Statement to support a Lawful Development Certificate application

The Oaklands
Uttoxeter Road
Checley
Staffordshire
ST10 4NA

'Use of premises (C3a) as a home for up to four children or young people with up to two full-time resident carers sleeping overnight and living together as a single household. (C3b)'

7/03/2019

1. I am writing on behalf of 'Blue Mountain Homes Ltd'(BMH) which is seeking confirmation that the proposed use of a C3a use (Oaklands) as a small specialist children's home falls within use class C3b of the Use Classes Order and therefore as both uses are within Class C3, planning permission is not required.

2. It is essential for BMH to create the right care setting for children who, through no fault of their own, have suffered a difficult upbringing. The idea is to provide as close as possible, a family environment, with the carers providing the parental guidance which has been so lacking in their early years.

3. This is required to ensure that the property will meet the necessary planning requirements and able to achieve Ofsted registration.

4. From 10:30pm to 7:30 am two members of staff are present in the house. During the day, other staff such as cleaners and possibly home tutors may visit the site but such activity is not materially different from a normal household.

5. During the day it is expected that all the young people will engage in various activities: attend a DfES registered school, attend mainstream school or receive home schooling.

6. The property already has up to four car parking spaces, hence more than sufficient to ensure vehicles do no need to park on the highway.

7. In terms of residential amenity, the use is no different from a normal household. This particular property does not have neighbours close by.

Blue Mountain Homes Limited - specialist children's residential care home

8. BMH has been established since 2002. It currently has 12 homes located in the East Midlands, providing residential care to young people aged 10-18 years. Its young people may have complex emotional and behavioural difficulties or mild to moderate learning difficulties.

9. It acknowledges that its young people may have much multi-faceted and complex behaviour, requiring a clear strategy to ensure that it is able to meet individual needs. It is imperative that wherever possible, it actively encourages their participation in all aspects of their care plan and in any decisions that may impact upon their future.

10. The intention is to provide fulfilling opportunities that are rewarding and support personal development through a variety of experiences. It is the aim for young people to be happy and engaged in activities that build confidence and self-esteem, ready for them to make their own way in the world.. The company believes that all young people deserve to live in a safe and nurturing environment, cared for by a dedicated staff team, who are experienced and well trained.

Care Services

11. As an organisation, BMH is committed to ensuring that it has a wide range of services and resources available to meet the individual needs of young people. Integral to this is its approach of working in partnership with local authorities, families and other skilled professionals so as to ensure that as a multi-agency team, it achieves the best possible outcomes.

Successes

12. Over the past 15 years, BMH has been focused on providing excellent care services to young people and delivering a quality service. They have a strong commitment to achieving real sustainable outcomes. Working in partnership with local authorities, recognising the changes within the care sector and responding to these accordingly ensure that services continues to evolve and develop.

Creating the right environment in the right location

13. It is clearly essential to create the right care setting for children 'who have suffered a difficult upbringing. The small family home that Blue Mountain Homes Limited plans to set up will provide the safety and security needed for the specialist care the children require.

Planning use

14. BMH has identified a local property that is considered suitable for use as a small, specialist children's home. This will accommodate up to four children or young people, with up to two members of staff sleeping on the premises to provide 24-hour care.

15. In order to achieve Ofsted registration, Blue Mountain Homes Limited is required to provide written confirmation that the home will be lawful and acceptable from a planning perspective.

16. In accordance with the Use Classes Order 1987 (as amended) the wording of Class C3 covers the use of a dwellinghouse (whether or not as a sole or main residence) by:

- C3(a): use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.

- C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.

17. Class C2 covers Residential institutions and includes residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres. For clarification a Young Offenders Institution falls within Class C2A Use. Class.

18. Section C3(b) clearly states that where care is provided, the residents must live together as a single household. Circular 05/2010 states that for the purposes of Class C3(b) single household is not defined in the legislation. The question of whether a particular building is a dwellinghouse will therefore depend on the facts of the case. Paragraph 21 of Circular 05/2010 adds that in small residential care homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institution Use Class regardless of the size of the home.

19. Article 2 of the Town and Country Planning (Use Classes) Order 1987 defines “care” to mean “personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or

present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment."

20. The Use Classes Order states specifically that the element of care, which is necessary to satisfy inclusion in Class C2, includes the personal care of children. However, a children's home may also fall within Use Class C3 (Dwelling houses) where the total number of residents does not exceed 6 and the carers and the cared-for live as a single household. Therefore, the key issue here is whether the residents would be living as a single household.

21. Another issue of relevance relates to the number of people forming the 'household'. It was established in case law (a judgment of the Court of Appeal in R (Hossacks) v Kettering BC (2002) EWCA Civ 886) that "the limit in class C3 to no more than six persons is an important consideration as with no more than that number, it would be more likely that a person would be living as part of a single household than if it were significantly more than six; the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy would be likely to be and more likely they are to be regarded as a single household."

22. Paragraph 25 of Circular 05/2010 states that the criteria for determining whether the use of particular premises should be classified within the C3 use class include both the manner of the use and the physical condition of the premises. The circular states that the premises can properly be regarded as being used as a single dwelling house where they are:

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

23. There is a significant amount of case law in regarding residential care homes and residential institutions. In a court case following the challenge of an appeal decision (North Devon 5/8/02) in Barnstaple, the court held that in order to form a single household living together it was necessary for carers to live permanently within the building instead of visiting on a shift system. In this instance two non-resident staff were on duty at all times and the children were under the supervision of a team of five to seven carers operating 8-hour shifts. A Lawful Development Certificate had sought confirmation that the use of the property fell within Class C3(b) and an Inspector concluded that the use fell within that class relying on the leading judgement of R v Bromley LBC ex parte Sinclair 1991 which concluded that staff providing care did not necessarily have to be resident at the property in order to be still classed as forming part of the household.

24. The Council argued that the Sinclair case was wrongly decided and it argued that for a use to fall within Class C3(b) carers had to be resident within the building otherwise the use fell within Class C2.

25. The court agreed that in order to form a single household living together it was necessary for the carers to live permanently within the building, otherwise it was reasoned that those in need of care would not be able to live as a single household because they were incapable of undertaking the tasks associated with running and living within a dwellinghouse.

26. The applicants' have also referred to this case in their submissions and advise that at paragraph 19 of his judgement Mr Justice Collins stated "it seems to me that the concept of living together as a household means that, as I have put it, a proper functioning household must exist and, in the context of a case

such as this, that must mean that the children and a carer must reside at the premises."

27. A case decided after the North Devon case (above) and running contrary to it found that premises were in use as a dwellinghouse even though the use involved three staff on a shift system providing 24 hour cover with one of them staying on the premises for a maximum of eight hours and with each of the staff would have their own homes. In this case the premises were occupied by four people recovering from mental health problems. The intention was to allow the residents to live a communal life as a single household sharing a kitchen, living room, dining room, toilet and bathroom (Enfield 11/7/06).

28. Another case to go against the North Devon ruling involved a house for the accommodation of 5 persons with learning difficulties. The Council argued that C3 did not embrace the proposal as there would be one or two members of staff present during the day and one on night duty. It argued that this was not occupation by a single household but amounted to a residential institution.

29. An Inspector considered that the use was a group home and not a care home, and noted that residents and staff would share all facilities and take meals together. The Inspector concluded that the use would not have an institutional character and fell squarely within the C3 Class (Croydon 8/1/03). The applicants' supporting statement has advised that there would be a maximum of 5 residents between the ages of 11 and 16 and one permanent live-in carer with additional carers working on a shift basis.

30. A key element in the use of a dwelling house for non-family purposes is the concept of a single household and a fundamental consideration here is that there would be one live-in carer and thus the carer and children would be

living together as one single household. The premises is proposed to be laid out to provide a kitchen, lounge, utility, study and staff office on the ground floor and 6 bedrooms (which includes the one bedroom for the live-in carer) and a bathroom on the first floor.

31. With the exception of the staff office there is no indication that the live-in carer would have separate facilities. Whilst a ground floor room has been identified as a 'staff office' which would suggest only the resident who is staff could use this room, the remainder of the house would appear to be laid out in the same way as any other residential dwelling.

32. In an appeal at Crewe & Nantwich (24/4/06) an Inspector noted that although the building would be fitted with an office [and fire alarm], this was not uncommon in many dwelling houses around the country he decided and would not materially alter its basic character as a dwellinghouse.

33. BMH state that the purpose of the home would be to support children to build their confidence and help them in developing life skills and reengaging them into education. All facilities within the property would be shared with all residents and carers and the applicants have advised that the children would attend school, food would be prepared and eaten together, homework completed and recreational activities carried out.

34. Whilst it is acknowledged that additional carers would work on a shift basis with a maximum of three at the premises during the day and two in the evening (including the live-in carer) the comings and goings are not considered to be any different from that associated with many dwellinghouses.

35. The applicants would have to register with Ofsted who would ensure minimum standards in relation to accommodation, care and safeguarding. The applicants are aware of the licensing requirements via officers within the Social Services.

36. On this basis it is maintained that the proposed use as detailed in this supporting statement would fall within the existing C3 Use Class and as such planning permission would not be required.

Living together as a single household

37. It is also maintained there is no material difference in planning terms between the proposed use and a typical residential household, to necessitate a requirement for planning permission. It is important to confirm that the nature of the specialist home provided by Blue Mountain Homes Limited will ensure that the use falls within class C3b.

38. The carers will effectively live at the dwelling house to provide 24-hour care, as a single household. Facilities such as the bathroom/wc, kitchen and living rooms will be shared and the living mode will be communal. The comings and goings associated with the use will not be materially different from a typical residential household.

Conclusion

39. It is contended that the existing use of the property falls within C3a of the Use Classes Order and that the proposed use falls within C3b. As both uses are in the same use Class C3, a change of use from one to another would not amount

to development in accordance with section 55(2)(f) of the Town and Country Planning Act.

40. Furthermore, the use is intended to be run as close as possible to a normal household, hence there is no material difference from a C3a use.

41. Planning permission is accordingly not required for the proposed use which could lawfully be placed within the subject premises, thus a Lawful Development Certificate should therefore be granted. It is hereby requested that a Certificate of Lawful Development be granted for the use of Oaklands as a dwelling house to be occupied as a home for up to four child or young persons with up to two full-time resident carers sleeping overnight and living together as a single household.