



Land | Planning | Development

Planning Statement

Lawful Development Certificate for the Proposed Use of a Dwellinghouse (Use Class C3 (a)) as a Residential Children's Home for up to two children.

254 Heywood Road, Manchester. M25 2GR.

January 2025

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1. Introduction

1.1 Purpose of the Statement

The purpose of this statement is to support a Lawful Development Certificate application for the proposed use of an existing dwellinghouse (Use Class C3 (a)) as a residential children's home for up to two children. It demonstrates that the proposed use of the property is lawful, as there will be no material change of use.

1.2 Authorship

This report has been prepared by Chris Smyton BSc (Hons) MA, MRTPI.

2. Site and Context

2.1 Site and Surroundings

The application site, No 254 Heywood Road, is an existing two-storey semi-detached dwellinghouse located in a residential area. The property benefits from a shared living room, dining room, kitchen, WC/ utility room, snug, hall and entrance porch on the ground floor. Upstairs, there are 4 bedrooms and a shared bathroom. The dwelling has a front block paved forecourt with parking space for at least two cars, enclosed by a fence. It has an enclosed rear garden with shed.

On-street car parking is also available on Heywood Road.

Figure 1. Site Location Plan, Hunter & Belle.

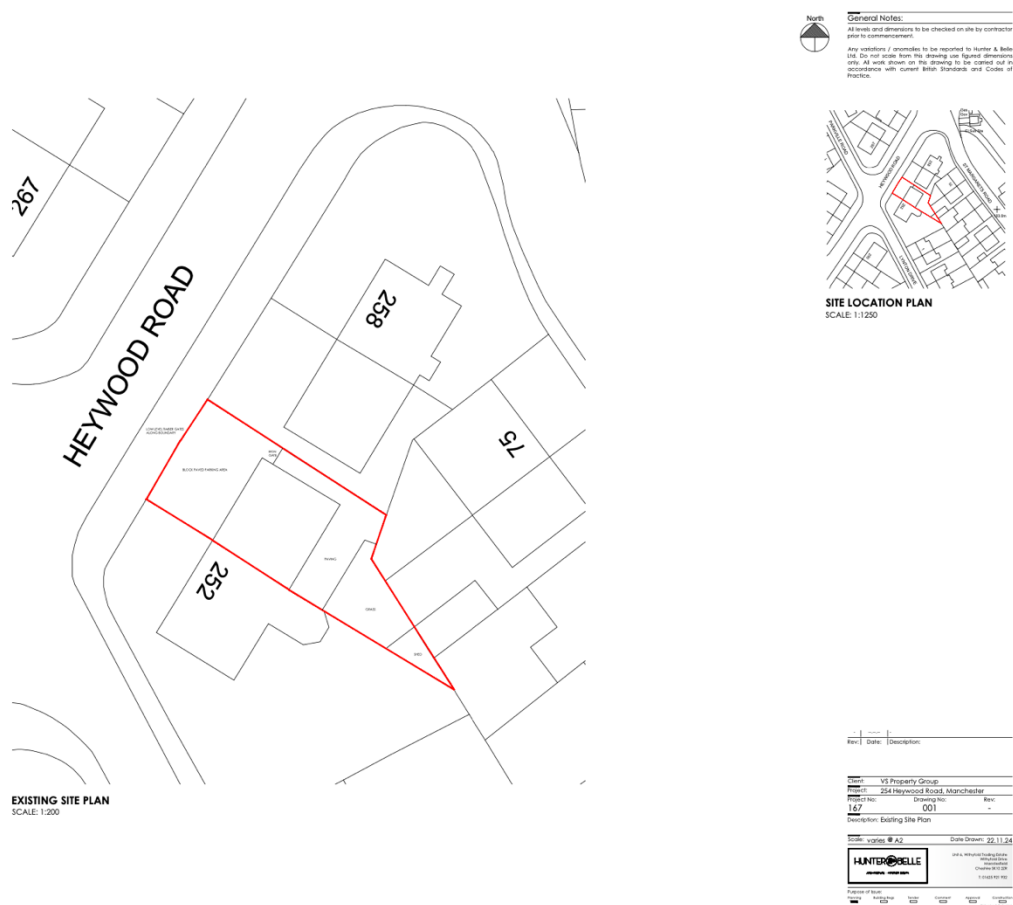


Figure 2. Photographs of the Application Site, Google Earth.



2.2 Planning History

- Reference 68168: First floor extension at rear; bay window extension at front and loft conversion / rear dormer extension; granted 16th June 2022.

- Reference 96/32104: Replace flat roof with pitched roof at sides; granted 19th June 1996.

3. Details of the Application

The applicant seeks a Lawful Development Certificate for the proposed use of an existing dwellinghouse (Use Class C3 (a)) as a residential children's home for up to two children.

3.1 How the Home will Operate

There will be a maximum of two children at the home at any one time, as their sole residence. The age ranges of the children will be from 8 to 18 years (this would be 1 day before their 18th birthday), although the average age is expected to be around 12 to 16 years. The children will be placed at the property by the Council

There will be a maximum of two care staff at the home each day and night. This consists of one sleep-in member of staff and one waking-night member of staff. The sleep-in member will complete a 2 on 4 off shift pattern, on day one working from 10:00am - 23:00pm and on day two from 08.00am – 23.00. The waking night member of staff will work from 23.00pm – 10.00am each night.

It will operate and promote lifestyles which would be the same as if the residents lived in a family home. The staff will support all children with day-to-day tasks as a parent would do with their own children, and they will interact with children in a similar way.

Children will be taken to and brought home from school or college by the carer (or in specific cases, where mainstream school attendance is not possible due to negative experiences, education will be provided through Virtual Schools), and they will share outings such as trips to the shops, Alton Towers and firework displays. They will be actively encouraged and supported to do their homework, experience a variety of activities and pursue different interests and hobbies.

All facilities, other than bedrooms, will be shared and the residents will be able to make their own meals (depending on their age) or have shared meals together.

The children will have been assessed as presenting with concerns relating to social and emotional behavior, but they will still live communally, interact with each other or their carers and be capable of forming friendship bonds.

The home will have expected boundaries for behaviour that placed children will be aware of. There is the clear expectation that these boundaries will be met, and if this is not the case sanctions will be applied. These might include informal measures such as restorative work and guidance as a first option, followed by restricted internet access, the payment of a reasonable sum by way of reparation or the removal of free time.

It will not provide emergency rest bite facilities. It is for long-term stable placements, and will be a home for children to invest in. The intention is to provide settled placements where children stay for 3 - 4 years. The applicant's last provision (in a different home) was for 4 children, of which one child was there for 6 years, two for 4 years and another for 1 year.

The number of visits to the property from carers and others will be low. In addition to the carers, property visits will include:

- Responsible individual: 1 x visit per month (Average 1 full day visit)
- Regulation 44 inspector: 1 x visit per month (Average 3 hour visit)
- Social worker: 1 x every 6 weeks (average 1 hour visit)
- Ofsted inspectors: 1 x year (2 full days inspection)
- Psychotherapist: 1 x every two weeks (for 3 hours)

A home manager may be present at the property between 09:00am - 17:00pm Monday to Friday, although their time will be split between the application property, working from home for two to three days per week and supporting a second home elsewhere.

Driving lessons will be supported once children turn 17, however placed children will not have their own cars or the facility to drive.

Locks will be provided on bedroom doors as these are required by law under The Children's Homes (England) Regulations 2015. For clarity the children will have a key to their own bedroom, these are not locks to imprison a child. The lockable doors are for privacy, to prevent another child from entering their rooms un-authorised and to keep their personal belongings safe. Care workers will have room keys, however they will not access a child's bedroom without their knowledge or consent unless the child has gone missing from home or there are concerns for safety. The front door and back door will have thumb turn locks so that age-appropriate children may leave of their own free will.

Door alarms will be provided and are a safeguarding measure that must be approved by a social worker. These are usually only in operation at night-time and are kept under regular review. They are so staff are aware of a child's movements (such as going into each other's rooms or leaving the property).

No physical alterations are proposed to the exterior of the property.

The home will be required to be registered with OFSTED.

Figure 3. Proposed site plan, Hunter & Belle

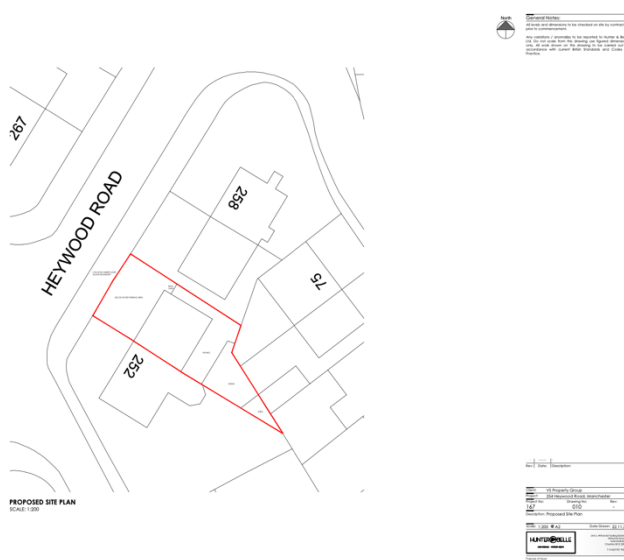


Figure 4: Existing Plans and Elevations, Hunter & Belle



Figure 5: Proposed Plans and Elevations, Hunter & Belle



4. Legal Framework

4.1 The Town and Country Planning Act 1990

Under Section 192 of The Town and Country Planning Act 1990, a Local Planning Authority (LPA) can grant a certificate confirming that a proposed use of buildings or other land would be lawful for planning purposes. The statutory framework covering “lawfulness” for lawful development certificates is set out in Section 191(2). In summary, lawful development comprises development for which planning permission is not required. This might include, inter alia, changes of use permitted by the Town and country Planning (Use Classes) Order 1987 (as amended), or instances where the alteration from one use to another does not amount to a material change of use requiring planning permission. Section 55 (1) defines development as being *“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”*.

The LPA must consider, on the facts of the case and relevant planning law, whether the proposed use of the application site would be lawful. If the LPA is satisfied that the use described in the application would be lawful if instituted or begun at the time of the application, they should issue a certificate to that effect. Planning merits are not relevant at any stage to the consideration of a Lawful Development Certificate application.

4.2 The Town and country Planning (Use Classes) Order 1987 (as amended)

The Town and country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. 'Change of use' can occur within the same Use Class, or in specific cases from one Use Class to another, without the need for planning permission. The Use Classes relevant to this application are C3 'Dwellinghouses' and C2 'Residential Institutions'.

Use Class C3 Dwellinghouses includes:

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).

Use Class C2. Residential institutions includes:

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

4.3 Legal Precedents

Blackpool Borough Council Secretary of State for the Environment [1980] 40 P&CR 104

This concerned a four-bedroom townhouse in Blackpool whose owner had acquired it as an investment and ultimate retirement home, but also used it for holidays. Holidays were taken by himself and his family, but also friends or employees, and it was let out commercially when not required by them. Commercial lettings occurred for about 10 of the 18 weeks between June and the end of October. The premises were left empty for eight months in the year. The Council served an enforcement notice alleging an unauthorised material change of use from private dwelling house to use for holiday lettings on a commercial basis.

The Divisional Court upheld the planning inspector's decision to overturn the enforcement notice. Ackner LJ and Jupp J both emphasised that not every residential use of a dwelling house was necessarily use as a private dwelling house. They found that the Inspector had been entitled to conclude as matter of fact that the character of the house in question had not changed. The house was not constantly being let in short holiday lettings and its character had not been changed by the succession of occupiers.

Gravesham Borough Council v Secretary of State for the Environment (1982)

P&CR 142

McCulloch J in the High Court was required to consider the definition of a dwellinghouse. Not every case was to be determined by having regard only or even primarily to the use to which the building was in fact put, nor was the duration or frequency of the user always relevant, and in general little if anything turned on it. The issue was one of fact.

He held that a distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons, or if it was under commercial management for holiday or other temporary lettings.

Moore v SSE and New Forest District Council [1999] 77 P&CR 114

The outbuildings of a large Edwardian country house were converted into 10 self-contained units of residential accommodation for the purpose of holiday lettings in the New Forest. The planning inspector did not regard the units as single dwellinghouses because they were not occupied as permanent homes. The Court of Appeal held, following Gravesham, that there was no such requirement. Nor did dwellinghouses cease to be used as such because they were managed as a whole for the commercial purpose of holiday or other temporary lettings. Had the correct test been applied, the inspector could only have properly concluded that the 10 units were being used as single dwellinghouses.

R(Hossack) v Kettering BC [2002] EWCA Civ.886

This overturned an earlier High Court finding that three adjoining houses operated by the English Churches Housing Group (ECHG) to provide accommodation and support for people in need had operated as a “hostel” use falling within Class C2. The kernel of the judgment by Mr Justice Lightman was that people coming to a house with only a common need for

accommodation and support did not necessarily fail to enjoy a relationship which would enable them to be regarded as living in a single household. This would apply whether or not they came as a pre-formed group or for a pre-determined period.

The decision made two important points. Firstly, that in the Use Class Order Class C3 was intended to include small community care homes consisting of up to 6 residents *“living together under arrangements for providing care and support within the community”*. The second point was that by setting the C3 (b) limit to 6 residents it was more likely they were living together as a single household than if there were more than six.

North Devon District Council v First Secretary of State and Stokes [2004]
EWHC 578 (Admin)

This sought to quash the decision of an Inspector to grant an LDC. This was for the use of a semi-detached three bedroom house within Use Class C3 for the residential care of two children. Only the children would live permanently on the premises, with the carers being resident elsewhere and providing care on a shift rota system.

The Inspector had concluded, with reference to *R v Bromley London Borough Council ex parte Sinclair* [1991] 3 PLR60 in which it was accepted that staff providing care need not themselves be resident, that *“...the use is within the constraints of Class 3(b)...; namely the use as a dwellinghouse by not more than six residents living together as a single household”*. In summary, it was his view that carers need not be resident carers and that provided they were present on the premises they can be regarded to be part of the household. Consequently, he granted an LDC for *‘The use of the premises as a dwelling house providing care for up to two children living together as a single household with care provided by up to two non-resident staff’*.

With regard to the Inspector’s decision which followed the *Sinclair* authority, Mr Justice Collins stated *“I...cannot agree with that approach. It seems to me that the concept of living together as a household means that...a proper functioning household must exist and, in a case such as this, that must mean that children and a carer must reside on the premises.*

Otherwise, as it seems to me, it clearly falls within Class C2”; Use Class C2 being for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses). It was also determined that “notwithstanding that this (appeal site) may fall within Class C2 rather than C3, nonetheless planning permission may not be required if the change of use was not a material change of use.....It will only be material if, as a matter of fact degree in the circumstances of an individual case, the change of use was material”.

On the facts of the case, it was ruled that the Inspector was correct to decide that the use of the property for up to two children, with care provided by up to two non-resident staff (Use Class C2), was not a material change of use from a dwellinghouse (Use Class C3). It was therefore a lawful use that did not require planning permission.

Crawley BC vs SSETR [2004] EWHC 160 (Admin)

Crawley Borough Council challenged the decision of an Inspector to allow an appeal against the refusal of an LDC. This was for the proposed use of the premises for the occupation of four people with learning difficulties living as a single household. There were carers present 24 hours a day on a shift based system. The carers did not reside at the property permanently.

Mr Justice Richards considered that whether a use falls within C3 (b) depends on the specifics of the case and that it *‘was possible for residents receiving care to constitute a single household even if that care was full time’*. The Judge rejected the assertion that the carers had to permanently reside in the home for C3 to apply. This case highlighted that both the level of care and the living arrangements (single household or not) are relevant to C3 (b).

It considered the North Devon Case and found that it should not be taken as setting down a principle. Each case should be considered on its merits, noting that if carers were not resident there remained a perfectly sensible question whether those resident (those in receipt of care) themselves constituted a single household.

4.4 Relevant Appeal Decisions

Appeal Ref: APP/C4235/X/20/3244329. Decision date: 07th December 2020.

72 Oakdale Drive, Heald Green, Cheadle SK8 3SW

<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3244329>

A certificate of lawful use or development was sought as a home for up to three children or young people aged between 7 to 15 years with two full-time resident carers sleeping overnight and living together as a single household.

In granting the Certificate, the Inspector concluded:

- Subsequent case law [Crawley BC vs SSETR [2004] EWHC 160 (Admin)] considered the North Devon case and found that it should not be taken as setting down a principle. Each case should be considered on its merits, noting that if carers are not resident there remains a perfectly sensible question whether those who are resident and in receipt of care themselves constitute a single household.
- The subsequent case which reviewed *North Devon* added, '*I would reject any suggestion that in a case where care is needed for those under a disability, Class C3 can apply only if the carers are in residence in the same property as those for whom they are caring. That would seem to me to run counter to the language of Class C3 itself and to the underlying policy*'. The non-resident carers come in to help, and there is no indication other than to say that the extent of care would be low level and would not fall within the category of care associated with a Class C2 use.
- The resident children who were 15 years old or younger would be assisted with their daily lives and require supervision, structure and guidance to develop and progress to self-sufficiency. This level of care on the available evidence was low level. Non-resident carers assisted the resident carer in his duties as the head of the household. The number of visits by the non-resident care worker would be four over

a seven-day period. The number of social worker/clinician visits would be four a week. The low frequency of shift changes and other visits would not alter the character balance of the use and the way its occupants interacted with one and another as a single household.

- In all, given the level of care involved, the low frequency of visits by non-resident carers who stay overnight and work a shift pattern with the resident carer who guides and look after the resident children, the proposed use would constitute a single household. On the available evidence that the proposed use would fall within use class C3 (b).

Appeal Reference APP/M4320/X/22/3300634. Decision date: 13th December 2022. 19 Winstanley Road, Waterloo, Liverpool L22 4QN
<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3300634>

A certificate of lawful use or development was sought for the proposed change of use from a dwellinghouse (Class C3) to a children's home (Class C2). No more than two children would be resident at any one time along with their two staff carers. A manager could also be at the premises during the daytime on weekdays. The only time when there would normally be more staff was during the handover between shifts, which would take place every two days. It was also anticipated that there could be one or two visits from social workers or other professionals each week.

In granting the Certificate, and issuing an award of costs against Sefton Metropolitan Borough Council for unreasonable behaviour, the Inspector concluded:

- The Use Classes Order specifies classes for the purposes of Section 55(2)(f) of the 1990 Act, which provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class. However, the Use Classes Order should not be interpreted as meaning that some change between use classes is necessarily development within the meaning of Section 55(1) of the 1990 Act. The key issue is whether the change is 'material'.

- For the vast majority of the time there would be a maximum of four persons present on site (two children and two adults). There would be comings and goings to and from school, and at staff handover times, plus social, recreational and other outings. However, this would not be materially different from the number or pattern that would be reasonably expected with a family of four carrying out their day-to-day activities. While there would be additional visits from other professionals, this would likely be comparable with social visits from friends and family associated with a household of four.
- The parking demand generated by the proposed use was likely to be higher than it would be typical for a dwellinghouse. However, the increase would not be significant given the proposed number of resident children and the consequent number of carers and professional visits. In addition, the area was relatively well-served by public transport and so parking demand might not be as high as the Council envisaged. The use would not have a material impact on its surroundings in this respect.
- As a matter of fact and degree, the scale of the proposed use would not reach the point where it would give rise to such materially different planning circumstances that it would result in such a change in the definable character of the use that it would amount to a material change of use. No express planning permission would be required for the change of use, and it would have been lawful had it been instituted on the date of the application.

Appeal Ref: APP/Z5060/C/18/3214506: Decision date: 10th May 2019

Land at 316 Westrow Drive, Barking, IG11 9BX

<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3214506>

An appeal was made against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham. The breach of planning control alleged in the notice was the unauthorised material change of use of a single-family dwelling house to a residential care home (C2 use class) without planning permission. On allowing the appeal and quashing the enforcement notice, the Inspector concluded:

- The ages of the residents were not known, but as they were described as looked-after young people needing assistance to live independently they were considered to be young adults. In order to form a household for the purposes of Class C3 (b) the persons who live together need not be related as family members.
- There was no reason to doubt the Appellant when he explained that support workers on site were not resident and mainly assisted residents in day to day tasks rather than undertaking such tasks on their behalf.
- The property was laid out as one would expect for a family home, with bedrooms and shared communal areas with one room dedicated as an office for support workers.
- The Appellant referred to locks on bedroom doors to provide privacy and security, and there was CCTV at the property, but this was not determinative of whether the residents formed a single household.
- There was nothing to suggest that the layout of and facilities in the buildings were significantly different to a C3 (b) building.
- The Council referred to the fact that residents were placed there as individuals through referrals by councils, but this did not mean that they could not form a single household.
- The residents lived communally, sharing shopping and cooking, and formed friendship bonds.
- There was no evidence to suggest that the needs of the young adults residing at the property were such that they were not capable of running a household themselves, albeit with some support. The Council's assertion that the level of care had the characteristics of a C2 use was not accepted, with the use more accurately described on the evidence presented as supported living.

- The Appellant's evidence did not need to be independently corroborated in order to be believed, and there was nothing in the Council's submissions that casted any serious doubt on the Appellant's description of the use of the site. It was found, as a matter of fact and degree, that the care provided to the residents fell within the meaning of use class C3 (b).

5. Assessment

It is maintained that the proposed use falls within Class C3 (b) of The Town and Country Planning Act 1990 (as amended), or if not it must fall within Use Class C2. In either case, however, planning permission is not required as there will be no material change of use.

To establish whether there is a material difference, a comparison between the existing lawful use and the proposed use of the property must be considered. Although there is no statutory definition of 'material change of use' it is linked to the significance of a change and the resulting impact on the use of land and buildings. Differences which might be considered to be material are those which are measurable or quantifiable as resulting in a significant or substantial change in the character or impact of a use. Whether a material change of use would occur is a matter of fact and degree, and this is determined on the merits of a case. Further guidance on whether a change of use of land or buildings requires planning permission is included in the government's Planning Practice Guidance:

"When does a change of use require planning permission?"

A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.

Paragraph: 011 Reference ID: 13-011-20140306

Revision date: 06 03 2014"

The property comprises a shared living room, dining room, kitchen, WC/ utility room, snug, hall and entrance porch on the ground floor. Upstairs, there are 4 bedrooms and a shared bathroom. The dwelling has a front block paved forecourt with parking space for at least two cars, enclosed by a fence. It has an enclosed rear garden with shed. As shown on the proposed plans, this arrangement will not change (other than one of the bedrooms will become an office). There is no limit on the size of a 'family' that can occupy a

dwellinghouse, and it could already be used to accommodate at least two adults and three children and more family members if they shared a room and it met the definition of a dwellinghouse under Class C3 (a) of The Town and Country Planning (Use Classes) order (as amended). Furthermore, under Class C3 (b) it could be occupied by up to 6 residents living together as a single household and this could include an arrangement where the residents are provided with care. The use of a dwellinghouse under Class C3 could therefore bring with it considerable activity and vehicle movements. While there might be identifiable differences between proposed and existing uses, these would not be 'material' or easily measurable and quantifiable against the flexible characteristics and impacts of a lawful dwellinghouse. It was established in *R (Hossacks) v Kettering BC* (2002) EWCA Civ 886 that *'the limit in class C3 to no more than six persons is an important consideration as with no more than that number, it would be more likely that a person would be living as part of a single household than if it were significantly more than six; the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy would be likely to be and more likely they are to be regarded as a single household.'* It was also confirmed that Use Class C3 is intended to include small community care homes consisting of up to 6 residents *"living together under arrangements for providing care and support within the community"*. The proposed use of the property is for up to two children and two carers living together as a single household.

For a C3 use to apply, the courts have provided some assistance in determining the significance of there being an arrangement where the occupants have generally only a limited period of stay or if carers have to reside permanently in a home. Cases such as *Blackpool BC v Secretary of State for the Environment* [1980] and *Moore v Secretary of State for the Environment* [1998], where houses were used for holiday lettings on a limited basis, established that this did not necessarily amount to a material change of use from a dwellinghouse within Use Class C3. Following *Gravesend BC v Secretary of State for the Environment* [1982], the court accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons, or if it was under commercial management for holiday or other temporary lettings. In *Crawley BC vs SSETR* [2004] the assertion that the carers had to permanently reside in a

home for C3 to apply was rejected.

The proposed home will not provide emergency rest bite facilities. It is for long-term stable placements, and will be a home for children to invest in. The intention is to provide settled placements where children stay for 3 - 4 years. The proposed use will operate in a way that is very similar to a normal family home, and it will afford to those who use it the facilities required for day-to-day private domestic existence. All facilities, other than bedrooms, will be shared and the residents will be able to make their own meals (depending on their age) or have shared meals together.

Children will be taken to and brought home from school or college by the carer (or in specific cases, where mainstream school attendance is not possible due to negative experiences, education will be provided through Virtual Schools), and they will share outings such as trips to the shops, Alton Towers and firework displays. They will be actively encouraged and supported to do their homework, and experience a variety of activities and pursue different interests and hobbies. The children will have been assessed as presenting with concerns relating to social and emotional behavior, hence the need for the placement, but they will still live communally, interact with each other or their carers and be capable of forming friendship bonds. Furthermore, although staff will not be full time residents they will support all children with day-to-day tasks as a parent would do with their own children in their own home, and they will interact with children in a similar way.

The prevailing character of the proposed use would be that of a small number of children living together and using the property in a way similar to that of a family home, where they would be supervised and cared for by adult guardians.

Locks will be provided on bedroom doors as these are required by law under The Children's Homes (England) Regulations 2015, and the doors will be alarmed for safeguarding purposes. However, as was established in the planning appeal for the land at Land at 316 Westrow Drive, Barking, IG11 9BX (Appeal Ref: APP/Z5060/C/18/3214506) locks on bedroom doors to provide privacy and security, and the need CCTV at a property, are not determinative of whether residents form a single household. There is also nothing to suggest that the proposed layout of and facilities in this building will be significantly

different to a Use Class C3 building.

There will be some vehicle movements associated with carers coming to and going from the site in accordance with their shift patterns, and Use Class C3 (b) includes a household where care is provided for residents. This could already result in an undetermined number of visits to the property by care professionals, and for the proposed use the number of visits to the property by carers and others will be low. It will not be significantly more than the number that could be undertaken by a family, and certainly not enough to result in a level of intensification in the use of the site that would give rise to concerns from a planning point of view. In addition to the carers, property visits will include:

Responsible individual: 1 x visit per month (Average 1 full day visit)

Regulation 44 inspector: 1 x visit per month (Average 3 hour visit)

Social worker : 1 x every 6 weeks (average 1 hour visit)

Ofsted inspectors: 1 x year (2 full days inspection)

Psychotherapist: 1 x every two weeks (for 3 hours)

The internal use of the building, and any associated activity within its rear garden area or outside, would be indiscernible from that which could already occur or take place within it or any other similar property in the street. The proposed use for up to two children and their carers would not be materially different to the existing lawful use of the site by a typical residential household. It will not give rise to greater levels of noise and disturbance than could arise from the existing authorised residential use.

Even if the LPA determines that the proposed use falls within Use Class C2 as opposed to Class C3, the judgment in *North Devon District Council v First Secretary of State and Stokes* [2004] is relevant. It established that that the use of a dwellinghouse within Use Class C3 for up to two children, with care provided by up to two non-resident staff (Use Class C2), need not amount to a material change of use requiring planning permission. In the current case it is also clear that the use of the dwellinghouse for up to two children, with care provided by up to two non-resident staff, will not be materially different to the existing use or a typical household. As with the North Devon case, the change of use will not be material in planning terms and therefore planning permission is not required.

6. Conclusion

It is contended that the proposed use falls within Class C3 (b) of The Town and Country Planning Act 1990 (as amended), or if not it must fall within Use Class C2. As the existing property falls within Use Class C3 (a), a change of use to Class C3 (b) would not amount to development in accordance with section 55(2)(f) of the Town and Country Planning Act 1990. If it falls within Class C2 it is maintained that in planning terms there is no material difference between the proposed use and a typical C3 (a) or C3 (b) household. In either case, planning permission is not required as there will be no material change of use.

Planning permission is not required for the proposed use that could lawfully take place from the application site, and the Lawful Development Certificate should be granted.

7. Contact



Land | Planning | Development

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