



PLANNING STATEMENT

223 AINSWORTH ROAD, BURY, BL8 2SQ

Application for Lawful Development Certificate re: use
of a dwelling (C3a) as a children's home for a
maximum of one child



1. Introduction

This statement has been prepared on behalf of SAFESPACE4U Ltd to change the use of 223 Ainsworth Road from a C3a use, to a C2 children's care home for a maximum of one young child aged between 7 and 17 years old with 24-hour care provided by two carers sleeping overnight on a rota basis.

This statement should be read in conjunction with the submitted plans and application form, which together make up the Lawful development Certificate application.

The aim of this Planning Statement is to provide details of the Existing and Proposed Use of the building, and to demonstrate how the proposed use would not result in any material change to the character and appearance of the building, or indeed no material change to the nature of the current use of the building, making reference to relevant appeal decisions where appropriate, which are material to the determination of the application.

This Planning Application is supported by the following information and documentation:

- Existing and Proposed Plans
 - Planning Statement
 - Appendix 1 North Devon District Council v The First Secretary of State [2003] EWHC 157 Admin
 - Appendix 2 Joint Ministerial Statement
 - Appendix 3 9 Whitburn Road, London SE13 7UQ
(Appeal Ref: APP/C5690/X/22/3299351)
 - Appendix 4 9 Winstanley Road, Waterloo, Liverpool, L22 4QN
(Appeal Ref: APP/M4320/X/22/3300633)
 - Appendix 5 604 Didsbury Road, Heaton Mersey, Stockport, SK4 3AG (Appeal Ref: APP/C4235/W/17/3173975)
 - Appendix 6 'The Cottage', Stonebridge Green Road, Egerton, Ashford, TN27 9AP
(Appeal Ref: APP/E2205/X/16/3161037)
 - Appendix 7 Certificate of Lawfulness Application Number 71590
 - Appendix 8 Certificate of Lawfulness Application Number 71562
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2. Application Site

The application site is a one storey three-bedroom semi-detached house situated on Hayfield Road. There is hard standing to the front of the property suitable for off road parking suitable for off road parking with a garden to the rear. The area is residential in character.

There are no parking restrictions on Ainsworth Road and there are bus stops in close proximity, on Ainsworth Road itself.

The current residential property has been occupied as a single-family unit C3a since its construction

As detailed on the existing plans, the ground floor that comprises of a Lounge, Kitchen, 3 No. Bedrooms and a shared Bathroom.

3. Proposed Development

The application seeks to establish that the existing property can be used for the care of a maximum of one child between the ages of 7 and 17, with 24-hour supervision, without the need for planning permission to be granted, on the basis that the proposed use is lawful.

The proposal will involve the young person being looked after by carers, drawn from a small pool of staff assigned to the dwelling (6 people), operating on a shift basis and supported by one manager. There would usually be no more than 2 carers present during the daytime and no more than 2 carers present overnight.

There will be 2 carers per day doing a day and night shift (same staff members)- Shift pattern is 8 am start - 10 pm (10 pm-8 am sleep) this will be done by the same 2 carers who are in the day sleeping over. Carers shifts will be 2 days on 4 days off so the same staff will be there consistently for two days.

Typical Weekly Rota							
	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Staff	Start/End	Start/End	Start/End	Start/End	Start/End	Start/End	Start/End
Employee 1	8am		8am				8am
Employee 2	8am		8am				8am
Employee 3			8am		8am		
Employee 4			8am		8am		
Employee 5					8am		8am
Employee 6					8am		8am

There will be more carers present during shift change overs, but this will only be for a limited time. Changeover will take place at 8am.

There would be a registered manager assigned to the property who would visit the property on an ad-hoc basis between 9am-5pm Monday to Friday. The manager would not work out of the property full time and would be assigned to other care homes also.

There would also be a "responsible individual" assigned to the property. The RI would oversee management and ensure the care home is safe, well run and complies with regulations. They are responsible for leading and managing the care home to ensure it meets the needs of individual, safeguards and promotes well-being and the development of the child. The RI would visit the property 1 - 2 times a month.

The carers would be directly responsible for the care and welfare of the young person, supporting them in their daily routine. Any additional visits, such as by a social worker or other professionals, would take place during normal working hours and are likely to be monthly not daily and would not lead to more activity than a single household with visiting friends and family.

The staff will be from a small pool so they would be familiar faces. The relationship between the staff and the children will be different to a parent/child relationship, nevertheless the carers would cook, clean, ferry the child around and care for them, such that the difference would not be suitably noticeable or materially different from the existing pattern of activity at the property of exhibited by a traditional small family.

The whole ambience of the home encourages a feeling of warmth, stability, and security. The home interior has been carefully planned to give privacy but also enable young people to experience a safe and homely environment.

The purpose of the home would be to support the children to build their confidence, help them in developing life skills and prepare them for adult life when they leave the home. This type of support has been found to be most effective in helping these children to have normal lives and not experience problems in later life.

There is off road parking spaces at the property and there is also plenty of unrestricted, street parking such that adult staff and visitors, likely to be present at any one time, can easily be accommodated without any impact on the immediate character of the area. It is also the company policy to encourage staff to use public transport or cycle to work.

There are no physical changes proposed to the external appearance of the property meaning it will retain the appearance of standard family home.

As shown on the submitted Proposed Floor Plans, the Children's Home would see the communal rooms at ground floor and first floor be used in the same way as a family dwelling with the exception being the allocation of two of the bedrooms for staff.

The aim of the care home is to provide a stable home environment for the occupants. The applicant has confirmed any child that resides at the property is likely to be there long-term, which could be several years and/or until they reach adulthood as opposed to being a temporary passing.

4. Planning Legislation

Use Classes Order

The Town and Country Planning (Use Classes) Order 1987 (as amended) ('the Use Classes Order') puts uses of land and buildings into various categories, known as 'Use Classes'. Use Class C2 regards Residential Institutions, which are defined as:

- 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

Class C3 – Dwellinghouses – is defined as the following:

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)

Town and Country Planning Act

Section 192 of the Town and Country Planning Act 1990 relates to Certificates of Lawfulness for proposed use or development, and states the following:

- 1) If any person wishes to ascertain whether –
 - a. Any proposed use of buildings or other land, or
 - b. Any operations proposed to be carried out in, on, over or under land would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operation in question.
 - 2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect, and in any other case they shall refuse the application
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3) A certificate under this section shall –

- a. *Specify the land to which it relates;*
- b. *Describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under Section 55(2)(f), identifying it by reference to that class);*
- c. *Give the reasons for determining the use or operations to be lawful, and*
- d. *Specify the date of the application for the certificate*

4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a **material change**, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness. (My Emphasis)

5. Material Considerations

Case Law

The property is in use as a Class C3a Dwellinghouse with three bedrooms. It could accommodate an individual living alone, a couple, co-habiting adults, or a family unit with 2-3 children (depending on the precise sleeping arrangements).

Under Use Class C3(b) and C2 Properties could also accommodate individuals living together and receiving care (i.e. supported housing schemes such as those for people with learning disabilities or mental health problems). The Town and Country Planning (Use Classes) Order 1987 (as amended) ('Use Class Order') therefore allows for a range of different household types and models.

Class C3 of the Use Classes Order refers to "use as a dwelling house by no more than six residents living together as a single household, (including a household where care is being provided for residents)". If a children's home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there would be no requirement for planning permission. However, in this instance, care providers will not reside on the property and shall operate in a shift pattern across day and night.

It is widely accepted that the case of *North Devon District Council v The First Secretary of State* [2003] Judgement is the primary case law for such applications. In their judgement, Lord Justice Collins states that children "*need to be looked after*."

They cannot run a house. They cannot be expected to deal with all the matters that go to running a home...children are regarded as needing fulltime care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should."

The North Devon judgement confirms that children are incapable of forming a 'household' for the purpose of Use Class C3. It also clarified that carers who provided 24-hour care but were not residents could not be regarded as forming part of a household. The concept of living together as a household means that a proper functioning household must exist and that both children and carer(s) must reside in the premises. In such circumstances, the use cannot therefore be considered to fall within Class C3(b) and must be considered as Class C2.

The Judge later states, at paragraph 20, that:

"If an Inspector is satisfied that the use falls within C2 rather than C3, then it would appear that there is prima facie a change of use. Nonetheless, the Inspector is entitled, as indeed are the local planning authority, to consider whether that change of use was material. It will only be material if, as a matter of fact and degree in the circumstances of the individual case, the change of use was material." (My Emphasis)

In light of the above, this Statement acknowledges that the use falls within a different Use Class to the existing lawful use. Below it is assessed whether or not the proposed use constitutes a material change of use, based on the specific circumstances of this case.

Material Change of Use

The matter of whether a material change of use has occurred is a matter of 'fact and degree'. The key test is whether there has been a change of use in the character of the use, and second, the effects of this change upon neighbouring uses in the locality.

The Property is a three-bedroom semi-detached house, although the current internal configuration could accommodate several different configurations of family units. Due to the size of the property, it is likely that it would accommodate a family unit consisting of 1-2 adults – whether parents or guardians, and 2-3 children.

In a typical family unit, adults would carry out domestic duties – such as grocery shopping, preparing meals, washing clothes, cleaning the house, general maintenance, etc. – as well as transporting children to and from day care and/or school, and other activities. There would be several trip movements a day. This could be to attend their employment, transport children to childcare / school and/or other activities, and to complete duties such as grocery shopping. Children will have full access to the building and garden for play, studying, and other activities.

It is the full intention of the applicant that the proposed Children's Home looks, feels, and operates in very similar manner to a typical family home, as this aids the child's progress, in accordance with OFSTED requirements. These characteristics stated will continue when the property is in use as a Children's Home. The only discernible difference being that carers will carry out the roles otherwise undertaken by parents or guardians.

The carers would essentially act as their parents / guardians. They would carry out typical domestic tasks, care for the child's needs, accompany the child to school and for other activities if/when required. There would typically be no more than 2 carers at the property at any one time, and the levels of comings and goings would be like that of a typical family.

4. Ministerial Statement

On the 23rd May 2023, the Minister of State for Housing and Planning and the Minister for Faith and Communities, released a ministerial statement setting out the Government's commitment to supporting the development of accommodation for looked after children, and its delivery through the planning system.

It states that the planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children's communities. These need to be the right homes, in the right places with access to the necessary infrastructure.

The ministerial statement calls for local planning authorities to assess whether it is appropriate to include accommodation for children in need of care as part of their overall assessments on housing need.

Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children that reflect local needs.

In addition, it states that planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a certificate is issued, a planning application would not be required for the matters specified in the certificate.

A copy of the Ministerial Statement is appended to this Covering Statement (Appendix 2).

6. Precedent Applications and Appeals

There are recent applications setting precedent for similar proposals. These include the following:

Application Number 71590 (Appendix 7).

Application Number 71562 (Appendix 8).

There are also recent appeal precedent for similar proposals. This includes the following appeals:

Appeal Ref: APP/C5690/X/22/3299351 at 9 Whitburn Road, London SE13 7UQ - a Certificate of Lawfulness was issued at Appeal for the use of a dwellinghouse (Class C3) as a Children's Home (Class C2) for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight.

This Appeal was allowed on 27th January 2023. (Appendix 3).

Appeal Ref: APP/M4320/X/22/3300633 at 9 Winstanley Road, Waterloo, Liverpool, L22 4QN – a Certificate of Lawfulness was issued for a change of use from a dwellinghouse (Class C3) to a children's home (Class C2) for up to two children. This Appeal was allowed on 13th December 2022 (Appendix 4)

Appeal Ref: APP/C4235/W/17/3173975 at 04 Didsbury Road, Heaton Mersey, Stockport SK4 3AG - a Certificate of Lawfulness was issued at Appeal for the use of a dwellinghouse (Class C3) as a Children's Home (Class C2) for up to four children or young people.

Appeal was allowed on 28th July (Appendix 5)

Appeal Ref: APP/E2205/X/16/3161037 'The Cottage', Stonebridge Green Road, Egerton, Ashford, TN27 9AP - Certificate of Lawfulness was issued for a change of use from a dwellinghouse (Class C3) to a children's home (Class C2) for up to three children.

Appeal was allowed on 28th February (Appendix 6)

The above cited appeals are each subject to their own unique and specific circumstances however I would like to emphasise to the Case Officer is that there is a common denominator with regards to:

1. the proposed use of an existing building as a home for children in the care system
 2. that the existing building could be utilised by a large family
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3. the number of staff and vehicle movements associated with that proposed use would be no different to that which could be expected for a typical family household.

These cases were very similar in that carers would be on site 24/7, working on a shift rota, plus a manager would be on site during weekdays from 9am to 5pm. Typically 2-3 carers would be on site at any one time. An office would be created for the manager's use. The levels of comings and goings were not considered to give rise to a greater level of disturbance than could be generated by a lawful use as a C3 dwellinghouse.

In light of the considerations outlined above and the outcomes of highly comparable appeal and application precedents for which certificates of lawfulness have been issued, it is considered that the proposed changes to the property, typical occupant levels, and the resultant comings and goings from the property are materially the same as a dwellinghouse. As a result, no material change of use has occurred.

7. Summary and Conclusions

It is maintained that there is no material difference in planning terms between the proposed use and the current dwelling. The carers, working on a rota basis, would effectively live at the dwelling house to provide 24-hour care, as a single household. Facilities such as the bathroom, kitchen and living rooms, would be shared and the living mode would be communal. The comings and goings associated with the use would not be materially different from a typical residential household.

It is maintained the level of activity, associated with the proposed use, would be comparable with that which might reasonably be expected to be generated by a single family that could occupy a property of this size. On this basis, it is considered that the proposed change of use from C3 to C2 would be lawful, as it would not constitute a material change of use.

The North Devon Judgement confirms that whilst the proposed use may fall within a different Use Class, it does not necessarily follow that a material change of use has occurred, and that this is a judgement to be made by the decision maker, as a matter of fact and degree, based on the individual circumstances of the case.

Based on the above, it is respectfully requested the Local Authority grant the applicant a Certificate of Lawfulness without delay.

**Appendix 1 North Devon District Council v The First Secretary of State
[2003] EWHC 157 Admin**

Neutral Citation Number: [2003] EWHC 157 Admin
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Thursday, 30 January 2003

B E F O R E:

MR JUSTICE COLLINS

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NORTH DEVON DISTRICT COUNCIL

(CLAIMANT)

-v-

THE FIRST SECRETARY OF STATE

(DEFENDANT)

- - - - -

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MR DH FLETCHER (instructed by North Devon District Council, Civic Centre, Barnstaple, Devon
EX31 1EA) appeared on behalf of the CLAIMANT

MR M GIBBONS (instructed by Treasury Solicitors) appeared on behalf of the DEFENDANT

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J U D G M E N T

1. MR JUSTICE COLLINS: This appeal raises a short but not at all easy point of construction of two classes set out in the Use Classes Order of 1987. The two classes are contained in Part C and are: Class C2, which is headed "residential institutions", and Class C3 which is headed "dwelling houses". The question is whether the situation in this case fell within C2 or C3. There is a subsidiary question relating to whether even if it was within C2, nonetheless there was a material change of use from its C3 use as a dwelling house. That, of course, is a question which depends entirely on the facts of this individual case.
2. The facts are straightforward and, indeed, are agreed. The premises in question are an address in Barnstaple in North Devon. They comprise a semi-detached 3 bedroom dwellinghouse in a residential area. A company called Southern Childcare Limited runs a business operating registered children's homes. Since 2000, as a result of provisions contained in section 40 of the Care Standards Act 2000, which amended section 63 of the Children Act 1989, children's homes which provide for three or less children are required to be registered. That was not the position before that change in the law.
3. I gather from the information before me that there are a number of such small homes, that is to say homes catering for three children or less, which have sprung up. The reason for that is not entirely clear. It may have something to do with a lack of foster parents, or with the increased concern about the welfare of children and the need for them to be looked after in small units rather than in the larger children's homes that used to be in existence in the past. In any event, the local planning authority, in this case North Devon District Council, are concerned about the effect on residential areas of these homes, and are concerned that there should be the possibility of planning control to deal with applications to set up these homes in residential areas.
4. In February 2000 Southern Childcare Limited began to use the premises to provide residential care for two children aged between 10 and 17. The Inspector who eventually had to decide on the issue described the premises. Outside was a semi-detached 3 bedroom house which looks like any other house in the street. Internally, it is in good decorative order; there is a small office downstairs, otherwise it is laid out as an ordinary house. The children sleep in individual bedrooms. There is the usual kitchen and bathroom facilities.
5. Southern Childcare Limited provide in the premises residential care for two children placed in their care by various local authorities. Two non-resident staff are on duty at all times and the house is under the supervision of a team of 6 or 7 adult carers who operate 8-hour shifts. The result is the children are never unsupervised whilst in the building. That means of course that the various carers will come and leave at the beginning and end of their shifts but otherwise the building is to all intents and purposes used as any other family house would be with two children there: shopping trips are needed; children have to be taken to school; the children assist to an extent in the preparation of meals and so on.
6. Because there was a question raised as to whether the use required planning permission, Southern Childcare Limited applied under section 191 of the Planning Act for a certificate of lawful use. That application was refused by the local planning authority. Southern Childcare Limited appealed and an inspector determined the appeal in their favour on 5th August of last year. Against that decision the Council appeals to this court.
7. I should go straightaway to the relevant provisions in the Use Classes Order. The purpose behind the Use Classes Order is well-known and is conveniently set out in Circular 13/87, issued by the Department in May 1987 when the Use Classes Order was about to come into effect. The purpose is set out in paragraph 3, and it is there indicated:

"The aim of the new Order is twofold:-

- (i) to reduce the number of classes while retaining effective control over changes of use which, because of environmental consequences or relationship with other uses, need to be subject to specific planning applications and;
- (ii) to ensure that the scope of each class is wide enough to take in changes of use which generally do not need to be subject to specific control.

It serves no-one's interest to require planning permission for types of development that generally do not damage amenity. Equally, the Secretaries of State are in no doubt that effective control must be retained over changes of use that would have a material impact, in land-use planning terms, on the local amenity or environment."

That is doing no more in reality than setting out the general approach to planning control, but it helpfully indicates the rationale behind the Use Classes Order. By section 55 of the Act, provided that a use falls within a particular designated class, then no planning permission is needed for any change which falls within the same class.

8. The two classes are C2 and C3. C2 reads:

"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."

C3 reads:

"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)."

It will be noted that there is reference to care in both C2 and C3. Care is in fact defined in paragraph 2 (the interpretation clause of the Order) this:

"'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."

It is to be noted that that definition appears to exclude the personal care of children from the definition of care except in class C2. In class C3 there is reference (in the parenthesis to C3(b)) to care provided for residents. That care will not by the definition clause include care of children. Of course if the children happen to be disabled or to suffer from mental disorder, then care for them will fall within class C3(b), but it is not suggested that the children with whom this case is concerned would fall within that category. They are children who, for whatever reason, have been put into the care of the local authority, and the local authority is

required to find somewhere for them to live and to be cared for during their minority.

9. The application by Southern Childcare Limited was "use as a dwelling providing care for up to 3 children living together as a single household with care provided by up to two non-resident staff." So it appears that the application was based on the contention that the children would constitute the single household living together and thus fall within C3(b), and that the non-resident staff would provide care but would not be regarded as part of the household because that would not be necessary.
10. When the matter came before the Inspector he considered the correct construction of the Order between paragraphs 12 and 19 of his determination. I do not propose to read them in any detail, but some parts I shall cite because they indicate the way in which the Inspector approached his task. In paragraph 16 he said:

"Living together incorporates dining together, sharing the kitchen, lounge and garden etc. A functioning family (parents and children/adopted children/foster children) is almost by definition a caring unit. Whilst clearly a husband and wife with two foster children would be considered as falling within Class C3(a) of the UCO, there is a close similarity with the situation on the appeal site except that the carers (guardians) whilst present all the time, are not resident in the same way as a husband and wife. The dictionary definition of a household is 'the occupants of a house regarded as a unit'. Although the care element in a household is less than that for a family there are joint shared responsibilities, the security of the house, the buying of food, the preparation of meals, the paying of bills and the maintenance of the property are some examples. There has to be a thread of care running through a household for it to function effectively."

In paragraph 19 he states:

"If one includes the children and the adults on the appeal premises, there are then four residents living together as a single household. The High Court judgment in the case of *R v Bromley London Borough Council ex parte Sinclair* [1991] 3 PLR60 has accepted that staff providing care for residents need not themselves be resident. 'Care' as defined in Art 2 does not come into play on the appeal site and I find that the use is within the constraints of Class 3(b) of the UCO; namely the use as a dwellinghouse by not more than six residents living together as a single household."

It seems to me that the natural meaning of what the Inspector says in paragraph 19 is that he is regarding (and what he sets out in paragraph 16 supports this conclusion) the household as being the children plus the carers. But, in his view, the case of *Sinclair* means that carers need not be resident carers, in the sense that they need not have the premises as their residence, and live there as well as the children. That, in his view, is not necessary; provided they are present on the premises then they can be regarded as part of the household. It is true that when he came to give the lawful development certificate it was in these terms:

"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."

That, of course, is more consistent with the way in which the application was framed. Nonetheless the natural meaning of paragraphs 16 and 19 seem to me to point clearly in the direction that the Inspector is finding that the household includes both children and carers, but

that carers do not need to be resident carers.

11. Mr Fletcher contends that that is wrong, and that insofar as *Sinclair* may appear to support that approach it is wrongly decided. He submits that the purpose behind the division of classes C2 and C3, insofar as it applies in the circumstances of this case, is that small homes used for care in the community should not be regarded as falling outside the class as a dwellinghouse merely because there are carers, provided that those carers are resident. He submits that if one looks at the natural meaning of the words used in the Use Classes Order and couples that with the guidance given by the Circular, that conclusion is inevitable. The Circular in paragraph 5 states:

"The new Order is also intended to clarify the circumstances in which the establishment of small community care homes and hostels will require planning permission. For example, it provides that development is not involved when a dwellinghouse becomes used as a small community care home, provided that all the residents live together as a single household and that they number no more than 6 including resident staff."

That certainly on its face appears to me to be more consistent with the approach that Mr Fletcher submits is the correct one.

12. In paragraphs 25, 26, and 27 the Circular deals specifically with classes C2 and C3. In discussing C2 in paragraph 25 it states:

"The *residential institutions class* combines classes XX11 and XIV of the 1972 Order. Apart from educational establishments, the characteristic of the uses contained in this class that sets them apart from those in the hotels and hostels and dwellinghouses classes is, in the case of the former the provision of personal care and treatment, and in the case of the latter that the residents and staff do not form a single household."

In paragraph 27, which deals with class C3, it is said:

"The new *dwellinghouses class* groups together use as a dwellinghouse - whether or not as a sole or main residence - by a single person or any number of persons living together as a family, with use as a dwellinghouse by no more than 6 persons living together as a single household. The key element in the use of a dwellinghouse for other than family purposes is the concept of a single household. In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class, regardless of the size of the home. 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 ... Local planning authorities should include any resident care staff in their calculation of the number of people accommodated. The class includes not only families or people living together under arrangements for providing care and support within the community, but also other groups of people such as students, not necessarily related to each other, who choose to live on a communal basis as a single household."

That again, Mr Fletcher submits, and I agree, points in the direction of resident care staff and

small residential homes and, indeed, the reference to the need for certainty over the planning position of small group homes playing a major role in the Government's community care policy, gives a clue why the definition of "care" as not including children should be applicable to C2 and not to C3 because children do not fall into the community care policy because they are not disabled or mentally disordered.

13. It seems to me that it is essential that all the words of the Order are given some meaning. There is no doubt that unless the circumstances here mean that it falls within C3, the activity in question would clearly fall within C2, because it is use for the provision of residential accommodation and care to people in need of care. The definition of "care" which is applicable to C2 includes care of children. So unless it falls within Class C3, it clearly will fall within C2. The question, therefore, is whether it does fall within C3.
14. It is not contended that it falls within C3(a) and the Inspector did not so find. Clearly, it is not being used by people living together as a family. The question therefore is whether it falls within C3(b). There are certainly not more than 6 residents. But are they living together as a single household, including a household where care is provided for residents? The parenthesis does not directly apply because care does not include care of children. Thus, it is not a household where care is provided for residents. The first question, as it seems to me, is what is the meaning in the context of C3(b) of "household"?
15. It is submitted by Mr Gibbon that the children can constitute the household. The children are living together as a single household and, therefore, it is a dwellinghouse. The parenthesis does not apply and, on the straightforward meaning of the words, you have here not more than 6 residents living together as a single household. Of course if any of the carers were resident, then they would have to be brought into account, but there would be no problem because obviously a resident carer would be properly regarded as part of the household, but the absence of a resident carer does not prevent it being a household.
16. It seems to me that the Inspector's approach was, in this respect, correct, inasmuch as he was regarding the household as needing more than just children. Children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home. Sometimes, of course, one recognises they are forced to do so, but as a matter of principle and approach the whole point of these homes is that the children are regarded as needing full-time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should. It seems to me that in the context "household" means more than merely the bodies. You have to consider whether the bodies are capable of being regarded in the true sense as a household. The same would apply to those who suffer, for example, from physical or mental disability and who need care in the community. They, if they are not capable of looking after themselves, would not be regarded as a household, hence the need for the carer, hence the need for that addition to make it a household within the meaning of the relevant class.
17. One has to have regard to the need that they be living together as a single household. The question then arises whether carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care can be regarded as living together. In my view, the answer to that is no. Consistent with the approach indicated by the Circular, what is required is indeed residential care with a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household.
18. Now that I recognise is an approach which may well not accord with that set out by Popplewell J in the *Sinclair* case, which I have already mentioned. In that case the Council proposed to use a house as a family home for three mentally handicapped persons. Twenty-

four hour a day supervision was to be provided by social workers attending on a rota basis. They would not be living at the property although a room would be used as a bedroom by the care assistant who was there at night.

19. An application for judicial review of the decision that the proposed use was within Class C3(b), and so did not require planning permission, was made by a local resident. Permission had been refused on paper and the matter came before Popplewell J as a renewed application for permission to apply for judicial review. He cited Class C3(b), the relevant parts of paragraphs 25 and 27 of the Circular and went on at page 62B:

"The order does not say that the staff have to live together as a single household. It says the residents 'living together as a single household'. The residents here are the three residents and the staff come in from time to time. I do not find anything in the order which takes into account the presence of the staff as being involved in the concept of a single household. The bracketed words are simply '(including a household where care is provided for residents).'

I do not take the view that the staff have to be living together with the residents. I am of the view that this can properly be determined as a Class C3(b) case."

I am afraid I cannot agree with that approach. It seems to me that the concept of living together as a household means that, as I have put it, a proper functioning household must exist and, in the context of a case such as this, that must mean that the children and a carer must reside in the premises. Otherwise, as it seems to me, it clearly falls within Class C2. It is apparent that the size of the institution is irrelevant for the purposes of C2. If it falls within that definition it is not to be regarded as a dwellinghouse, then whether there are 1, 2, 10 or 15 children makes no difference to the Class. It does, however, clearly make a difference in planning terms when one considers the second point, which is whether there was, in the context of this case, a material change of use.

20. Although it may sound somewhat illogical, it is accepted by both Mr Fletcher and Mr Gibbon that, notwithstanding that this may fall within Class C2 rather than Class C3, nonetheless planning permission may not be required if the change of use was not a material change of use. I am bound to say that if an Inspector is satisfied that the use falls within C2 rather than C3, then it would appear that there is prima facie a change of use. Nonetheless, the Inspector is entitled, as indeed are the local planning authority, to consider whether that change of use was material. It will only be material if, as a matter of fact and degree in the circumstances of an individual case, the change of use was material.

21. The Inspector understandably deals with this very briefly. In paragraph 20 he states:

"In the alternative, the Council state that the change of use is a significant factor which when weighed with other changes to the character of the use of the premises amounts to a material change of use. Since I have found that the use is as a dwelling house, the alternative does not fall to be considered. There is nevertheless no indication from my consideration of all the representations and from my detailed inspection of the site and the surroundings, that there has been a change of use from a dwelling house which could, as a matter of fact and degree, be considered as being a material one."

Mr Fletcher attacks that on the basis that it is unreasoned, and the Inspector appears to be saying from the use of the word "could" that there is not even an arguable case that there has been a change of use.

22. The parties put forward extensive submissions to the Inspector and he clearly had them before him and had regard to them. The Council dealt with materiality over some four pages of its submissions. It set out what it submitted were the principles referred to and cases in support, in particular in paragraph 6.9 of its submissions. It made the point that the case law established that whether there had been a material change was a question of fact and degree and the fact that, in the broadest sense, the property continued to be used for residential purposes did not mean that there could not have been a material change of use. The court in the case of *London Borough of Richmond upon Thames v Secretary of State* [2001] JPL 84 indicated that matters which could be planning considerations might include the effects on the residential character of the area, strain on the welfare services and reduction on the stock of private accommodation available for renting. Points were made about traffic movements and various other factors were put forward.
23. True it is that the Inspector dealt very briefly with those matters. But it is plain that he had before him all the relevant submissions and all the relevant representations. He had inspected the site and he had considered all the issues. He sets out at the beginning of his determination a description of the site and surroundings and of the background. It would have been better, no doubt, had he referred in more detail to the submissions which had been made and explained why he rejected them. Nevertheless, it is, in my view, clearly implicit in what he says that he had considered them and that he had rejected them as being matters which indicated a material change of use.
24. Mr Fletcher accepts that it would have been open to the Inspector to have decided that the change of use was not material but he should, if he was to reach that conclusion, have indicated more clearly why. I do not dissent from that proposition in the sense that I too would have preferred that he had indicated more clearly why. But one has to be careful in accepting a reasons challenge. It seems to me that if, in reality, it is plain that the Inspector has considered the matters and has reached a decision, which in law was open to him, then it would take a very strong case to quash that purely on the ground that the reasons were not as extensively set out as they should have been.
25. The only matter which has given possible cause for concern is the use of the word "could." But, in my view, it does not bear the construction which Mr Fletcher suggests is the possible one. All that the Inspector is saying is that in his judgment the matters put forward do not mean that the change of use is a material one. It is true he does not express himself as happily as he might, but as a matter of pure English reading that sentence does not, in my view, lead one to conclude that he had misdirected himself in approaching it on the basis of arguability rather than fact.
26. Accordingly, in my view, the Inspector was wrong to regard this as falling within C3(b) rather than C2, and that the Council's contentions are and were correct. C3 does require at least one residential carer, together with of course those who are being cared for. On the facts of this case, and I emphasise limited to the facts of this case, the Inspector was correct to decide that there was no material change of use in the circumstances.
27. Accordingly, although it may be expressed slightly unhappily in the context of my decision, and indeed in the way the Inspector approached it in his decision, the use for up to two children, with care provided by up two non-resident staff at these premises, and only at these premises, is, in the circumstances, a lawful use.
28. Accordingly, for those reasons, I dismiss this appeal.

29. MR GIBBONS: My Lord, in the light of that may I seek brief instructions before I make any further submissions?
30. MR JUSTICE COLLINS: Yes .
31. MR GIBBONS: My Lord, the question of costs arises from my point of view. Now the usual situation clearly, as your Lordship is aware, not only because the principal argument today is on Use Classes Order but also the Inspector, clearly I am entitled to make the formal submission that I have succeeded even though there has not been----
32. MR JUSTICE COLLINS: Yes, but nowadays we split costs rather more, do we not?
33. MR GIBBONS: My Lord, you have anticipated my very next observation, which is, if your Lordship is inclined, as it were, to take the CPR approach to this rather than the more old-fashioned approach.
34. MR JUSTICE COLLINS: I think I have to, do I not?
35. MR GIBBONS: Clearly, my fallback position would be no order as to costs.
36. MR JUSTICE COLLINS: I am thinking along those lines.
37. MR FLETCHER: My Lord, I am very happy with my learned friend's fallback position.
38. MR JUSTICE COLLINS: I think that in the circumstances, and having regard to the issues, I know it is palm tree to some extent, but costs almost always is. I think no order for costs is the fair order. No further applications?
39. MR FLETCHER: No, my Lord.

Appendix 2 Joint Ministerial Statement

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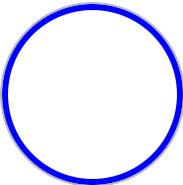
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Planning for accommodation for looked after children

Statement made on 23 May 2023

Statement UIN HCWS795

Statement made by



Rachel Maclean

Minister of State for Housing and Planning

Conservative

Redditch

[>](#)

[Commons](#)

Statement

I, with the support of my Rt Hon colleague the Secretary of State for Education, wish to set out the Government’s commitment to support the development of accommodation for looked after children, and its delivery through the planning system.

The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children’s communities. These need to be the right homes, in the right places with access to good schools and community support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love.

Today we use this joint statement to remind Local Planning Authorities that, as set out in paragraph 62 of the National Planning Policy Framework, local planning authorities should assess the size, type and tenure of housing needed for different groups in the community and reflect this in planning policies and decisions. Local planning authorities should consider whether it is appropriate to include accommodation for children in need of social services care as part of that assessment.

Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country. It is important that prospective applicants talk to local planning authorities about whether their service is needed in that locality, using the location assessment (a regulatory requirement and part of the Ofsted registration process set out in paragraph 15.1 of the Guide to the Children’s Homes Regulations) to demonstrate this.

To support effective delivery, unitary authorities should work with commissioners to assess local need and closely engage to support applications, where appropriate, for accommodation for looked after children as part of the authority's statutory duties for looked after children. In two tier authorities, we expect local planning authorities to support these vital developments where appropriate, to ensure that children in need of accommodation are provided for in their communities.

Children’s homes developments

Planning permission will not be required in all cases of development of children’s homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children’s home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate.

Statement from

Department for Levelling Up, Housing and Communities



Linked statements

This statement has also been made in the House of Lords

Department for Levelling Up, Housing and Communities

>

Planning for accommodation for looked after children



[Baroness Scott of Bybrook](#)

Minister for Faith and Communities

Conservative, Life peer

Statement made 23 May 2023

HLWS780

Lords

Appendix 3 9 Whitburn Road, London SE13 7UQ
Appeal Ref: APP/C5690/X/22/3299351



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/C5690/X/22/3299351

9 Whitburn Road, LONDON, SE13 7UQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Nigel Kennedy, Kennedy Elliott Partnership against the decision of London Borough of Lewisham.
 - The application ref DC/22/126014, dated 17 March 2022, was refused by notice dated 19 May 2022.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of premises as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Preliminary Matter

2. A site visit was not necessary in this case as it would not aid the decision-making process, and the parties were informed of this before the appeal was determined.

Main Issue

3. The main issue is whether the Council's decision to refuse the LDC application was well-founded. It is agreed that the proposed use as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight constitutes a change from the current lawful use as a Use Class C3 dwellinghouse. I accept that, because the carers work on a rota basis and the property is not their primary residence, the proposed use would fall within Use Class C2 as a residential care home.
4. It is a question of fact and degree in each case as to whether a change from a use falling within one class to a use falling within a different class amounts to a material change of use. It is for the appellant to prove on the balance of probabilities that there is no material difference between the current and proposed uses, and therefore no development which would require planning permission

Reasons

5. The property comprises of a large kitchen/dining room, a lounge and 4 bedrooms. Three children or young people would live at the house, with two carers working on a rota basis sleeping overnight. Six carers would operate on

a rota of 48 hours on and 48 hours off, or 60 hours on and 60 hours off. A manager would be on site during weekdays from 9 am to 5pm. The manager's role would be as a third carer, together with administrative work relating to the home. Locks would be included on the bedroom doors and fire doors would be located at the kitchen.

6. The Council refused the application on the basis that the proposed development would result in a material change to the use and character of the property. The factors they identified which they say will change the character of the use are the increased comings and goings, the increase in level of disturbance and refuse arising from an increase in the number of people at the property, the use of a room as an office by someone who does not live at the property and the provision of locks on the bedroom doors.
7. In particular the Council disputes the levels of comings and goings of the previous and proposed use provided by the appellant. The Council say that the increase in total movements including the carers arriving and departing on a shift basis, the manager coming to the site during the working week, specialist care counselling and teaching required onsite and parental visits are highly likely to lead to a material increase in comings and goings which will have a cumulative material impact on the character of the property.
8. The appellant argues that the property would be operated in a way that is very similar to a typical family home. Up to three children would live at the house, with two carers working on a rota basis sleeping overnight. Other than changeover times, there would be no more than three carers on the premises at any one time. There would be one changeover of the overnight care staff per day, usually 8am each morning, lasting for around ten minutes. A manager, also a carer, would usually visit the site at some point during the working day.
9. Any home schooling would take place online and there would not be specialist staff visiting the premises, as the carers will provide for all of the residents' needs, and parental visits will take place away from the property. Social Services and Ofsted will need to visit the property but this is only several times each year. The Council have not provided conclusive evidence as to why or whether specialist or clinical staff will need to visit (to contradict the appellant's case), and indeed most households are likely to have a variety of visitors from time to time, if not frequently.
10. The next door property (7 Whitburn Road) was granted an LDC in 2019 for a C3 use with a carer living in the property as his main residence. There is disagreement in the information before me as to how this property is now being used but this is not directly relevant to the appeal in this case.
11. Taking the Council's case at its highest, there could be up to 7 people at the property during a week day (if all of the children were being home-schooled) which is not an unexpectedly large number of people to be found in a 4 bedroomed family house. Whilst there would be one staff changeover a day this is not in itself enough to materially change the character of the property. The use of the office by the manager to deal with matters associated with the running of the property is also not materially different in terms of impact on the character of the house to the use of a room in a C3 dwellinghouse as a home office. Locks are not typically found in a C3 dwellinghouse but this will

not alter the external appearance of the property, or change the character of the property in the locality in a way which is material.

12. Whilst there will be some additional comings and goings associated with the use as a residential care home, there is no evidence before me to dispute the appellant's case that the use will not give rise to a greater level of disturbance than could be generated by the lawful use as a C3 dwellinghouse. The additional comings and goings identified by the appellant and Council are at a sufficiently low level so as to remain within the parameters of what could be usually expected of a family home and not therefore materially different so as to change the character of the property. Similarly the number of people who will be typically present at the property, and therefore the associated waste generated, is not significantly higher than could be expected with its current lawful use.
13. I have considered the previous appeal decisions provided to me by the parties but as each case turns on its own facts these are of limited assistance in assessing whether there would be a material change of use here. The appellant has provided sufficient information to show that on balance there would not be a significant difference in the character of activities at the appeal property from what has gone on previously.
14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed use as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Zoë Frank

INSPECTOR

Lawful Development Certificate

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) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 March 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

There would not be a material change of use.

Signed

Zoë Franks

Inspector

Date: [27 January 2023]

Reference: APP/C5690/X/22/3299351

First Schedule

Use of premises as a home for up to three children or young people with up to two full-time resident carers working on a rota basis sleeping overnight.

Second Schedule

Land at 9 Whitburn Road, LONDON, SE13 7UQ

IMPORTANT NOTES – SEE OVER

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

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified 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 which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [27 January 2023]

by Zoë Franks Solicitor

Land at: 9 Whitburn Road, LONDON, SE13 7UQ

Reference: APP/C5690/X/22/3299351

Scale: Not to Scale



Appendix 4 9 Winstanley Road, Waterloo, Liverpool, L22 4QN
Appeal Ref: APP/M4320/X/22/3300633



Appeal Decision

Site visit made on 18 November 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Appeal Ref: APP/M4320/X/22/3300633

9 Winstanley Road, Waterloo, Liverpool L22 4QN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Liam Wharton of Alternative Approach Ltd against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2022/00223, dated 3 February 2022, was refused by notice dated 5 April 2022.
 - The application was made under section 192(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is proposed change of use from a dwellinghouse (Class C3) to a childrens home (Class C2).
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Liam Wharton of Alternative Approach Ltd against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In this type of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. For the avoidance of doubt, the planning merits of the proposed use are not relevant to an appeal under section 195 of the 1990 Act. Therefore, comments from local residents concerning perceived impacts on living conditions due to noise and disturbance, anti-social behaviour, on-street parking and loss of privacy cannot be taken into account since these matters concern the planning merits. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. The Council refused the application because – “There is no provision within the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 to change the use from C3 dwellinghouses to C2 Residential Institutions therefore a certificate of lawfulness cannot be issued”. It is not clear which part of Statutory Instrument 757 to which the Council refers. In any event, the Regulations had the effect of amending the Town and Country Planning (Use Classes) Order 1987, so it is the Use Classes Order (as amended) which should be relied upon.

5. 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 Act¹. The key issue is whether the change is 'material'.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. What must be determined is whether the increase in the scale of the proposed use would reach the point where it would give rise to such materially different planning circumstances that, as a matter of fact and degree, it would result in such a change in the definable character of the use that it would amount to a material change of use.

Reasons

7. The appeal property is a four-bedroom, mid-terrace dwellinghouse. It has a small yard to the front and rear, and no off-road car parking. The use would be as a childrens care home, in which no more than two children would be resident at any one time along with their two staff carers. A manager may also be at the premises during the daytime on certain weekdays. The only time when there would normally be more staff is during the handover between shifts, which would take place every two days. It is also anticipated that there may be one or two visits from social workers or other professionals each week.
8. 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, staff handover times, plus social, recreational and other outings. However, I agree 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.
9. The parking demand generated by the proposed use is likely to be higher than would be typical for most 4-bed, mid-terrace homes. However, the increase would not be significant given the proposed number of resident children and the consequent numbers of carers or professional visits. In addition, the area is relatively well-served by public transport and so parking demand may not be as high as the Council envisages. I do not consider the use would have a material impact on its surroundings in this respect.
10. The Council refers to appeal decisions in support of its case². The appeal at Bridge Street was against the refusal of planning permission. That Inspector was considering the planning merits of the proposed development not lawfulness. Moreover, the site-specific circumstances and the nature of the proposed use were significantly different.

¹ "Development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

² Refs APP/M4320/W/19/3231962 dated 25 October 2019 and APP/M4320/X/19/3233476 dated 23 June 2020.

11. The appeal at Warwick Street concerned the refusal of a lawful development certificate with the Inspector reaching a finding on the materiality of change. In that respect the appeal is relevant. However, the nature of the use, the number of staff and the size of the property are not comparable. The circumstances of that particular case are significantly different to the appeal before me.
12. Overall, I find that, 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.

Conclusion

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed change of use from a dwellinghouse (Class C3) to a children's home (Class C2) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Debbie Moore

Inspector

Lawful Development Certificate

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) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 3 February 2022, the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

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.

Signed

Debbie Moore

Inspector

Date: 13 December 2022

Reference: APP/M4320/X/22/3300633

First Schedule

Change of use from a dwellinghouse (Class C3) to a childrens home (Class C2)

Second Schedule

Land at 9 Winstanley Road, Waterloo, Liverpool L22 4QN

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

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified 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 which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 December 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land at: 9 Winstanley Road, Waterloo, Liverpool L22 4QN

Reference: APP/M4320/X/22/3300633

Scale: NTS





Costs Decision

Site visit made on 18 November 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Costs application in relation to Appeal Ref: APP/M4320/X/22/3300633 9 Winstanley Road, Waterloo, Liverpool L22 4QN

- The application is made under the Town and Country Planning Act 1990 (the 1990 Act), sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Liam Wharton of Alternative Approach Ltd for a full award of costs against Sefton Metropolitan Borough Council.
 - The appeal was against the refusal of a certificate of lawful use or development (LDC) for proposed change of use from a dwellinghouse (Class C3) to a childrens home (Class C2).
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Background

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant claims the Council has acted unreasonably through not providing a rational reason for refusing the LDC application. It is argued that the Council's decision notice specified irrelevant legislation and the reasoning was based on a misunderstanding of the application of the Use Classes within the Schedule to the Town and Country Planning (Use Classes) Order 1987. It is also argued that the Council has failed to determine cases in a consistent manner, with reference to a very similar proposal on the same road. Finally, the applicant maintains that the LDC should have issued and the failure to do so has delayed a use which should have been confirmed as lawful. This has caused the appellant to incur unnecessary expense in pursuing an appeal which could have been avoided.
4. The Council counters that the officer report clearly sets out the reasoning behind its refusal to grant the LDC, and this was based on planning judgement. There was no unnecessary delay in determining the application. It is also argued that the other case, which is claimed to be similar, was eight years ago and the Council focussed on more recent appeals.

Reasons

5. The Council's decision notice states that there is no provision within the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 to change the use from C3 dwellinghouses to C2 Residential Institutions therefore a certificate of lawfulness cannot be issued.

6. As explained in my Decision, the Regulations quoted had the effect of amending the Use Classes Order, so it is the Use Classes Order (as amended) which should be relied upon. In addition, the wording points to a misunderstanding of Section 55(2)(f) of the 1990 Act. This 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. The key issue is whether the change is 'material'.
7. The officer report did set out a brief analysis of whether there would be a change in the character of the use. However, the implicit conclusion that a material change of use would occur did not find its way into the reasons for refusing the application. The applicant understood from the decision notice that the proposal was unacceptable on a point of law and it was not apparent that any further assessment had taken place. Given that the decision notice also referred to a Statutory Instrument that was not relevant, I find that this amounted to unreasonable behaviour.
8. In addition, the analysis by the planning officer was limited, and there was scant regard to the information contained in the accompanying Planning Statement, which was accurate and relevant. Further, it is unclear whether the other proposal at No 51 Winstanley Road, which the Council approved, was considered nor how the Council justified reaching a different conclusion.
9. I consider that the Council's assessment of the proposal was limited and that factual information submitted with the application was not properly analysed. The planning officer did have some understanding of the matters at issue, but this was not properly set out in their delegated report. Nor were previous decisions properly assessed for their relevance. Consequently, an invalid reason for refusing the application was provided in the decision notice. A thorough and proper assessment of the application should have been undertaken, based on the correct tests.
10. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Sefton Metropolitan Borough Council shall pay to Alternative Approach Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
12. The applicant is now invited to submit to Sefton Metropolitan Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Debbie Moore

Inspector

Appendix 5 604 Didsbury Road, Heaton Mersey, Stockport, SK4 3AG
Appeal Ref: APP/C4235/W/17/3173975

Appeal Decision

Site visit made on 10 July 2017

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28th July 2017

Appeal Ref: APP/C4235/W/17/3173975

604 Didsbury Road, Heaton Mersey, Stockport SK4 3AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul O'Reilly (Klearwater Properties Ltd) against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/061216, dated 29 February 2016, was refused by notice dated 19 October 2016.
 - The development proposed is the change of use of dwelling to children's care home and construction of 1.8m high gate/fence.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of dwelling to children's care home and construction of 1.8m high gate/fence at 604 Didsbury Road, Heaton Mersey, Stockport SK4 3AG in accordance with the terms of the application, Ref DC/061216, dated 29 February 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Block Plan Scale 1:200; and Figure 1 Existing Floor Plans and Elevations.
 - 3) The premises shall be used as a Children's Home for up to four children, up to the age of 17 years, and for no other purpose (including any other purpose within Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Main Issues

2. The main issues in the appeal are the effect of the proposal on:
 - The living conditions of nearby residents with particular regard to noise and disturbance, crime and the fear of crime, and the general character of the area; and
 - Housing supply in the borough.

Reasons

3. The appeal property is a detached dwelling occupying a corner plot, with a detached garage and 2 parking spaces to the rear. It is located on a busy main road, and whilst the surrounding area is predominantly residential in nature, there are also a number of commercial uses in the vicinity. The proposed change of use would not result in any external changes to the building other than the erection of a short stretch of fencing and a gate between the side elevation of the house and the existing boundary wall/fence around the side and rear garden.

Living Conditions

4. The proposed change of use would allow the use of the property as a care home for up to a maximum of 4 children (aged 6 to 17), with 2 carers present at any one time. Given the property is a 5 bed dwelling the levels of occupation would be similar to that of a large family home. Given that the majority of children would not be of an age where they can own a car, and the limited number of staff, the proposal would be unlikely to generate significantly more traffic movements than would be the case if the property was being used as a dwelling.
5. Similarly, noise generated within the house and garden from the occupiers would be unlikely to be significantly different from that created by its use as a family dwelling. Therefore I am not persuaded that the proposal would be likely to have an adverse impact on nearby residents with regard to noise and disturbance, especially given the level of general traffic noise that already exists in the area.
6. Whilst I note the concerns regarding the potential for crime and anti-social behaviour, the Police and Community Safety Unit have no objection to the proposal, and have stated that there are no anti-social behaviour hot-spots in the vicinity. The Council have referred to the fact that Police figures show significant 'missing from home' incidents from other children's care homes in the borough, and that certain "high risk" children, have a 'magnet' effect in attracting other children and young people to an area. However, I have not been provided with these figures, or any other evidence, to show that crime levels in the area around these other homes is significantly greater than elsewhere. Therefore, on the basis of the evidence before me, there is nothing to indicate that the proposal would have an adverse impact on the local area in terms of crime, or anti-social behaviour.
7. The explanation to Policy CDH1.3 of the *Stockport Unitary Development Plan Review (adopted May 2006)* (UDP) indicates that care homes are appropriately located in residential areas. However, in this case the Council have suggested that the proposal would lead to a proliferation of similar uses in the area. To this end they have provided a map which shows that of the 39 children's homes in the borough, 13 are located in the "Heatons" (the locality in which the appeal site is located). However, as the "Heatons" appeared to be one of three areas into which the borough is divided, this does not show a disproportionate number of such uses in this area. Moreover, the response from the Community Safety Unit specifically states that although there are a number of residential care homes in the "Heatons", they are not in close proximity to this proposed development.

8. In the light of this I am not persuaded that the proposal would result in a fundamental change in character to this residential area, especially as the lack of external changes to the building means that it would still look like a domestic property.
9. Consequently, I consider that the proposal would not have an unacceptable effect on the living conditions of nearby residents, with particular regard to noise and disturbance, crime and the fear of crime, and the general character of the area. Accordingly there would be no conflict with Policies SIE-1 and SIE-3 of *Stockport Core Strategy Development Plan Document (adopted March 2011)* (SCS) which seek to ensure that new development does not have an unacceptable impact on the amenity of nearby residents.

Housing Supply

10. Policy CS2 of the SCS seeks to ensure that a wide choice of high quality homes are provided to meet the requirements of existing and future Stockport households. To support this aim Policy HP1.3 of the UDP states that in determining planning applications which would involve the loss of existing dwellings, the Council will have regard to the balance of the following factors: the restricted housing land supply in Stockport; whether the change of use or re-development is for some form of community use; whether the development is small scale and is a source of employment or service for the local residential community; the extent to which dwellings suffer from adverse environmental conditions; and whether the loss would be justified to facilitate regeneration or the environmental improvement of an area.
11. The *National Planning Policy Framework* sets out in paragraph 47 that to significantly boost the supply of housing, local planning authorities should be able to demonstrate a 5 year supply of deliverable housing sites. The Council have indicated that they currently cannot do this with the latest figures indicating they only have a 3.8 year supply. However, the explanation to the policy indicates that where the new use is also residential in nature this will limit the extent of the deficiency. In my mind the use of the property to provide a home for up to 4 children and their carers would be residential in nature. A conclusion supported by the fact that the change of use requires minimal internal and external alterations to the building.
12. Whether the proposed use constitutes a community facility is disputed by the main parties. Policy HP1.3 does not provide any definition of what constitutes a 'community facility' nor have I been made aware that it is defined elsewhere in either the UDP or the SCS. As such, what constitutes a community facility is a matter of judgement.
13. In my experience, irrespective of whether they are run by the private or public sector, Care Homes, particularly for the elderly, are often considered to be community facilities as they provide an important service for specific groups within the community. However, the Council's evidence is that the existing children's care homes within the borough have a capacity of between 180 and 200 beds, which is significantly greater than the need the Council had for care home placements for Stockport children. Given this, I am not persuaded that in this case, the proposal could be considered to be a community facility.

14. As the proposal would only provide care for 4 children, it would be a small scale facility, and it would create a limited number of employment opportunities too. Whilst these may not specifically be for Stockport residents, the same is true for most employment creating proposals, especially in a large conurbation, and I see no reason why at least some of the jobs would not benefit local residents.
15. Although located on a main road, the dwelling is within an established residential area, and it does not suffer from adverse environmental conditions. Nor is the loss of the dwelling required to facilitate regeneration or environmental improvement of the area.
16. Bringing these points together: whilst the proposal would result in the loss of a dwelling, and would not be for a community use, the use would still be residential in nature, would be small scale, and would create some employment opportunities. On balance, and given that the building could easily be returned to residential use if the proposal use should cease, I consider that the proposed development would not have an adverse impact on the housing supply. It therefore follows that it would not conflict with Policy CS2 of the SCS or Policy HP1.3 of the UDP.

Other Matters

17. At present there is free access between the front and rear garden via the side garden. It is proposed to secure the rear garden by the addition of a small section of fence between the existing high boundary wall/fence and the side elevation of the house. This would be a similar height to the existing boundary treatment, and therefore I am satisfied that it would not have a detrimental impact on the character and appearance of the area.
18. A number of concerns have been raised regarding highway safety issues. The property has a garage and off-street parking for 2 cars. Even though the use may attract visits from a variety of professional staff, its occupancy by a maximum of 6 children and carers, would not generate significantly more traffic or demand for parking than if the property was to be utilised as a family dwelling. As such the Highways Authority has no objection to the scheme. Given this, and my own observations on site, I am satisfied that the proposed scheme would not have an unacceptable impact on highway safety in the area.
19. It has been suggested that the internal and external space would not be sufficient for the number of proposed occupiers, and also that the location on main road, and near commercial uses would put the occupants at risk. However, as a 5 bed house, its use as a dwelling could easily result in a similar level of occupation, and the locational characteristics would be the same for any family who lived in the house. It has been stated that in the future extensions to the property may be sought and that the proposal may set a precedent for other similar uses in the area. However, the acceptability of either of these would have to be considered by the Council at the time, and so does not constitute a reason for refusing this current application.
20. It has been put to me that there are not enough school places in the locality. However, I have not been given any detailed evidence which quantifies the

extent of any local shortage, or the need for new facilities. In any case occupation of the house by a family would also generate demand for school places. In addition, there is no firm evidence to show that the proposal would lead to a loss of property prices, and whilst I note the concerns regarding the company making the application, that is not a matter that is before me at this appeal.

21. Whilst I note the concerns regarding the notification of local residents of the planning application, this is a matter that would need to be taken up with the Council in the first instance.

Conclusion and Conditions

22. For the reasons set out above, I conclude that the appeal should be allowed.

23. In addition to the standard implementation condition I have imposed a condition specifying the relevant plans as this provides certainty. In the interests of clarity and to protect the living conditions of nearby residents a condition specifying the specific nature of the use is necessary.

Alison Partington

INSPECTOR

**Appendix 6 ‘The Cottage’, Stonebridge Green Road, Egerton, Ashford,
Appeal Ref: APP/E2205/X/16/3161037**

Appeal Decision

Site visit made on 17 February 2017

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28th February 2017

Appeal Ref: APP/E2205/X/16/3161037

The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Parkview Care against the decision of Ashford Borough Council.
 - The application Ref 16/01000/AS, dated 1 July 2016, was refused by notice dated 24 August 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is as a C3(b) private dwelling.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the matter constituting a proposed use which is considered to be lawful.

Procedural matters

2. At the time the application was considered, the Planning Statement submitted with the application form noted that the house was intended for use by 4 young people, between the ages of 8 and 17, and their carers. However, the appellants' Appeal Statement refers to a maximum of 3 children and 2 adult carers and their submissions justifying the proposed use are based on this number. As this is the latest information submitted in support of the appeal, I have considered the merits of the case on this basis.
 3. The appellants now appear to agree that this scenario would not constitute a 'household' as set out in Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and as defined in Government Circular 8/2010. This Class is defined as not more than 6 residents living together as a single household where care is provided for residents.
 4. A similar scenario to the appeal proposal was considered in the case of *North Devon District Council v First Secretary of State [2004] 1 P. & C.R. 38* which determined that children alone cannot form a 'household' and that if their carers do not live permanently at the property, the use would fall within Class C2 of the UCO. This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use. Examples given are as a hospital, nursing home, residential school, college or training centre.
-

5. Nevertheless, a change to a new use class only requires planning permission to authorise it if it is material in planning terms. The appellants consider that, in this instance, a change from Class C3(a) to C2 would not be material and planning permission is not therefore required for the proposed use. I have considered the appeal on this basis.

Main Issue

6. I therefore consider the main issue in this case is whether the proposed use is a material change from the lawful use as a single dwellinghouse falling within Class C3(a).

Site and surroundings

7. The appeal site is a detached house with a generous garden in an enclave of other properties on the outskirts of the village of Egerton. At present it has 2 living rooms, a kitchen and a cloakroom on the ground floor and 4 bedrooms and 2 bathrooms on the first floor. An entrance drive leads to a garage and off street parking.

Reasons

8. As noted above, the proposal is for the use of the property for a maximum of 3 young people between the ages of 8 and 17 who would live in the house under the care of 2 adults at all times, although the identity of the carers would change and the carers would not have the property as their main residence.
9. The Council relies on the report of the Officer who determined the application and this report concludes that the proposed use falls within in Class C2 and, given the findings of the judgement set out above, I concur with this view. However there is no assessment made in the report as to whether a change of use between Class 3(a) and Class 2 as described in this case would be material. To establish this, a comparison between the existing and proposed uses needs to be considered.
10. A house of this size could easily accommodate a typical family with 2, 3 or more children and 2 adults and it seems to me that the use of the house as a home for a maximum of 3 young people and their carers would not be materially different from the authorised use as a 4 bedroom family home. It is likely that there would be vehicle movements created by the carers coming to and leaving the site on a daily basis as they start and leave their shifts and journeys undertaken by the children when being taken to and from school. Nevertheless, I do not consider that the number of such movements is likely to be significantly more than those undertaken by a family and certainly not enough to result in an intensification of use that would give rise to planning concerns.
11. I have noted the village location and the lack of facilities available for young people in the immediate area, but again, there would be nothing to stop the property being occupied by a family, to whom the same concerns would apply.
12. The appellants will be required to comply with all relevant rules governing the accommodation for children in care and their full time supervision and, if the property can meet these regulations and the appellants can meet the staffing requirements, I see no reason why the use proposed would have any planning impacts that would cause it to be considered as a material change of use.

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property for a class C2 use for 3 children and 2 adults was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Katie Peerless

Inspector

Lawful Development Certificate

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) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 1 July 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), would not represent a material change from the authorised use of the site as a Class C3(a) dwellinghouse.

Signed

Katie Peerless
Inspector

Date 28th February 2017
Reference: APP/E2205/X/16/3161037

First Schedule

The use of the dwellinghouse within Class C2 of the UCO, for occupation by no more than 3 children and 2 adults at any one time.

Second Schedule

Land at The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified 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 which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 28th February 2017

by Katie Peerless Dip Arch RIBA

Land at: The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

Reference: APP/E2205/X/16/3161037

Scale: NTS



**Appendix 7 Certificate of Lawfulness Application Number:
71590**

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 Fahad Patel
45 Woodvale Avenue
Bolton
BL3 3HF

On Behalf Of:

Khojani
iCare Solution LTD
101 Wellington Road North
Stockport
SK4 2LP

Application Number: 71590

Date of Registration: 03/02/2025

First Schedule

Second Schedule

Lawful development certificate for proposed change of use from dwellinghouse (Class C3a) to a care home for three children aged 7-17 with up to two staff working on a rota basis(Class C2)

13 Milner Avenue, Bury, BL9 6NG

Bury Metropolitan Borough Council hereby certifies that on 03/02/2025 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 13 Milner Avenue to a residential children's home for up to 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 supporting statement submitted 03/02/2025, would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

Applicant Plan Numbers:

01, Site Plan, Location Plan, Supporting Statement

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 'Paul Harris', written over a dotted line.

.....
On behalf of the Council

Date of Decision: 14/05/2025

**Appendix 8 Certificate of Lawfulness Application Number:
71562**

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 C Smyton
D2H Land Planning Development Limited
D2H Lpd Ltd
Foxlowe Arts Centre (First Floor)
Stockwell Street
Leek
ST13 6AD

On Behalf Of:

Ms C Miller
C/O D2H Limited
First Floor
Foxlowe Arts Centre
Stockwell Street
Leek, Staffordshire
ST13 6AD

Application Number: 71562**Date of Registration:** 24/01/2025**First Schedule**

Lawful development certificate for proposed change of use from residential (Class C3) to children's residential care home for up to three children with up to two staff working on a rota basis and one manager working business hours (Mon-Fri) (Class C2).

Second Schedule

254 Heywood Road, Prestwich, Manchester, M25 2GR

Bury Metropolitan Borough Council hereby certifies that on 24/01/2025 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 254 Heywood Road, Prestwich, Manchester, M25 2GR to a children's residential care home for up to three children with up to two staff working on a rota basis and one manager working business hours (Mon-Fri) (Class C2) operating in full accordance with the details set out within the planning statement submitted 24th January 2025, would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

Applicant Plan Numbers:

001, 002, 010, 011 & Planning Statement (All submitted 24/01/2025)

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: 27/03/2025