

CERTIFICATE OF PROPOSED LAWFUL USE OR DEVELOPMENT

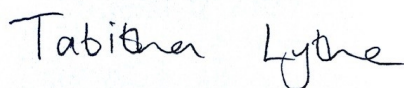
TOWN AND COUNTRY PLANNING ACT 1990, Sections 191 and 192 (as amended by Section 10 of the Planning and Compensation Act, 1991)
Town and Country Planning (Development Management Procedure) (England) Order 2015

Location	Agneash, Tilstock, Whitchurch, Shropshire
Proposed Development	Lawful development certificate for change of use from dwelling to childrens home
Application No.	24/04422/CPL
Date Received	20th November 2024
Applicant	C/O agent
Date of Decision:	13th January 2025

The Shropshire Council hereby certify that on **20th November 2024** the matter described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged red on the plan attached to this Certificate, is **LAWFUL** within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason[s]:

1. The proposed use of Agneash, Tilstock as a children's residential home as indicated in the supporting information is considered to fall within use class C2. Due to the workers not being permanent residents and working on rota patterns this would not therefore constitute a single household for the purposes of use class C3.

However, having regard to all the factors, it is planning officers' judgement that this proposal will not amount to a 'material' change of use that would require planning permission and as a result a certificate can be issued. Planning permission is therefore not required in this instance for the change of use from residential (use class C3) to the use described in the application (use class C2).



Tabitha Lythe
Planning and Development Services Manager

Case officer: Melanie Williams, Planning Officer, 01691 677277
Northern Team, planning.northern@shropshire.gov.uk - 01743 258940



24/04422/CPL

FIRST SCHEDULE

Lawful development certificate for change of use from dwelling to childrens home

SECOND SCHEDULE

Agneash Tilstock Whitchurch Shropshire

Notes:

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

It certifies that the matter 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.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

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 matters relevant to determining such lawfulness.

Appeals to the Secretary of State

If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then the applicant can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990 (as amended), or under section 195 of the Town and Country Planning Act 1990 (as amended) for Lawful Development Certificate applications (Section 191 and 192 applications) and under section 26K of the Planning (Listed Building and Conservation Areas) Act 1990 (as amended) for Listed Building Lawful Development Certificate applications.

An appeal must be made within six months of the date of this notice, or 12-weeks if the scheme is for that of "household" development, or minor commercial application, or within 8 weeks in the case of advertisement appeals. The appeal must be made on a form which can be obtained from the Planning Inspectorate at Customs Support Unit, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN or online at

<https://www.gov.uk/government/organisations/planning-inspectorate>

Where an enforcement notice has been served on the same, or substantially the same, development as in the application within 2 years of the date the application was made, the period for receiving an appeal is 28 days of the date on the decision notice or the date by which the LPA should have decided the application. Where an enforcement notice was served after the decision notice was issued or after the end of the period the LPA has to determine the application, the period for receiving an appeal is within 28 days of the date the enforcement notice was served (unless this extends the normal 12 week deadline).

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 appeal.

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 it 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.

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority (appeals@shropshire.gov.uk) and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

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 Council requiring the Council to purchase the interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990 (as amended).



Development Management Report

Responsible Officer: Rachel Robinson, Director of Health Wellbeing and Prevention

Summary of Application

<u>Application Number:</u> 24/04422/CPL	<u>Parish:</u>	Whitchurch Rural
<u>Proposal:</u> Lawful development certificate for change of use from dwelling to childrens home		
<u>Site Address:</u> Agneash Tilstock Whitchurch Shropshire SY13 3NS		
<u>Applicant:</u> C/O agent		
<u>Case Officer:</u> Melanie Williams	<u>email</u> :	melanie.williams@shropshire.gov.uk

Recommendation:- Certificate - Lawful.

REPORT

1.0 THE PROPOSAL

- 1.1 This application seeks a legal determination under Section 192 of the Town and Country Planning Act 1990 (as amended) as to whether or not the proposed change of use of a dwelling to a children's home would be lawful by virtue of the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 1.2 The application documents state that there will be no external alterations to the building or surrounds and there will be no change from the outside in the appearance or character of the dwelling.
- 1.3 The children's home will be for a maximum of two children, with two members of staff (carers) who will sleep over night, working on a rota basis.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 Agneash, Tilstock is a two-storey detached 4 bedroomed dwelling. The dwelling benefits from existing ample parking to the front of the property for 6 vehicles plus

integral garage with a private garden located to the rear.

- 2.2 The site is surrounded by neighbouring dwellings with hedgerow boundary between.

3.0 REASON FOR DELEGATED DETERMINATION OF APPLICATION

- 3.1 Determination of this application under delegated powers complies with the terms of the scheme of delegation to officers as set out in Part 8 of the Council Constitution.

4.0 COMMUNITY REPRESENTATIONS

- 4.1 There are no statutory consultees or public consultations required for this application since the matters to be determined are solely matters of fact and law.

5.0 THE MAIN ISSUES

- Lawfulness of proposed use
- Interpretation of Class C3 'dwelling house'
- Legal interpretation

6.0 OFFICER APPRAISAL

6.1 Lawfulness of proposed use

It has previously been found that the use of a property as a care home facility does not fall within Class C3 and would be within Class C2. For a change of use from class C3 to a use in class C2 to amount to development and thereby require planning permission, the change of use has to be material.

- 6.1.1 The submitted documents state that the applicant (Utopia Childcare) aims to operate a small specialist children's home for two 7-18 years olds, with 2 carers sleeping overnight. Utopia Childcare aims to provide high quality homes for children and young people so that they have a stable and nurturing environment to enjoy their childhood and achieve the best possible outcomes for their future.
- 6.1.2 The dwelling is intended to accommodate a maximum of 2 children/young people and 4 care staff in total within the day which would include a manager and deputy who will be on site during weekdays from 9am to 5pm. At night there will be a total of 2 carers at the dwelling with the 2 children.
- 6.1.3 Up to two children would live at the house, with two carers working on a rota basis. The change over period will be between 8 and 8:30 am and the staff would operate a 40 hour week with set shift pattern.
- 6.1.4 No details have been provided in relation to the daily activities of the children.
- 6.1.5 In terms of the vehicle movements to and from the site, the application confirms that there would be little difference from the current use as a dwelling house, either in terms of numbers or concentration of movements or to influence its character. There will be 2 'house' vehicles parked at the property which will remain over night. These vehicles would be utilised to provide transport for the children as would be akin to family trips from home associated with a dwelling house.

6.1.6 On the basis of the above, the view is taken that the proposal would not result in a material change of use and there is no material difference in activity to that which may be anticipated in relation to a residential use. The premises has the looks and character of a conventional residential dwelling and the use gives rise to no greater level of disturbance that would usually be generated by a C3 use. As the staff will be working on a rota and will not be full time residents of the house this would be consistent with Use Class C2, however if it transpired that a greater number of staff were required to take care of children/young people this could result in a material change of use.

6.2 Interpretation of Class C3 'Dwelling house'

6.2.1 This class groups together use as a dwelling house, whether or not the sole or main residence, by single person, any number of persons living together as a family, or by no more than 6 persons living together as a single household. The key element in the use of a dwelling house for non-family purposes is the concept of a single household. The single household concept will provide more certainty over the planning position of small group homes which play a major role in the Government's community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community.

6.2.2 In the case of small residential care homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential Institutions (use class C2), regardless of the size of the home. Local planning authorities should include any resident care staff in their calculation of the number of people accommodated. This class not only includes families, or people living together under arrangements for provision of care, but also other groups of people, not necessarily related to each other, who chose to live on a communal basis as a single household.

6.2.3 The term 'dwelling house' is not defined in the Use Classes Order. Nor is its definition limited, as in the General Permitted Development Order 2015, so as to exclude flats. The question of whether a particular building is a dwelling house is therefore, one of fact. The common feature of all premises, which can generally be described as dwelling houses, is that they are buildings that ordinarily afford the facilities required for day-to-day private domestic existence. It is recognised that unlikely or unusual buildings, such as churches or windmills, have been used as, or adapted to become, homes and dwelling houses. Whilst such premises may not be regarded as being dwelling houses in the traditional sense, they may be so classified for the purposes of the Use Classes Order.

6.2.4 The criteria for determining whether the use of a particular premises should be classified within the C3 use class include both the manner of the use and the physical condition of the premises. Premises can properly be regarded as being used as a single dwelling house where they are: -

- A single, self-contained unit of occupation which can be regarded as being a separate 'planning unit,' distinct from any other part of the building containing them.
- Designed, or adapted, for residential purposes - containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house.

- Used as a dwelling, whether permanently or temporarily, by a single person, a family, or more than one person living together like a family, as a single household.

6.3 Legal Interpretation

6.3.1 The North Devon District Council vs The First Secretary of State (2003) judgement confirms that it is unrealistic to expect children to look after themselves in a single household. Carers who provide 24 hour care but were not residents of the same dwelling could not be regarded as living together in a household, as the concept of living together as a 'household' must constitute a proper functioning household and children and carers must reside in the dwelling/premises. In these circumstances, such as the proposal subject of this application, the use would not be considered to fall within Class C3(b). The use of the premises as a children's home would therefore fall within Class C2 of the Order (Residential Institutions).

7.0 CONCLUSION

The proposed use of Agneash, Tilstock as a children's residential home as indicated in the supporting information is considered to fall within use class C2. Due to the workers not being permanent residents and working on rota patterns this would not therefore constitute a single household for the purposes of use class C3.

However, having regard to all the factors, it is planning officers' judgement that this proposal will not amount to a 'material' change of use that would require planning permission and as a result a certificate can be issued. Planning permission is therefore not required in this instance for the change of use from residential (use class C3) to the use described in the application (use class C2).

8.0 Risk Assessment and Opportunities Appraisal

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.
- The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be made a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1990.

9.0 Financial Implications

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. Background

Relevant Planning Policies

Central Government Guidance:

National Planning Policy Framework

Core Strategy and Site Allocations and Management of Development (SAMDev) Plan:

RELEVANT PLANNING HISTORY:

24/04422/CPL Lawful development certificate for change of use from dwelling to childrens home LA 13th January 2025

NS/01/00381/FUL Erection of a first floor extension over the existing garage to provide an additional bedroom CONAPP 12th June 2001

11. Additional Information

List of Background Papers

24/04422/CPL - Application documents associated with this application can be viewed on the Shropshire Council Planning Webpages <https://pa.shropshire.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SN7OVMTDLSA00>

Cabinet Member (Portfolio Holder) - Councillor Chris Schofield

Local Member - Cllr Gerald Dakin

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