

# Simpatico

## Town Planning

61 Prestwich Hills, Prestwich, Manchester, M25 9PY



Application for a Lawful Development Certificate for proposed use of a (C3a) dwelling as a residential home for a maximum of three children with up to three carers who would sleep overnight on a rota basis (C2)

Supporting Statement

Statement prepared on 4<sup>th</sup> March 2024 by Richard Jewkes BSc DipTP MA,

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# Introduction

1. This Statement is submitted alongside an application by SAI Houses Limited which seeks the grant of a Certificate of Lawful Development for a proposed use of the property known as 61 Prestwich Hills, Prestwich, Manchester, M25 9PY ('the application property').
2. The application seeks confirmation from Bury Metropolitan Borough Council ('the LPA') that the proposed use of the property as a small residential home for a maximum of three resident young people, who would receive care on site in a household setting, would be considered a non-material change of use for planning purposes, being materially the same, under the terms of the Use Classes Order, as the current, established, C3(a) residential use. As such, the application seeks confirmation, via the issuing of a Lawful Development Certificate (LDC), that the proposed use as detailed in this submission would be lawful and would not require the express grant of planning consent.
3. This Statement will present the background surrounding the case and will set out, in the context of the nature and intensity of the existing use, how the proposed use would operate, in order that the LPA may, in the light of this information, confirm that the proposed use would not represent a 'material' change of use, but would, to all intents and purposes, be akin to the established C3(a) use. It will also highlight and consider similar recent cases whereby the LPA has issued LDCs confirming that proposed changes of use from dwelling to small residential home in which care is provided did not constitute a material change of use and, as such, did not require the grant of planning permission.
4. In addition to this Statement, the application is supported by the following drawings and documents. As such, this Statement should be read in conjunction with them:
  - Location Plan
  - Floor Plans
  - Application Form

## Application site and planning history

5. The application property is a detached, five bedroom dwelling of late-Twentieth Century construction, located in the established residential area of Prestwich, a suburb of Bury Town Centre. The property is set back behind a fore garden and benefits from a private drive which can accommodate two vehicles. Figure 1, below, is a photograph of the property's frontage which also takes in the adjacent properties to either side, nos. 59 and 63 Prestwich Hills, and shows the existing parking facilities.

**Figure 1 – the application property**

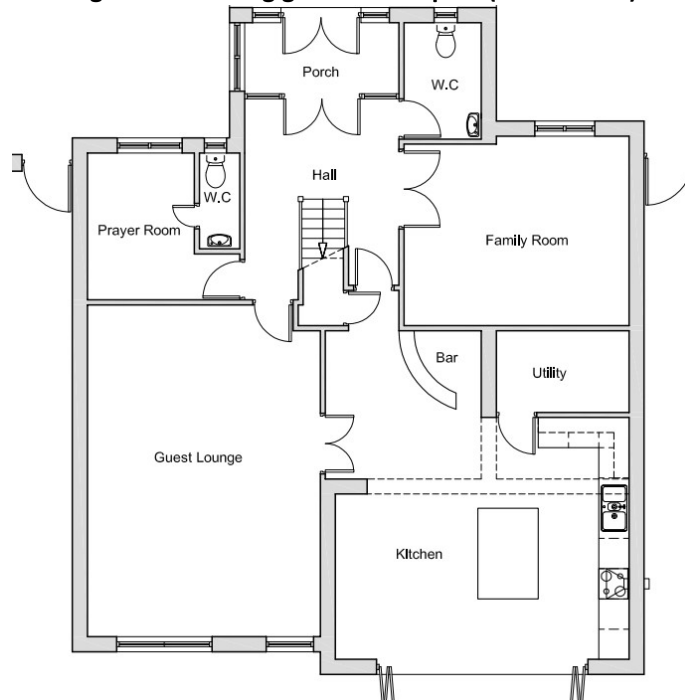


6. The property was built as a residential dwellinghouse and has remained continually in such use for the duration of its life. The LPA's planning records confirm that, since the property was built, various planning applications have been submitted seeking consent for both internal and external alterations. Of these applications, some were the subject of split decisions, and some were duly approved with the grant of consent being forthcoming. However, some of the previously approved alterations, most notably an approved single storey rear extension, have not been implemented. The current arrangements at the property, both internal and external, will therefore be described here.
7. Internally, the property is currently configured for occupation by a large family. In fact, at the time of writing, under the established use, a family household is currently resident. At first floor level, the property benefits from five bedrooms, three of which enjoy en-suite facilities, together with a communal family bathroom. At

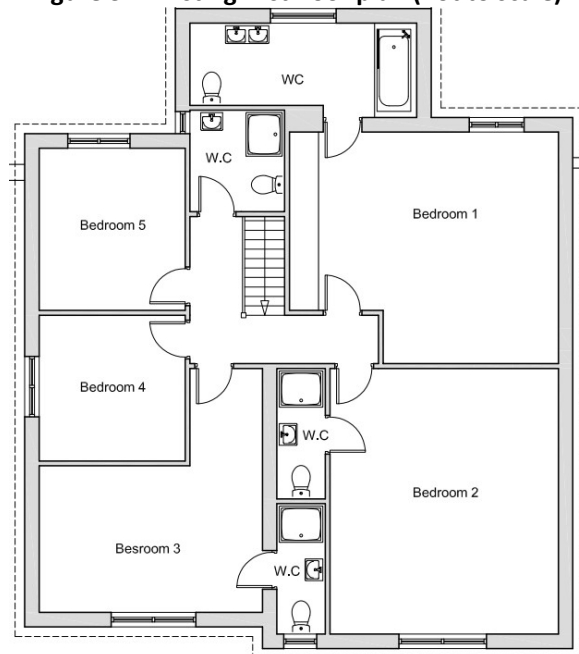
ground floor level, the property benefits from a porch, WC, prayer room, family room, lounge, bar, kitchen and dedicated utility room.

8. Figures 2 and 3, below, comprise extracts from the submitted floor plans which show the property's existing internal layout at ground and first floor.

**Figure 2 – Existing ground floor plan (not to scale)**



**Figure 3 – Existing first floor plan (not to scale)**



9. Externally, to the front the property enjoys a fore garden and driveway. To the rear, there is a private garden area measuring approximately 13 metres deep and 9 metres wide (117m<sup>2</sup>). Figure 4, below, is an aerial image of the existing rear garden (all aerial images taken from Google), including the property's rear elevation.

**Figure 4 – Photograph of rear garden and surroundings**



10. Beyond the site's immediate boundaries, it is located in a well-established residential area within Prestwich. Neighbouring properties within the locality are exclusively C3(a) dwellinghouses. Figure 5, below, is an aerial photograph of the site which shows its curtilage edged in red.

**Figure 5 – Aerial photograph showing site and its surroundings**



# Proposal

11. It is proposed to use the property to provide a residential home, supported by carers, for a maximum of three young people between the ages of 8 and 18. The occupiers would live as a household, receiving support and care from qualified professionals who would have a de facto parenting role and a high degree of personal familiarity with the residents, in order to provide them with a safe and loving home within a domestic, family environment.
12. On the basis that the care staff would not be fully 'resident' at the property, i.e. using it as their primary address, it is recognised in the context of the 'North Devon Judgment', that the proposed use would not technically fall within the boundaries of Use Class C3(b) of the Use Classes Order. However, it is considered to be the case, in this instance, that the proposed use of the property as a residential home for up to three young people, who would live as a household and would receive care in family environment, would equate, in all material senses, to a use instituted under Use Class C3, and therefore would not require the grant of express planning consent. This conclusion has been reached on the basis of the following details of the proposed use.
13. As has been noted, the property was built as a family home, having five bedrooms and a private rear garden, and is presently occupied on that basis by a family of five people, comprising two adults and three children. It is proposed that, under the future use, the living experience at the house would continue to be very much akin to the current daily routine. Under the proposal, the three resident young people would each have their own bedroom, using bedrooms 1, 2 and 4, with the younger of the children generally having the smallest room, as one would usually expect in a family home.
14. Bedrooms 3 and 5 would be slept in by a maximum of three 'overnight' care staff. Two carers would sleep in bedroom 5, with twin beds being provided. In addition, where required depending on the number of children who were resident at any given time, bedroom 3 would occasionally be used to accommodate a third carer. Aside from the resident young people, no one else would live at the property. However, care staff would be present around the clock in order to care for the children, on the basis of a shift rota system which will be detailed below.
15. The carers would typically be present on a two days (48 hours) on and four days (96 hours) off pattern. Each shift would start at approximately 0900 every two days, meaning that 'handovers' would not happen every day, but only once every two days, with the overlap lasting no more than 30 minutes. In addition to the care

staff, a home manager would also oversee the home and provide senior input into its operations. However, the manager would be based in an office off site and would carry out their administrative duties remotely from there. They would only attend the property itself as and when needed, for general oversight and for 'catch up' meetings with the carers. They would also visit in the case of some kind of unforeseen issue or emergency. Visits from family and friends of the residents would also not take place at the property. Typically, the residents would visit family and friends in neutral locations off site, again with their carers present to look after them at all times.

16. Aside from the short handover which would take place once every 48 hours, and the occasional visit of a manager, the only trips to and from the property during the daily routine would be the usual domestic trips that a family household would need to make. These would include, for example, journeys to and from school, journeys associated with any other activities which the young people may engage in outside of school, for example sports or hobbies, and journeys for normal domestic reasons such as food shopping.
17. As would normally be expected in a domestic setting, and as is the case under the existing use of the application property, on weekdays the carers would take the children to school and accompany them to any other appointments or extra-curricular activities during the day-time. When the children were at home, the carers would be on site to care for them and to engage in play and the other activities and chores one would expect. When the children were out at school or college, there would be a reduced presence of carers at the property, with it often being empty, again as one would expect in a domestic household.
18. This level of activity would not exceed a 'functional' total of 6-8 trips per day, which would not be any higher than would be expected of a five-bedroom residential dwelling in this location. Clearly there may be occasions when there are more daily trips, and there may be occasions when there are fewer. However, for the purposes of assessing the 'materiality' of the proposed use when compared with the established use, it is considered that the level of activity would be commensurate with the current C3 use, under which a family of five or more people, including three or more children or young people, would be expected to reside at the property.
19. This approach is designed to ensure continuity for the residents, in order to create a family environment in which they are able to bond with the carers who look after them during their waking hours. Care would be given in a communal environment with the young people and their carers sharing facilities in a manner akin to a family. For example, there would be no locks on bedroom doors and meals would be taken together, being cooked by the care staff with the help of the resident children.

20. **Professional Ofsted standards and safeguarding:** The children or young people would be cared for on a medium to long term basis in order for them to integrate properly into the community and build strong relationships with the carers and the environment. This is a standard arrangement within a residential home environment, regardless of the level of care provided.
21. In the case of all incoming residents, a professional, detailed risk assessment would be undertaken to ensure that the residence was appropriate for the chosen young people. As standard procedure, all prospective new residents would be referred to the Applicant by a local Children's Services department, following which their case would, in the first instance, be reviewed and the young person screened by the home's manager, and then with its care team. Referrals would then be shortlisted, and their social workers consulted at that stage. The next stage would be for the young person to be invited to the property for a short visit, normally including a meal, in order to ascertain whether or not they felt comfortable in the house and would like to become a resident. Only after all of these checks had been carried out, would a young person be placed at the property as a resident.
22. In order to run a residential home of this kind, it is necessary to obtain a registration from Ofsted. Ofsted stress the need for care homes to create an environment as close as possible to a traditional family home setting, and its requirements in this regard can be summarised as follows:
- *A risk assessment would be undertaken to ensure that the residence is appropriate for the chosen children, prior to them moving in.*
  - *Children in residential child care should be loved, happy, healthy, safe from harm and able to develop, thrive and fulfil their potential.*
  - *Residential child care should value and nurture each child as an individual with talents, strengths and capabilities that can develop over time.*
  - *Residential child care should foster positive relationships, encouraging strong bonds between children and staff in the home on the basis of jointly undertaken activities, shared daily life, domestic and non-domestic routines and established boundaries of acceptable behaviour.*

# Legislative context

## Town and Country Planning (Use Classes) Order 1987

23. The established use of the application property is C3(a), within Class C3 (Dwellings) of the Town and Country Planning (Use Classes) Order 1987 (as amended). The C3 use class generally refers to instances where the occupiers of a given residential property live together as a single household. Different types of residential living arrangements are allowed for under the C3 use class, as follows: -

*Use as a dwellinghouse (whether or not as a sole or main residence) by—*

*(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 for 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).*

24. The Use Classes Order allows, as a 'permitted change', the switching of living arrangements within the uses defined in classes C3(a), C3(b) and C3(c), or indeed between use classes C3 and C4, without the grant of planning permission being required.

25. Article 2 of the Order confirms that, for the purpose of use class categorisation, 'care' should be interpreted as follows:

*"care" means 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.'*

26. This proposal relates to the provision of a residential home for young people, in an environment which operates principally in the way that a shared residential property, including the provision of care, would under Use Class C3(b). However, case law has established that a residential household, for the purposes of Use Class C3(b), will not generally exist in instances where a property is occupied, as a place of residence, only by children or young people. In this scenario, both appeal decisions and case law (the most prevalent of which being known as the 'North Devon Judgment') have held that where young people are to be the sole permanent residents of a given property, this arrangement cannot be considered, technically, to fall within

Use Class C3 of the Use Class Order. Case law also holds, however, that where a given proposed use does not, technically, fall within Use Class C3(b), depending on the specific circumstances of the site and the proposed use, it may still represent a 'non-material' change of use, being for all intents and purposes the same as a C3(b) household, with the express grant of planning permission therefore not being required.

27. In the case of this application, it is recognised that the proposed living arrangements would not, by virtue of the absence of permanently resident adults, constitute a lawful change of use under Use Class C3(b). However, it is submitted that the proposed living arrangements, whereby the occupiers of the property would live in all senses as a 'household', with the resident young person or people receiving care and support, would not be materially different, for planning purposes, to the existing use of the property as a C3(a) dwelling for a large family comprising two adults and three young people. It is submitted that the new use would, in terms of all material considerations, be no different or any more noticeable, than the lawful occupation of the property, as permitted within Use Class C3, as a residence occupied under Use Class C3(b).
28. This application therefore seeks confirmation from the LPA, based on the details of the proposal as outlined, and of the likely material impacts (or lack thereof) upon the local community following the implementation of the proposed change of use, that the proposal would not result in any 'material' impact when compared with a bona fide C3(b) use, and therefore would not require the express grant of planning permission by the LPA. The application therefore seeks the grant of a Certificate of Lawfulness for Proposed Development on that basis.
29. In order to assist the LPA in making a judgment regarding the materiality of the proposed change of use, and the extent to which it would result in any perceptible material impact for planning purposes, the potential impacts of the proposal will be considered individually in the subsequent section of this Statement. These are considered to comprise the following:
- Parking and highway safety
  - 'Comings and goings' and other general activity associated with the use
  - Noise and other disturbance created by the residents

## Recent local comparable cases/precedents

30. A perusal of the LPA's planning records confirms that Lawful Development Certificates have been recently issued for proposed uses which are commensurate with, or indeed more intensive, than that which is under consideration in this application. These are highlighted in order to demonstrate that the proposal under consideration here would not represent a material change of use, when compared with the existing use as a residential household with two adult residents, and three young people. These cases confirm that the LPA concurs with this assertion, having recently issued LDCs for the same use at similar properties within the Borough.

### Recent example no. 1 – Application 69169 - 3 Sandown Road, Bury, BL9 8HN

31. On 18<sup>th</sup> April 2023, the LPA issued a Lawful Development Certificate relating to a proposed use to be undertaken at 3 Sandown Road, Bury. The decision notice, a copy of which is appended to this Statement at Appendix 1, confirms the LPA's position that the use of the property as a small residential home for up to three children would not represent a material change of use in planning terms and, as such would be lawful and would not require the grant of planning consent.
32. The decision notice confirms the LPA's position that the use of the property to accommodate three children is lawful, based on the following description:

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) as the proposed change of use of 3 Sandown Road, Bury, BL9 8HN to a children's home (Class C2) for up to 3 children with a maximum of 3 additional staff members with 2 of those staying overnight on a rota basis and operating in full accordance with the details set out within the applicants planning statement submitted 13th December 2022, would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

33. This decision was based on materials submitted with the planning application which cannot be reproduced here for copyright reasons, but which explained that the property in question had five bedrooms, and three off street parking spaces. The Case Officer's report on the application explains this position, in the context of the relevant material considerations, as follows:

*The residing of up to 3 children aged 8-18 with up to 3 carers on a rota basis, no more than 5 people in total, is considered not to constitute a material change of use after*

*taking into account the following factors. The size of the household of 3 8-18 year olds and 3 adults would not go beyond what would be expected of a large family unit in a two storey semi-detached dwellinghouse. The movements of the occupiers of the property would not go beyond what would be expected of a family unit. There would not be any frequent visits by other care staff or clinicians. There will be three off-street car parking spaces at the front of the property and there is on street parking available in nearby side streets. No external or internal changes are required to the property.*

*As such the change of use would not alter the character of the immediate vicinity, either by alteration of the building or by any increase in noise or disturbance or have any more significant impact on the residential amenity of nearby occupiers. As such the change of use does fall into the different use class of C2 - care homes, but does not constitute a material change of use from residential occupation. Therefore the proposed change of use would be lawful.*

34. The application case is clearly comparable to that of 3 Sandown Road, in that the application property as five bedrooms, available off street parking, and also access to adjacent on street parking. The two cases are comparable, in that the application proposal would also result in three children or young people being resident, ensuring that the proposed new use was not materially different or noticeable in terms of external impacts.

## Recent example no. 2 – Application 67556 - 141 Ainsworth Road, Bury, BL8 2RT

35. Similarly, on 3<sup>rd</sup> December 2021, the LPA granted another Lawful Development Certificate relating to a proposed use to be undertaken at 141 Ainsworth Road, Bury. The decision notice, a copy of which is appended to this Statement at Appendix 2, confirms the LPA's position that the use of the property as a small care home for up to four young people, supported by a carer who would sleep at the property overnight would, again, not represent a material change of use in planning terms and, as such, would be lawful and would not require the grant of planning consent.
36. The decision notice confirms the LPA's position that the use of the property to accommodate up to four young people, aged 16 to 18, with a 'sleeping' carer, was lawful, based on the following description:

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) as the proposed change of use of 141 Ainsworth Road, Bury, BL8 2RT, to a care home (Class C2) for up to 4 persons between the ages of 16 & 18 years with a maximum of 1 additional staff member staying overnight on a rota basis, would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

37. This decision was based on materials submitted with the planning application which cannot be reproduced here for copyright reasons, but which argued that the proposed use would fall within use class C3(b), on the basis that the residents would be adults and, therefore, not subject to the precedent of the North Devon Judgment. The LPA disagreed with that interpretation, on the basis that 16 to 18 year olds would not be considered fully fledged 'adults', bringing the proposed use under the C2 class. The LPA did, however, consider that the proposed switch to a C2 use would, in the circumstances, be immaterial for planning purposes. The Case Officer's Report explains this position, in the context of the relevant material considerations, as follows:

*The size of the household of four 16-18 year olds and 1 adult would not go beyond what would be expected of a large family unit in a two storey terraced dwellinghouse. The movements of the occupiers of the property would not go beyond what would be expected of a family unit. No extra medical professionals would be required to visit as all care will be provided by the 1 carer on a rota. On street parking would be available in nearby side streets. As such the change of use would not alter the character of the immediate vicinity, either by alteration of the building or by any increase in noise or disturbance or have any more significant impact on the residential amenity of nearby occupiers. As such the change of use does fall into the different use class of C2 - care homes, but does not constitute a material change of use from residential occupation. Therefore the proposed change of use would be lawful.*

38. As the Case Officer's comments highlight, in the 141 Ainsworth Road case, the application property was a terraced house, with no off street parking. Nonetheless, it was found by the LPA that the proposed use would be no more intensive than the existing C3(a) use, and as such would have no material impact which would trigger the need for planning consent.

### Recent example no. 3 – Application 69777/LDCP - 14 Higher Lane, Whitefield, M45 7FY

39. A further relevant example of precedent in the LPA's assessment of LDC applications of this type was a decision issued on 20<sup>th</sup> September 2023, which related to a proposed use to be undertaken at 14 Higher Lane, Whitefield. In that case, it was proposed to change the use of the property from C4 (small HMO) to a C2 use comprising a residential home for up to two children, aged 8 to 16, with up to two staff living-in working on a shift pattern. The Case Officer's report, a copy of which is appended to this Statement at Appendix 3, again confirms the LPA's finding that the use of the property as a small residential home would not represent a material change of use in planning terms and, as such, would be lawful and would not require the grant of planning consent.
40. The decision notice confirms the LPA's position that the use of the property to accommodate two children is lawful, based on the following description:

An application for a Certificate of Lawful Development under Section 192 for the proposed change of use of a dwellinghouse (Use Class C3(a)) to a children's care home (Class C2) for up to 2 children aged 8-16 with up to two staff living-in working on a shift pattern. The care staff would work on a rota basis and would not be permanently resident. Effectively, therefore, the property will be occupied as a single household with two adults and two young people.

41. Upon assessing the proposal, the LPA considered that the proposed switch from a C4 to a C2 use would, in the circumstances, be immaterial for planning purposes, on the basis that the proposed use would have no material impact and as such would not cause any external detriment to the amenity of the street nor the wider locality. The Case Officer's Report explains this position, in the context of the relevant material considerations, as follows:

*The judgement reiterated that case law had established that whether or not a material change of use had taken place was a question of fact and degree. The residing of up to 2 children aged 8-16 with up to 2 carers on a rota basis, no more than 4 people in total, is considered not to constitute a material change of use after taking into account the following factors. The size of the household of 2 8-16 year olds and 2 adults would not go beyond what would be expected of a standard family unit in a two storey detached dwellinghouse. The movements of the occupiers of the property would not go beyond what would be expected of a family unit. Each member of the household will have their own bedroom and will share all other domestic facilities within the property such as the*

*bathroom, kitchen, lounge and garden. There is onsite parking at the rear of the building and also on street parking available on nearby side streets. There is expected to be a visit from a social worker once every 4-6 weeks in the early stages of a child's placement but this is expected to reduce to once every 2 months when the child has settled into the home, there is expected to be 1 visit every fortnight from other supporting professionals but the frequency of visits in total is not any more than one could expect from a family home.*

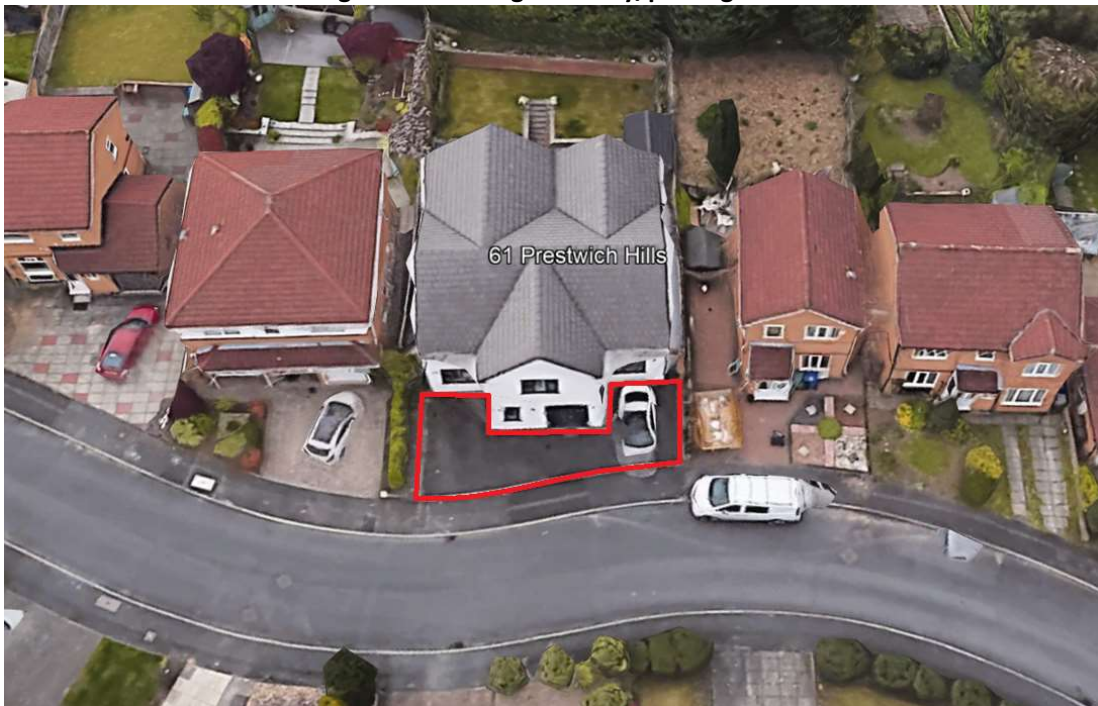
*As such the change of use would not alter the character of the immediate vicinity, either by alteration of the building or by any increase in noise or disturbance or have any more significant impact on the residential amenity of nearby occupiers. As such the change of use does fall into the different use class of C2 - care homes, but does not constitute a material change of use from residential occupation. Therefore the proposed change of use would be lawful.*

42. As the Case Officer's comments highlight, in the 14 Higher Lane case the application property was under a domestic residential use, nonetheless, it was found by the LPA that the proposed use, despite falling within class C2, would be no more intensive than the existing use and as such would have no material impact which would trigger the need for planning consent.
43. **Summary:** In granting LDCs relating to the above three applications, the LPA has confirmed its interpretation of case law in relation to proposals of this type. Whilst every case is of course different and must be judged upon its individual merits, the new uses which were proposed in those cases, each of which were judged to be immaterial and as such lawful, were in some cases more intensive than that which is proposed in this current application.
44. By contrast, the proposal under consideration here would be of commensurate intensity in terms of the number of people generally present at the site and the general comings and goings, given that the application property is generously-sized, and that it is, under its current use, occupied permanently by a large family. In this context, it is considered that, in this specific case, the proposed use must be considered to be materially the same as the existing, and therefore lawful and not requiring the grant of express planning consent.

## Planning considerations and materiality

45. As has been explained above, based on the details of the proposed use, and the application property's facilities and physical qualities, it is considered that no perceptible material impacts would result from its implementation on this site, and that as such the proposal would not represent a material change of use for which the grant of express planning consent would be required. The use would, in all material senses, be akin to the established use, that of a conventional dwellinghouse occupied by five people under use class C3(a), or the alternative C3(b) use which could be implemented here as a 'permitted change'. The various potential material impacts will therefore be considered here.
46. **Parking and highway safety:** As has been highlighted, the application property benefits from an accessible driveway/parking area which can presently accommodate three vehicles. Figure 5, below, comprises photographs of the property which show the location and extent of the existing parking area. This facility would naturally be retained and utilised under the proposed use.

**Figure 5 – Existing driveway/parking area**



47. It is considered that the use proposed in this application would generate no additional demand for parking than is currently the case. The property is occupied as a C3(a) dwellinghouse, with five people being resident, and it is evident that the extent of the available floor space at the property lends itself to

occupation by a large family. Further, the property enjoys off street parking spaces which would be sufficient to meet the demand generated by the new use. In view of this, it is considered that the proposed use would not result in any net increase in demand for parking facilities above and beyond that generated by the established use, in fact being likely to generate less trips on a daily basis. In this sense, the proposal would have a neutral impact.

48. Furthermore, an inspection of the surrounding street scene confirms that on street parking space is abundantly available and could, as would be the case under the established C3(a) use, accommodate any momentary overspill on occasions when this may be required. Figure 7, below, comprises photographs of the street scene in Prestwich Hills which demonstrate the high availability of on street parking.

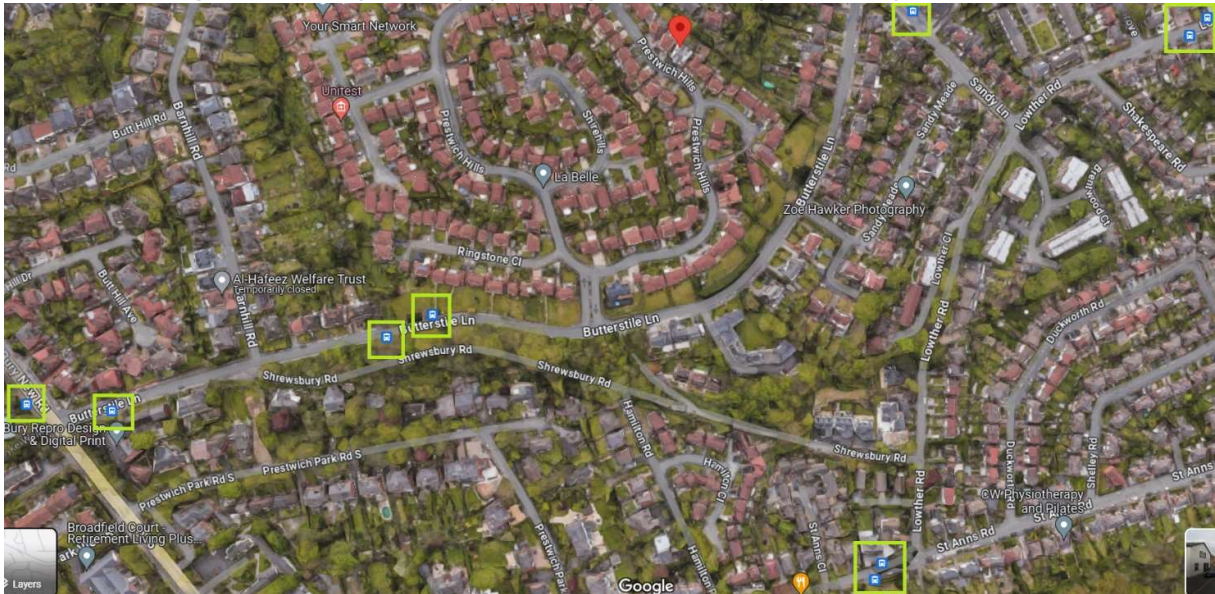
**Figure 7 – Street scene images taken June 2023 (application property shown with gold arrow)**



49. Under the proposed use, a maximum of three care staff would be present at the site at any one time. However, as highlighted above, due to the resident young people attending education, or other off site engagements or activities in the afternoon, it would often be the case that just one carer, or none at all, would be present at the property. The 'handover' periods, during which there could, in theory, be additional vehicles present, would take place just once every 48 hours, and would be very brief in nature. This level of demand is considered to be no more intensive than is the case under the current use as a family dwellinghouse.
50. In addition, it must also be noted that the site is situated in a particularly sustainable location, in a highly populated urban area, with all of its available private and public transport links. In fact, there are two bus stops located around the corner from the site in Butterstile Lane, with several more being available close by, in Bury New Road (A56) and Hilton Lane (A6044). These stops provide access to the public transport network, with routes to Salford, Bury Town Centre, and Manchester City Centre, all being available. Figure 7,

below, shows circled in green the location of these bus stops in close proximity to the site (application site shown with red pin).

**Figure 7 - Nearby bus stops providing access to the public transport network**



51. The site is therefore highly sustainable, and it should therefore be taken as read that at least some of the staff who would provide care at the property would use public transport to travel to work, again thereby reducing the demand for parking associated with the new use.
  
52. **‘Comings and goings’ as a result of the proposed use:** It is considered that the proposed use would not generate any disturbance which would be perceptible to the surrounding residents. As has been noted, any trips to and from the property during the day made by carers would be for ‘school runs’ and for other engagements which the residents needed to attend. This is the case under the current, established use. The only other trips to and from the property during the day would occur when the manager visited the site. These visits would not occur habitually, but only as required in order for them to perform their oversight and safeguarding duties. It is considered that ‘comings and goings’ of this level of intensity would be imperceptible to the surrounding residents, and would be broadly commensurate, in fact possibly less intensive, than the level of activity generated by a family living at a property of this size and with this number of bedrooms. The number of ‘comings and goings’ resulting from the proposed use would therefore not materially exceed that which would already be expected at this site, and would not result in any material harm to surrounding neighbour amenity or highway safety.

53. **Noise:** Similarly, it is considered that the proposed use would be highly unlikely to give rise to the emission of excessive noise from the property, above and beyond what would generally be expected of a family residence of this size. It is considered that any noise created either from within the property itself, or from the garden when being used for recreation in the warmer months, would not exceed that which would be created by a resident family under the current use. Indeed, the proposed use would be likely to generate less noise than is currently the case, on the basis that the children and young people would be supervised at all times by care staff when using the garden area. In terms of potential for noise disturbance, therefore, the proposed use would not be materially harmful, or even more noticeable, in comparison with the established use under the current level of occupancy.
54. On the basis that no more people would generally be present at the property under the proposed use than would be the case should it continue to be occupied by a large family, it is submitted that there would no additional potential for noise disturbance under the proposed use which would render the use materially different for planning purposes. Whilst, as has been explained, the property would continue to operate in all senses as a family household, it is the case that there would be stringent safeguarding measures and operating procedures in place, ‘behind the scenes’, which would minimise the potential for any noise emissions caused by the resident young people while they lived at the property. Indeed, the Ofsted guidelines which need to be met in a residential home of the type proposed require as much, and stress the need for care homes to be operated in an environment as close as possible to a conventional family home, as quoted in Paragraph 21, above.
55. The observance of those Ofsted guidelines would be mandatory under the proposed use, and would ensure that the behaviour of the resident young people would be strictly controlled and managed at all times, much the same as would be expected should young people continue to occupy the property, under the established use, whilst in the care of their parents. In addition, the manager who would occasionally look in on the property would, as a matter of procedure, be highly qualified and experienced in overseeing a home of this type, usually with at least ten years of experience in the role. On this basis, it is evident that there would in fact be no further risk or potential for noise disturbance to neighbours to arise under the proposed use, in comparison with the existing use, or an alternative use which could be undertaken, as a bona fide ‘permitted change’, under Use Class C3(b).

## Summary and conclusions

56. This application seeks confirmation from the LPA, via the issuing of a Lawful Development Certificate, that the proposed use of the property as a residential home, with no more than three young people living as a household and receiving care and support from no more than three specialised carers who would sleep at the property on a rota basis, would not represent a material change of use from its established use as a dwellinghouse under Use Class C3(a). In fact, the proposed use would be akin, both in nature and impact, to that of a residential household operating under Use Class C3(b). This being the case, it is submitted that the proposal would not require the express grant of planning consent.
57. Under the proposed use, the application property would be used to provide residential care for a maximum of three young people, who would receive daily care and support from carers with whom they shared a close relationship and deep rapport. Whilst the property would also be attended, occasionally, by a manager, this would be only be as required for monitoring and safeguarding purposes. The manager would be based off site in their office, and would perform all of their administrative tasks remotely from that location.
58. The LPA has already indicated, through its recent approval of planning applications 69169 (3 Sandown Road), 67556 (141 Ainsworth Road) and 69777/LDCP (14 Higher Lane), that the use of an existing C3(a) dwellinghouse, or in one case a C4 small HMO, as a small residential home, does not necessarily represent a material change of use in planning terms and, as such, will sometimes not require the grant of planning permission. The use proposed in this application would be less intensive than some of these similar proposals which have recently been judged to constitute a lawful use – a maximum of three residents would live and receive care at what is a substantial, five-bedroom property. This proposal would be likely to result in less people being present at the property at different times of the day than is currently the case, with no additional trips to and from the property being made. On this basis, the LPA is invited to apply a consistent judgment, and as such to grant a Certificate in relation to this proposal.
59. In light of the above submissions, the LPA is respectfully invited to approve this application and issue a Certificate of Lawful Development for a Proposed Use. This will enable the Applicant to continue their work providing support and care to young people in a safe, caring household environment, giving them a foundation from which they can go on to live happy and fulfilling lives in the community.

## CERTIFICATE OF LAWFUL USE OR DEVELOPMENT (PROPOSED)

**Town and Country Planning Act 1990: Section 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)  
Town and Country Planning (Development Management Procedure) Order  
2010: Article 35**

**To:**

Adrian Rose  
Rose Consulting  
16 Rhodesia Avenue  
Halifax  
HX30PB

**On Behalf Of:**

Zeeshan Chaudary  
Accord Care Homes Ltd  
28a Middle Hillgate  
Stockport  
SK1 3AY

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**Application Number:** 69169**Date of Registration:** 12/12/2022**First Schedule****Second Schedule**

Lawful development certificate for proposed use of a (C3a) dwelling for a children's home for a maximum of three children with three carers of whom two sleep overnight working on a rota basis (C2)

3 Sandown Road, Bury, BL9 8HN

Bury Metropolitan Borough Council hereby certifies that on 12/12/2022 the matter described in the First Schedule in respect of the land specified in the Second Schedule and edged red on the plan attached to this certificate is **Lawful Development** within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) as the proposed change of use of 3 Sandown Road, Bury, BL9 8HN to a children's home (Class C2) for up to 3 children with a maximum of 3 additional staff members with 2 of those staying overnight on a rota basis and operating in full accordance with the details set out within the applicants planning statement submitted 13th December 2022, would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

**Applicant Plan Numbers:**

Plans submitted 13/12/2022

**Notes to Applicant**

1. This certificate is issued solely for the purposes of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the matter described in the First Schedule and to the land specified in the Second Schedule was lawful, on the specified date and, thus, was not liable to enforcement action under section 172 of the 1990 Act on that date.
3. 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 development or use materially different from that described or which relate 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 TO APPLICANT**

Not Applicable

Signed:

A handwritten signature in black ink, appearing to read 'J. H. H.', is written over a dotted line.

.....  
On behalf of the Council

**Date of Decision:** 18/04/2023

### CERTIFICATE OF LAWFUL USE OR DEVELOPMENT (PROPOSED)

**Town and Country Planning Act 1990: Section 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)  
Town and Country Planning (Development Management Procedure) Order  
2010: Article 35**

**To:**

Mr John Cummins  
MTPC My Town Planning Consultancy  
9 Astley Hall Drive  
Ramsbottom  
Bury  
BL0 9DF

**On Behalf Of:**

Mr Rizwan Khan  
Inspire Care Group Limited  
95 Brompton Street  
Oldham  
OL4 1AQF

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**Application Number:** 67556

**Date of Registration:** 17/09/2021

**First Schedule**

**Second Schedule**

Lawful development certificate for proposed change of use of existing dwelling house (Class C3(a)) to a care home (Class C2) for 4 young adults (16-18 years old) with 1 non-resident carer

141 Ainsworth Road, Bury, BL8 2RT

Bury Metropolitan Borough Council hereby certifies that on 17/09/2021 the matter described in the First Schedule in respect of the land specified in the Second Schedule and edged red on the plan attached to this certificate is **Lawful Development** within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) as the proposed change of use of 141 Ainsworth Road, Bury, BL8 2RT, to a care home (Class C2) for up to 4 persons between the ages of 16 & 18 years with a maximum of 1 additional staff member staying overnight on a rota basis, would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

**Applicant Plan Numbers:**

**Notes to Applicant**

1. This certificate is issued solely for the purposes of Section 191/192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the matter described in the First Schedule and to the land specified in the Second Schedule was lawful, on the specified date and, thus, was not liable to enforcement action under section 172 of the 1990 Act on that date.
3. 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 development or use materially different from that described or

which relate 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 TO APPLICANT**

Not Applicable

Signed:

A handwritten signature in black ink, appearing to read 'Paul Harte', written over a dotted line.

.....  
On behalf of the Council

**Date of Decision:** 03/12/2021

# Appendix 3 - 14 Higher Lane Officer Report

## DELEGATED REPORT

|                                 |                                   |                                |
|---------------------------------|-----------------------------------|--------------------------------|
| <b>Report by</b> Sam Summers    | <b>Date of report:</b> 20/09/2023 | <b>Ref:</b> 69777/LDCP         |
| <b>Registration:</b> 18/07/2023 | <b>LDFC:</b>                      | <b>Expiry Date:</b> 12/09/2023 |
| <b>Site Visit:</b>              | <b>Site Notice:</b> N/A           | <b>Press Date:</b> N/A         |
| <b>Objections:</b>              | <b>Con Area:</b> N/A              | <b>Adv Type:</b> N/A           |
| <b>Reason for Delay:</b><br>N/A |                                   | <b>EIA:</b> NA                 |
|                                 |                                   | <b>Dec Level:</b> DEL          |
|                                 |                                   | <b>Stat Class:</b> NREQ        |

**Proposal:** Lawful development certificate for proposed change of use from HMO (Class C4) to residential care home (Class C2)

**Location:** 14 Higher Lane, Whitefield, Manchester, M45 7FY

### **Description**

An application for a Certificate of Lawful Development under Section 192 for the proposed change of use of a dwellinghouse (Use Class C3(a)) to a children's care home (Class C2) for up to 2 children aged 8-16 with up to two staff living-in working on a shift pattern. The care staff would work on a rota basis and would not be permanently resident. Effectively, therefore, the property will be occupied as a single household with two adults and two young people.

### **Relevant Planning History**

None

### **Publicity**

None

### **Statutory/Non-Statutory Consultations**

None

**Pre-start Conditions** - None

### **Unitary Development Plan and Policies**

### **Issues and Analysis**

Applications for lawful development must be determined by planning law, fact and any other relevant judicial authority. In this case the planning law is the Town and Country Planning Act 1990 and the Use Classes Order 1987. The relevant judicial authority in this case is the judgement in North Devon District Council v. First Secretary of State [2003] EWHC 157 (Admin).

In North Devon the question was to look at was:

Use Classes Order; Dwellinghouse used as home for children in care; Care provided by staff on rota basis; Town and Country Planning (Use Classes) Order 1987; Whether residents living together as single household; Whether use falling within Class C2 or C3; Whether material change of use.

In the case that was subject of the appeal (North Devon) S Ltd used a house to provide residential care for two children. The house comprised a small downstairs office, individual bedrooms, and the usual kitchen and bathroom facilities. Two non-resident staff were on

duty at all times and the house was under the supervision of a team of six or seven adult carers, who attended on a rota basis. A question arose over whether the use required planning permission, and S Ltd applied, under section 191 of the Town and Country Planning Act 1990, for a certificate of lawful use. This was refused by the local council. On appeal, the inspector concluded that S Ltd was entitled to a certificate of lawful use because no material change of use had occurred. The council appealed that decision. In issue was the meaning of Classes C2 and C3 of the Use Classes Order 1987.

In North Devon it was ruled that for up to 6 persons living as a single household where care is provided caring staff must be permanently resident. It says:

"The concept of living together as a household presupposes a proper functioning household. In the context of a case such as this, that requires the children and a carer to reside in the premises, otherwise the use clearly falls within Class C2. It is apparent that the size of the institution is irrelevant for the purposes of C2, but if it falls within that definition, it is not to be regarded as a dwellinghouse. The inspector had been wrong to regard the use in this case as falling within C3(b) rather than C2. Class C3 does require at least one carer, together with those being cared for, to reside at the premises. The inspector had correctly decided that no material change of use had taken place. The use for a maximum of two children, with care provided by up to two non-resident staff at these premises, and only at these premises, was, in the circumstances, a lawful use".

In this application for lawful development the proposal for carers to be non-resident, in accordance with regard to the judicial authority, places the proposed use within Use Class C2 - Care Homes.

The other question in this application is whether or not the change of use constitutes a material change of use within the meaning of Section 55 of The Town and Country Planning Act 1990.

The judgement reiterated that case law had established that whether or not a material change of use had taken place was a question of fact and degree. The residing of up to 2 children aged 8-16 with up to 2 carers on a rota basis, no more than 4 people in total, is considered not to constitute a material change of use after taking into account the following factors. The size of the household of 2 8-16 year olds and 2 adults would not go beyond what would be expected of a standard family unit in a two storey detached dwellinghouse. The movements of the occupiers of the property would not go beyond what would be expected of a family unit. Each member of the household will have their own bedroom and will share all other domestic facilities within the property such as the bathroom, kitchen, lounge and garden. There is onsite parking at the rear of the building and also on street parking available on nearby side streets. There is expected to be a visit from a social worker once every 4-6 weeks in the early stages of a child's placement but this is expected to reduce to once every 2 months when the child has settled into the home, there is expected to be 1 visit every fortnight from other supporting professionals but the frequency of visits in total is not any more than one could expect from a family home.

As such the change of use would not alter the character of the immediate vicinity, either by alteration of the building or by any increase in noise or disturbance or have any more significant impact on the residential amenity of nearby occupiers. As such the change of use does fall into the different use class of C2 - care homes, but does not constitute a material change of use from residential occupation. Therefore the proposed change of use would be lawful.

**Recommendation:** LAWFUL

**Conditions and Reasons:**

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) as the proposed change of use of 67 Hunstanton Drive, Bury, BL8 1XH to a residential children's home for three children with up to two staff working on a rota basis (Class C2) and operating in full accordance with the details set out within the applicants planning statement submitted 15th June 2023, would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

| <u>Case Officer</u> | <u>Date</u> | <u>Sign off Officer</u> | <u>Date</u> |
|---------------------|-------------|-------------------------|-------------|
| SS                  | 20/09/2023  |                         |             |