DELEGATED DECISION REPORT

SMD/2017/0095 **Valid 20/03/2017**	**GREENFIELD HOUSE** **EAVES LANE** **ARMSHEAD**	**CERTIFICATE OF LAWFUL DEVELOPMENT OF EXISTING USE AS A DWELLINGHOUSE IN ACCORDANCE WITH THE C3(B) USE CLASS DEFINITION SINCE 1ST MAY 2008** **(CERTIFICATE OF LAWFULNESS - EXISTING)**

MAIN ISSUES

The application is for a Certificate of Lawful Use which can only be granted in the circumstances where the existing use (on the date of the application) can be considered to have a lawful status that is immune from enforcement action. A use can be lawful either through the passage of time (a 10 year continuous period) or because the change to that use did not require planning permission. The application is to be decided on the basis of a legal determination with only consideration of evidence relating to either of those factors.

The report will set out the following considerations:

- What is the character/nature of the existing use?/How should it be described?
- Does the use fall within any Class of the Use Classes Order?
- Does the use require planning permission or is it lawful and immune from enforcement action?

DESCRIPTION OF SITE

Large detached farm house with substantial curtilage including areas available for off road parking, situated in an isolated rural location surrounded by farm and nursery land. Greenfield House is in a countryside Green Belt location to the north of Werrington.

Greenfield House has its own driveway and parking area with ingress and egress access formed off an unmade road. There are no near neighbours.

APPLICATION

'The Use' is described as:

A home for young persons requiring guidance and care in a safe, stable and homely environment.

It is submitted that:

'The Use' is that of a Dwellinghouse (*Class C3(b) Use Classes Order 1987*).

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

The property was built and last used as a family dwellinghouse (*Class C3(a) Use Classes Order 1987*)

The property has been leased by Horizon Care and Education Group Ltd since 2008.

CONSULTATIONS

Publicity

Site Notice expiry date: 15.05.2017
Neighbour consultation period ends: 15.05.2017

Public Comments

None

Town / Parish Comments

Awaited

OFFICER COMMENTS

What is the character/nature of the existing use?

There is a difference between the way the agent has described the use on the application forms and the way it is described in the evidence. I will rely entirely on the submitted evidence to determine the correct way of describing the use.

Victoria Kelly, the children's residential care worker employed by Horizon Care, has submitted a statutory declaration. She says that:

• A maximum of 3 young people live at the property, their ages ranging between 10 and 17 years.

• A staff pool of between 8 &10 full time carers cover 24 hours a day 365 days a year. There are a maximum of 3 carers on duty, making 6 the total occupants at any one time.

• The carers operate a 24hour shift with a 30minute change over period between 9:30am and 10:00am daily.

• Each young person has their own private bedroom. Bathrooms, kitchen, dayrooms and garden are shared and communal.

Also provided is a Horizon Care 'Our Homes' mission statement, this says that:

• Individuals will be resident on average for a period of between 3 and 5 years.
• Minimum of 2 carers while residents are at home.
• Residents encouraged to be actively involved in the running of their home.
• No dormitory style accommodation no care for physical or mental disabilities or any clinical care.

Using the evidence therefore, I consider the most appropriate and accurate way of describing the use as:

"Use of a dwellinghouse by up to three children, with ages ranging between 9 and 17 years of age, as their prime and sole residential home where their care is provided by up to three duty carers, at any one time, who operate a 24 hour shift with a 30 minute change over between 9:30am and 10:00am".

Does the use fall within any Class of the Use Classes Order?

The applicant submits that the use falls within Class C3(b) of the Order – "Use as a dwellinghouse by not more than 6 residents living together as a single household where care is provided for residents".

I can not accept this submission the case law is quite clear on this point. In the case of *North Devon District Council v The First Secretary of State [2003] EWHC 157* Collins J concluded that children on their own are not capable of forming a single household, they are reliant on adult care and non-residential carers, operating on a shift basis, could not be regarded as living together with the children in a single household. The use at Greenfield therefore, can not be said to fall under Class C3(b) or C3 in general.

An alternative proposition would be that the use falls into Class C2, Residential Institutions – "Use for the provision of residential accommodation and care to people in need of care". However, the character and appearance of Greenfield House (I have made an internal inspection and been shown all of the rooms and facility) is that of a dwelling house and importantly the submitted evidence, appertaining to the use, is not suggestive of a 'residential institution'. The submitted evidence describes how each of the three residents have their own bedroom which they are encouraged to personalise, are involved in the preparation of menus and the weekly shop, and have the opportunity to give their views on the running of the home. Although not determinative, it is noted that it is just three residents that occupy Greenfield House, there is no provision of dormitory style accommodation, educational facility or any specialist medical care or equipment.

The use as described above therefore, is not considered to fall within Class C2 of the Use Classes Order. When a use does not fall into either C3 or C2 and does not fit with any other Class it is referred to as sui generis.

Does the use require planning permission or is it lawful and immune from enforcement action?

There has been a change in the use from that of a family dwellinghouse (Class C3(a)) to a new use that does not fall within either Class C3 or C2. This change of use occurred in 2008, just less than 10 years ago.

The applicant says that the change of use is immune from enforcement action because it falls within the same C3 use class as that of a family dwellinghouse. While it has already been found that the applicant is wrong in that respect and the current use of the premises does not fall into Class C3 of the use class order, if the local planning authority are satisfied, on the information submitted, that the use is lawful for some other reason, they are duty bound to issue a certificate (s.191(4) of the T & CP Act 1990).

Importantly therefore, the Change of Use will only be development that requires planning permission, if that change has resulted in a "material change of use". Where it is considered therefore, as in this case, that there has been a change of use from a dwelling (Class C3) to a *sui generis* use it is necessary to consider whether this change constitutes a 'material change of use'.

This is a matter of fact and degree based on the specific circumstances of each case. The key test is whether there has been a change in the character of the use and second, the effects of this change upon neighbouring uses and the locality.

Outside Greenfield House appears as a large detached farm house. Internally, it is in good decorative order; there is a small office downstairs, otherwise it is laid out as an ordinary house with a homely character and appearance. The children sleep in individual bedrooms. There are the usual kitchen and bathroom, and living room facilities.

Greenfield House provides a home for three children that are placed in the care of Horizon Care Ltd by various local authorities. They are children who, for whatever reason, have been put into the care of the local authority, and the local authority is required to find somewhere for them to live and to be cared for during their minority. Up to three non resident staff are on duty at all times and the house is under the supervision of a team of adult carers who operate 24 hour shifts. The result is the children are never unsupervised whilst in the building. That means of course that the various carers will come and leave at the beginning and end of their shifts, a half an hour period in the morning between 9:30am and 10:00am - similar in character to parents leaving for work or departing on the school run, otherwise the building is to all intents and purposes used as any other family house would be with three children there: shopping trips are needed; children have to be taken to school; the children assist to an extent in the preparation of meals and so on.

Additional vehicle movements to and from the property might result from the monthly visit of the clinical psychologist, infrequent community liaison visits from the police, and visits from the friends and family of the residents. However, any other family home is also visited by any number of friends, family, contractors, professionals and maintenance workers without specific limit or preclusion.

No Public comments have been received, perhaps not surprising giving the properties isolated location without near or immediate neighbours.

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CONCLUSION

The Use of the dwellinghouse, as described in the applicant's evidence, which does not fall within either use class C3 or C2 was lawful on the date of the application because it is not the result of a "material change of use".

OFFICER RECOMMENDATION : Approve

Case Officer: Ben Hurst
Recommendation Date: 15/05/2017

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council