

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

PLANNING STATEMENT

Proposal: Application for a lawful development certificate for the change of use from Class C3(a) to
Class C2

Site: Oak Lodge, Sandy Lane, Brown Edge, Stoke-On-Trent, Staffordshire, ST6 8QJ

Applicant: Bedspace Resource Limited

Ref: BED1535/1

Date: October 2021

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1. INTRODUCTION

- 1.1 This planning statement has been prepared by Knights plc on behalf of Bedspace Resource Limited ('the applicant') to accompany a certificate of lawful development for the change of use of Oak Lodge, Sandy Lane, Brown Edge, Stoke-On-Trent, Staffordshire, ST6 8QJ ('the proposal site') from a Class C3(a) (dwellinghouse - use by a single person or a family) use to a Class C2 (residential institution). The proposal will provide care for 3no. children with a minimum of 2no. carers on-site during the day and night and a visiting manager whom attends the property during the week (day light hours).
- 1.2 This planning statement should be read alongside the following drawings:
- Location Plan;
 - Block Plan;
 - Application Form.
- 1.3 The purpose of this statement is to demonstrate that the use of this property as a Class C2 use would not result in a material change of use from that of a Class C3(a) use.

2. LEGISLATION

The Town and Country Planning Act 1990

- 2.1 Section 336(1) defines "use" in relation to land as, not including the use of land for the carrying out of any buildings or other operations on it.
- 2.2 Section 192(1) provides that if any person wishes to ascertain whether any proposed use of buildings or other land is lawful or whether any operations which have been carried out in, on or under land are lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use.
- 2.3 Section 192(2) advises that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- 2.4 Section 192(3) requires this certificate to detail the specific land to which it relates, describe the use or operations in question, give the reasons for determining the use or operation to be lawful and specify the date of the application on the certificate.
- 2.5 Section 192(4) provides that the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change,

before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

National Planning Practice Guidance (“the NPPG”)

- 2.6 The NPPG provides advice regarding how applications should be determined alongside the National Planning Policy Framework (NPPF).

What information must accompany an application for a lawful development certificate?

- 2.7 Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. The application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

Who is responsible for providing sufficient information to support an application?

- 2.8 The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

How is an application for a lawful development certificate determined?

- 2.9 A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process. In determining an application for a prospective development under section 192 a local planning authority needs to ask *“if this proposed change of use has occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”* A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however advisable to seek the applicant’s agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010

2.10 The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 confirms in Part B of the Schedule that uses falling within Class C3 'Dwellinghouses' comprise of three subsections wherein uses can be interchangeable whilst remaining within this class. These areas are set out as:

- *"C3(a) covers 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.*
- *C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger."*

2.11 This Order also refers in Part B to uses falling within Class C2 'Residential Institutions' as uses comprising *"residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres"*.

The Town and Country Planning (General Permitted Development) (England) Order 2016

2.12 The Town and Country Planning (General Permitted Development) (England) Order 2020 sets out in Class L of Part 3 'Changes of use' of Schedule 2 that small HMOs (Use Class C4) can change use to dwellinghouses (Use Class 3) and vice versa under permitted development. There is however no provision in this Order for the change of use from a dwellinghouse (Use Class C3) to residential institutions (Use Class C2).

3. THE FACTS

- 3.1 The application site comprises a two-storey semi-detached property that is located within a residential estate in the centre portion of the Brown Edge urban area. The site has a C3 use and is currently vacant. The buildings is a residential dwelling and is comparable in style, design and layout to the majority of other residential properties along Sandy Lane, containing a drive and a rear garden. The property and local context are shown in Figure 1.



Figure 1: Aerial image (edged in red) showing site in context (image source: Promap)

- 3.2 The property provides 5no. bedrooms in total with all five bedrooms located on the first floor. There is a bathroom on the first floor however there is toilet/ shower room on the ground floor too. The ground floor also provides a kitchen, lounge/ dining area, conservatory towards the rear of the property, and a garage towards the front.
- 3.3 As stated in the previous section of this statement the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 splits Class C3 uses into three separate parts (parts 'a', 'b' and 'c') and enables the property to move between each use without the need to apply for planning permission. The property therefore currently falls within a Class C3(a) use but under these provisions could change to a Class C3(b) use to enable up to six persons to live together as a single household receiving care.
- 3.4 The applicant proposes to operate the premises as a residential institution use which falls within Class C2. A risk assessment would be undertaken to ensure that the residence is appropriate for the chosen children. In order to run a care home it is necessary to obtain a registration from Ofsted. Ofsted stress the need for care homes to be operated in an environment as close as possible to a traditional family home environment and are set out below:
- Children in residential child care should be loved, happy, healthy, safe from harm and able to develop, thrive and fulfil their potential.

- Residential child care should value and nurture each child as an individual with talents, strengths and capabilities that can develop over time.
- Residential child care should foster positive relationships, encouraging strong bonds between children and staff in the home on the basis of jointly undertaken activities, shared daily life, domestic and non-domestic routines and established boundaries of acceptable behaviour.

3.5 The property would be run in the following manner:

- The care home would provide accommodation for up to three children who would be cared for by trained carers 24 hours a day and 7 days a week. Care would be given in a communal environment with the children and their carers sharing facilities in a manner akin to a family. For example, there would be no locks on bedroom doors.
- The property consists mainly of 5no. bedrooms, kitchen, lounge/dining area and conservatory. In order to meet the full requirements of this scheme, this proposal seeks to utilise two of the bedrooms on the first floor for the staff members whilst the other three bedrooms would be utilised individually by the three children in care. There would be no home office on-site.
- Although the property does not contain a home office, a desk space with a lockable filing cabinet for paperwork will be provided within the living area to allow members of staff to undertake administration work (normally when the children are at school). This is a requirement to satisfy GDPR regulations.
- Other than the two dedicated staff bedrooms, all of the other rooms would be communal.
- The carers for the children would not be permanent residents but their working hours would be split between 3 shifts. The first shift would likely be between 7am to 3pm; the second would be between 2:30pm to 10:30pm and the third shift would be between 10pm to 7:30am. One of the staff during the nightshift would be a waking night staff.
- The handover period between shifts would generally last around 30 minutes. On occasions the site manager would be present during this time. During the daily operations, the staff members would remain on site supervising the children but would also accompany the children to school and other appointments.
- One of the carers would be a more experienced member of staff in a senior role in order to meet the requirements of Ofsted regulations.

- The site manager would be present at the property anytime between 9am to 5pm on various the days of the week (as required) to provide more senior input. The manager provides an over sight to the operations, safeguarding responsibility and deals with administration. They are a senior member of staff who are more qualified (i.e. hold a level 5 children's residential care qualification - whereas the other staff would hold a level 3 qualification). The manager may on occasions be on site during shifts change overs and to cover shortfalls (i.e. where one of the other carers is unable to attend).
- The children would be cared for on a medium to long term basis in order for them to integrate properly into the community and build strong relationships with the carers and the environment.
- Other visitors to the property (i.e. family and friends of the children) would be strictly limited. Typically children would visit family and friends in neutral locations with the carers present.
- There would be the children cared for by two staff members during the day. This is a standard arrangement throughout the care home arrangement regardless of the level of care provided. Food would also be cooked and served by the carers. During the night 2 carers would remain on site and would work the night shift between 10pm to 7:30am.
- The residents would attend school during the day and would utilise services and facilities in the surrounding area.
- The three children would be taken to appointments by an individual. Where suitable, many of these trips (including school trips) would be taken on foot or on public transport. There would be no more requirement for these children to be taken to any specialist schools or appointments (compared to if the house was utilised as a dwelling house).
- The applicant would employ carers in partnership with Staffordshire Moorlands District Council. The applicant would be registered with Ofsted as the proprietor with the home registered for up to three children.

3.6 It is important to note that this proposal does not seek to alter the premises structurally or externally in order to accommodate the new usage as the existing building as it stands provides the required level of accommodation and room sizes, etc. which is in line with Ofsted and building control standards however the building may need adapting in terms of alarm systems, etc. none of which have any material planning consideration.

4. ASSESSMENT

- 4.1 The applicant proposes to operate the premises as a residential institution use. This use falls within Class C2. The use would not increase the number of residents within the dwelling as the scheme would provide accommodation for only three children between the ages of 8 to 18 years, and cared for by staff carers in the day and night plus a manager visiting on occasions during the day. The proposed use would be a lower occupation than would be the case if the property remained as a dwellinghouse (i.e. with the ability for a standard family to have a greater number of children who could share bedrooms). This would mean that there is a finite space to accommodate persons under the residential care home use.
- 4.2 As a result, at any time a maximum of 6 persons (2 carers, 3 children and 1 site manager) would be present at the property in the daytime and a maximum of 5 persons (2 carer and 3 children) would be present at the property during the night. The site manager who would visit the premises for only short periods of time (typically during the day) and would also travel between other care homes within their responsibility.
- 4.3 The relatively modest nature of these operations would not facilitate the increase of the operations and number of residents above the level that would normally be expected to reside in a five-bedroom family home. Whilst the proposed use would include three child residents and up to two adult carers, as set out in the previous section of this statement, the activities and operations at this site would be very similar to that of a typical dwellinghouse with vehicle movements associated with the use akin to a standard residential dwellinghouse (Class C3a).
- 4.4 The ethos behind the applicant's intended operations of this property would be for the residence to provide an environment as close as practically possible to normal family life in order to ensure that the children can live a life of normality in the local community. This in fact is a requirement of Ofsted. The proposal is not a 'half way' house or a facility that would provide overnight emergency lodgings for example. The applicant considers that such properties can offer a better and stable home environment than would be the case in larger institutions as they enable individual needs to be met and allow the children to integrate into their community and live as equal citizens. As a consequence, the whole structure of the operations is designed to ensure that the building functions as close as possible to a standard Class C3(a) use. The home has a typical layout as found across most homes in the UK; a living area where residents all relax and enjoy TV, games etc. A kitchen where all residents are expected to cook and eat together. Bedrooms with en-suites, which are commonplace in modern homes and also a study for children to do homework, research or unwind with a book. The home also has smoke alarms and fire doors, which are found in all modern properties with the emphasis on fire safety being greater in the modern world. Nothing in this home or its surroundings suggests anything other than a normal dwellinghouse.

- 4.5 Furthermore, children who are placed in these homes are often stigmatised for being in care, In recognition of this. Ofsted's requirements are that the homes, in no way, shape or form, feel like an institution or care home. Therefore, it is very important to the applicant to ensure the home is not materially changed in any way and that the characteristics of a typical home are kept in-tact. At no point will there be signs above the home, or any advertising that this is a care home as the aim is to have the children assimilate with their surroundings and feel part of the community, as any normal family would do.
- 4.6 The carers would travel to and from the site (during the crossover of shift patterns) either by car or public transport. The property is accessed via Sandy Lane. Located immediately next door is a Methodist Church and around the corner there is a Keith Supermarket; it is evident there are a number of services available in close proximity to the site. The closest bus stop provides access to the wider city (Stoke-on-Trent); this stop is approximately 0.16km away from the property due south.
- 4.7 The property is provided with a garage which has the capacity for 1 vehicle, the remainder of the site provides 4no. on-site car parking spaces on the drive; additionally on-street parking is available also. Indeed it is entirely reasonable to expect a high proportion of staff to typically commute to the site via public transport. Therefore the movement of vehicles to and from the site would generally centre around the changeover of shifts (during 7am to 3pm, 2:30pm to 10:30pm and 10pm to 7:30am) and would not result in operations that would be materially different to a normal residential situation wherein one would expect a similar level of vehicle movements throughout the day (and typically minimal movements during the night time).
- 4.8 It is Knights view that the change of use of the property to a Class C2 use would **not** represent a material change of use when accessing the operations as a matter of fact and degree. This view is formed when considering various case law on the matter which is discussed in the paragraphs below.

Relevant case law

- 4.9 In the refusal of the previous certificate of lawfulness D0010.21 the LPA specifically refer to the case of North Devon District Council v The First Secretary of State [2003] EWHC 157 Admin. That case acknowledged that a property in Barnstable, North Devon that proposed to use a 3 bedroom dwelling to care for up to two children within a residential home would fall within a Class C2 use (rather than a Class C3b use) on account of the carers not being residents at the property, regardless of the size of the institution. **The case went on to state that the change of use was not considered to be material.**
- 4.10 Case law in the form of Crewe and Nantwich in 2006 (Ref DCS No 100-042-095) wherein the Inspector confirmed that a Class C2 use which housed four children between the ages of 11

and 17 years (with a minimum of two carers operating on an 8 hour rota system) would not involve a material change in the use of a premises from Class C3.

4.11 In the case of Burbage (in Hinckley and Bosworth District Council) which was allowed at appeal in 2011 (Planning Inspectorate reference APP/K2420/X/11/2155849) for a care home to provide care for up to three children with emotional and behavioural difficulties. A copy of that appeal decision can be found in **Appendix A**. In this appeal the Inspector considered that the use fell within a Class C2 use. That proposal involved three shift patterns per day with three carers and a site manager providing care and it was not anticipated that more than three cars would be parked at the premises. The Inspector concluded that the proposal would not result in a material change of use.

4.12 A further appeal at The Cottage, Stonebridge Green Road, Egerton (Planning Inspectorate reference: APP/E2205/X/16/3161037) which was allowed in 2017 related to a certificate of lawfulness in respect of the use of a 4-bedroom dwelling to a proposed care home providing care for three children by two adult carers. A copy of this appeal decision is contained in **Appendix B**. The Inspector acknowledged that the use would fall within Class C2 but that the level of vehicle movements to and from the property would not be significantly more than if it were used as a family house. The Inspector concluded that:

“The appellants will be required to comply with all relevant rules governing the accommodation for children in care and their full time supervision and, if the property can meet these regulations and the appellants can meet the staffing requirements, I see no reason why the use proposed would have any planning impacts that would cause it to be considered as a material change of use”. [Knights’ emphasis]

4.13 The North Devon, Crewe & Nantwich, Burbage and Egerton cases result in very similar operations to that at the application scheme.

4.14 A more recent appeal decision in January 2020 relating to a property know as Willow House, 11 Mansfield Road, Clipstone, Nottinghamshire (Planning Inspectorate reference: APP/N4720/X/13/2201154) was dismissed as it was considered that in that instance the change of use was material (thus requiring planning permission). A copy of that decision can be found in **Appendix C**. That decision referenced the North Devon and Burbage cases, and in this instance considered that the proposal did amount to a material change of use. The Inspector formed that view on the basis of a combination of the following factors:

- The care required for the children would “*require substantial amount of care and educational development by non-resident staff*” and that “*it is reasonable to expect the engagement of external agencies as YMCA concede alternative education would be provided at the property. The provision and delivery of home-tutoring because a child/young person can’t be placed at a suitable educational establishment would, potentially, increase staff numbers coming and going during the day*”.

- Additional visits were made to the property by *“made by those involved in teaching and the welfare of children”* and this would result in additional parking on and around the property.
- It was considered that *“the level and frequency of movements generated by non-resident staff and other professionals would significantly increase”*
- Whilst visits by family members would be arranged off-site there would be additional vehicle movements associated by these occurrences (whether using private or public transport).
- Whilst no physical changes to the property would occur but some layout changes would occur including the provision of a room on the ground floor as an office.

4.15 However in the case of the operations at Oak Lodge, Sandy Lane, the following would be the case:

- Care is provided solely by the 2 resident carers (operating in shift patterns). An additional site manager will visit a number of times a week and will manage not only this site but other properties in the applicant's portfolio, they would not stay overnight. The manager's responsibilities relate to the overall running of the home, dealing with child protection issues and liaise with the social care professionals, schools and health professionals for example.
- The children in care would come from traumatic living environments, and the care provided by the staff would be to provide a safe and secure, family environment in order to address these issues. Indeed residents are selected and assessed in order to promote the formation of a good relationship between them.
- Children would attend the local schools in the area, be that mainstream schools or specialist schools. Carers will take these children to and from school in the normal fashion. There will be no requirement for home-schooling. In the Willow House case it was established that it would be necessary to home-tutor the children as they could not be placed within a suitable educational establishment. This would not be the case here.
- No specialist additional carers would visit the premises, aside from Ofsted inspectors (typically twice a year) and social workers (typically once a month) however these would be visiting to check the overall running of the premises and not in respect of providing specialist care to the resident children. Where specialist care is required, this would take place off-site as would be case with any other typical family household. On that basis, is it not considered that a 'substantial amount of care' would be required from non-residential staff, indeed it would not be necessary for any of the rooms to be altered to facilitate the care that would be provided.
- There will be no family visits at the site. Given the nature of the children and the safeguarding requirements, these children are often those that have been removed from the family household and therefore any visits would be arranged to meet in a neutral location or at the family home with carers in attendance. Family visits are not typically a regular occurrence in order to provide a consistent care environment for the children, this would typically take place on rare occasions (i.e. less than once a month). Indeed in some instances it would not be appropriate for any family contact to take place at all.
- No business meetings would take place at the site and no dedicated room would be made available within the building for such a purpose (unlike what was the case for Willow House).
- Whilst some administration work would occur at the premises, this would not be within a dedicated office, rather it would be undertaken in one of the staff rooms with the use of a laptop or by the site manager (who would undertake much of the paperwork off-site). The general appearance of the house would be no different to any other typical dwellinghouse.

4.16 When all of these issues are considered in the round, it is clear that the operation of Oak Lodge, Sandy Lane would not provide the nature of care identified at the Willow House case. Perhaps the only similarity are the shift patterns and the off-site family visits, however the latter are likely

to be minimal and the Inspector's decision was based on considering all of the issues in the round, rather than one individual element being a determining factor. Indeed, the North Devon, Crewe & Nantwich, Burbage and Egerton cases also involved similar levels of movement to and from the site (which were not considered to result in a material change of use) and the application site's location in close proximity to public transport options would result in the likelihood for staff to commute and travel via public transport rather than the private motor vehicle, as is typical in London and the surrounding areas. On this basis, those two elements would not tip the balance to make the change of use material, and it is clear that in this instance no material change of use would take place. Instead, this proposal bears strong similarities with the Burbage and Egerton appeal decisions (referred to previously) where it was considered that, whilst the use would fall within Class C2, the proposed operations would not result in a material change of use. Therefore, when considering this case law, the operations proposed at Oak Lodge are still considered to operate even more closely to those expected of a family household, and therefore the change of use would be even less material in this instance.

- 4.17 An even more recent appeal decision in December 2020 for a site at 72 Oakdale Drive, Heald Green, Cheadle (Planning Inspectorate reference: APP/C4235/X/20/3244329) allowed the change of use from a 5-bedroom dwellinghouse to a care home caring for up to 3 children who would be cared for by two carers at any time, working 48 hour shift patterns. A copy of this appeal decision is contained in **Appendix D**. Importantly that decision recognised that the carers would sleep overnight at the property but would the property would not be their main residence. The Inspector considered that that proposal would fall within Class C3b as it stated in paragraph 17 of that decision that:

"In all, given the level of care involved in this case, the low frequency of visits by non-resident carers who stay overnight and work a shift pattern with the resident carer who guide and look after the resident children, the proposed use in my view, would constitute a single household. I conclude on the available evidence that the proposed use would fall within use class C3(b)."

- 4.18 It is therefore, entirely feasible that the proposed use could fall within a Class C3(b) use.
- 4.19 Knights have obtained numerous certificates of lawfulness through both of these routes and these examples can be provided on request. A recent example of which was in Lichfield District Council on 26 January 2021 which confirmed that the nature of the operations involved, whilst falling within a Class C2 use concluded that:

"Whilst the existing and proposed uses would constitute a change of use between Class C3 and Class C2, it is concluded that the exact nature of the proposed use as described within the submission would not constitute a 'material change of use', as it would not be materially different to the character of a dwellinghouse or produce external effects that would be materially different to the use of the property as a Class C3(a) dwellinghouse. The submission describes a

proposed situation very similar to a family consisting of adults and children with on-site activities and comings and goings that would not be usual at a family home. No material change of use amounting to development requiring planning permission from the Local Planning Authority would, therefore, occur.”

- 4.20 For safeguarding reasons for the children at that home the reference number for this decision has not been included in this report but Knights can provide this information directly to the case officer for reference in due course if necessary.
- 4.21 We would also emphasise that small homes such as this play a significant role in the Government's approach to social care policy, aiming to enable children in care to live as normal lives as possible within the community and the operation of such homes that seeks to create a 'family-orientated' environment where children thrive and achieve positive outcomes.

5. CONCLUSION

- 5.1 The application seeks the grant of a Certificate of Proposed Lawful Use in terms which recognise that the site, which is shown edged red on the Location Plan, can be used for a Class C2 use.
- 5.2 This statement clearly demonstrates that the proposed change of use of Oak Lodge, Sandy Lane, Brown Edge, Stoke-On-Trent, Staffordshire, ST6 8QJ to a Class C2 from its current use as a Class C3(a) would not result in a material change of use.
- 5.3 As a consequence, it is considered that the proposal would not require the submission of a planning application and that a certificate of lawfulness should be issued in accordance in accordance with Section 192 of the Town and Country Planning Act 1990.

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OCTOBER 2021

APPENDIX A - APPEAL DECISION AT 15 CROWNHILL ROAD, BURBAGE



Appeal Decision

Site visit made on 25 October 2011

by Chris Hoult BA BPhil MRTPI MIQ

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

Decision date: 7 November 2011

Appeal Ref: APP/K2420/X/11/2155849

15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Chartwell Care Limited against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00279/CLU, dated 24 March 2011, was refused by notice dated 6 June 2011.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a certificate of lawful use or development is sought is the use of a dwellinghouse as a children's care home.

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

Application for costs

1. An application for costs was made by the appellants against the Council. This application is the subject of a separate decision.

Preliminary matter

2. The description of the proposed use on the application form refers the reader to a statement from the appellants. I adopt the shorthand description on the Council's decision notice.

Main issue

3. The single main issue for consideration is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. The appeal property is a large modern detached house with an open frontage to the street on a residential estate on the southern edge of Burbage. It is proposed to operate it as a care home for children/young people between the ages of 9 and 17 with learning disabilities, in which the age range at any one time would be no more than 3 years¹. Although the evidence indicates that the property was previously in use as a care home for children, the parties are agreed that its lawful use is as a dwellinghouse in Use Class C3 of the Use

¹ Although the initial application referred to children between the ages of 10 and 18 with an age range of 5 years at any one time, these figures were revised in a subsequent e-mail to the Council from the appellants dated 20 May 2011.

Classes Order². The appellants contend that the proposed use could be argued to fall within part (b) of Class C3. In the alternative, if the use were to fall within Use Class C2 (residential institutions), any change of use from Class C3 would, they argue, not be a material change of use and would not therefore amount to development for purposes of the 1990 Act.

5. Under the Order, Class C3 includes use by "...*(b) not more than six residents living together as a single household where care is provided for residents*". Care homes more typically fall under Class C2 as use "*for the provision of residential accommodation and care to people in need of care*". The definition of "care" as set out in Article 2 of the Order includes, in Class C2, the personal care of children. There is therefore some overlap between classes C2 and C3 in so far as they relate to care homes, a point which the appellants emphasise in making their case. For a change of use from a use in Class C3 to a use in Class C2 to amount to development, and thereby require planning permission, the change of use has to be material³. That applies to the overall character of the use not just to certain aspects of it.
6. No alterations are proposed to the appeal property. A previous application for a LDC, made in November 2010, was refused by the Council on the basis of insufficient information. The Council took the view that, in the absence of evidence to the contrary, a material change of use from a C3 use to C2 requiring planning permission would occur. The current application seeks to demonstrate by reference to details of the operation that it would amount to a use of a character which would be largely the same as if the property were used as a family dwelling (Class C3). Any change of use to use in Class C2 would not therefore be material and would not amount to development. In refusing to grant a LDC, the Council refers to the number of staff required to operate the home as a basis for its view that the proposal would "materially alter the character of the property" (as it is put in the reason for refusal).
7. I deal firstly with which Use Class the use should fall into before going on, in the event that it falls into Class C2, to consider whether any change of use would be material.

Whether C2 or C3(b)

8. The home would provide for care for up to 3 children, administered by non-resident care staff who would work in shifts, thereby providing round-the-clock care. The appellants give details in the application of the numbers involved and the pattern of working. The case of *North Devon DC v FSS and Southern Childcare Ltd* [2003] EWHC 157 Admin provides authority for the view that use as a care home for children, where carers are non-resident, falls within Class C2. Children need to be looked after and could not, on their own, be regarded in the true sense as a household without the presence of a carer. Carers who provide 24-hour care but who are not resident could not be regarded as living together in a household. The concept of living together as a household means, in the context of Class C3(b), that a proper functioning household must exist.
9. The facts of this case align with those of *North Devon* and, while the appellants refer me to an appeal decision from 1992 which comes to a contrary view, any authority deriving from it must be regarded as being superseded by that case.

² The Town and Country (Use Classes) Order 1987 as amended.

³ See s55(1) of the 1990 Act wherein "development" is defined as (among other things) "...the making of any material change in the use of any buildings or other land." (My emphasis)

In the light of this, I conclude that the proposed use falls into Class C2 and that a change of use from a use in Class C3 has taken place.

Whether material change of use

10. By way of a forerunner, it may be noted that, in *North Devon*, the Inspector determined that, although the use fell within Class C2, the change from Class C3 use was not material. *North Devon* therefore provides authority for the two-stage assessment process which I have outlined. The appellants explain that the model of care provided seeks to replicate, as far as possible, typical family life in an ordinary local community. It is emphasised that young people with emotional and behavioural difficulties would not be cared for.
11. At any one time, and excluding short-term changeover periods in the early mornings and mid-afternoons, there would be up to three children and three carers present. The pattern of working means that vehicle movements to and from the property would peak at the following times: (a) 07.00 to 08.00 – two staff and the manager arriving and one night staff departing; (b) 14.30 to 15.00 – three staff arriving and two departing; and (c) around 22.00 – two staff departing. To these movements should be added school transport and transport related to outings etc. at weekends and during school holidays. The appellants give assurances that no activity involving vehicle movements would occur before 07.30 or after 22.00.⁴
12. In refusing a LDC, staff numbers are cited by the Council as the sole cause for concern. However, looking at the numbers involved, they are not materially different from what might be expected of a large family house in which, say, a parent and two teenagers or young adults live together and each uses a car to get to work or college and for socialising. Peak daytime vehicle movements, setting aside the potential for the use of car sharing or public transport by staff, coincide broadly with school run periods when there would be similar activity associated with neighbouring properties and the locality in general. Transport associated with school and weekend outings would not be an untypical occurrence in a family house. Up to two vehicles departing from the property late at night would not, on its own, be a sufficient basis for determining that a materially different character of use would be taking place.
13. I acknowledge that the Council, in its statement, highlights that these figures are qualified by reference to “normally” and that the potential exists for greater staff numbers to be at the property to deal with particular difficulties. However, this should be regarded as an exception and not part of the typical day-to-day operation of the home. As regards the Stockport appeal decision which is referred to by the Council⁵, that can be distinguished from this case as it appears to involve young people with a history of behavioural difficulties.
14. A number of arguments are put forward by neighbouring residents in support of a view that a material change of use would occur. However, there is no reason to suppose that suppliers and visitors would be attending on a 24-hour basis. The appellants explain that parents are unlikely to visit the home as the care will, to an extent, be respite care for their benefit. There are two parking spaces, with the possibility of more on the gravelled area alongside them and ample safe on-street parking close by. The appellants have given assurances

⁴ See e-mail from appellants to Council dated 20 May 2011.

⁵ Appeal Ref. APP/C4235/X/10/2132351 – 73 The Crescent, Stockport, SK3 8SL

that not more than three cars would be parked at any one time at the property. The garage would be converted to a sensory room and there are no proposals for office facilities or the holding of meetings. Much of the objection stems from a mistrust of assurances given by the appellants in the light of residents' previous experience of a home for young people with behavioural difficulties.

15. In bringing matters to a conclusion, the nature of a LDC and the relatively narrow remit of the decision-maker should be borne in mind. Planning merits are not for consideration. The application relates to a use taken in a snapshot in time, which is capable of being described in precise terms. The lawfulness of the use relates to the use as so described and it is lawful only so long as it conforms to the description on the LDC. It is incumbent on the applicant to describe precisely the proposed use for this very reason. Given this, and in the light of a fact and degree assessment, I conclude that the proposed use would not, as a use within Class C2, amount to a material change of use from Class C3 use as a dwellinghouse. The change of use would not therefore amount to development for which planning permission would be required.
16. For these reasons, I conclude, on the available evidence, that the Council's refusal to grant a LDC in respect of the use of a dwellinghouse as a children's care home was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

Decision

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

C M Hoult

INSPECTOR



Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 24 March 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Although a change of use from a use in Use Class C3 dwellinghouse to Use Class C2 residential institutions would occur, it does not amount to a material change of use and no development requiring planning permission would therefore take place.

Signed

C M Hoult

INSPECTOR

Date 7 November 2011

Reference: APP/K2420/X/11/2155849

First Schedule

The use of a dwellinghouse as a children's care home pursuant to the Children's Act 2000 for children who fall within the Ofsted registration for children with learning disabilities, in which:

- (1) no more than three children are receiving care at any one time;
- (2) the children in care are aged from 9 to 17 years' old with an age range of no more than three years at any one time;
- (3) the home at no time provides care for children with emotional and/or behavioural difficulties;
- (4) there are no more than (a) two staff on duty between 07.00 and 08.00 to prepare the children for school or between 14.30 and 22.30, unless

exceptionally a further member of staff is required to meet individual needs (b) no more than three staff on duty at weekends and during school holidays, and (c) normally no more than one waking staff at night to provide support to the children with a further member of staff sleeping in who would be available should further assistance be required;

- (5) no parental visits to children normally take place;
- (6) no room is used as an office and no business meetings of any kind take place;
- (7) no more than three vehicles are parked at or around the home at any one time;
- (8) no activity in relation to staff vehicle movements takes place before 07.30 or after 22.00.

Second Schedule

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

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

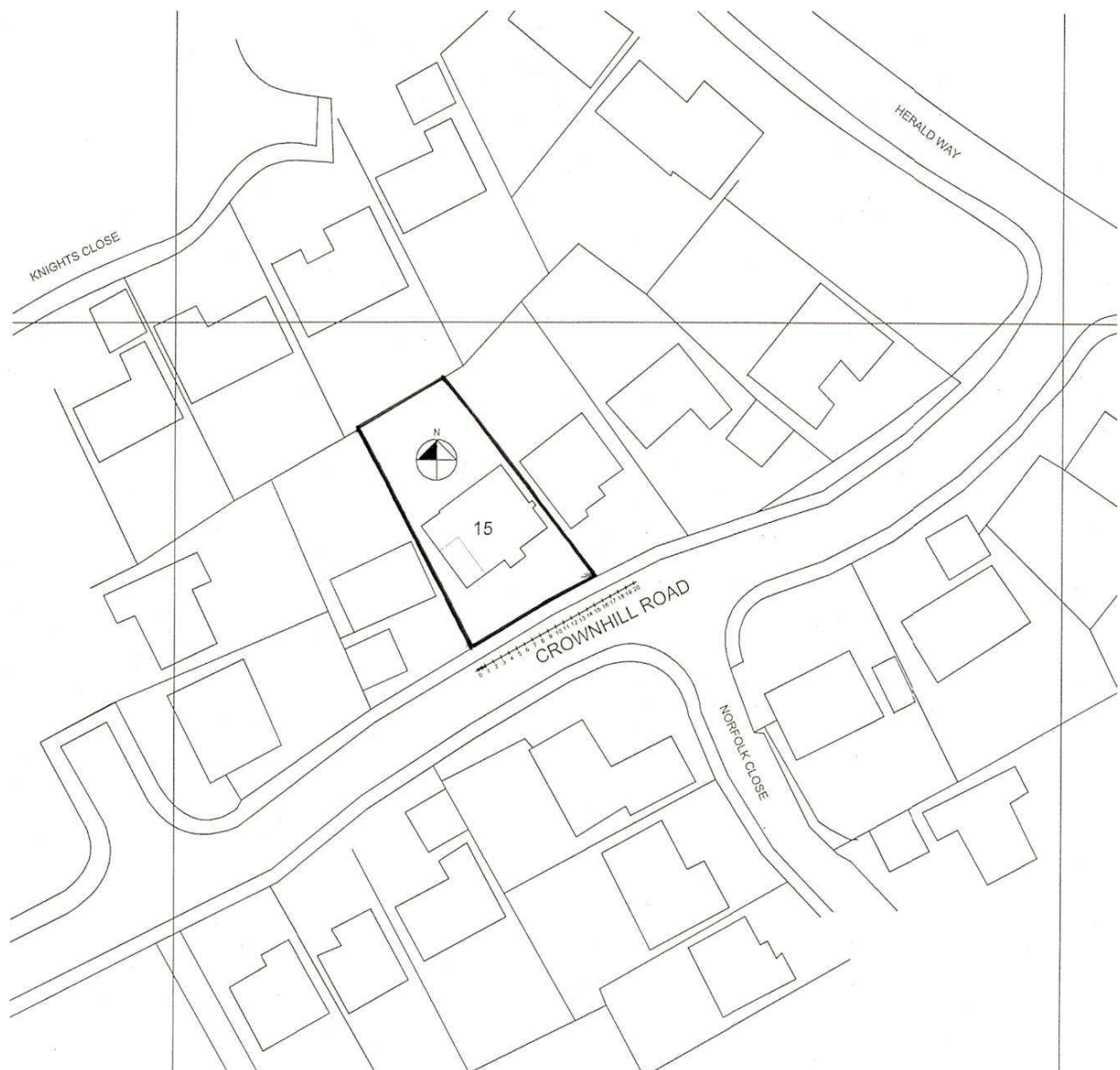
This is the plan referred to in the Lawful Development Certificate dated: 7 November 2011

by C M Hoults BA BPhil MRTPI MIQ

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

Reference: APP/K2420/X/11/2155849

Scale: not to scale



APPENDIX B - APPEAL DECISION AT THE COTTAGE, STONEBRIDGE GREEN ROAD, EGERTON

Appeal Decision

Site visit made on 17 February 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 28th February 2017

Appeal Ref: APP/E2205/X/16/3161037

The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

- 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 Parkview Care against the decision of Ashford Borough Council.
 - The application Ref 16/01000/AS, dated 1 July 2016, was refused by notice dated 24 August 2016.
 - 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 as a C3(b) private dwelling.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the matter constituting a proposed use which is considered to be lawful.

Procedural matters

2. At the time the application was considered, the Planning Statement submitted with the application form noted that the house was intended for use by 4 young people, between the ages of 8 and 17, and their carers. However, the appellants' Appeal Statement refers to a maximum of 3 children and 2 adult carers and their submissions justifying the proposed use are based on this number. As this is the latest information submitted in support of the appeal, I have considered the merits of the case on this basis.
 3. The appellants now appear to agree that this scenario would not constitute a 'household' as set out in Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and as defined in Government Circular 8/2010. This Class is defined as not more than 6 residents living together as a single household where care is provided for residents.
 4. A similar scenario to the appeal proposal was considered in the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C.R. 38* which determined that children alone cannot form a 'household' and that if their carers do not live permanently at the property, the use would fall within Class C2 of the UCO. This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use. Examples given are as a hospital, nursing home, residential school, college or training centre.
-

5. Nevertheless, a change to a new use class only requires planning permission to authorise it if it is material in planning terms. The appellants consider that, in this instance, a change from Class C3(a) to C2 would not be material and planning permission is not therefore required for the proposed use. I have considered the appeal on this basis.

Main Issue

6. I therefore consider the main issue in this case is whether the proposed use is a material change from the lawful use as a single dwellinghouse falling within Class C3(a).

Site and surroundings

7. The appeal site is a detached house with a generous garden in an enclave of other properties on the outskirts of the village of Egerton. At present it has 2 living rooms, a kitchen and a cloakroom on the ground floor and 4 bedrooms and 2 bathrooms on the first floor. An entrance drive leads to a garage and off street parking.

Reasons

8. As noted above, the proposal is for the use of the property for a maximum of 3 young people between the ages of 8 and 17 who would live in the house under the care of 2 adults at all times, although the identity of the carers would change and the carers would not have the property as their main residence.
9. The Council relies on the report of the Officer who determined the application and this report concludes that the proposed use falls within in Class C2 and, given the findings of the judgement set out above, I concur with this view. However there is no assessment made in the report as to whether a change of use between Class 3(a) and Class 2 as described in this case would be material. To establish this, a comparison between the existing and proposed uses needs to be considered.
10. A house of this size could easily accommodate a typical family with 2, 3 or more children and 2 adults and it seems to me that the use of the house as a home for a maximum of 3 young people and their carers would not be materially different from the authorised use as a 4 bedroom family home. It is likely that there would be vehicle movements created by the carers coming to and leaving the site on a daily basis as they start and leave their shifts and journeys undertaken by the children when being taken to and from school. Nevertheless, I do not consider that the number of such movements is likely to be significantly more than those undertaken by a family and certainly not enough to result in an intensification of use that would give rise to planning concerns.
11. I have noted the village location and the lack of facilities available for young people in the immediate area, but again, there would be nothing to stop the property being occupied by a family, to whom the same concerns would apply.
12. The appellants will be required to comply with all relevant rules governing the accommodation for children in care and their full time supervision and, if the property can meet these regulations and the appellants can meet the staffing requirements, I see no reason why the use proposed would have any planning impacts that would cause it to be considered as a material change of use.

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property for a class C2 use for 3 children and 2 adults was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Katie Peerless

Inspector

Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 1 July 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), would not represent a material change from the authorised use of the site as a Class C3(a) dwellinghouse.

Signed

Katie Peerless
Inspector

Date 28th February 2017
Reference: APP/E2205/X/16/3161037

First Schedule

The use of the dwellinghouse within Class C2 of the UCO, for occupation by no more than 3 children and 2 adults at any one time.

Second Schedule

Land at The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

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 /operations 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 /were 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 /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 that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

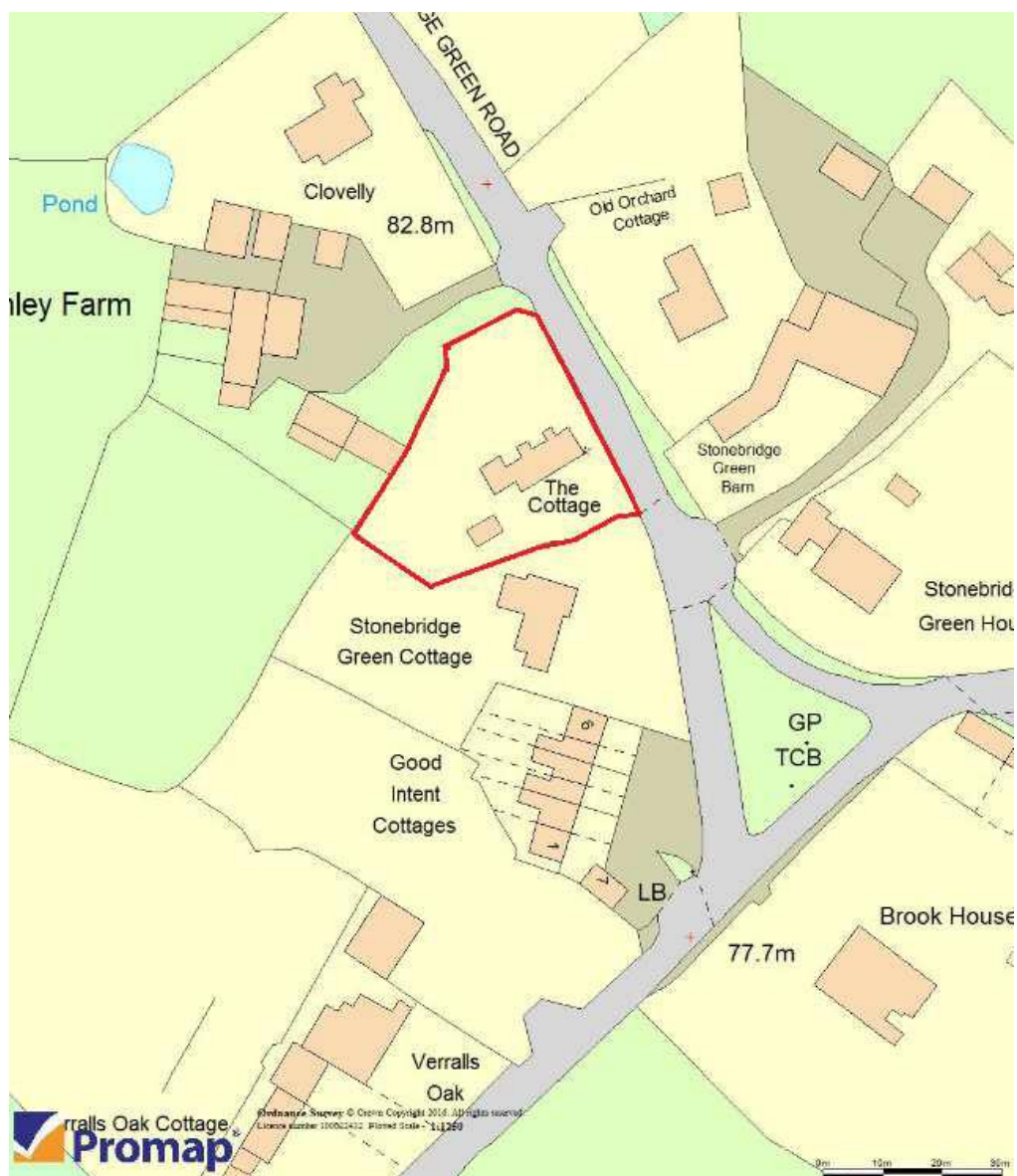
This is the plan referred to in the Lawful Development Certificate dated: 28th February 2017

by **Katie Peerless Dip Arch RIBA**

Land at: The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

Reference: APP/E2205/X/16/3161037

Scale: NTS



APPENDIX C - APPEAL DECISION AT WILLOW HOUSE, 11 MANSFIELD ROAD, CLIPSTONE

Appeal Decision

Site visit made on 17 December 2019

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2020

Appeal Ref: APP/X/19/3233788

Willow House, 11 Mansfield Road, Clipstone Nottinghamshire NG21 9AB

- 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 Anthony Gallaher¹ on behalf of YMCA against the decision of Mansfield District Council.
 - The application Ref 2019/0264/CLPD, dated 26 April 2019, was refused by notice dated 31 May 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of a dwelling-house (use class C3) to small scale home for children (use class C2)².
-

Decision

1. The appeal is dismissed.

Inspector's Reasons

2. Is the Council's decision to refuse the LDC well-founded?
3. Willow House is a five-bedroom dwelling located on a spacious corner plot. The property has the potential to accommodate four motorised vehicles within its curtilage, but this would require use of a double-garage and tandem driveway. The property would be occupied by children and/or young persons aged between eight and 17. The average stay at the care home for the children and/or young person would be about two years. The building would accommodate a maximum of four children/young person at any one time and they would be staffed 24-hours seven-days-a-week by two and four non-resident carers.
4. The *North Devon*³ case is relevant. The Court considered the question as to whether a semi-detached 3-bedroom dwelling-house in a residential area fell within Use Class C2 or C3 to the Schedule of the Town and Country Planning (Use Classes) Order 1987 as amended [the 'UCO']. The characteristic of uses contained in Class C2 which set them apart from dwelling-houses are that the residents and staff do not form a single-household. The key element in the use of a dwelling-house for non-family purposes is the concept of a single-household.

¹ The application form cites Ms Brenda Serrant as the applicant, but I have used the name given on the appeal form for my Header.

² The application and appeal forms refer to supporting documentation to describe the proposed use. The Council's decision notice clearly describes the proposed use. I have adopted that description for my Header.

³ *North Devon v FSS and Southern Childcare Ltd* [2003] EWHC 157 (Admin).

5. Following *North Devon* Mr Gallaher accepts the character of the proposed use would fall within Class C2 to the schedule of the UCO: I have no reason to disagree with that approach which, in my assessment, is correct given the evidence about the nature of the proposed operation. Although the use in the *North Devon* case was found to fall within Class C2, the Court did not impugn the Inspector's finding that the change from Class C3 was not a material one. In practice, and on those particular facts, the use for up to two children, with round-the-clock care provided by up to two non-resident staff at those premises, and only at those premises, was in the circumstances a lawful use. *North Devon* is legal authority for the two-stage assessment process.
6. *North Devon* does not endorse the proposition that all similar type of children's care homes would, by implication, not amount to a material change in the use of any building. In the context of an LDC appeal, it is necessary to examine the factual evidence and circumstances of this proposal. A fact and degree planning judgement will need to be reached as to whether the change in the use of Willow House would be material. The planning merits of the proposed use, including visual impact, has no role in that assessment.
7. Against all that background, the simple question is this: if the use of the dwelling-house to small scale home for children (use class C2) had occurred on the application date, would it had been lawful for planning purposes? If the answer is yes, then a declaration will be issued to that effect because express planning permission would not be required. On the other hand, if the answer is no, then the proposed use will fall within the meaning of "development" as so defined by section 55(1) of the Act - the making of any *material change in the use of any buildings or other land*. It must be emphasised that the activity which constitutes the second limb of the term *development* is not merely a change of use, but a '*material*' change of use [abbreviated as 'MCU']. The concept of an MCU is not defined in any statute or statutory instrument. An MCU requires a change in the definable character of the use of the building [emphasis added].
8. Willow House and its curtilage form a single planning unit in residential use. Mr Gallaher claims that the number of children accommodated and supervised by non-resident staff would not result in the intensity of that residential use. The focus is on Class C3(b) - not more than six residents living together as a single-household where care is provided for residents. The appellant claims housing arrangements and the care provided at Willow House would afford the children with a household environment. It is contended that the use of the dwelling-house as a small-scale home for children (use class C2) would be very similar to a typical family home.
9. However, while the size of the property is not conclusive when assessing if an MCU would occur, the evidence presented⁴ is particularly instructive of the nature of the proposed use. The documents show that Willow House would be occupied by children and/or young persons with emotional and/or behavioural difficulties who are no longer able to live with their families. Care would be progressive in nature and support young people who display behavioural difficulties and who may have learning difficulties, yet the information provided is lacking in specificity as to the level of care that would be provided. In all probability, the property would be occupied by individuals who would require substantial amount of care and educational development by non-resident staff.

⁴ The grounds of appeal and YMCA Statement of Purpose.

10. The claim is that the proposed use of Willow House would be like a large family residing at the premises, but the caring element would involve a closely-managed and supervised regime because of the residents' behavioural difficulties. While the argument is that residents would be educated away from Willow House, it is reasonable to expect the engagement of external agencies as YMCA concede alternative education would be provided at the property. The provision and delivery of home-tutoring because a child/young person can't be placed at a suitable educational establishment would, potentially, increase staff numbers coming and going during the day.
11. The assertion is that a typical day-time would involve the presence of three members of staff and at night-time two non-resident staff would be on hand. However, the example rota and shift chart submitted with the bundle of evidence does not include details of other visitations. For example, visits made by those involved in teaching and the welfare of children. If these visits were included, the likelihood is that the routine would involve significant number of people arriving and departing at different times of the day.
12. The claim is the use would generate low-level of vehicle movements to and from the site – the agent says there would be three movements, and these would broadly coincide with school run periods where there would be a similar level of activity from many other properties in the area. However, occasionally vehicle movements would be markedly different especially during shift-handover where staff numbers would increase. This would occur around Mondays at 0900, Thursday between 1630 and 1700 and Sunday mornings. In my assessment, the level and frequency of movements generated by non-resident staff and other professionals would significantly increase. These movements would be linked to a change in shift-patterns and activity attributed to the proposed use of the dwelling-house as a small scale home for children with learning and behavioural difficulties.
13. Furthermore, it is reasonable to expect that the children's home would not operate in total isolation and there would be deliveries associated with the operations. Family contact may well be made away from the property and social workers would visit once per month, but there is potential for additional vehicular movements generated by these activities. I attach limited weight to the argument that vehicle movements could be reduced due to potential for non-resident staff and regular visitors to use public transportation as specific details have not been provided.
14. As I have said elsewhere, vehicle parking would be provided within the curtilage to Willow House. That said, however, there is potential for an increase in demand for on-street parking during the day, because of the number of non-resident staff and the likelihood of other professionals visiting the premises.
15. There would be no physical change to the property's external appearance, but there would be some change to the layout of the property. A room at ground floor level would be used as an office. Team meetings would not take place at the home, but a dedicated meeting room would be available. It is likely that the proposed use of the dwelling-house as a small scale home for children would result in a change in the arrangement and configuration of the site. Added to that is the potential change in the level and type of activity generated by the proposed use, which would have considerable off-site impacts on amenity and residential character requiring an assessment.

16. I find that, when the nature and scale of the operations are considered in combination with the arrangement and configuration of the site, there would be a substantial change in the character of the site's use. The introduction of the proposed small scale home for children (use class C2) would result in on and off-site effects which, to my mind, would sufficiently bring about a significant change in the definable character of Willow House as a dwelling-house.
17. Much is made of the appeal decision at *Burbage*⁵ in Hinckley and Bosworth District Council area. There is a striking difference between the appeal before me and *Burbage* in that the proposed use of Willow House would involve care of children and/or young persons with some emotional or behavioural difficulties. *Burbage* specified that the home at no time provides this type of care for children in the schedule to the issued certificate. The LDC also limited the scope of that use to no more than three children, that no room is used as an office and no business meetings of any kind take place at that property. While the agent urges consistency, the material facts between the two cases are clearly distinguishable. I am not persuaded *Burbage* is a strong precedent to take a different approach in this appeal. In any event, I should assess the proposed use of Willow House on its individual merits, and that is what I have done.
18. Drawing all the above threads together, as a matter of fact and degree, I find that the use of the dwelling-house (use class C3) as a small scale home for children (use class C2), as proposed, would constitute a *material* change in the use of the building firmly falling within the scope of s55(1). When LDC application was submitted, express planning permission would have been required [my emphasis].
19. Whilst I share some of the agent's reservations regarding the Council's assessment as to whether there would be an MCU, based on the available evidence, the particular facts and circumstances presented, understanding and application of relevant judicial authority I conclude that the authority's refusal to grant a certificate of lawful use was well-founded and that the appeal should fail.
20. For the reasons given above, and having regard to all other matters, I have exercised accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A U Ghafoor

Inspector

⁵ Reference APP/K2420/X/11/2155849 allowed on 7 November 2011.

APPENDIX D - APPEAL DECISION AT 72 OAKDALE DRIVE, HEALD GREEN, CHEADLE



Appeal Decision

Site visit made on 17 June 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

Appeal Ref: APP/C4235/X/20/3244329

72 Oakdale Drive, Heald Green, Cheadle SK8 3SW

- 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 Habib Ahmed, Cambrian Child Care Service against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/074154, dated 21 July 2019, was refused by notice dated 19 December 2019.
 - 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 described as 'use of premises as a home for up to three children or young people with up to two full-time resident carers' sleeping overnight'.
-

Decision

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

Scope of the LDC application

2. The appellant confirms that the application for the proposed use was not retrospective. It was treated as an application to determine whether the use described in the application would be lawful if instituted or begun at the time of the application. I have considered the appeal in the same way as a proposed use and based on the submissions made.
3. The application form indicates that the property is a dwellinghouse Class C3(a) as defined in *The Town and Country Planning (Use Classes) Order 1987* as amended (the UCO). There is no dispute about this point.
4. The application submission is described as a home for up to three children or young people aged between 7 to 15 years with two full-time resident carers sleeping overnight and living together as a single household. The submissions indicate that one of the carers, the appellant, lives in the property as his main residence. The appellant and the other carer operate a shift pattern of work with two days on and four days off work. It is reported that there would be a carer present during the day and the children would be visited twice a week by a social worker or clinician.
5. It is indicated that all facilities within the property would be shared and the residents would live as a family. The carers would support the resident children

in all aspects of their development and act as corporate parents by supporting them with their life, social and behavioural skills and assist them in re-engaging with education.

Main issues

6. The main issues are whether the appeal children's home falls under use class C3(b) and, if not, whether there would be a material change of use of the property.

Reasons

7. There is no dispute that the lawful use of the property is a dwellinghouse under Class C3(a) of the UCO as amended. Class C3(a) is use as a dwellinghouse (whether or not as a sole or main residence) by a single person or by people to be regarded as forming a single household. Class C3(b) is use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household where care is provided for residents.
8. The appellant argues that the proposed use falls under Class C3(b) and no material change of use would occur, as a change from Class C3(a) use to a Class C3(b) use would not be development requiring planning permission under Section 55(f) of the Act as amended. The Council contend otherwise that the proposed use falls under use Class C2 'Residential institutions' – use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3).
9. The appellant asserts that as the appellant and one of the resident carer's of the resident children would live in the property as his main residence this is distinguishable from the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C.R. 38*. This case held that children living alone but provided with care by non-resident staff on duty cannot form a household without the presence of a caregiver who is resident and that the use fell within use Class C2 of the UCO.
10. Subsequent case law considered *North Devon* and found that it should not be taken as setting down a principle, but each case should be considered on its merits noting that if carers are not resident, there remains a perfectly sensible question whether those who are resident and in receipt of care, themselves constitute a single household. That question is essentially answered on the facts. The case also identifies that if the carers are resident, the question is whether they, together with the other residents', constitute a single household. In this appeal case the carer/appellant would live permanently at the property as his main place of residence.
11. The property has seven bedrooms, kitchen, dining area, sitting room, lounge and bathrooms. The Council indicates in submissions that the house would be laid out with a kitchen, lounge, utility, study, staff office and five bedrooms and bathroom. The resident children (7 to 15 years old) would be cared for by up to two full-time resident carers sleeping overnight and working on a shift pattern and during the day there would be an additional carer and visits during the week from social workers or clinician. The Council has not raised issues concerning the level of care required to assist the resident children with their daily lives and there is no suggestion that indicates personal or medical care is

needed. The resident children would be taken and brought home from school each day, they would eat together and share prepared meals or make their own meals and they would share all the facilities of the home. The adult carers would interact with the resident children as if they were their guardians living with them, and as in the case of the appellant living in the property as his main residence and working as a resident carer.

12. The Council recognise that the property is the appellant's main residence, but consider that as the appellant does not provide full-time care then a proper functioning household would not exist, and resident children, the non-residents carers and the appellant would not form a single household. In my view, the appellant cannot be expected to provide full-time care to the resident children there must be respite and for practical reasons a shift pattern of work would have to be administered for the care of the children. This in my view, does not take the use outside the meaning of a single household for the purposes of the relevant class.
13. The *North Devon* case stated, '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'. This is the situation in this appeal. The appellant has indicated that he would be living on the premises even when it is not his shift. The appellant being a permanent resident and the resident children would in my view form a single household, given that they all share the facilities of the house and that the appellant is guardian and responsible for the running of the household even during such times when he is not working on shift as carer.
14. Turning to the question of the non-resident carers these are compared by the appellant as having an au-pair assisting the resident guardian in the provision of care and the running of the household. The subsequent case which reviewed *North Devon* added, 'I would reject any suggestion that in a case where care is needed for those under a disability, Class C3 can apply only 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 itself and to the underlying policy'. It seems in this case that the level of care is not an issue between the parties. The non-resident carers come in to help and there is no indication other than to say that the extent of care would be low level and would not fall within the category of care associated with a Class C2 use.
15. The resident children who are 15 years old or younger are assisted with their daily lives and require supervision, structure and guidance to develop and progress to self-sufficiency. This level of care on the available evidence is low level. Non-resident carers assist the resident carer in his duties as the head of the household. The number of visits by the non-resident care worker would be four over a seven-day period. The number of social worker/clinician visits would be four a week. These low frequency of shift changes and other visits do not in my view alter the character balance of the use and the way its occupants interact with one and another as a single household.
16. The Council compares this case to an appeal at No. 73, The Crescent, Stockport. From my reading of that appeal case it is distinguishable from the current appeal because the carers were not resident. There is also the contention that there would be separate areas for the staff and the residents, but an office use within a dwellinghouse is not itself unusual and there is no

overall distinguishable character change to indicate a use which falls outside the meaning of a single household for the purposes of the relevant class.

17. In all, given the level of care involved in this case, the low frequency of visits by non-resident carers who stay overnight and work a shift pattern with the resident carer who guide and look after the resident children, the proposed use in my view, would constitute a single household. I conclude on the available evidence that the proposed use would fall within use class C3(b).
18. I note the other matters raised in relation to the proposed use, although these relate to whether there would be a material change of use of the property. As I have concluded that the proposed use falls within use class C3(b), it would not be development and no planning permission is required for this use, and so, I need not consider whether the change would be a material change of use.
19. For the reasons given above I conclude, on the available evidence, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Iwan Lloyd

INSPECTOR

Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 21 July 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Section 55 of the Town and Country Planning Act notes that the making of any material change of use of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provision of the order, of any part of the buildings or the other land, for any other purpose of the same class shall not be taken for the purposes of the Act to involve development of the land, and does not require planning permission.

At the time the application was made, the property was in use as a dwellinghouse (whether or not as a sole or main residence) by Class C3(a) a single person or by people to be regarded as forming a single household of the Town and Country Planning (Use Classes) Order 1987 (as amended). The change from Use Class C3(a) to Class C3(b) - not more than six residents living together as a single household where care is provided for residents would not be development and would not require planning permission.

Signed

Iwan Lloyd - Inspector

Date: 07 December 2020

Reference: APP/C4235/X/20/3244329

First Schedule

Use of premises as a home for up to three children or young people with up to two full-time resident carers' sleeping overnight

Second Schedule

Land at 72 Oakdale Drive, Heald Green, Cheadle SK8 3SW

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/were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 07 December 2020

by Iwan Lloyd BA BTP MRTPI

Land at: 72 Oakdale Drive, Heald Green, Cheadle SK8 3SW

Reference: APP/C4235/X/20/3244329

Scale: Not to scale

Location Plan of SK8 3SW



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Scale: 1:1250, paper size: A4

72 Oakdale Drive