



**Basingstoke
and Deane**

Basingstoke and Deane Borough Council
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REF:24/00696/LDPU

Mr Gareth Jones
ET Planning
200 Dukes Ride
Crowthorne
RG45 6DS

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Town & Country Planning Act 1990 Planning & Compensation Act 1991

The Basingstoke and Deane Borough Council hereby certify that on 25 March 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red 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 reasons:

- 1 The proposal to use the existing dwelling house as a children's home for four children, as outlined within the submitted documents, would not constitute a material change of use of the property from the existing Class C3 use (dwellinghouse).

Signed:

Jeni Jackson
Head of Planning and Infrastructure

(Council's authorised officer)

on behalf of Basingstoke and Deane Borough Council

Date: 20 May 2024

First Schedule:

Proposal: **Proposed use of Class C3 dwellinghouse as children's home for 4 children**

Second Schedule:

Location: 7 Burney Bit Pamber Heath Hampshire RG26 3TJ

Notes

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

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

3. 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 other land may render the owner or occupier liable to enforcement action.

4. The effect of the certificate is also qualified by the proviso in Section 192 (4) of the 1990 Act, as amended, which states that the lawfulness of a described 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 relevant to determining such lawfulness.

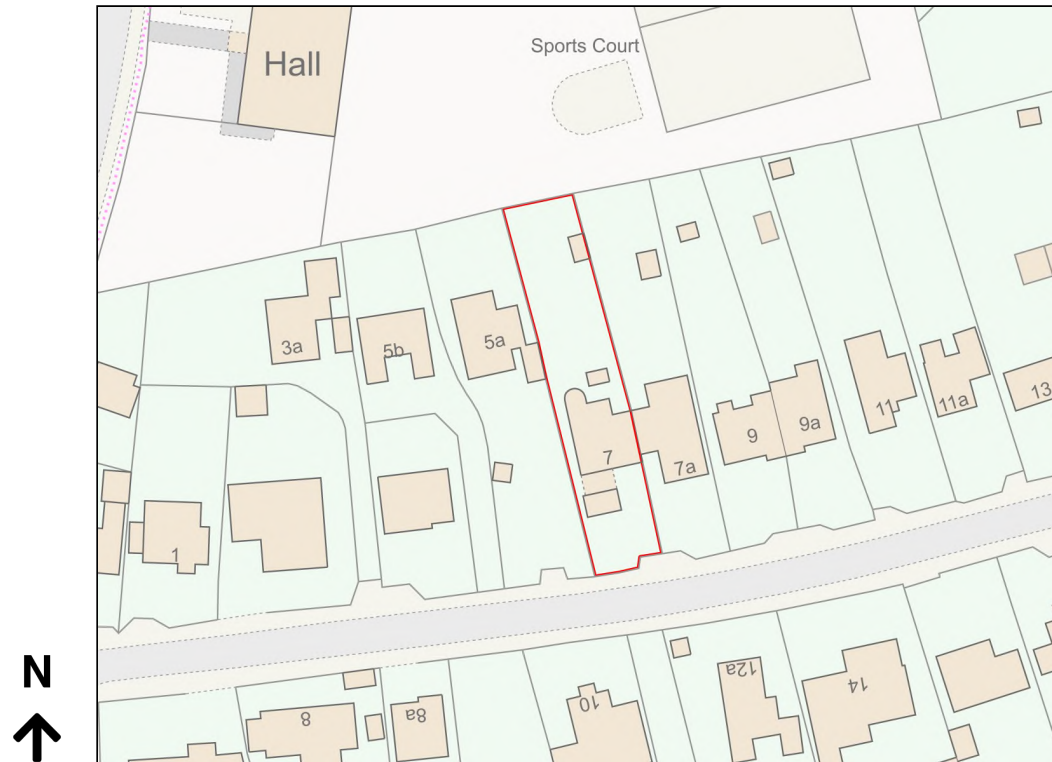
The officer's report can be viewed on the council's website www.basingstoke.gov.uk.

Location Plan

Site Address: 7, Burney Bit, Pamber Heath, RG26 3TJ

Date Produced: 25-Mar-2024

Scale: 1:1250 @A4



Planning Portal Reference: PP-12914246v1



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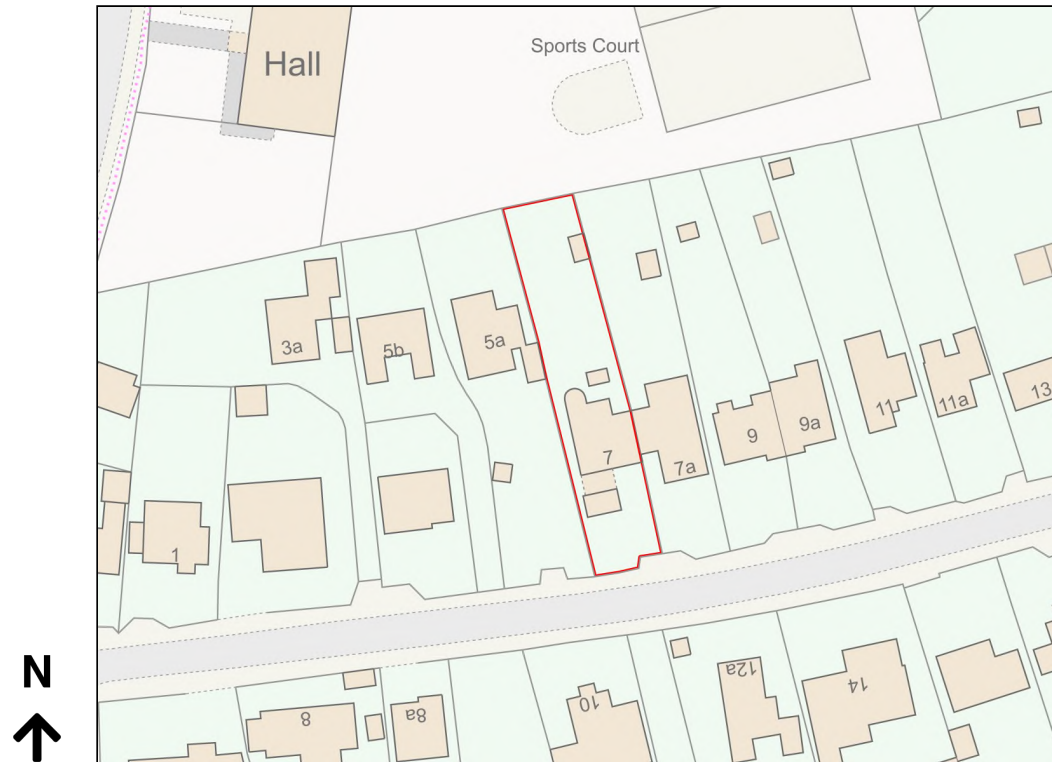
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Planning Portal Reference: PP-12914246v1

Application 24/00696/LDPU

Details of Application:	Cert of Lawful dev't - proposed use Proposed use of Class C3 dwellinghouse as children's home for 4 children Date Registered 25 March 2024 (Subject to three year condition)
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Location:	Address: 7 Burney Bit Pamber Heath Hampshire RG26 3TJ Ward: Tadley & Pamber Parish: PAMBER CP OS: 461089 161974
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Applicant:	Amegreen Children's Services
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Case Officer:	Beatrice Malama
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RECOMMENDATION:

It is RECOMMENDED that the **application be APPROVED.**

Reasons for Approval

1. The proposal to use the existing dwelling house as a children's home for four children, as outlined within the submitted documents, would not constitute a material change of use of the property from the existing Class C3 use (dwellinghouse).

Planning Policy

The application is a Lawful Development Certificate for the use of a dwelling as a children's home and whether the proposal would result in a material change of use. The certificate is considered under the Town and Country Planning Act 1990 (as amended).

Description of Site

The site is located on the northern side of Burney Bit a predominantly residential street within Pamber Heath. The application site is a two-storey 4-bedroom detached dwelling, with a garden, garage and associated driveway parking space.

Proposal

The proposal seeks a Certificate of Lawful Development for a proposed use of the existing dwelling house as a children's home for four children aged between 7 and 18 years and a maximum of three members of staff at any one given time, all sharing the existing facilities. The staff will be working on a rotational basis with shifts of at least 24 hours to reduce staff movement in and out of the home.

The duration of stay for each child will vary depending on their individual needs however it is anticipated that the property would act as their long-term home with a minimum stay of one year. The property would act as the children's primary living accommodation.

Consultations

Parish Council – no comment

Relevant Planning History

BDB/09754	OUTLINE PERMISSION FOR ERECTION OF A DETACHED GARAGE	Granted	
BDB/10093	ERECTION OF A DETACHED GARAGE	Granted	10.09.1980
BDB/28102	CONSERVATORY	Granted	
BDB/14327	TWO STOREY REAR EXTENSION	Granted	

Assessment

The main planning consideration is whether the proposal would constitute a material change of the existing dwelling.

Under the Town and Country Planning Act 1990 (TCPA), planning permission is required for any operational development or any change of use of land. In order for this certificate to be granted, it must be demonstrated that no change of use of land is involved.

Section 55 (1) of the TCPA outlines that "Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means 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."

Section 55 (2) of the TCPA, stipulates that is not taken for the purposes of this Act (TCPA) to involve development of land. The most relevant in this instance is (f) which states:

(f) in the case 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 provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.

Class C3 use

As outlined within the Planning Statement the Class in question in this instance is Class C3 (dwellinghouse) which under The Town and Country Planning (Use Classes) Order 1987 (as amended) is formed of three parts:

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided or residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

The current lawful use of the site is considered to be Class C3 with no change of use being approved by the Local Planning Authority. The consideration is, therefore, turned to whether the proposed children's home comes under Class C3 (notably (b)) or a change of use would occur, in particular to Class C2 (residential institution): which is:

- Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).
- Use as a hospital or nursing home.
- Use as a residential school, college or training centre.

"Care" is defined within the Order 'as *personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder*', and in Class C2, also includes the personal care of children and medical care and treatment.

In this regard, a children's home could fall into either a Class C2 or Class C3 use, whereby it is a matter of fact and degree for each case.

A key Case Law for this debate is North Devon District Council v First Secretary of State and Southern Childcare [2003] whereby it was held that the concept of what constituted a 'household' meant more than the number of people. It was necessary to assess whether they could truly be regarded as a household and carers who did not live there all the time meant that it was considered that the use fell to Class C2.

In following this Case Law, it has been outlined that the carers on-site would be on a shift basis and no adult would live there on a permanent basis. Whilst there would be staff onsite for a 24-hour period each day, they would not be permanent residents as they would operate within a staff rota. As such, the residents of the dwelling could not be regarded as living together as a household. Inspectors for other appeals such as under Appeal Ref: APP/P4225/X/16/3145074 against Rochdale Metropolitan Borough Council also note that a group of young people could not reasonably be regarded as being capable of living together as a single household (given that the carers cannot be included as a resident).

In line with the above, given the proposed nature of the use of the dwelling with a shift basis for carers, the proposal would constitute a residential institution falling within Class C2. Therefore, Case Law outlines that there needs to be an assessment of whether a material change of use would occur from the existing situation. This is a two-stage assessment process and one needs to assess whether the change of use is material taking into account the activity of the site compared with a Class C3 use (dwellinghouse).

In particular, the following appeals have been noted:

Brecon Beacons National Park: 18/02/2014 Appeal Reference: APP/P9502/X/12/2205394.

The Inspector considered that a scheme for five children which would be supervised by a team of adults on a shift basis would not be material in planning terms (although considered to be Class C2). The scheme displayed many features associated with a family dwelling and while some of the children may make more noise than children in a typical family dwelling, the overall number of children was small. The property was large, sitting in a rural location and the coming and going of staff and family would not materially impact on the surrounding area.

Hinckley & Bosworth Council 7/11/2011 Appeal Reference: APP/K2420/X/11/2155849:

The Inspector assessed no material change of use was involved for care up to three children with non-resident care staff working in shifts. The sole issue was the number of staff (three carers at one time excluding change over timings), however the Inspector considered that it was not materially different from what might be expected of a large family house such as a parent and two teenagers or young adults who live together and each uses a car to get to work or college and for socialising. Transport associated with school and weekend outings would not be an untypical occurrence in a family house. It was also stated that 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.

Crewe and Nantwich Borough Council 24/04/2006 Appeal Reference: APP/K0615/X/05/2004825.

In this case the Inspector considered whether the lack of any carers living within the property materially changes the character of the property - which in his opinion it did not. Although the carers when visiting would increase the number of coming and goings it would not disturb local residents or affect the character of the area.

City of Wolverhampton Council 15/09/2006 Appeal Reference: APP/D4635/X/06/2013826

The inspector found that a use of a dwelling occupied by children with carers on a 24-hour basis with staff being rotated in shifts of eight hours each would not trigger a material change of use. Whilst the use would not fall within Class C3 (b) due to not being a household the day-to-day activity would be similar to that of a dwellinghouse with people coming and going to school and the maximum number of carers at any one time associated with employees (three) would not be materially different from its use as a dwelling in a suburban location.

Consideration of a material change of use

In light of the Case Law, an assessment of whether the proposal would amount to a material change of use is provided below. This is a matter of fact and degree and depends upon the particular circumstances of each case. Established case law provides that it is necessary to look at whether the change gives rise to planning considerations which can include the effects of the change on local amenity.

The use of the dwelling would be akin to a family home, the planning statement sets out that the children would all eat meals together, share the living room and bathrooms and sleep under one roof. This would be similar to that of a traditional family setup.

The application also confirms the working patterns of staff and sets out that each staff member would operate across a 24-hour shift period, with change over periods limited to once a day occurring at 2pm. The staff would operate and run the dwelling as a family home, including cooking and cleaning and taking the children to school associated with a typical family home. It is therefore considered that the characteristics and operations of the site would be similar to that of a C3 use, including day to day traffic movement. It is not considered that the vehicle movements would be materially different to that of a C3 use (dwellinghouse).

Carers would not be playing a professional role, such as in a medical or teaching capacity and are purely for supervisory means similar to a parent in some respect. The staff would care for the children in a similar arrangement to a family, including cooking and cleaning for the children and general overseeing of their care, including taking the children to the local schools. No internal adaptations are required for the property to operate as required by the applicant. The communal living experience will be the same as a family home, functioning as a single household.

It is noted there is potential for noise, however, similar to that under the Brecon Beacons National Park Appeal while some of the children may make more noise than other children in a typical family dwelling, the overall number of children is small therefore not considered to materially change the use. Furthermore, the set-up would be no different to a nuclear family of 6, including two parents and four children.

In considering the submitted information and taking into account the Case Law and appeals listed above, it is considered that the proposed use would be similar to that of a household. The existing residential property is large enough to comfortably accommodate 4 children and 2 carers, in a similar situation to a household. The children would be attending school and staff movements are not considered to be materially different to the operation of a C3 dwelling. As such it is not considered that the proposal would affect or change the amenity of

Considering the information provided by the applicant, the activities associated with the proposed use of the property would not materially differ from those reasonably associated with the use of the property as a dwellinghouse. The proposed use is not considered to amount to a material change of use for the reasons outlined above and is therefore not deemed as development. The use of the dwelling for four children and their carers would not require planning permission in this instance and therefore the certificate can be issued.

Basingstoke and Deane Borough Council implemented its Community Infrastructure Levy (CIL) on the 25th June 2018. The required forms have not been submitted as there no net additional gross internal floor space.

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Date: 17.05.2024

Date: 20/05/2024