o agent C/O AGEN

1st Schedule - Proposal: Certificate of Lawful Use for a Proposed Use of the above property as a small home for looked after children

2nd Schedule - Location: GREAT CRESSINGHAM Harvest Lodge The Street

Breckland Council hereby certify that the Application for a Certificate of Lawful Proposed Use or Development detailed above is **LAWFUL** on the basis that on 18-06-21, the use described in the First Schedule in respect of land specified in the Second Schedule and coloured red on the plan attached to this certificate, **WOULD BE LAWFUL** within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

- The proposed development is not considered to constitute a material change of use and therefore still falls under a C3 Use Class.

First Schedule

The proposed use of the property as a small home for up to four looked after children between the ages of 8-18.

Second Schedule

The property edged in red on the attached plan and known as Harvest Lodge, The Street, Great Cressingham.

planning@breckland.gov.uk

Elizabeth House, Walpole Loke, Dereham, Norfolk, NR19 1EE

Telephone 01362 656870 www.breckland.gov.uk

Signed:



Mr Robert Walker Executive Director Place

Date 8th September 2021

If you have any questions relating to this decision, please contact Rebecca Collins (Head of Development Management) email: rebecca.collins@breckland.gov.uk

List of plans and documents referred to in this Notice

Title/Number	Date
Supporting Statment	18-06-21
Drg No 21007 01A Location Plan	18-06-21

Informatives:-

- 1 This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
- 2 It certifies that the use/operations specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful, on the specified date and, therefore, would not have been liable to enforcement action under section 172 of the 1990 Act on that date.
- 3 This certificate applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from those described or which relates to other land may render the owner or occupier liable to enforcement action.
- 4 Buildings Regulations
This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work.
- 5 INFORMATION RELATING TO APPEALS AGAINST THE DECISION OF THE LOCAL PLANNING AUTHORITY

If you are aggrieved by the decision to refuse or grant in whole or in part, a certificate of lawful development then you can appeal to the Secretary of State under S.195 of the Town and Country Planning Act 1990.

planning@breckland.gov.uk

Elizabeth House, Walpole Loke, Dereham, Norfolk, NR19 1EE

Telephone 01362 656870 www.breckland.gov.uk

Appendix 13: Churchfield, Haydon Wick LDC S/LDP/21/1658/BLOWC



CERTIFICATE OF LAWFUL DEVELOPMENT

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

**Application
Number:**S/LDP/21/1658/BLOWC

Ward:Haydon Wick
Parish: Haydon Wick

First Schedule: Certificate of lawfulness (Proposed) for the use of dwelling house as a home for a maximum of 4no. looked after children (8 - 18 years of age).

Second Schedule: 14 Churchfield, Haydon Wick Swindon SN25 1HY

Agent:
Alder King Planning Consultants
Pembroke House
15 Pembroke Road
Bristol
BS8 3BA

Applicant:
Compass Children's Homes Limited
C/o Agent

Swindon Borough Council as Local Planning Authority, under the provisions of Part III of the Town & Country Planning Act (as amended) **DO HEREBY GRANT A CERTIFICATE OF LAWFUL USE OR DEVELOPMENT.** This certificate is in respect of the **PROPOSED** development described above in the first schedule in respect of land specified in the second schedule and in respect of drawings detailed in the informatives section below.

Reason(s)

1. On the balance of probability and on the basis of the proposed use as set out in the plans provided and the supporting statement that the proposed use at 14 Churchfield, would constitute a use from Use Class C3(a) dwellinghouses to C2 Residential Institutions, however it does not amount to a material change of use and no development requiring planning permission would therefore take place under Section 55(2) of the Town and Country planning Act 1990 (as amended).

Informatives

1. This certificate relates only to 14 Churchfield as outlined in red on the submitted Location Plan reference 21018 01 received 20 October 2021 and Existing and Proposed Floor Plan, references 21018 02 and 21018 03 received 20 October 2021.
2. This certificate relates only to the use of a dwellinghouse as a children's home for up to 4 young persons (aged 8-18) with 2no. 24-hour carers.

**Authorised by Richard Bell,
Director of Strategic Development**

Decision Dated: 10th December
2021



Notes

- (a) This certificate is issued solely for the purpose of Section 192 of the Town & Country Planning Act 1990 (as amended) and does not include any consent or approval under any other enactment, byelaw, order or regulation. In particular approval under the Building Regulations, please contact Building Control on 01793-466128 for more information.
- (b) This certificate applied only to the extent of the development described above. Any development which is materially different from that described or which relates to other land, may render the owner or occupier liable to enforcement action.
- (c) The effect of this certificate is also qualified by the provision in Section 192 (4) of the 1990 Act, as amended, which states that the lawfulness of the described development is only conclusively presumed where there has been no material change, before the development has commenced in any of the matters relevant to determining such lawfulness.
- (d) This certificate has been issued on the basis of the plans, application form and other supporting evidence accompanying the application.

Appendix 14: Croydon LDC 22/01782/LP

Development Management
Sustainable Communities, Regeneration and
Economic Recovery Department
6th Floor, Bernard Weatherill House
8 Mint Walk
Croydon CR0 1EA

Alder King Planning Consultants
Pembroke House
15 Pembroke Road
Clifton
Bristol
BS8 3BA
United Kingdom

Please ask for/reply to: Natalie Rowland
Tel/Typetalk: 020 8726 6000 Extn 63956
Minicom: 020 8760 5797
Email: development.management@croydon.gov.uk

Your ref: 77 Headcorn Rd, Croydon LDC
Our ref: P/PC/North Area Team/DCNR

Date: 4th August 2022

**Town and Country Planning Act 1990.
Section 192 (As amended by Section 10 of the Planning & Compensation Act
1991) Town and Country Planning (Development Management Procedure)
(England) Order 2015: Article 39**

Application Number: 22/01782/LP

Applicant: Resicare Alliance Ltd

Grant of Certificate of Lawful Use or Development

The Council of the London Borough of Croydon, as the Local Planning Authority, hereby certify that on 28.04.2022 the operations described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate, was lawful within the meaning of section 192 of the Town and Country Act 1990 (as amended), for the following reason(s) :-

- 1 On the balance of probability, the occupation of the building at 77 Headcorn Road, CR7 6JS by up to a maximum of two young persons aged between 8-18 with up to two carers on a shift basis and one home manager during the day, would not constitute a material change of use in the building from an existing use falling within Use Class C3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and as such, is not considered to amount to development as defined within Section 55 of the Town and Country Planning Act 1990 (as amended) and would therefore be lawful pursuant to section 192 of the Act.

First Schedule:

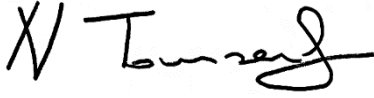
Use of existing dwellinghouse (Class C3) as a residential home for two looked after young persons between the ages of 8-18 (Class C2)

Second Schedule:

77 Headcorn Road, Thornton Heath, CR7 6JS, ,

Informative: This decision relates to planning only. It does not convey any decision which may be required under the Building Regulations or any other enactment.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'N. Townsend', written over a horizontal line.

Nicola Townsend

Head of Development Management

Drawing No's: Floor plans HR.77.EX.01 Received , Floor plans HR.77.PR.01 Received ,

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 operations specified in the First Schedule taking place on the land described in the Second Schedule was lawful, on the specified date and, thus was not liable to enforcement action under section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, 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 relevant to determining such lawfulness.

Appendix 15: Harrisehead, Stoke-on-Trent 23/00154/PLD

**TOWN AND COUNTRY PLANNING ACT 1990:
SECTION 191 AND 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**

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Application number: **23/00154/PLD**

Alder King Planning Consultants
Pembroke House
15 Pembroke Road
Bristol
BS8 3BA

Applicant: Nine Points Property Ltd

The Council of the Borough of Newcastle-under-Lyme hereby certify that on 24th February 2023 the use described in the First Schedule to this Notice in respect of the land specified in the Second Schedule to this Notice and edged in RED on the plan attached to this Notice, would have been lawful, within the meaning of Section 192 of the Town and Country Planning Act 1990 (amended) for the following reason:-

1. The proposed use of the premises falls within Class C2 (residential institutions) of the Town and Country Planning (Use Classes) Order 1987 and the existing, lawful use falls within Class C3 (dwellinghouses). It is, however, considered that the proposed use would not materially differ from the existing use and as such it would not involve a material change of use requiring planning permission.

First Schedule

Proposed use of the property as a small care home falling within use class C2 for up to four children with a maximum of three carers on-site at any time.

Second Schedule

104 Harriseahead Lane, Harriseahead, Stoke-On-Trent, Staffordshire, ST7 4RB

**TOWN AND COUNTRY PLANNING ACT 1990:
SECTION 191 AND 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**

Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful, on the specified date and thus, would not have been liable to enforcement action under Part 7 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use 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 other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, 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 relevant to determining such lawfulness.

Appeals to the Secretary of State

- If you are aggrieved by the decision of your Local Planning Authority to either (i) refuse to issue a certificate or (ii) modify the description of use, operations or other matter in the application then you can appeal to the Secretary of State in accordance with Section 195 of the Town and Country Planning Act
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at <https://acp.planninginspectorate.gov.uk>

Martin Hamilton
Chief Executive

Newcastle-under-Lyme Borough Council
Direct Line 01782 717717
E-Mail planningapplications@newcastle-staffs-gov.uk

Date: 3 April 2023

Appendix 16: Hull Road, Cottingham, Hull 23/00232/CLP

County Hall, Beverley, East Riding Of Yorkshire, HU17 9BA Telephone 01482 393939

www.eastriding.gov.uk

Stephen Hunt Director of Planning and Development Management

Alder King Planning Consultants
Pembroke House
15 Pembroke Road
Clifton
Bristol
BS8 3BA

Your Ref:

Contact: Mrs Shirley Ross

Email: shirley.ross@eastriding.gov.uk

Tel: (01482) 393867

Date: 17 April 2023

Application No: **23/00232/CLP**

Case Officer: Mrs Shirley Ross

NOTICE OF DECISION

CERTIFICATE OF LAWFUL PROPOSED DEVELOPMENT

TOWN AND COUNTRY PLANNING ACT 1990: Section 192

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

Proposal:	Certificate of Lawfulness for the proposed use as a home for up to 4 'looked after' young persons
Location:	The Beeches , 47 Hull Road, Cottingham, East Riding Of Yorkshire, HU16 4PN
Applicant:	Compass Children's Homes Limited
Application type:	Cert of Lawful Development - Proposed

The East Riding of Yorkshire Council hereby certify that on 20 January 2023 the development described in the First Schedule to this Certificate and edged red on the attached plan **would be lawful** within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reasons and subject to the following provisions and/or restrictions:-

1. The use of the property, as set out by the applicant, would fall within Class C2 (residential institutions) of the Town and Country Planning (Use Classes) Order 1987 (as amended). The young persons (aged between 8 - 17 years) residing at the property would be unable to undertake the day-to-day activities that would be associated with occupying the property as a single household. Whilst supervised care will be provided on a shift pattern, by two carers on site 24 hours a day with an additional carer during the daytime, those providing the care will not reside at the property on a permanent basis. Consequently the proposed use of the property would fall within Class C2, to which there is no permitted change from C3. However, the residents and carers would share the same facilities, with the carers supporting the residents in undertaking routine daily activities. In this case the carers and residents would be, for all intents and purposes, living together as a single household. As such, on the particular facts of this case, it is considered that the proposed use would not constitute a material change of use that would

require planning permission under Section 55 of the Town and Country Planning Act 1990 (as amended).

The following plans have been used for the assessment of this certificate:-

22052 01 Location and Site Plan received 20 January 2023

22052: 02A Existing & Proposed Floor Plans received 20 January 2023

First Schedule: Certificate of Lawfulness -

Proposed use of a residential institution (whether or not as a main place of residence) under Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) as a residential institution providing accommodation and care, there would be a maximum of 4 residents (plus 2 carers) in the 4 bedroom house and will be staffed 7 days a week

Second Schedule: The Beeches,

47 Hull Road

Cottingham

East Riding Of Yorkshire

HU16 4PN

Notes:

1. This certificate is issued solely for the purposes of Section 55 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development specified in the First Schedule taking place on the land described in the Second Schedule is lawful, on the specified date and, thus, is not liable to enforcement action under Section 172 of the above Act on that date.
3. This certificate applies only to the extent of the development described in the First Schedule above and to the land specified in the Second Schedule above and identified on the plan. Any development MUST NOT be materially different from that described or it may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation shall be conclusively presumed unless there is a material change before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

First Schedule:	Certificate of Lawfulness for the proposed use as a home for up to 4 'looked after' young persons
Second Schedule:	The Beeches , 47 Hull Road, Cottingham, East Riding Of Yorkshire, HU16 4PN

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 specified in the First Schedule taking place on the land described in the second Schedule is lawful, on the specified date and, thus, is not liable to enforcement action under Section 172 of the above Act on that date.

3. This certificate applies only to the extent of the development described in the First Schedule above and to the land specified in the Second Schedule above and identified on the plan. Any development which is materially different from those described or which relate/s to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed when there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

Signed

A handwritten signature in black ink, appearing to read 'Stephen Hunt', written in a cursive style.

17 April 2023

Stephen Hunt MRTPI
Director of Planning and Development Management

NOTES TO ACCOMPANY THIS DECISION

Appeals to the Secretary of State

If you are aggrieved by this decision you can appeal to the Planning Inspectorate. Appeals can be made online by accessing the Planning Inspectorate website (links shown below) dependant upon the type of application. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on telephone number: 0303 444 5000.

Appeals must be made on the correct forms relating to the type of application you submitted. Information provided as part of the appeal process will be published online.

If you wish to appeal against a decision relating to:

Householder applications - appeals must be made within 12 weeks of the date of this notice; please refer to Planning Inspectorate guidance at <https://www.gov.uk/appeal-householder-planning-decision>

Minor commercial applications - appeals must be made within 12 weeks of the date of this notice; please refer to Planning Inspectorate guidance at <https://www.gov.uk/appeal-minor-commercial-development-decision>

Advertisement consents - appeals must be made within 8 weeks of the date of this notice; please refer to Planning Inspectorate guidance at <https://www.gov.uk/appeal-decision-consent-display-advertisement>

Any other type of application – appeals must be made within 6 months of the date of this notice; please refer to planning Inspectorate guidance at <https://www.gov.uk/appeal-planning-decision>

Appellants requesting an inquiry into their appeal must notify the Local Planning Authority and Planning Inspectorate at least 10 days prior to appeal submission.

Please note - If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, you must appeal within 28 days of the date of this notice. Please refer to Planning Inspectorate guidance at <https://www.gov.uk/appeal-enforcement-notice>

If an enforcement notice is served relating to the same land and development as in your application, you must appeal within 28 days of the date of service of the enforcement notice or within 6 months (12 weeks in the case of a householder appeal) of the date of this notice, whichever period expires earlier.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

Purchase Notice

If either the Local Planning Authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by carrying out any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with Part VI of the Town and Country Planning Act 1990.

Approval of Details Required by Conditions

A fee is payable for the submission of any matters required to be submitted for approval by any conditions attached to this permission. The fee is payable for each submission, not for each condition. Please refer to

the council's website at www.eastriding.gov.uk for more information.

Appendix 17: Oaktree Corner, West Berkshire 23/00449/CERTP

Town and Country Planning Act 1990: sections 191 and 192

**Town and Country Planning (General Development Management Procedure)
(England) Order 2010: article 35**

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Alder King Planning Consultants
Pembroke House
15 Pembroke Road
Clifton
Bristol
BS8 3BA

Applicant: Aspris Children's Services Ltd

PART I - DETAILS OF APPLICATION

Date of Application

27th February 2023

Application No.

23/00449/CERTP

THE PROPOSAL AND LOCATION OF THE DEVELOPMENT:

The proposed use of the dwellinghouse as a home for three looked-after young persons would not involve a material change of use.

Oaktree Corner Soke Road Silchester Reading

PART II - DECISION

West Berkshire Council hereby certify that on 27th February 2023 the operation or use described in the First Schedule of this certificate in respect of land specified in the Second Schedule to this certificate and edged red 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(s):**

1. It is considered that the proposed use falls within Class C2. Furthermore whilst the existing lawful use is for purposes falling within Class C3, from the information submitted the occupation as a C2 use would not be material change from the current use.

It is considered no material change of use would result and planning permission is not required for the proposed use of Oaktree Corner, Soke Road, Silchester as a home for three looked after young persons between the ages of 7-18. The proposed development would therefore be lawful.

The described development is lawful for the purposes under section 192 of the Town and Country Planning Act 1990, and an application for planning permission from the local planning authority is not required.

FIRST SCHEDULE:

The proposed use of the dwellinghouse as a home for three looked-after young persons would not involve a material change of use.

SECOND SCHEDULE:

Oaktree Corner Soke Road Silchester Reading

Decision Date :- 9th June 2023

Bob Dray
Interim Development Control Manager

Notes

1. This certificate is issued solely for the purposes of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations/matter specified in the First Schedule proposed to take place on the land described in the Second Schedule would have been lawful on the specified 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 use/operations/matter described in the First Schedule and to the land specified in the Second Schedule and identified in the attached plan. Any use/operations/matter which is/are materially different from that/those described or which relate(s) to other land may render the owner or occupier liable to enforcement action.
4. The effect of this 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 instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

If the applicant is aggrieved by the decision of the local planning authority he may, by notice, appeal to the First Secretary of State for the DCLG in accordance with Section 195 of the Town and Country Planning Act 1990. (Appeals must be made on a form which is obtainable from The Planning Inspectorate. Room 3 O/P, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN) or online at www.planninginspectorate.gov.uk.

Appendix 18: Keepers Lane, Wolverhampton 23/00298/CPL

CITY OF WOLVERHAMPTON COUNCIL

Town and Country Planning Act 1990: Section 192

**Town and Country Planning (Development Management Procedure) (England) Order
2015**

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Applicant

Children's Services
City of Wolverhampton Council
St. Peters Square
Wolverhampton WV1 1SH

Our Ref:	23/00298/CPL
Site:	11A Keepers Lane, Wolverhampton, West Midlands, WV6 8UA
Proposal:	The proposed development would change the use of the home from C3(b) to C2 a residential dwelling into a small Children's Home that will be registered with Ofsted, catering for no more than two young people with social, emotional, and behavioural needs.

The City of Wolverhampton Council hereby certify that on, 28 March 2023, the use described in respect of the land specified and shown edged by a solid red line 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(s):-

Although a change of use from a use in Use Class C3 (dwellinghouse) to Use Class C2 (residential institutions) of the Use Classes Order 1987 (as amended) would occur, the applicant demonstrates with sufficient clarity and precision that it does not represent a material change of use. Planning permission is only needed if the work being carried out meets the statutory definition of 'development' which is set out in section 55 of the Town and Country Planning Act 1990. The change of use would not amount to development for which planning permission would be required.

NOTES

1. This Certificate is issued solely for the purpose of Section 192 of the Town & Country Planning Act 1990 (as amended).
2. It certifies that the operations specified taking place on the land described would have been lawful, on the specified date and, thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.

Civic Centre
St Peter's Square
Wolverhampton
WV1 1RP
Telephone 01902 555641



Authorised Officer: _____ **Ms Tracey Homfray**
Date.: 16th June 2023

3. This Certificate applies only to the extent of the operations described and to the land identified on the attached plan. Any operations which is materially different from that described or which relate to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the proviso in Section 192(4) of the 1990 Act (as amended) which states that the lawfulness of a described operation is only conclusively presumed where there has been no material change, before the operation begun, in any of the matters relevant to determining such lawfulness.

Civic Centre
St Peter's Square
Wolverhampton
WV1 1RP
Telephone 01902 555641



Authorised Officer: _____ **Ms Tracey Homfray**
Date.: 16th June 2023

Appendix 19: Ipswich LDC IP/23/00306/CLD

**TOWN AND COUNTRY PLANNING ACT 1990
SECTION 192 (AS AMENDED)
TOWN AND COUNTRY PLANNING
(DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015**



To: Alder King Planning Consultants
Pembroke House
15 Pembroke Road
Bristol
BS8 3BA

Agent for:
Compass Childrens Homes Ltd

Application Reference: IP/23/00306/CLD

CERTIFICATE OF LAWFUL USE AND/OR DEVELOPMENT

The Ipswich Borough Council as Local Planning Authority hereby certify that on 14.06.2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this Certificate, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended).

FIRST SCHEDULE

Use as a home for up to four looked after young persons between the ages of 7-18

SECOND SCHEDULE

at: 22 Belmont Road Ipswich Suffolk IP2 9RH

in accordance with your application reference number: IP/23/00306/CLD received 20.04.2023.

Dated: 14th June 2023

Signed:

James Mann MRTPI
Head of Planning and Development
Grafton House
15 -17 Russell Road
Ipswich IP1 2DE

SEE NOTES BELOW/OVERLEAF

N.B. This permission is not an approval under the Building Regulations; Approval under those regulations may be required.

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and, thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use 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 other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, 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 relevant to determining such lawfulness.

In making this decision the Council has positively addressed the National Planning Policy Framework 2021.



Appendix 20: Herstmonceux WD/2023/1826/LDP

**CERTIFICATE OF PROPOSED USE OR DEVELOPMENT
Application No. WD/2023/1826/LDP**

Wealden District Council hereby certifies that on 14 July 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, and edged red on the plan date stamped 17 July 2023, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):-

1. Sufficient evidence and details have been submitted such that the Council is satisfied on the balance of probabilities that the proposed use of the subject property as a children's home within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) would not constitute a material change of use as set out under Section 55 of the Town and Country Planning Act 1990. Accordingly, no development would occur and planning permission is not required.
2. This planning decision relates solely to the information contained within the application form, the following plans and documents:

Ref.	Date Stamped
Covering Letter, dated 14th July 2023	17 July 2023
Site Location Plan (0300 Rev P01)	17 July 2023
Existing Floor Plans (0301 Rev P01)	17 July 2023
Proposed Floor Plans (0302 Rev P02)	17 July 2023
Supporting Statement	17 July 2023

REASON: For the avoidance of doubt.

The Local Planning Authority's reasons for its decision to issue the Certificate are set out in the officer's report which can be viewed on the Council's website at <https://planning.wealden.gov.uk>



Signed:
Council's Authorised Officer
On behalf of Wealden District Council
DATE OF ISSUE: 24 August 2023

First Schedule
USE OF PROPERTY AS A HOME FOR UP TO FOUR YOUNG PERSONS AGED 7-18

Second Schedule
NEWHAVEN, GARDNER STREET, HERSTMENCEUX, BN27 4SX

Notes

1. This Certificate is issued solely for the purpose of Section 191/192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations/matter specified in the First Schedule taking place on the land described in the Second Schedule would be lawful on the specified date and thus would not be liable to enforcement action under Section 172 of the 1990 Act on that date.

3. This Certificate applies only to the extent of the use/operations/matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation/matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, 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 relevant to determining such lawfulness.
5. The effect of this Certificate is that the proposed use/operation/matter if carried out within the scope of this Certificate would not require planning permission.
6. If the applicant is aggrieved by the decision of the Council to issue this Certificate with an alternative description of the uses, he may appeal in writing to the Secretary of State under Section 196 of the said 1990 Act.



Stacey Robins
Head of Planning & Environmental Services

**Council Offices, Vicarage Lane,
Hailsham, East Sussex,
BN27 2AX**

Appendix 21: St. Mary's Road, Kettering (NK/2023/0120)



DNLDPAPP

Name and address of agent:

**Mr A Rose
Rose Consulting
16 Rhodesia Avenue
HALIFAX
West Yorkshire
HX3 0PB**

Name and address of applicant:

**Ms R Kalmanovich
Heart And Home Living Ltd
C/O Rose Consulting
16 Rhodesia Avenue
HALIFAX
West Yorkshire
HX3 0PB**

CERTIFICATE OF LAWFULNESS

Town and Country Planning Act 1990 (as amended) s.192

Part I – Particulars of application
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**Date Valid:
27 February 2023**

**Application Number:
NK/2023/0120**

**Location:
19 St Marys Road, Kettering**

**Description:
Proposed use of dwellinghouse to children's home for up to four children**

Part II – Particulars of decision
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North Northamptonshire Council, hereby certify that on 27 February 2023 the proposed operation or use described in Part I above in respect of the land specified above and shown for the purposes of identification only edged red on the plan attached to this certificate would have been **LAWFUL within the meaning of Section 192 of the Town and County Planning Act 1990 (as amended), for the following reasons:**

1. In the opinion of the Local Planning Authority the proposal does not constitute a material change of use from Class C3 to Class C2 and planning permission is not required.

INFORMATIVES:

1. In accordance with The Town and Country Planning (Development Management Procedure) (England) Order 2015, Article 35(2). The application as submitted was acceptable and did not require the Local Planning Authority to work positively and proactively with the applicant to seek solutions to problems arising from the application.
2. The applicant is advised that this permission is only pursuant to the Town and Country Planning Act 1990. The applicant is advised to contact Building Control with regard to the necessary consents applicable under the Building Regulations.
3. The plans and documents, some of which may have been subsequently referenced by the LPA, are set out below and form the basis for this decision:

Title	NK Ref.	Agent's Ref	Received Date	Status
Colour Location Plan	NK/2023/0120/1		24/02/23	Approved
Location Plan		2302-24	27/02/23	Approved
Proposed Ground Floor Plan		2302-22	15/03/23	Approved
Proposed First Floor Plan		2302-23	15/03/23	Approved
Existing Ground Floor Plan		2302-20	15/03/23	For Information
Existing First Floor Plan		2302-21	15/03/23	For Information
Planning Statement	NK/2023/0120/3		24/02/23	For Information
Front Elevation Photographs	NK/2023/0120/4		27/02/23	For Information
Photo	NK/2023/0120/7		15/03/23	For Information

Decision Date:**24 April 2023**
George Candler
Executive Director of Place & Economy**NOTES:**

1. A full report is available at:
 - <https://www.kettering.gov.uk/planningapplication/search>
2. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended) and does not include or imply consent or approval under the Building Regulations or any other legislation for which a separate application may be required.
3. It certifies that on the date of the application the operation or use specified above would have been lawful if instituted or begun at that time and would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.

4. This certificate applies only to the extent of the proposed operation or use described above and to the land specified above and identified on the attached plan. Any operation or use which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
5. 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 operation or use is only conclusively presumed where there has been no material change, before the operation or use begun, in any of the matters relevant to determining such lawfulness.

RIGHT OF APPEAL:

1. An applicant who is aggrieved by the decision of the Local Planning Authority may appeal to the Secretary of State.
2. If you wish to appeal against this decision you must do so on the Lawful Development Certificate Appeal form. Appeals may be made online at <https://www.gov.uk/appeal-planning-inspectorate>. If you are unable to use the online service, please contact the Planning Inspectorate's Customer Services Team on 0303 444 5000.
3. If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. [Further details are on GOV.UK](#)

Appendix 22: Shore New Road, Todmorden (23/00344/192)

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

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

THIS CERTIFICATE OF LAWFUL USE DOES NOT RELATE TO ANY REQUIREMENT
UNDER THE BUILDING REGULATIONS

(Please see notes at end of this letter)

To
BarroCare Limited
c/o ELG Planning
FAO Mr Andy Darby
Gateway House
55 Coniscliffe Road
Darlington
DL3 7EH

This Council hereby certifies that on 22.05.2023 the use described in the First Schedule
hereunder

**Change of use from residential dwellinghouse (C3 Use Class) to Children's home (C2
Use Class) (Certificate of Proposed Lawfulness)**

in respect of the land specified in the Second Schedule hereunder

**1 Shore New Road
Todmorden
Calderdale
OL14 8NW**

Plan Type	Reference	Version	Date Received
Location Plan	001		27.03.2023
Existing Floorplans	002		27.03.2023
Proposed Plans	003		27.03.2023

and edged red on the location plan listed above, would be lawful within the meaning of
Section 192 of the Town and Country Planning Act 1990 (as amended), for the following
reason(s):

CALDERDALE METROPOLITAN BOROUGH COUNCIL

Application No:

23/00344/192

WARD: 15

1. From the information submitted by the applicant (and having regard to North Devon District Council v First Secretary of State 2003 EWHC 157) it is considered that the use of the dwelling as a children's home for up to 4 children (aged 5-17) with up to 3 full time residential carers with two sleeping overnight on a rota basis at the property, does not represent a material change of use for the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended). An application for planning permission is not therefore required for the aforementioned use

DATED: 22 May 2023

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Richard Seaman
For and on behalf of
Director of Regeneration and Strategy

TOWN AND COUNTRY PLANNING ACT 1990

1. This certificate is issued solely for the purposes of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use / operations / matter specified in the First Schedule taking place on the land described in the Second Schedule was / would have been lawful, on the specified date and thus, was not / would not have been liable to enforcement action under Part 7 of the 1990 Act on the date.
3. This certificate applies only to extent to the use / operations / matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use / operations / matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, 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 operation begun, in any of the matters relevant to determining such lawfulness.

Appeals to the Secretary of State

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State for Communities and Local Government under Section 78 of the Town and Country Planning Act 1990.

If you want to appeal then you should use forms which you can get from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel: 0303 4445000). A copy of the completed appeal form should be sent to the Planning Inspectorate at the above address as well as Calderdale MBC Planning Services, C/O the Town Hall, Crossley Street, Halifax, West Yorkshire, HX1 1UJ. **There is a time limit of 6 months for a making an appeal from the issue date of the decision.**

The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to her that the Local Planning Authority could not have granted it without the conditions imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order.

In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by her.

ONLINE APPEAL SERVICE

The Planning Inspectorate have introduced an online appeals service which you can use to make your appeal online. You can find the service through the Appeals area of the Planning Portal – see www.planningportal.gov.uk/pcs. The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.