

Planning Statement

Application for a Certificate of Lawfulness of Proposed Use to confirm the use of, 27 Primrose Way, Hoyland, Barnsley, S74 0HN, as a therapeutic residential children's home (Class C3b) for 2 children with a live in matron (primary care giver) would be lawful for Optimum Healthcare Ltd.

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1. Introduction

- 1.1 This statement supports an application made under Section 192 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawfulness of Proposed Use or Development. It seeks confirmation that the proposed use of 27 Primrose Way, Hoyland, Barnsley, S74 0HN, as a therapeutic residential children's home for 2 children with a live in matron (primary care giver), (Class C3b) use, would not be materially different to the property's current lawful use as a dwelling house (Class C3a) and would not therefore require planning permission.
- 1.2 This statement aims to demonstrate that, as the proposed use falls within the same use Class as the property's existing lawful use, there is no material difference in planning terms between the two uses and is thus considered a permitted change. Therefore, planning permission would not be required for the proposed use, as no material change of use (and consequently no development) would occur.
- 1.3 This statement supersedes a previous case study application refusal REF 21/00887/CLP by addressing the core issue of a care giver present 24/7 as outlined in the refusal notice for the property to be classed as C3.

2. Context

The applicant

Optimum Healthcare Ltd is a start-up company that is committed to the future delivery of services to children and young people at risk or in need of care and support by providing them person centred tailored therapeutic services and accommodation. We will provide a holistic framework in which young people's emotional, cultural, religious, social, and intellectual and health needs are met. Our perspective is that effective childcare has to encompass all areas of a young person's life, in line with the, Every Child Matters agenda, Children's Homes Regulation, Quality Standards and Legislation, which includes working in partnership with their parents/family and the Local Authority who have placed them in our care, education professionals, youth workers, CAMHS, therapists and all other professional individuals as required and appropriate. The philosophy underpinning the work which we will undertake is to empower and enable individual children and young people to make choices within a safe, proactive environment facilitating exploration of their growing awareness of themselves and their place in society.

- 2.1 Children within the care of Optimum Healthcare Ltd are unable to live on their own for a variety of reasons such as past or present mental health challenges and disablement and thus require day to day support.

Site location and description

- 2.2 The location of the application site is shown on the location plan submitted with the planning application.

2.3 It is a semi-detached house located at the head of Primrose Way within a solely residential area characterised by a mixture of other two-storey semi-detached dwelling and bungalows. See supporting floor plans for layout arrangement.

- 4 bedrooms semi-detached house.
- Lounge
- Dining/Kitchen
- Study
- 2 x ensembles
- A common bathroom.
- Storage
- onsite parking

3. The application

3.1 The application seeks formal confirmation under Section 192 of the Town and Country Planning Act 1990 (as amended) that the proposed use of 27 Primrose Way, Hoyland, Barnsley, S74 0HN as a residential children's home for 2 children with a live in matron (Class C3b use) would not be materially different to the property's current lawful use as a dwelling house (Class C3a) and would not therefore require planning permission. This would mean that as they fall within the same C3 Use Class it would be considered a permitted change.

3.2 The existing property has the layout, facilities, services, and has the character of, a standard dwelling house. The proposed use would not change this, and the external appearance of the building would not be altered.

3.3 We aim to provide the children with an environment as close as possible to a traditional family home. The use of the property would fall within Class C3b. They would have a live in matron who would reside at that property as their permanent home thus constituting a "single household". As there would be less than six people living at the home, it would fall under the same C3 Use Class – C3b to be specific, which covers up to six people living together as a single household and receiving care e.g., supported housing schemes such as those for people with learning disabilities or mental health problems.

3.4 Two children/young persons, between the ages of 10 and 18 years, would live at the property as their principal residence. The children/young persons who would be residing in the proposed premises need additional support to live within the community due to a variety of reasons such as past or present mental health challenges and complexities, and disablement. The aim of the service is to ensure that they live as independent life as possible and reintegrate them to more independent living facilities.

3.5 At the proposed residential children's home, day-to-day living facilities, including bathroom, kitchen, dining and sitting rooms would be shared. The children / young persons would have their own bedroom. Bedrooms would be fitted with locks to meet legal requirements, including human rights legislation; however, the live in matron plus the additional support staff would have a key to each room.

- 3.6 The preparation of meals would be principally undertaken in turn by the live in matron or care assistants; however, the children / young persons would be encouraged to assist. The live in matron, care assistant and children / young persons would eat their meals together at the dining table and socialise together. The young persons would normally attend a school, college, university, or work placement.
- 3.7 The live in matron would provide 24/7 cover as the primary care giver living permanently with the children/young persons. Having a live in matron means there is no need to employ a lot more additional staff to work on a shift rota basis. As such only one to two other care assistants will be available on a shift basis on site to assist the live in matron.
- Live in matron – available 24/7
 - Care Assistant – 8am-8pm (Sun-Sat)
 - Care Assistant – 8pm-8am (Sun-Sat)
 - Registered Manager – 8am- 5pm (Mon – Fri)
- Having live in matron means there is a great reduction for the number of vehicles accessing the on-site parking at any moment in time due to the lack of people, usually generated if staffing levels for carers where in force, in such an environment.
- 3.8 The proposed total number of employees is 7, with two staff on shift plus the Registered Manager at any given time. Not all staff would be always present on the site. During the day there would be approximately 4 members of staff at the site. These would include a live in matron, 2 x care assistants and a manager as this will be on a one-to-one staffing level with the manager overseeing. During the night the live in matron would be present ably supported by an overnight care assistant.
- 3.9 In addition to support staff, there would be short and infrequent visits from social workers and other support professionals. However, it would be rare for the children / young persons to receive social visits from family members to the home. Day to day living activities such as shopping, school runs and social outings for the children / young persons would be undertaken by the support staff (or perhaps by online ordering / delivery in the case of shopping).
- 3.10 The application site has sufficient on-site parking and outdoor amenity space for the proposed use. There would likely be approximately 1-2 cars on the site during the day and far less overnight.

4. Legislative and procedural context

Town and Country Planning Act 1990 (as amended)

- 4.1 Part III of the Town and Country Planning Act 1990 (as amended) (hereafter referred to as “the 1990 Act”) relates to Control over Development. For the purposes of the 1990 Act, “development” is defined in Section

55(1) and includes operational development or “*the making of any material change in the use of any buildings or other land*” (emphasis added).

- 4.2 Section 192 of the 1990 Act provides that an application may be made to the local planning authority (LPA) to ascertain whether any proposed use of land or buildings would be lawful. If such an application contains information to satisfy the LPA that the proposed use would be lawful if begun at the time of the application, they shall issue a certificate to that effect.

Town and Country Planning (Use Classes) Order 1987 (as amended)

- 4.3 The Town and Country Planning (Use Classes) Order 1987 (as amended) (hereafter referred to as the Use Classes Order) classifies land uses and identifies certain uses which do not fall within any of the specified classes.
- 4.4 The classes of the Order relevant to this application are Class C2 (residential institutions) and Class C3 (dwelling houses).
- 4.5 Amendments were made in 2010 to the 1987 Order. The effect of these amendments was to amend Class C2A, introduce a new Class C4 and to further sub-divide Class C3. It is the subdivision of Class C3 that is of great relevance to this application. The amended Class C3 reads as follows:

"Class C3. Dwelling houses

Use as a dwelling house (whether or not as a sole 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)"

- 4.6 The Use Classes Order thus differentiates between dwelling houses where residents live together in different circumstances as a single household, including small houses in multiple occupation (which are not included in the new Class C4); and specifically includes separate reference to a household of 6 or fewer people where care is provided for residents (Class C3b). Whilst the Order identifies three different types of dwelling house uses, it should be noted that the subdivisions remain within the overall Class C3. Consequently, permission is not required for a change of between any of the subdivisions of the Class.
- 4.7 Class C2 (residential institutions) remains unchanged by the 2010 amendment and reads:

"Use for the provision of residential accommodation and care to people in need of care (other than within Class C3 (dwelling houses)). Use as a hospital or nursing home. Use as a residential school, college, or training centre.

Circular 05/2010

- 4.8 Circular 05/2010 provided guidance on the interpretation of the 2010 amendment to the Use Classes Order. It was withdrawn on the 7th of March 2014; however, whilst no longer a Statutory Instrument, it does assist in interpreting the scope of Class C3.
- 4.9 In respect of Class C3, the Circular notes at paragraph 17 that the term "single household" is not defined in the legislation.
- 4.10 Paragraph 19 notes that the limit on the number of people in a household for the purposes of Class C3(b) is no more than 6. However, paragraph 34 emphasises that although the control limit of 6 persons defines the scope of the C3 dwelling house Class, this does not imply that any excess of that number must constitute a breach of planning control. A material change of use will only occur where the total number has increased to the point where it can be said that the use has intensified so as to become a different character, or the residents no longer constitute a single household.
- 4.11 Paragraphs 20 and 21 notes that supported housing schemes such as for people with disabilities or mental health problems continue to be within Class C3(b), but that in 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 C2 Use Class regardless of the size of the home.
- 4.12 Paragraphs 23 to 25 note that the term "dwelling house" is not defined within this part of the Use Class Order. Whether a particular building is a dwelling house will therefore depend upon the facts of the case. The common feature of all premises that could be described as dwelling houses is that they are buildings that afford the facilities required for day-to-day private domestic existence. The criteria for determining whether particular premises could be classified within Class C3 include both the manner of the use and the physical condition of the premises. Two specific characteristics of a Class C3 dwelling house are identified in paragraph 25, where a building is:
- a single, self-contained unit of occupation which can be regarded as being a separate "planning unit" distinct from any other part of the building containing them; and
 - designed or adapted for residential purposes and containing the normal facilities for cooking, eating, and sleeping associated with use as a dwelling house.

5. Planning considerations

5.1 Attached at Appendices EP2 to EP7 are the following relevant documents:

- Barrister's opinion prepared by Mr J Barrett of Kings Chambers, Manchester (EP2).
- case law: *North Devon District Council and the First Secretary of State (Queen's Bench Division, 30th January 2003)* [2003] JPL 1191 (EP3).
- appeal decisions: Briar Cottage, Malpas, Cheshire¹ (EP4) and Ty Rhos Bach, Brecon² (EP5).
- Old Rectory Cottage, Fleet Marston CLOPUD decision notice (ref: 10/01965/ACL) (EP6)
- Old Rectory Cottage, Fleet Marston CLOPUD delegated officer's report (ref: 10/01965/ACL) (EP7).

5.2 The above documents provide very useful indicators for the determination of this application. In addition, the specific circumstances of this case are a primary consideration.

5.3 In terms of the assessment of whether the premises could properly be regarded as a dwelling house, the physical condition of the premises accords with the characteristics outlined in paragraphs 24 and 25 of Circular 05/2010. Indeed, the property has been used as a single dwelling for many years, as the site's lack of planning history indicates.

5.4 It is not proposed that any significant changes to the physical condition of the application property would be made, and it would retain all the elements for day-to-day private domestic existence when in use as a children's home. Therefore, in terms of its physical condition, the premises would retain all the characteristics of a dwelling house.

5.5 It is clear from paragraph 25 of the Circular that the classification of particular premises as Class C3 includes the manner of its use as well as its physical condition. In terms of occupation of a dwelling house in Class C3(a), such a household may comprise adults and children living together, with the children being cared for by either their parents or foster parents, and possibly a nanny, governess or au-pair.

5.6 In the case of 27 Primrose Way, the children / young persons would be resident in the dwelling house and would require all the facilities for day-to-day living plus the added advantage of having a live in matron on site. We acknowledge, as determined in the attached judgment in *North Devon*, that if only young people are resident at the property, they would not constitute a "household". A property must be occupied by a single household for it to be classified as Class C3a, however The Town and Country Planning (Use Classes) Order 1987 (as amended) provides a reprieve within the class uses, by allowing for use under class C3b. We therefore acknowledge that the proposed use would not fall under Class C3a on this merit alone, but with

¹ APP/K0615 /X/05/2004825 (dated 24/06 /2006)

² APP/P9502 /X/13/2205394 (dated 18/02 /2014)

the introduction of primary care giver to stay with the children permanently, it does now constitute a classification within Class C3b.

- 5.7 The outcome of *North Devon*, and as applied by the respective Planning Inspectors in the above-listed appeal decisions, is that despite there being a change between Class C3 and Class C2; that change was *not material* and planning permission was therefore not required in the context of Section 55(1) of the 1990 Act. Mr Justice Collins made it clear in *North Devon* that his judgment was based on the individual facts of the case, and that whether or not a change is material, is a matter of fact and degree. Therefore, in respect of 27 Primrose Way, it must be determined whether the change of use from a single-family dwelling to the proposed small care home for two children with a primary care giver (live in matron) would be considered a material change, based on the facts of the specific case.
- 5.8 Notwithstanding the changes in the national planning policy context since the *North Devon* Judgment, there has been no material change that would suggest the Judgment is no longer applicable.
- 5.9 The above-listed appeal decisions give an indication of some of the factors that Inspectors have considered when assessing whether a material change of use would occur. These include:
- the nature of the use.
 - physical changes to the building; and
 - vehicle trips to and from the site.
- 5.10 We look at the facts of the proposed use below, by referring to each of these factors.

The nature of the use

- 5.11 The purpose of the home would be to provide an environment as close as possible to a “traditional” family home. With the exception of the care assistants not being resident at the home (which, as described in this Statement, would not have any materially different planning impacts), it would operate in a very similar way to a normal dwelling house with the live in matron being the primary care giver for that young person, as described in the section of this statement titled “*The application*”.
- 5.12 The property currently contains 4 bedrooms. A Class C3a use of the property as a dwelling house could therefore be expected to be occupied by a large family of potentially 3 children and 2 adults. The level of occupation with the proposed use would not be materially different to this.
- 5.13 In the Ty Rhos and Briar Cottage appeals, the Inspectors considered whether there were any inherent characteristics of the young people likely to occupy the proposed children’s homes that would result in materially different impacts in relation to noise and disturbance, and fear of crime.
- 5.14 As referred to above, the number of young people residing in the proposed residential children’s home would be no more than could be expected if the dwelling was occupied by a large family, which, given the size of the dwelling, is a realistic expectation. The young persons residing at the proposed residential children’s home would likely be subject to greater levels of supervision than young people in a typical family home. For example, with the proposed use, it is unlikely that the young persons would be left

unsupervised at any point, whereas older teenagers may be left unsupervised in a “traditional ” family home from time to time. It is therefore unlikely that any noise or disturbance would be materially different than could be expected if the dwelling were occupied by a large family with potentially up to 3 children.

- 5.15 In the Briar Cottage appeal, one of the reasons for refusal advanced by the LPA was that the concentration of occupants with behavioural problems would have a materially different impact on the surrounding community through increased fear of crime.
- 5.16 The Inspector makes reference in his decision to the Judgment in *Smith v First Secretary of State & Mid-Bedfordshire District Council* [2006] JPL 386. That Judgment confirms that the basis of fear of crime must be from the character of the use and not just the behaviour of some of the occupants. As confirmed in the Briar Cottage appeal decision, there is no evidence that young people taken into care intrinsically exhibit differing patterns of behaviour to children in a “traditional” family home.
- ² 5.17 It should be stressed that the young people in the care of Optimum Healthcare Ltd are taken into care for a variety of reasons and are in need of personal care by reason of disablement, past or present dependence on alcohol or drugs or past or present mental disorder, but also because they are unable to live with their natural parents and are simply not able to live by themselves due to their age. As referred to, above, on maturity they would be expected to live independent adult lives. The proposed home would not be a secure unit, and the young persons taken into care would not be expected to have any inherent behavioural problems, although for the purposes of Ofsted registration, Children’s homes must be registered to be able to provide for children with emotional and behavioural difficulties as a minimum level of care provision, which would be the case with 27 Primrose Way. It is possible that some residents may experience challenging behaviours, but this can be true of young people whether in care or not.
- 5.18 The nature of the proposed use and of the occupants is not one therefore that would be expected to give rise to antisocial behaviour issues and would not be materially different to the level of such issues that could arise in a “traditional” family home.
- 5.19 There would not therefore be any planning impacts arising from the use of the dwelling as a small residential children’s home for two children / young persons that would be materially different to if the property continued to be occupied as a large dwelling house.

Physical changes to the building

- 5.20 As referred to above there would be no material alterations to the building. It would remain of the character of a dwelling house.
- 5.21 There are sufficient bedrooms within the property for two children / young persons and another bedroom for the live in matron., with the fourth being for the overnight staff.

- 5.22 One of the bedrooms or Study may be used as a small office for administration purposes; however, as confirmed in the Briar Cottage appeal decision, it is not uncommon for dwellings to contain offices. This would not therefore result in a material change in the character of the building.
- 5.23 Similarly, and again as confirmed in the attached appeal decisions, whilst individual bedrooms would contain locks (something not usually associated with dwelling houses), this would not result in a material change to the building or the character of the use.
- 5.24 In light of the above, there would be no physical alterations to the building that would alter its character from a dwelling house.

Vehicle trips to and from the site

- 5.25 The existing semi-detached dwelling is capable of accommodating a large extended family; up to 5 adult house-sharers living as a single household in accordance with Class C3; or perhaps a family of two adults and 3 or 4 children. It has 4 bedrooms and generous living accommodation, so this level of occupancy is a realistic expectation. As with many modern households, if it were an all-adult household, it could be expected that many, if not all house-sharers could have their own private car, and use it on a daily basis for commuting, shopping, social and other journeys, particularly given the site's location.

If a family with children were resident, it would not be unusual for the property to contain 1 or 2 private cars, potentially more if the children were of driving age. Again, these cars could be used on a daily basis for above-mentioned journeys, as well as for the school run. Such a household would be likely to generate a number of such trips a day. There may also be numerous visitors to the site if it remained in Class C3 use, many of whom may travel by car given the site's location.

- 5.26 There would be little material difference with the number of vehicle trips that could be associated with the proposed use. The young persons would not be car drivers. Only the support staff would have access to a car. The young persons would be transported to and from school by support staff. Unlike a Class C3 use, it is likely that there would be few vehicle trips associated with social visitors to the site.
- 5.27 There are likely to be additional vehicle movements associated with staff at start of shift and end of shift, over time. However, similar to as determined in the Briar Cottage appeal decision (see paragraphs 8 to 9 of the appeal decision), given the size of the existing dwelling and the number of vehicle trips that could be generated by its Class C3 use, the number of vehicular trips associated with the proposed use, would not be significantly higher than the existing use, would not be materially different and would not have a material impact on the character of the building / site.
- 5.28 A similar conclusion is also reached in the Ty Rhos Bach appeal decision (paragraphs 21 and 22).
- 5.29 On the merits of this individual case, based on the significance of the change of use and resulting planning impacts on the use of the land and building, it should be concluded

that no material change of use would take place, and therefore planning permission is not required.

6. Summary and conclusions

- 6.1 This statement supports an application under Section 192 of the 1990 Act for a CLOPUD to confirm that there would be no material change of use between the proposed Class C3b residential children's home for use for 2 children with a live in matron and the property's current lawful use as a Class C3a dwelling house.
- 6.2 By virtue of the case law presented in the *North Devon* Judgment and the appeal decisions referred to in this statement, as well as the enclosed Barrister's opinion, and the previous refusal notice for a similar property, the proposed use would not have any land use consequences that would lead to the conclusion that a material change of use would occur. Because there would be no material change of use, the proposed change from a Class C3a use to the same class use proposed (which falls within Class C3b) would not be development and would not therefore require planning permission in the context of Section 55(1) of the 1990 Act. The same conclusion was reached by AVDC in a virtually identical case at Old Rectory Cottage, Fleet Marston.
- 6.3 We therefore respectfully request that a CLOPUD is issued to confirm that there would be no material change of use and planning permission would not be required.

7. Appendices

Barrister's opinion

EP3. Judgment in North Devon District Council and the First Secretary of State [2003]

JPL 1191 EP4. Briar Cottage, Wrexham Road, Bickerton, Malpas, Cheshire appeal decision

(APP/K0615/X/05/2004825)

EP5. Ty Rhos Bach, Hel Senni, Brecon, Powys, LD3 8SU appeal decision (APP/P9502/X/13/22053)