

PLANNING STATEMENT

Application for a Certificate of
Lawfulness for proposed use as a
Three Child Children's home (Class C2)
of 18 – 20 Church Street, Royston,
Barnsley S71 4QU.

MPD Built
Environment
Consultants Ltd

INTRODUCTION

The application is for a Certificate of Lawfulness in relation to the proposed future use of 18 – 20 Church Street, Royston, Barnsley as a three child children's home with non-resident carers (Class C2).

The proposed change of use is not considered to be amount to a material change of use and as such does not constitute development for which planning permission is required. Accordingly, it is considered that the use of the property for the proposed use would be lawful.

Under S.192 of the Town & Country Planning Act 1990 (as amended), any person who wishes to ascertain whether the proposed use of a building would be lawful, can apply for a certificate of lawful development for this purpose to the local planning authority (LPA), specifying the land and describing the use in question. If the LPA are provided with information satisfying them the use described in the application would be lawful if commenced at the time of the application, they shall issue a certificate to that effect. The lawfulness of the use for which a certificate is in force under this section of the Act shall be conclusively presumed unless there is a material change, before the use is started in any of the matters relevant to determining such lawfulness.

National Planning Practice Guidance sets out that on application for a Certificate of Lawfulness the LPA needs to consider whether, on the facts of the case and relevant planning law, the use would be lawful. The planning merits of the case are not relevant to whether a certificate should be granted. In determining an application for a prospective use, the LPA needs to ask, *'if this proposed change of use had occurred on the application date, would it have been lawful for planning purposes?'* (Reference ID: 17c-009-20140306).

THE CURRENT USE

The application property is a 4-bed detached dwellinghouse (Class C3). The planning history available to view online on the LPA website suggests it's current lawful use is as a dwellinghouse and there is no evidence to suggest it has ever been used for any other purpose. It is therefore considered reasonable to presume that use of the property as a dwellinghouse is its lawful use. This use is the primary and only use and falls within Class C3 of the Town & Country Planning (Use Classes) Order 1987 (as amended).



DESCRIPTION OF DEVELOPMENT

The proposal is for the use of the dwellinghouse (Class C3) as a residential children's care home, providing care for children, in which no more than three children (persons below the age of 18) will be resident at any single time. The carers will not reside at the property and as the courts have decreed that children cannot form a household on their own without a resident adult the use falls with Class C2 of the Town & Country Use Classes Order 1987 (as amended).



ADDITIONAL BACKGROUND INFORMATION

The following information does not form part of the formal description of the use for the purposes of the description required to be given in any certificate issued. The following is provided to ensure the LPA has a sufficient understanding of the nature and character of the proposed use, to assist it in its assessment and to affirm the description as provided above is clear and concise in relation to the proposed use.

There will usually be two staff members present to care for the children. During the normal working hours Monday to Friday a manager may also be present on occasions. The only time when there will normally be more staff present is during the handover between shifts, when there is an overlap, as one shift takes over from another. A shift rota has been submitted with the application.

No parental visits to the child will take place at the home.

Additionally, no comings and goings will normally take place between 2200 and 0700 hours.

Two staff members will be present overnight and during the daytime with a 1:1.5 staff to child ratio. A dedicated bedroom will provide overnight sleeping

accommodation for the staff on duty. With one staff member remaining awake during the night.

All meetings will normally take place away from the home. There will occasionally be visitors during the course of the week whose visits are associated solely with the use of the children's home. These visitors will normally be in the child's care plan, for example, multi-agency professionals or social workers. The number of visits will vary according to the needs of the child. These visits will normally take place on a weekday, and it is anticipated that these will amount to no more than two a month maximum.

A child is by law required to be in education, so during the week they will be away from the property during school hours.

All shopping, cooking, cleaning and other domestic chores will be undertaken by the staff who attend the home to provide personal care to the children. Meals will generally be prepared and taken together.

The children will share access to the bathroom, kitchen/diner, living room and garden and will have their own individual bedrooms.

No structural or material alterations are proposed to be made to the external appearance of the property, the grounds or interior. No additional CCTV will be installed.



WHY A CERTIFICATE OF LAWFULNESS SHOULD BE GRANTED

Legal Background and Government Guidance

Under Section 55(1) of the Town and Country Planning Act 1990 (as amended)(hereafter ‘the Act’), development means amongst other things, the making of any material change in the use of any building. Under Section 57(1), planning permission is required for the carrying out of any development.

Where a change of use is not material then it is ‘*not development*’and planning permission is not required.

Under Section 55(2)(f) of the Act, among the uses of land which should not be taken for the purposes of the Act to involve development of land, are uses of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the building or other land, for any other purpose of the same class.

Such an order exists in the Use Classes Order (1987) (as amended) (hereinafter ‘*the Use Classes Order*’), which says at Article 3(1): Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve the development of the land.

It is important to note the effect of the Use Classes Order is entirely permissive. It does not follow from it that a use change not authorised by the order must constitute development (see e.g. *Rann v Secretary of State for the Environment* [1979] 40 P & C.R. 113 [1980] JPL. 109). Development is not involved, for example merely because a new use would fall within a different class from the previous use. The question is whether there has been a *material* change in use. If there has not, then the change does not amount to development irrespective of the effect on the Use Classes Order.¹

The Use Classes Order sets out in Article 2 (interpretation) ‘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 present mental disorder, and in Class C2 also includes the personal care of children and medical care and treatment.

¹ See Journal of Planning Law and Environment, Volume 6, Part 3B, Section 950.1, ‘Functions of the Order’

The Courts have considered the scope of Class C2 in respect of children's homes. It was found that the definition of 'care' in Article 2 restricts the personal care of children to Class C2 only. Children normally cannot form a household without the presence of a care-giver, and a children's home may not fall within Class C3 unless a care-giver is also resident at the property,² such that a single household is formed. Therefore, even if no other form of care were provided, the use as a children's home, with no resident adult, providing personal care to children, would still fall within Class C2.

It does not follow that a Class C2 use would necessarily be materially different from a Class C3 use. For a change of use from a use in Class C3 to a use in Class C2 to amount to development, and thereby require planning permission, the change of use has to be material. That applies to the overall character of the use and not just to certain aspects of it.

The determination of whether a change is material is regarded by the courts as being primarily a matter of fact and degree.

Assessment of Proposed Change

The existing use fulfils a proper planning purpose by providing general purpose family housing. To the extent the change would end this use, the new use is another form of residential use which will also fulfil a proper planning purpose, in helping to meet the need for small children's homes. The objective is to provide a home which will allow the child to live as close to a conventional family life as is reasonably possible. In aiming to fulfil that objective the use will not appear to be any different from that of a family dwelling, nor will it be experienced as, an institutional environment.

The new use requires no structural or material alterations to the exterior of the property, to its grounds or to the interior.

The child will have their own dedicated bedroom. The number of children to be accommodated is consistent with the number of children a property of this size (4 bedrooms) might accommodate.

A child requires personal care because children cannot form a household on their own; adult supervision is required. Sometimes some children may be on the spectrum of special needs, by way of physical or mental impairment, or emotional or behavioural difficulties. This would not be such as to require

² North Devon DC v FSS & Southern Childcare Ltd [2003] EWHC 157 (Admin)

additional staffing or to require a greater than normal level of visitors to the premises. The need for care is therefore only marginally different to that which may be required by any household containing children.

The use of one of the bedrooms by staff as an office (as well as sleeping accommodation) will require no specific adaptation. It will be furnished and will have the appearance of a bedroom or spare bedroom equipped for home study or home working. It will appear and be used no differently to an arrangement which can be found today in many family homes.

The property will be occupied as close to a normal household as possible, for example, with a single kitchen where food can be cooked and a dining room where meals can be taken together, the same as in a single household. The resident children will attend education and will be able to engage in extra-curricular, domestic and social activities and days out. The children will have unrestricted access to the bathroom, kitchen and reception rooms, as well as the outdoor space. The only room which access will be restricted will be the staff bedroom/office. This is not considered to be unduly restrictive and it is not unusual in some family households for children to have restricted access to certain rooms. The children will have their own personal bedrooms. Taken together, these arrangements closely mirror a traditional family household set up in many respects with few if any discernible differences.

The use as a children's home will generate comings and goings in connection with three areas of activity.

- There will be comings and goings associated with taking children to school and bringing them home again. As well as with the usual extra-curricular, domestic and social activities, including miscellaneous visitors such as any household receives.
- There will be comings and goings associated with the staffing of the home.
- There will be infrequent comings and goings associated with visitors to the home as a children's home (2 per month weekdays)

It would not seem unreasonable to assume a 4-bed family home could generate an average of between 5 and 6 vehicle movements daily on a weekday. The level of vehicle movement generated by the children's home is considered to be comparable to this and in the event that the trips generated amount to more, it is considered that the difference would be insignificant compared to the overall movements that could be generated by a dwellinghouse

of this size over the course of a week. The timing of the majority of these movements will be similar to those of traditional family household. The overall number and pattern of comings and goings to the home will be little different from that associated with many dwellinghouses and will not be such as likely impact the amenities of neighbours or the character of the area.

When the change is viewed as a whole, the change in the patterns of comings and goings, which it is will be insignificant anyway, will be the only aspect where some change might be perceptible. The overall character of the use will not appear to change much if at all. Accordingly, having regard to this it should be found that the change of use will not be material and as such it does not constitute development. Therefore as the proposal is 'not development' then planning permission is not required and the use is lawful.



CONCLUSIONS

This statement and the detailed analysis of how the 3 child children's home will operate in practice has set out how the use, as a use within Class C2, will not amount to a material change in use from the existing Class C3 use as a dwellinghouse. The change in use will not therefore amount to development for which planning permission would be required. Accordingly, a Certificate of Lawfulness should be issued for the use as described in the application.

If the LPA require any further information or clarification of any points raised in the application, then they should contact me at their earliest opportunity.

I trust that the LPA finds the above sufficient to demonstrate the proposed use is lawful and accordingly it is respectfully requested that a Lawful Development Certificate be granted for the proposed use under S.192 of the Act.



APPENDICIES

Appendix A - *Appeal Decision: APP/M4320/X/22/3300633 - 9 Winstanley Road, Waterloo, Liverpool L22 4QN*

Appendix B - *Appeal Decision: APP/C5690/X/22/3299351 - 9 Whitburn Road, London, SE13 7UQ*

Appendix C - *Appeal Decision: APP/M4320/X/22/3300634 - 19 Winstanley Road, Waterloo, Liverpool L22 4QN*

Appendix D - *Appeal Decision: APP/H4315/X/22/3294620 - 81 Penny Lane, Haydock, St Helens WA11 0QR*

Appendix E - *Appeal Decision: APP/F1040/X/21/3283867 - 3 Sandpiper Lane, Mickleover, Derby DE3 0UU*

Appendix F - *Appeal Decision: APP/U2370/X/21/3277997 - 12 Chiltern Avenue, Poulton-Le-Fylde FY6 7DY*

Appendix G - *Appeal Decision: APP/D2320/X/21/3277353 - 20, Briery Hey, Bamber Bridge, Preston, PR5 8HU*

Appendix H - *Appeal Decision - APP/P1045/X/20/3263178 214 Dale Road, Matlock Bath DE4 3PT*

Appendix I - *Appeal Decision APP/K2420/X/11/2155849 -15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD*

Appendix J - *Appeal Decision - APP/K0615/X/05/2004825 - Briar Cottage, Wrexham Road, Bickerton, Malpas, Cheshire*

Appendix K - *Appeal Decision - APP/Z5630/X/23/3318074 Red Thorns, 98 Westbury Road, Kingston Upon Thames, New Malden, KT3 5AN*

Appendix L - *Appeal Decision APP/E2205/X/16/3161037 – The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP*

Appendix M - *Appeal Decision - APP/X1118/X/02/1081831 - 9 Miller Crescent, Barnstable, Devon.*

Appendix N - Certificate of Lawfulness: 2025/0724 – 9 Clifton Road, Grimethorpe, Barnsley.

Appendix O - Certificate of Lawfulness: 2025/0746 – 2A Dearnley View, Barnsley S75 1EA.

Appendix P - Certificate of Lawfulness: 2025/0808 – Bluebell Cottage, Brierley Road, Brierley, Barnsley S72 9JQ.

CRITERIA FOR ASSESSMENT OF MATERIAL CHANGE IN RESPECT OF SMALL CARE HOMES

1. The numbers of occupants and numbers of vehicles at the property or as last occupied.

There will be up to 3 young people under the age of 18 and 2-3 members of staff on site at any one time. Staff may drive and park their cars on the ample parking, and off road. This would cause no concern to other motorists or neighbours. The manager works 0900 – 1700 so starts work and leaves at a different time to the shift handover.

2. The number of children who will be residing at the property and for how long they will live there.

3 children and, dependent upon their needs, residency could be short, medium or long term

3. The age the children who will be residing at the property.

8-17

4. The types of children who will reside at the property e.g. children with disabilities, alcohol problems etc.

Looked after children that are unable to reside within a family setting with mild learning difficulties, emotional and social needs, etc.

5. The number of carers in total and the number which will be present at the property at any given time and whether there is 24-hour care.

9 is the total number of carers with a maximum of 2 support workers and the manager being on shift at any one time, with care being provided on a 24-hour basis. During the night 2 staff will be present on site.

6. Shift patterns including the duration of each shift and associated vehicular movements and parking details.

12-hour shifts (2 handovers per 24 hours)

- 7.** Details of tutors – numbers, frequency of visits and duration of stay at the property per day.

No tutors on site. The child would be placed in local education, and would be transported to school in the same manner as any normal dwelling house (car, public transport or walking)

- 8.** Details of social workers and child psychologists – numbers, frequency of visits and duration of stay.

Social worker(s) will visit, dependent upon the needs of child (similar in number to visits undertaken by relatives, family of a normal dwelling house). Other professionals involved in the young persons care, may also visit the property during a planned visit, however these meetings are now usually carried out via Teams.

- 9.** Details of any staff or contractors visiting the property e.g. gardeners, maintenance, home delivery etc. – numbers, frequency of visits and duration of stay.

Gardening visits once or twice a month and maintenance visits when repairs are needed.

- 10.** Any external changes which may be made to the property e.g. replacing the garden with a drive, erection or signage or cameras.

No changes are foreseen at this point.

- 11.** Have there been any internal alterations to the properties, if so what?

Internal doors will be changed to fire doors and a fire panel will be installed, but no other changes are required.