

Mrs Katie Walker
ET Planning
200 Dukes Ride
Crowthorne
RG45 6DS

10th February 2025

Dear Sir/Madam

Town and Country Planning Act 1990(As Amended)

APPLICATION NUMBER: PROPOSED DEVELOPMENT:	24/00625/CLPUD/ACLPZ Certificate of lawfulness to demonstrate that no development is occurring in the change of use from dwelling to childrens home.
LOCATION:	Tarnwell Downshire Way Bracknell Berkshire RG42 1XT
CASE OFFICER:	Kevin Lloyd Jones, direct line 01344 351602

Please find enclosed your decision notice in respect of the above proposal.

Should you wish to discuss the notice, please do not hesitate to contact me.

Yours faithfully

Kevin Lloyd Jones

Planning Officer
Planning Transport and Countryside
email kevin.lloydjones@bracknell-forest.gov.uk
Direct Line 01344 351602

PLACE DIRECTORATE

Bracknell Forest Council, Time Square, Market Street, Bracknell, Berkshire RG12 1JD
T: 01344 352000 www.bracknell-forest.gov.uk

Enc.

BRACKNELL FOREST COUNCIL
PLACE DIRECTORATE
Time Square, Market Street, Bracknell, Berkshire RG12 1JD
Telephone (01344) 352000 DX 33611
Jo Male Assistant Director: Planning

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

**CERTIFICATE OF PROPOSED LAWFUL USE OR
DEVELOPMENT**

Mrs Katie Walker
ET Planning
200 Dukes Ride
Crowthorne
RG45 6DS

APPLICANT: C/O Agent

DESCRIPTION: Certificate of lawfulness to demonstrate that no development is occurring in the change of use from dwelling to childrens home.

LOCATION: Tarnwell Downshire Way Bracknell Berkshire RG42 1XT

APPLICATION NO: 24/00625/CLPUD

DATE REGISTERED: 3rd December 2024

DECISION DATE: 10th February 2025

The Bracknell Forest Council hereby certify than on 3rd December 2024 the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged on the plans 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. ASSESSMENT

Use Class

Tarnwell is a dwellinghouse which falls within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987.

The Use Classes Order defines Use Class C3 as follows:

Use as a dwellinghouse (whether or not as a sole or main residence):

- a) by a single person or by people living together as a family, or
- b) by not more than 6 residents living together as a single household (including a household where care is provided for residents).

While it is proposed for the premises to be occupied by no more than six people living together and receiving care, the premises has to be considered as a 'household' rather than an institution or care home in order to constitute a C3(b) use. There is however no clear planning definition of what a 'household' constitutes.

In the context of this application, which involves the care of children under the age of 18, the residents would be reliant on carers in order for the premises to constitute a household. The carers at Tarnwell would operate on a shift basis. The house cannot be considered their main or permanent residence. Therefore, this operation could not constitute a C3(b) use, as defined in the Use Classes Order (1987)

It is considered that the proposed operation at Tarnwell would fall within Use Class C2 (Residential Institutions).

Material Change of Use

Whilst there is a change of use class from Class C3 to C2 consideration also needs to be given whether the proposal would result in a material change of use of the building. The proposed plans show Tarnwell not to be materially altered in such a way that the unit changes in appearance to be considered anything other than a dwellinghouse and the use is intensified so as to constitute a material change of use. As such, it is considered that there would be no material change of use in this instance.

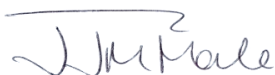
INFORMATIVE(S)

01. This decision is based on the following plans:

LocationPlan

BA0296-01 - Existing and Proposed Plans (3) - Received 03.12.2024

02. This Certificate of Lawfulness has been granted based on there not being a material change of use at the site. Should the use intensify, the Council can enforce against this. A full planning application would need to be submitted should there be any intensification proposal.



Jo Male
Assistant Director: Planning

First Schedule

1. Application for a certificate of lawfulness to demonstrate that no development is occurring in the change of use from a dwelling to a children's home.

Second Schedule

Land at Tarnwell, Downshire Way, Bracknell, Berkshire, RG42 1XT, shown outlined in red on the attached plan.

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 relate(s) 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.

Notes for Applicants

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development, to grant it subject to conditions, or to refuse a submission pursuant to a condition(s), then you can appeal to the Secretary of State for Communities and Local Government under section 78 of the Town and Country Planning Act 1990. If you want to appeal, then you must do so within a specified period (see note 1 below). Appeals must be made using a form which can be obtained from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (This form cannot be obtained from the local planning authority), or on line at www.planningportal.gov.uk/pcs.

The Secretary of State need not consider an appeal if it seems to him that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order. In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Borough Council. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

1. Consent to Display Advertisements or Refusal of Consent to Display Advertisements

- a) The regulations provide that every grant of express consent shall be for a fixed period which shall be no longer than *five* years from the date of grant of the consent and, if no period is specified, the consent shall have effect as consent for five years.
- b) A person who displays an advertisement in contravention of the regulations will be liable, on summary conviction, of an offence under section 224(3) of the Town and Country Planning Act 1990 (as amended), to a fine of an amount not exceeding level 3 on the standard scale and, in the case of a continuing offence, one tenth of level 3 on the standard scale for each day during which the offence continues after conviction.
- c) The regulations provide that every grant of express consent shall be for a fixed period which shall not be longer than five years from the date of grant of consent and, if no period is specified, the consent shall have effect as consent for *five* years.

2. Listed Building Consent or Refusal of Listed building Consent

Appeals to the Secretary of State

- a) If you are aggrieved by the decision of your local planning authority to refuse consent for the proposed development or to grant it subject to conditions, then you appeal to the Secretary of State for Communities and Local Government under section 20 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1991. An appeal must be lodged within 6 months of the date of this notice.

Purchase Notices

If either the local planning authority or the Secretary of State refuses Listed Building Consent or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any works which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Borough Council. This notice will require the Borough Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

Note 1:

If this is a decision to refuse planning permission for a householder application, and you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.

In all other cases if you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice. Appellants seeking an inquiry are asked to give the Planning Inspectorate and local planning authority at least 10 days' notice that they intend to submit an inquiry appeal.

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of an appeal.

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition)” that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be Bracknell Forest Borough Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed below.

Statutory exemptions and transitional arrangements in respect of the biodiversity gain condition.

1. The application for planning permission was made before 12 February 2024.
2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
 - (i) the original planning permission to which the section 73 planning permission relates* was granted before 12 February 2024;
 - or
 - (ii) the application for the original planning permission* to which the section 73 planning permission relates was made before 12 February 2024.
4. The permission which has been granted is for development which is exempt being:
 - 4.1 Development which is not ‘major development’ (within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015) where:
 - i) the application for planning permission was made before 2 April 2024;
 - ii) planning permission is granted which has effect before 2 April 2024; or
 - iii) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates* was exempt by virtue of (i) or (ii).
 - 4.2 Development below the de minimis threshold, meaning development which:
 - i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
 - ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).
 - 4.3 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A “householder application” means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.
 - 4.4 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee).
 - 4.5 Self and Custom Build Development, meaning development which:
 - i) consists of no more than 9 dwellings;
 - ii) is carried out on a site which has an area no larger than 0.5 hectares; and
 - iii) consists exclusively of dwellings which are self-build or custom housebuilding (as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015).
 - 4.6 Development forming part of, or ancillary to, the high speed railway transport network (High Speed 2) comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013.

* “original planning permission means the permission to which the section 73 planning permission relates” means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

The effect of section 73D of the Town and Country Planning Act 1990

If planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) and a Biodiversity Gain Plan was approved in relation to the previous planning permission ("the earlier Biodiversity Gain Plan") there are circumstances when the earlier Biodiversity Gain Plan is regarded as approved for the purpose of discharging the biodiversity gain condition subject to which the section 73 planning permission is granted.

Those circumstances are that the conditions subject to which the section 73 permission is granted:

- i) do not affect the post-development value of the onsite habitat as specified in the earlier Biodiversity Gain Plan, and
- ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat the conditions do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier Biodiversity Gain Plan.

Location Plan

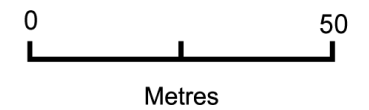
Site Address: Tarnwell, Downshire Way, Bracknell, RG42 1XT

Date Produced: 02-Oct-2024

Scale: 1:1250 @A4



Planning Portal Reference: PP-13403674v1



BRACKNELL FOREST BOROUGH COUNCIL

DELEGATED REPORT

APPLICATION NO: 24/00625/CLPUD
OFFICER: Kevin Lloyd Jones

DESCRIPTION: Certificate of lawfulness to demonstrate that no development is occurring in the change of use from dwelling to children's home.

LOCATION: Tarnwell Downshire Way Bracknell

Week No		Registered	03.12.2024	Expiry	28.01.2025
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CONSULTATIONS & REPRESENTATIONS RECEIVED

<u>Consultee(s)</u>	<u>Reply Date</u>	<u>Consultee Comments</u>
Borough Solicitor	05.02.2025	Not a material change of use

CASE OFFICER'S SUMMARY:

24/00625/CLPUD

Tarnwell
Downshire Way
Bracknell
Berkshire
RG42 1XT

PROPOSAL

A certificate of lawful development is sought to demonstrate that no development is occurring in the change of use from a dwelling to a children's home. The proposal is that a material change of use of the building would not occur and therefore planning permission would not be required.

Operational Details

- i. The building would be used as the primary living accommodation for up to 4 children, who are expected to reside there for a minimum of one year.
- ii. The children would have an age range of 8 to 17.
- iii. The building would also provide accommodation for a live in carer, who would rotate on a 12-hour shift.
- iv. One carer would be on site between 10 am and 10 pm – they would then leave, and another staff member would be on site from 10 pm to 10 am.
- v. A home manager or deputy home manager would be on site between 8 am and 6 pm.
- vi. No more than 2 members of staff would be present at any one time.
- vii. The house would be provided with five bedrooms. Four bedrooms for the children on the first floor. A carer's bedroom plus living, dining and kitchen on the ground floor.
- viii. Staff are employed to work a 40-hour week. Therefore, each staff member will complete one shift per week.

SITE

Tarnwell is a detached dwellinghouse, to the western side of Downshire Way, in the Priestwood area of central Bracknell.

The dwelling is not located on Article 2(3) land (Conservation Area) or on land covered by an Article 4 Direction. The property is not a Listed Building, nor is it located within the curtilage of a Listed Building.

RELEVANT PLANNING HISTORY

24/00314/FUL

Approval for conversion of existing garage into habitable accommodation and erection of front porch extension.

18.7.2024

17851

Approval for erection of 2 houses with double garages.

31.5.1972

There are no conditions attached to the property which restrict the use of the building.

ASSESSMENT

Use Class

Section 55(1) of the Town and Country Planning Act 1990 defines the meaning of 'development'. Included within this definition is a material change in the use of any buildings or other land. Section 55(2) sets out what operations or uses of land which shall not be taken to involve the development of the land. These include:

(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 use class.

Tarnwell is a dwellinghouse which falls within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987.

The Use Classes Order defines Use Class C3 as follows:

Use as a dwellinghouse (whether or not as a sole or main residence):

- a) by a single person or by people living together as a family, or
- b) by not more than 6 residents living together as a single household (including a household where care is provided for residents).

While it is proposed for the premises to be occupied by no more than six people living together and receiving care, the premises has to be considered as a 'household' rather than an institution or care home in order to constitute a C3(b) use. There is however no clear planning definition of what a 'household' constitutes.

In such an absence of definition relevant items of case law are therefore reviewed.

The court cases of North Devon District Council v The First Secretary of State [2003] EWHC 157 (hereafter abbreviated to Devon, 2003) and R (Crawley BC) v Secretary of State for Transport and the Regions [2004] EWHC 160 (hereafter abbreviated to Crawley, 2004) both examined the assessment and comparison of C2 and C3 use where the occupants of a property are receiving full time care.

In Devon (2003) the court held that in order for such a use to form a single household, it is necessary for the carers to actively reside within the building instead of, for example, visiting on a shift system, even if this shift system provides 24-hour care. This is because a premises consisting only of children cannot be considered a household as reliance on adult individuals is required. Having adult carers residing in the property as a primary residence is therefore material to the use of a premises as a household in comparison to a care institution.

The court held in Crawley (2004) that as the residents who required care were between the ages of 18 and 65, they did not require carers to be resident. Although the individuals had learning difficulties, as they were considered to be adults they could reasonably be considered to constitute a household without the presence of a carer. This does not however run contrary to the decision of Devon (2003) as within Devon the individuals requiring care were under 18. Furthermore, the decision of Devon (2003) was acknowledged within Crawley (2004), with the conclusion that ultimately the individual case is to be considered on its own merits, as matter of fact and degree.

In the context of this application, which involves the care of children under the age of 18, the residents would be reliant on carers in order for the premises to constitute a household. The carers at Tarnwell would operate on a shift basis. The house cannot be considered their main or permanent residence. Therefore, this operation could not constitute a C3(b) use, as defined in the Use Classes Order (1987)

It is considered that the proposed operation at Tarnwell would fall within Use Class C2 (Residential Institutions). This is for the provision of residential accommodation and care to people in need of care. Care is defined 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."

Material Change of Use

The Local Planning Authority took legal advice as to whether the change in use class from C3 to C2 would constitute a *material* change of use. Whether there is a material change of use is a matter of fact and degree and each situation needs to be assessed individually. The proposed site plans show Tarnwell to not be materially altered in such a way that the unit changes in appearance to be considered anything other than a dwellinghouse.

A material change would be an intensification of use. This can be viewed as the installation of a dedicated office, treatment rooms, alarms, locks on doors, etc. These are not proposed for this application and the use would operate similar to that as a family dwelling even though the use class would be different and as such it is considered that there will not be a material change of use of the building. However, should there be any future intensification of use over the current proposal, a planning application will need to be submitted. An informative has been added to the decision notice to this effect.

CASE OFFICER'S CONCLUSION:

It is considered that the proposed use of the premises for the residence and care of vulnerable children with a rotating care team would fall within use class C2.

The change from C3 to C2 would, in this instance, not be a material change of use. Therefore, the proposal does not require the submission of a formal planning application in accordance with the Town and Country Planning Act 1990 (as amended) and the Town and Country Planning (Use Classes) Order 1987 (as amended).

The Certificate of Lawfulness is granted.

RECOMMENDATION:

Recommendation: **APPROVE**

Date of Recommendation: 06.02.2025

This report should be read in conjunction with the Draft Decision Notice

Note: Under the BFBC's scheme of delegation this application has been considered in accordance with the Human Rights Act 1998.							
Decision Notice to?	Parish Council		Compliance		LAO	Other	Specify
Notes for WP Administrator:-						Date Legal Agreement Signed	
PI App Monitoring Check List		Yes / No	Temporary Register		Yes / No	Telecom Register	Yes / No

CHECKED – Case Officer	DATE 06/02/25	Team Leader/Section Head <i>B. Poinik</i>	DECISION DATE 10/02/25
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