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Application for a Certificate of Lawfulness for the Use of Land as a Residential Children's Home for up to Three Children with Care Provided by up to Three Non-Resident Members of Staff (Class C2)

Little Ash Farm, Ash Bank Road, Werrington

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Project	Little Ash Farm
Client	United Children Limited
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Project Team	Jon Imber
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1 Introduction

1.1 JMI Planning is a Midlands based town planning consultancy. Its directors are chartered town planners with over 30 years' combined experience in both the public and private sector.

1.2 The author of this appraisal, Jon Imber, has worked as both a development control and forward planning officer in local government, and more recently as a senior planning consultant in the private sector. He has extensive knowledge of the planning system and experience of the appeals process. He is a member of the Royal Town Planning Institute.

1.3 This statement is submitted as part of an application for a certificate of lawfulness in relation to the proposed use of the land as a residential children's home for up to three children with care provided by up to three non-resident members of staff.

2 Site and Planning History

2.1 Little Ash Farm is a two storey six bedroomed detached dwelling which sits within spacious grounds on the edge of the settlement of Werrington.

2.2 The site is adjoined by residential properties to the east, west and north and fields to the south.

2.3 The property is accessed by a surfaced driveway which emerges on to Ash Bank Road.

2.4 The property has an extensive planning history, most of which relates to domestic alterations and extensions. The following applications are of particular relevance:-

- SM95-0056 – Change of use to of people's home – Approved
- SMD/1995/0355 – Extension to form old peoples' home – Refused 21st September 1995
- 01/00909/FUL – Change of use to single dwelling – Conditionally approved 31st October 2001
- SMD/2003/0497 – Retention of dwelling without complying with condition 2 of planning permission 01/00909/FUL (class E permitted development rights only to be reinstated) – Refused 5th August 2003

2.5 The site and its surroundings are shown on the following photograph: -



Figure 1 - Aerial View of Site

3 The Proposed Development

3.1 The applicant has identified a demand for a residential children's home in the area. The property is well suited to this use, and it is proposed to utilise it to meet that demand.

3.2 The children's home would be occupied by up to three children aged between 5 and 18 years, who are for various reasons unable to live with their parents but are not old enough to live independently. They would live at the property as their main residence.

3.3 The children would be looked after by two carers at a time. The carers would work 48-hour shifts, during which they would sleep and take meals at the property. At the end of their shift, they would be replaced by another two carers. There would also be a floating manager who would occasionally attend the property, alongside other similar residential children's homes, between 9am and 5pm. Outside of these hours they would remain on call.

3.4 The children and carers would effectively be living in the house as a family. Each child and carer would have their own bedroom. The bathrooms, living rooms and dining room would be shared by the children and their carers. The children and carers would take meals together, and in the daytime the children would attend local schools. Children and carers would interact with each other and the property in a very similar manner to a family unit. The existing home office would be utilised by the manager during their visits.

3.5 The proposed children's home would not be a secure facility. The resident children would not be detained offenders or have any medical or clinical condition requiring

secured facilities or hands on attention. Their carers are simply required because they are too young to live independently.

3.5 Vehicle 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 may also be ordered online for delivery.

3.6 No external alterations to the property are required or proposed, and there would be no changes to the layout of the property internally.

3.7 The children's home will be licenced by Ofsted and will be managed and operated in strict accordance with their guidelines and requirements.

4 The Applicant's Case

4.1 Planning permission was granted for the use of the property as a single dwelling in October 2001. It is clear that this permission was implemented, since the 2003 Section 73 application seeking to reinstate Class E permitted development rights was described as "Retention of dwelling…". There have been no subsequent applications to change the use of the property, and it remains occupied as a dwellinghouse to date. The current lawful use of the property therefore falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

4.2 As well as allowing for conventional family occupation, Class C3 also allows for residential uses involving an element of care. It includes 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*".

4.3 In *North Devon District Council v First Secretary of State* [2003], it was found that unless at least one adult is in permanent residence at the property, the occupants cannot be regarded as a household in the true sense. In accordance with the Judgement in *North Devon District Council v First Secretary of State* [2003] it is therefore clear that in this case the proposals do not fall within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). Instead they fall within Class C2.

4.4 However, it is well established in caselaw that regardless at to whether a proposed use falls within an entirely different use class, or no use class at all, development requiring planning permission will only take place if there is a material change of use. The key question in this instance is therefore whether the proposed use of the property as a residential children's home as submitted would be materially different from its lawful use as a dwellinghouse, which may or may not include an element of care.

4.5 In this instance the property is a large 6 bedroomed dwelling set within a spacious plot. It is comfortably capable of accommodating a large family, which would not necessarily be limited to a maximum of six people by Class C3 of the Use Classes Order. It is also pertinent that it would be capable of accommodating the proposed use as a residential children's home with permanent live-in carers, and that in these circumstances both the existing and proposed uses would fall within the broader remit of Class C3.

4.6 The children and carers would live in a very similar manner to a family. The applicant's intention is to enable children in care to live as normal a life as possible within the community. The proposal seeks to create a 'family-orientated' environment where children thrive and achieve positive outcomes. Children and their carers would take meals together at the dining table, socialise together and share the communal space within the property in exactly the same manner as a conventional household. Carers

would, depending on the age of the resident children, get them ready for and take them to school, take them to doctor's appointments and carry out other duties typically associated with a parent or guardian.

4.7 It is not anticipated that the permanently resident children would live in the property on a short-term basis. The proposals seek to create a stable living environment as opposed to emergency short-term accommodation.

4.8 The proposals would not result in materially greater impacts than the lawful use of the property as a dwellinghouse. The permanently resident children will not have a car. Carers will drive to and from the site, and during their stay will be responsible for taking children to school, appointments, social outings and shopping trips. The proposals will also require occasional visits by the manager, social workers and a cleaner. Overall trip generation is likely to be very similar to that associated with a dwelling of this scale, where both parents and older children may have cars of their own. There is space on site for approximately 5 cars, which is comfortably sufficient to accommodate vehicles associated with the proposed use without increased pressure for on-street parking.

4.9 The proposals would not result in any greater noise or disturbance than a conventional family home. The resident children would not be detained offenders or have any medical or clinical condition requiring secured facilities or hands on attention. Their carers are simply required because they are too young to live independently.

4.10 Whilst it is accepted that the property would be run as a commercial enterprise as opposed to a family home, this is not determinative with respect to whether a material change of use is involved. The proposals do involve the provision of a manager's office. However, it is not unusual, particularly with the increase in home working, to find a home office in a property of this scale.

4.11 No other internal or external alterations to the property are required or proposed.

4.12 On balance, despite the proposed use falling outside of Class C3 of the Use Classes Order, it is not considered that in this instance the use of the property as a residential children's care home as described in this application would be measurably or materially different in nature than its current established use as a dwellinghouse.

4.13 Whilst it is appreciated that each case must be dealt with on its own individual merit, there are clear similarities between the current proposals and an application for a certificate of lawfulness made for the use of Greenway Cottage, Bagnall Road, Bagnall for a children's care home (LPA reference SMD/2023/0055). Here it was determined that despite the proposals falling within a C2 use class rather than C3, "*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*." Whilst these current proposals involve three permanently resident children rather than two, the reasoning for determining that permission was not required in that instance are equally applicable here.

5 Conclusions

5.1 The use of the property as a dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) is established and is lawful.

5.2 The proposed use as a residential children's home does not fall within Use Class C3, since the lack of any permanent adult resident means that the occupiers cannot be regarded as a household in the true sense.

5.3 However, the proposed use would not be materially different in character or nature than the continued use of this large 6 bedroomed property as a family home.

5.4 Section 57 of the Town and Country Planning Act 1990 prescribes that planning permission is required for the development of any land. It follows that where no development has occurred, planning permission is not required.

5.5 Section 55 of the Town and Country Planning Act 1990 defines development as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land".

5.6 On balance the proposals would not constitute a material change of use. Since no operational development is involved, it follows that in this instance the proposals do not constitute development, and that in accordance with Section 57 of the Town and Country Planning Act 1990 planning permission is not required in this instance.

5.7 As such, it is therefore respectfully requested that a Certificate of Lawfulness be issued.