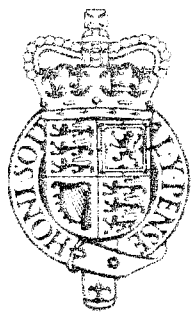


DLL 3/15



# Appeal Decision

Site visit made on 15 July 2002

by **D A Hill** BSc CEng MICE

an Inspector appointed by the First Secretary of State

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CASE COPIED BY  
**COMPASS**  
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Tel: 01452 310566

Date

5 AUG 2002

Appeal Ref: APP/X1118/X/02/1081831

9 Miller Crescent, Barnstaple, Devon.

- 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 failure to give notice within the prescribed period of a decision on an application for a lawful development certificate (LDC).
- The appeal is made by Southern Childcare Limited against North Devon District Council.
- The application (Ref. 32002) dated 8 November 2001 was made under section 191(1)(a) of the 1990 Act as amended.
- The use for which a Certificate of Lawfulness is sought is for the use as a dwellinghouse providing care for up to three children living together as a single household with care provided by up to two non-resident staff.

**Summary of Decision: The appeal is allowed and a Certificate of Lawfulness is issued, in the terms set out in the Formal Decision below.**

## Procedural Matters

1. An application for costs was made by Southern Child Care Limited against North Devon District Council. This application is the subject of a separate Decision.
2. During exchanges of statements on this appeal the Appellant sought to correct the reference to three children which was inadvertently carried over from an application for a Certificate of Proposed Lawful Use on this site which was not accepted by the Council. The Appellant has stated that there have only been two children at the Appeal site. The Council agreed and I shall therefore determine the appeal on the basis that the Certificate of Lawfulness which is sought is "for the use as a dwellinghouse providing care for up to two children living together as a single household with care provided by up to two non-resident staff."
3. Although the Council failed to determine the application within the prescribed period, the Appellant had made two identical applications at the same time. The second application (Ref 32003) was refused by the Council on 11 March 2002 having obtained Counsel's opinion. The reasons set down in that refusal notice are as follows:

"By virtue of Article 2 of the Town and Country Planning (Use Classes) Order 1987, the personal care of children is restricted to Class C2 of the Use Classes Order, and it is therefore not considered that the use of the premises as a dwelling house providing care for children falls within the provisions of Class C3 of the Use Classes Order.

Such a fundamental change of use when also assessed with other variations resulting from the change are considered to amount to development for which planning permission would be required."

### Site and Surroundings

4. The appeal site is a semi-detached three-bedroom dwelling house near the end of a cul-de-sac in a residential area of Barnstaple. Both inside and outside, the building has the appearance of an ordinary dwelling house. It is indistinguishable from its neighbours externally and is well maintained. There is parking space for two vehicles off road in the former front garden area and there is a further area of free public parking available in Bicton Street a short distance away. A side entrance leads to an enclosed rear garden.
5. Internally the house is in very good decorative order. Downstairs there is a small office which is locked, a kitchen and a through lounge/dining room. In the lounge/dining room there is a dining table with 5 chairs, a settee and easy chairs and other furniture including a television. Upstairs there is a small bedroom and a bathroom at the rear. The small bedroom is lockable and it contains a single bed and a filing cabinet and is used as a staff room and specifically for overnight accommodation for one of the carers. Two similarly sized bedrooms at the front are used by the two children. Each room is attractively furnished with a single bed, dressing table and a wardrobe together with other small pieces of furniture a CD player and radio. Children's paintings decorate the walls. Each of the bedrooms is capable of being locked.

### Background

6. The dwelling house is currently used by the Appellant to provide residential care for two children aged between 10 and 17 placed in the care of the Appellant (Southern Child Care Ltd) by various local authorities. There is a maximum of two non-resident staff on duty at all times and the house is supervised by a team of six or seven adults operating eight hour shifts. The children are never unsupervised whilst in the building. They travel to school daily at normal times and are taken out once or twice a week and also at weekends either on foot or by car with the supervisor. Other journeys for shopping, doctor and dentist etc. are also undertaken. The children may take part in the preparation of meals and in the cleaning of the premises. All meals are prepared in the kitchen

### Main Issue

7. For the purposes of this appeal it is necessary to determine whether the existing use of the premises would amount to a use within Class 3 Dwellinghouses of the Town and Country Planning (Use Classes) Order 1987 (UCO).

### Inspector's Reasoning

8. There are no submissions that the situation on the appeal site would fall into Class C3(a) of the UCO. There is a team of carers provided by Southern Childcare Limited rather than parents or guardians in a family situation who look after the two children. The circumstances here do not benefit from the provisions of Class C3(a)
9. The nub of the Council's case is that because "care" is defined in Art 2 as including the sentence "and in Class C2 also includes the personal care of children and medical care and treatment", it follows that the care of children is not included elsewhere in the Order within the meaning of "care" and that such a use (the care of children) cannot be considered within Class C3(b) of the UCO. The Council have argued that the care of children can therefore only lie within Class 2 of the UCO and that the use of the appeal premises falls within that Class.

10. The Council contend that a change of use to Class C2 of the UCO is sufficient to constitute a material change of use. 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.
11. This Use Classes Order came into force in June 1987, heralded by Circular 13/87 "Changes of use of buildings and other land: The Town and Country Planning (Use Classes) Order 1987". The effects of this Order were examined in a research report commissioned by the DOE and published in 1991. The Planning Encyclopaedia at 37002 notes that "In the residential sector, the Order has assisted with the provision of group homes for the Care in the Community programme, but had little effect on the provision of hostels and hotels." The use of dwelling houses has played and continues to play a part in providing a caring location within the community for those who may need care. The definition at Class C3(b) is a use "by not more than six residents living together as a single household (including a household where care is provided for residents)".
12. "Care" is specifically defined in Art 2, nevertheless in Class C3(b), the phrase "including a household where care is provided for residents" is in parenthesis and one is able consider the meaning of Class C3(b) as written without reference to that part in parenthesis, in other words by not making the inclusion if not required. It would therefore read as "Use as a dwellinghouse by not more than six residents living together as a household". The word "care" is not included and there is therefore no requirement to rely on its definition in Art 2, but clearly "care" is implicit in its normal dictionary sense namely "caring for or looking after someone".
13. Article 2 of the UCO headed "Interpretation" begins as follows: "In this Order, unless the context otherwise requires...." and thence follows a series of definitions including the word "care". The interpretation of the word "care" has to be made within the context of the Class in which it falls and I find nothing to suggest that the technical definition in Art 2 needs to be imported in relation to interpreting that part of Class C3(b) which reads as follows: "by not more than six residents living together as a single household.
14. Since the definition of "care" in Art 2 includes the following: "and in Class C2 also includes the personal care of children and medical care and treatment" the Council have argued that the personal care of children can only be considered under Class C2. I do not consider that to be the case. In class C3(b) the section in parenthesis is inserted as an explanation into a sentence which is grammatically correct without it. Only where the word "care", as defined in Art 2, comes to be considered does that part of the sentence in parenthesis come into play. It follows therefore that where the defined word "care" is not used there can be no reference to Class 2 as being the only class within which children could be considered. Furthermore, "not more than six residents living together as single household" does not constitute a category which excludes children. Children are included as residents within the context of a normal family home.
15. Notwithstanding the definition of "care" in Art 2, Class C3 of the Order seems to me to be founded upon a normal definition of care. Class C3(a) for example refers to people living together as a family and C3(b) refers to living together as a single household.
16. 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.

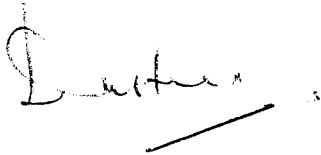
17. I consider that "care" in its ordinary meaning encompasses the uses in Class C3(a) and (b). "Care" as specifically defined by Art 2 of the Order comes into play in addition in Class C3(b) but only in respect of that part in parenthesis.
18. In the circumstances of this appeal, two children are being looked after by two adults on a rota basis. The evidence is that they are not problem children but that they have been removed from a problem situation. Problem children go to a "crisis centre" elsewhere, whereas these children could be placed with foster parents. The Appellant also states that these children are not disabled, they have no past or present dependence upon alcohol or drugs and have had no past or present mental disorder. There is no other evidence before me concerning the children.
19. 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 judgement in the case of *R. v. Bromley London Borough Council, exp. 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 C3(b) of the UCO; namely the use as a dwellinghouse by not more than six residents living together as a single household.
20. 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.
21. I have taken account of all the other matters set out in the representations but they do not outweigh the considerations which have led to my decision.
22. For the reasons given above and having regard to all other matters raised, I am satisfied, on the evidence now available, that the Council's deemed refusal to grant an LDC in respect of 9 Miller Crescent Barnstaple, Devon, was not well-founded and that the appeal should succeed. Accordingly I shall exercise the powers transferred to me in section 195(2) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.

**Formal Decision**

In exercise of the powers transferred to me, I allow the appeal and I attach to this decision a Certificate of Lawfulness describing the extent of the existing use which I consider to be lawful.

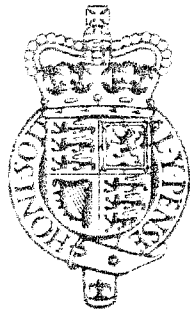
**Right of Appeal**

A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

A handwritten signature in black ink, appearing to read 'D A Hill', with a horizontal line drawn underneath it.

D A Hill

Inspector



# Lawful Development Certificate

The Planning Inspectorate  
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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT  
PROCEDURE) ORDER 1995: ARTICLE 24

**IT IS HEREBY CERTIFIED** that on 8 November 2001 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The Use sought by the Certificate falls within Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 in as much as it constitutes the use of a dwellinghouse by not more than six residents living together as a single household .

D A Hill  
Inspector

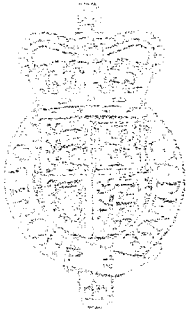
Date            5 AUG 2002  
Reference: APP/X1118/X/02/1081831

## *First Schedule*

The use of the premises as a dwellinghouse providing care for up to two children living together as a single household with care provided by up to two non-resident staff.

## *Second Schedule*

Land at 9 Miller Crescent, Barnstaple, Devon



# Plan

This is the plan referred to in the Lawful Development Certificate dated: 5 AUG 2002

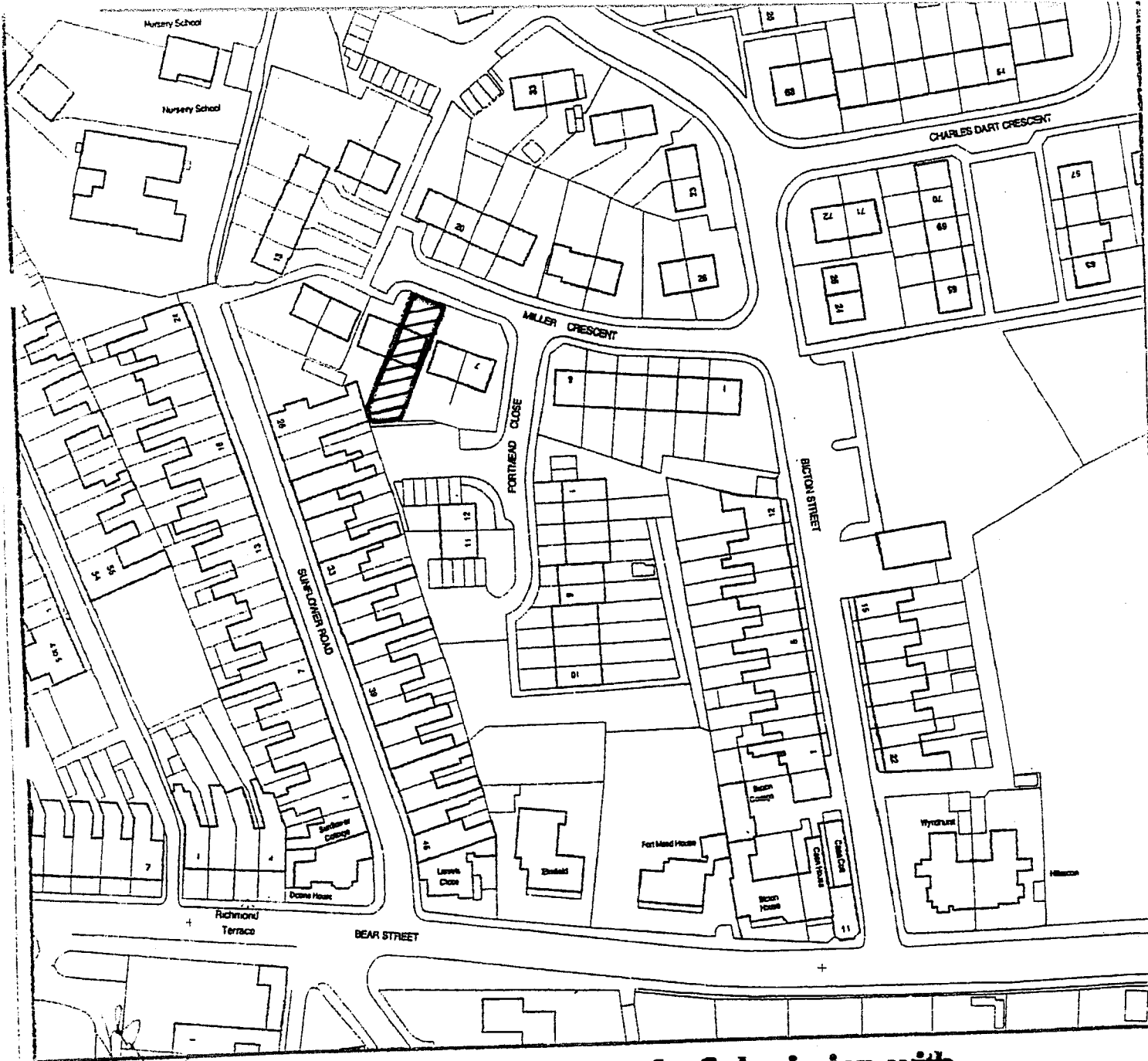
by **D A Hill BSc CEng MICE**

**Land at: 9 Miller Crescent, Barnstaple, Devon.**

**Reference: APP/X1118/X/02/1081831**

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Scale



## Ordnance Survey Extract for Submission with Planning Application

**9 Millar Crescent, Barnstaple**

Extract for Application at:

Copy Supplied To:

Scale of Extracts:

Date of Extract:

Map Reference:

Mark Senn

1:1250

4th October 2001

SS 5633

Extract No.

**554**



M.J. Easton Dip.T.P.L. M.R.T.P.L.  
Principal Planning Officer