DELEGATED DECISION REPORT

SMD/2023/0055 **Valid 27/01/2023**	**GREENWAY COTTAGE** **BAGNALL ROAD** **BAGNALL**	**LAWFUL DEVELOPMENT CERTIFICATE FOR A PROPOSED USE OF PROPERTY AS RESIDENTIAL CARE HOME (CLASS C2) FOR UP TO 2 CHILDREN AGED BETWEEN 5 AND 18 WITH CARE PROVIDED BY UP TO THREE NON RESIDENT MEMBERS OF STAFF (NO MATERIAL DIFFERENCE WITH LAWFUL USE AS CLASS C3 DWELLING)** **(CERTIFICATE OF LAWFULNESS - PROPOSED)**

MAIN ISSUES

If any person wishes to ascertain whether any proposed use of a building would be lawful, they may make an application for the purpose to the local planning authority. If the authority is satisfied, on the information provided, that the use would be lawful they shall issue a certificate to that effect.

The proposed use of a property would be lawful and not require planning permission in circumstances where either:

- there would be a change between two uses within a class of the Use Classes Order 1987; or
- there would be a change that is not 'material change' and so not development that is subject to the controls of the planning system.

DESCRIPTION OF SITE

The application site lies on Bagnall Road, to the north of the residential area of Light Oaks and north-east of Baddeley Edge. Bagnall Heights, a retirement village and the settlement of Bagnall, lie further east.

A public footpath runs along the northern boundary of the site. The land opposite the site comprises agricultural land and buildings. The nearest residential properties at Light Oaks are some 170m away. The land surrounding the site to the north and west of the site is a golf course, that is part of Greenway Hall Golf Club. Stoke City Centre is approximately 5km from the site.

The property is a detached, two storey, 3-bed dwelling with a detached garage, situated in a triangular plot. There is ample parking for 4 or 5 cars at the front and there is a rear garden. The garage comprises additional residential accommodation comprising an open plan kitchen, dining room and lounge area and an en-suite bedroom.

PROPOSAL
The application statement describes the proposed use as follows:

Up to 2 children between the ages of 5 and 18 years, would live at the property as their principal residence. The children who would live at the home, will have been taken into care because they are unable to live with their natural parents and are not old enough to live independently. They would be expected to leave the home on maturity to live independent lives. At the proposed care home, day-to-day living facilities, including bathroom, kitchen, dining and sitting rooms would be shared. Each child would have their own bedroom. Bedrooms would be fitted with locks to meet legal requirements, including human rights legislation; however, the carers would have a master key to each room. The preparation of meals would be principally undertaken by the carers; however, the children would be encouraged to assist. Both carers and children would eat their meals together at the dining table and children would socialise together. Children would usually attend a local school. Staff would work shifts to provide 24/7 cover. Shift changes normally take place between 8 and 9am and staff would sleep over between shifts. The purpose of staggering shift changes is to minimize the impact of shift changes on the young residents and to reduce vehicle movements to and from the site.

Not all staff would be present on the site, at all times. During the day there would be 2 carers present. A registered manager would work in a "dual capacity" where they would be responsible for 2 homes and would 'float' between the properties as well as working from home (off-site). This would result in working flexibly on and off site to provide oversight to meet the needs of children and the staff team as and when required. During the night 2 care staff would be present to provide care and/or support for the children should they wake during the night. In addition to carers, there would be short and infrequent visits from social workers and other support professionals. Family visits would be rare but where appropriate, the visits would be pre-planned in accordance with the child's contact arrangements. Vehicles trips for day to day living activities such as shopping, school runs and social outings for the children would be undertaken by the carers and, as with any family dwelling, shopping can also be ordered online for delivery.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS
99/01117/FUL Replacement dwelling. APPROVED.
00/01178/FUL Domestic Garage. APPROVED.
SMD/2019/0641 Conversion of garage to living accommodation and front extension. APPROVED.

CONSULTATIONS

Publicity
There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

In this case a site notice has been posted and the Parish Council were consulted.

Site Notice expiry date: 4th March 2023

Public Comments
None

Town / Parish Comments
Bagnall PC: Some concerns over the potential impact on local community through anti-social behaviour and the property's proximity to Bagnall Heights. The PC think that more information is required before they could make a decision.

OFFICER COMMENTS
The Town and Country (Use Classes) Order 1987 ("UCO 1987") groups and specifies different uses within broad categories of classification. By s55(2)(f) of the Town and Country Planning Act 1990 ("the Act"), where a use falls within a particular designated class, then no planning permission is needed for any change which falls within the same class. One of those classification categories is Class C3 'Dwellinghouses' which specifically includes the use of any dwellinghouse by either, a single person or family (Class C3a); up to six people living together as a household and receiving care (Class C3b); or groups of up to six people living together as a household, not receiving care (Class C3c). Additionally, by the exception at s55(2)(d) of "the Act", the dwelling and its curtilage can, without planning permission, be used for any purpose that is incidental to the enjoyment of the dwellinghouse.

The building in this case is a dwellinghouse purpose built and last occupied by a family (Class C3a). The applicant proposes to provide a home for up to two unrelated children who would live together and be cared for by non-resident staff, it is clear that these residents would not be a family and therefore, not included at Class C3a.

Turning to whether this proposed use would then remain with Class C3 but fall within Class C3b instead, we have the benefit of the judgement of Mr. Justice Collins in *North Devon District Council v First Secretary of State* [2003]. Collins J was clear, on the facts of that particular case, that carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care cannot be regarded as living together and that, whilst there would be less than 6 residents, the children, without at least one adult living with them at the premises, would not be capable of being regarded in the true sense as a household. Taking all of this on board it seems

clear that, applying Mr Justice Collins precepts from *North Devon*, the proposed use would not fall within Class C3(b).

However, it is well established by the courts that, notwithstanding whether the use might fall within Class C3, a different use class, or no class at all, planning permission will not be required, if the change of use would not be a 'material change' of use. The local planning authority must still consider therefore, whether the change of use proposed would be 'material'. It is a matter of fact and degree, in the circumstances of an individual case, as to whether a change of use will be material.

The determination therefore, rests with whether the differing use as set out and proposed by the applicant would be 'materially' different to that of a dwellinghouse and result in development requiring planning permission. "The Act" does not define 'material change of use' and in general therefore, it is necessary to exercise some considered judgement in individual cases, and this is regarded by the courts as being primarily a matter of fact and degree for the Local Planning Authority. Differences which might be considered 'material' are those which are measurable or quantifiable as resulting in a significant or substantial change or step up in the character or impact of a use.

As a starting point, the previous and lawful uses of the property, against which the materiality of the applicant's proposed change must be measured, provide the base line for comparison. The property was last used as that of a large, 3 bedroom detached family home with detached annexe and, indeed, it was built for that purpose. There is no limit on the size of 'family' that can occupy a dwellinghouse and obviously a sizeable property with ample grounds is likely to be occupied by a relatively large family. Included, within the same C3 use class, the property might also be used and occupied by up to 6 people, who are not related as a family, but live together as a single household, and this could include an arrangement where the residents are provided with care.

The task then is to compare against that 'baseline' the character of the land use proposed by the applicant. In so many respects the use would operate in a way that is very similar to a normal family home. The property would provide the young people with their sole and main residence, with free and shared access to living, dining, and kitchen facilities able to take shared meals prepared for them or make their own food or drink. The residents will be taken to and brought home from school each day and while their carers would not be resident, while in attendance, they would interact with the property and the residence in a way that is very similar to an adult resident, parent or guardian. The residents would eat together and get ready on a daily basis to attend school. The home seeks to foster lifestyles which would be the same as if the residents were normal teenage children living in a family home.

It is acknowledged that the home would be provided by a commercial organisation and that the carers would be employees attending the home as their place of work. However, these are perhaps more coincidental factors which actually have little effect on the character and way in which the property would be used on a day to day basis. The conduct, activity and interaction between residents and staff would in all likelihood be very similar to that of a family unit. If for example, the care staff use an office

provided within the property, this is not obviously different in character and impact to the resident of a dwellinghouse normally using a home office or study.

The applicant's evidence is that the proposed use is to provide a stable home environment for the occupants as their main and sole residence and that the length of stay is generally more than temporary or passing. It would not be a 'half way' house or provide overnight emergency lodgings for example. It might also be noted that interior preparations might include the installation of an office, fire alarms, fire doors and ensuites. However, these are not facilities that are uncommon within any other dwellinghouse and are not in themselves obvious indicators that the proposed use would be materially different.

The home would provide care for young people who, through no fault of their own, have suffered a difficult and sometimes traumatic up bringing. The residents would not be detained offenders or have any medical or clinical condition requiring secured facility or hands on attention, and these more extreme behaviours are unlikely to define the prevailing character of the resident's conduct or the land use. The impact and character of a use needs to be considered in the context of the planning unit on which it takes place. In this case the planning unit is that of a large dwelling within ample grounds enclosed by mature trees, hedges and bushes; it is set back from the road with a long driveway, otherwise it is surrounded by open fields and golf course – 170m from the nearest residence and 300m from the edge of the Bagnall Heights complex. Any noise from the occupants would be well absorbed across the planning unit and will not impact within in its surroundings or be of any detriment to local amenity. In this context, predicted externalities and amenity impacts are not obvious indicators that there would be 'material change'.

The house would have just two residents, none of whom drive or own a car. This would be in contrast to most family households, where it is likely that at least two adult members, often more where there are adult children, own and use a car; and, in the case of a house share, it is possible that all six members of the household could all use their own car, with all of the comings and goings associated with a household. Whilst the residents themselves would not drive, there will of course be some vehicle movements associated with the proposed use. On the applicant's evidence submitted with the application, the limited number of staff (who provide supervision on a shift basis) would come and go over a 24-hour period, there would be trips taking the residents to and from school and social activities, shopping, visits from resident's different family and friends, and cleaners. When considered together, that cumulative level of activity, traffic movement and requirement for parking, is unlikely to be any greater than any of those 'dwellinghouse' uses, where many or all of the residents make journeys to and from work, school, shops and services and can take any number of deliveries and visits from friends, family, cleaners, maintenance tradesman etc.

The application site has off-road parking and outdoor amenity space for the proposed use. Typically, there would be approximately 2 cars on the site during the day which can be accommodated within the site. The site has space for up to 4 or 5 cars.

CONCLUSION / PLANNING BALANCE

The lawful use of a dwellinghouse, included at Class C3 of "the UCO 1987", is broad in scope and could in association bring with it considerable activity, associated and ancillary use, or vehicle movement. The prevailing character of the proposed use would be that of just two children living together and using the property in a way similar to that of a family home where they would be supervised and cared for by adult guardians. While there might be identifiable differences, between proposed and existing uses, these would not be 'material' or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwellinghouse.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Ben Hurst
Recommendation Date: 24th March 2023

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council