

DELEGATED DECISION REPORT

SMD/2025/0143
Valid 21/03/2025

WEST VIEW THORNYEDGE
ROAD
BAGNALL

**CERTIFICATE OF
LAWFULNESS FOR AN
EXISTING USE OF FORMER
RESIDENTIAL
DWELLINGHOUSE AS A
CHILDREN'S CARE HOME
FOR 2NO. CHILDREN (C2 USE)
WHICH HAS BEEN
OPERATIONAL SINCE APRIL
2012**

**(CERTIFICATE OF
LAWFULNESS - EXISTING)**

MAIN ISSUES

Whether or not a certificate of lawfulness can be granted for the use of the site as a children's care home for up to two children (a "C2 Use") on the basis of whether it has been used for this purpose continually for at least ten years and in accordance with the Town and Country Planning Act.

DESCRIPTION OF SITE

The site is in the open countryside on the east side of Thornyedge Road (which provides the access to the site), about a mile to the east of Bagnall village. It comprises a modern detached bungalow and is surrounded by open land and fields although there are three other detached dwellings a short distance to the south.

PROPOSAL

This is a Certificate of Existing Lawful Use application which seeks a certificate to confirm that the bungalow is lawfully used as a children's home (a "C2" use in the Use Classes Order). The use commenced, allegedly in 2012, without planning permission, which would have been required for the change of use from a dwelling (C3 residential use) to a care home. However, Section 171B of the Town and Country Planning Act (as amended) states that unauthorised uses of land occurring for a period of at least ten years (from the date the application was submitted) are immune from Enforcement Action. Therefore the use would become lawful.

The onus is on the applicant to demonstrate/give evidence of the use having occurred continually for this length of time. If the Council does not have any evidence of its own to dispute the applicant's evidence, then, on the balance of probabilities, if the Council considers the current use has continued uninterrupted for this period, the current use becomes lawful and a Certificate can be granted on that basis.

According to the applicant, the care home is due a legally required OFSTED (a government regulatory body for schools and children's care homes) Inspection on 9th June 2025 and would not be able to be registered without the certificate.

The relevant evidence provided by the applicant includes a covering letter and OFSTED Inspection Reports from 2012, 2018 and 2023 and also an OFSTED Registration Certificate dated 21.10.24.

The Covering Letter states the following:

These first three documents listed above confirm that the first known inspection of the Children's Care Home carried out by Ofsted took place in April 2012, with further known inspections being carried out as follows:

- 02/08/2012
- 14/03/2016
- 10/08/2016
- 09/12/2016
- 19/07/2017
- 10/07/2018
- 23/07/2019
- 06/12/2022
- 26/09/2023

The final document referred to in the above bullet point list (the Ofsted Registration Certificate dated 21st October 2024), provides further evidence that the Children's Care Home was registered on 23rd April 2012.

At a later stage of the submission the applicant provided a snapshot of the OFSTED website which showed inspection reports of the property for every year between 2012 and 2023 (except for 2020).

Further details were provided by email from the applicant which reveal the following:

The home was run by "Footsteps a Path to Change" care provider from 2012 until December 2024 when "Step by Step Homes Ltd" (the applicant's company) became the care provider and took over the property tenancy. The applicant was a Director of "Footsteps..." until 2017.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

N/A

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

None.

CONSULTATIONS

Publicity

Site Notice expiry date: 14.5.25

Neighbour consultation period ends: 14.5.25

Press Advert: N/A

Public Comments

None.

Town / Parish Comments

None.

Environmental Health

No objection.

Staffs Police Crime Prevention Design Advisor

There is currently nothing from a policing perspective which would be a cause for concern or provide grounds for any objection.

OFFICER COMMENTS

In order to achieve a certificate of lawfulness for an unauthorised use of land, in this case, the use of a former residential property/dwelling as a care home for up to two children, the applicant must demonstrate that the care home is still in use (i.e. the use has not ceased) and there has been a continual uninterrupted care home use for a period of at least ten years from the date that the operations were substantially completed. If the Council has no evidence of its own to refute the applicant's evidence then if it considers on the balance of probabilities the use did continually occur for this period, without the intervention of enforcement action where it was possible to do so, then the certificate of lawful use should be issued. This is because Section 171B of the Town and Country Planning Act (as amended) states that unauthorised uses of land occurring for a period of at least ten years are immune from Enforcement Action.

The Planning Encyclopaedia also states that where an applicant's case is that the time for enforcement action has expired, the decision-maker must start with the date of the

valid application and then consider the 10-year period (as the case may be) prior to that date.

The applicant has provided evidence in the form OFSTED registration and inspection reports between April 2012, when the care home was first registered through to October 2024 (see comments in the Proposal section of the report, above).

The Oct 2024 OFSTED Registration Certificate confirms that a care home was first registered at the application site i.e. West View, Bagnall in April 2012.

The OFSTED Inspection Reports do not state the property name on them but all have the same "URN" number (i.e. SC446261) as the Oct 2024 Registration Certificate which identifies the actual care home address (i.e. West View), not the care home provider.

OFSTED Inspection reports of the care home have been provided for every year since the original registration in April 2012 except for 2020 and 2024. However, it is plausible that an inspection was unable to have been undertaken due to the Covid pandemic. In 2024, the new Registration Certificate (granted in October 2024) confirms that the care home was operating in that year.

I have checked all the inspection reports on the OFSTED website and confirm their validity.

I consider that on the basis of all the information submitted and all the information available to the Council that on the balance of probabilities, the application site was operating as a children's care home for up to two children continually for a period of at least ten years from the date the application for a certificate of lawfulness was submitted and that the care home is still in current use (with an OFSTED inspection due on 9th June 2025).

The Council does not have any information or evidence to suggest otherwise.

Therefore I consider that a certificate of lawful use should be granted for the use of the site as a children's care home for up to two children (in line with what the applicant has applied for).

OFFICER RECOMMENDATION : APPROVE

Case Officer: Chris Johnston
Recommendation Date: 6.6.25

X *J Colley*

Signed by: Jane Colley Signature

On behalf of Staffordshire Moorlands District Council