

Supporting Statement

92 Wilbraham Road, Manchester M14 7DR

Use as a children's home for a maximum of 3 resident children receiving care aged
13-16 with non-resident care staff support.

Executive Summary

This application is for a Lawful Development Certificate for the proposed use of 92 Wilbraham Road as a children's care home for up to 3 children aged 13-16 with 24 hour care provided by non-resident carers. Based on case law and Appeals this type of use is generally considered to be a C2 Use Class.

The existing use of the property is a C3 dwellinghouse.

As set out in s.55 of the Town and Country Planning Act 1990 development only occurs if the change of use is "material". There is no definition of a "material" change and it is therefore a question of fact and degree depending on the circumstances of each case.

If the use is C2, the change from C3 to C2 does not in itself need planning permission. It only needs permission if that change is material.

The application is put forward on the basis that there would be no material change of use of the property. It would not therefore constitute development and would not require permission.

The leading Court judgement on children's care homes is North Devon District Council v FSS & Southern Childcare Ltd (2003).

The judge considered the question as to whether the Use Class of the property was C3 or C2. He took the view that with no adult residing permanently in the property the arrangement did not constitute a "household" for the purposes of C3 and therefore it was a C2 residential institution.

The judge then went on to consider a subsidiary question whether, even if it was a different use class, the change of use was material. The materiality of any change was either in character of the use or the effect of the change on neighbouring uses and the locality. The judge observed that this depends entirely on the facts of each individual case and in that particular case concluded that there was not a material change and lawful use was confirmed.

This application should be considered in the same way as the North Devon case, firstly which use class does the use fall into and secondly, if it is C2 then would there be a material change of use?

It is our view that the proposed use of the property does not constitute development.

The proposed use of the property is to house a maximum of 3 children, with 2 non-resident adult carers present providing 24 hour care. The property has 4 bedrooms, kitchen/dining room and office room and is large enough that it could easily accommodate a large family group of 2 adults plus 3 children. It could also be used as a C3(b) care home for up to 6 adults, with non-resident care being provided.

The proposed use would be very similar to a C3 dwellinghouse. Daily patterns of movement to and from the property would not be dissimilar to a family home or small care home. There would not be any greater number of trips to and from the property which might lead to traffic, parking, or other disturbance to amenity than one would expect in a normal family or small care home. On this basis the Applicant's therefore consider that the proposed development is lawful, and a Lawful Development Certificate should be granted.

1. Introduction

- 1.1.1 This statement has been prepared to support my client's application for Certificate of Lawfulness of Proposed Use or Development

Use as a children's home for a maximum of 3 resident children receiving care aged 13-16 with non-resident care staff support.

- 1.1.2 TMP Planning Ltd act as planning consultants for the applicant.

2. Site Description

- 2.1.1 The application site is a two storey 4 bedroom semi-detached house on the northern side of Wilbraham Road which is about 2.7 miles south of the city centre. The property has three off-road parking spaces.
- 2.1.2 Surrounding uses are mainly residential.
- 2.1.3 The property is within 70m of bus stops and 1km from shops and services at Fallowfield.

3. Planning History

- 3.1.1 The Council's online planning records show the following planning history for the property as follows:

Erection of part single, part two-storey rear extension including juliet balcony, to form additional living accommodation to dwellinghouse (C3 Use Class).

Ref. No: 101117/FH/2012/S1 | Status: Application Approved

4. Proposal

Existing Use

- 4.1.1 The property is a C3 dwellinghouse. The only planning history relates to an extension to the property as a single dwellinghouse.

Proposed Use

- 4.1.2 The proposal is to operate as a small residential care home for children between the ages of 13-16 which would be Ofsted registered as a Children's home. The maximum number of children housed at any one time will be 3. They will, ideally, be long term placements for the children.
- 4.1.3 There would be typically 2 care staff present during the day with a maximum of 3 including a Home Manager. At night there will be two carers present (one sleeping one awake). The care staff would be non-resident working on a three shift basis starting as follows:

7:30 – 15:00

14:30 – 22:30

22:00 – 08:00

- 4.1.4 There would be a 30 minute handover between shifts. Although carers will work shifts, it is important for the children to see carers they are familiar and comfortable with, so the number of carers will be limited.
- 4.1.5 The children will attend school either locally or at other locations where appropriate and depending on their needs. They will be transported by the carers or by taxi.
- 4.1.6 In terms of visitors social workers will generally visit once every 1-3 months. An independent visitor will visit once per month to report on the quality of the home
- 4.1.7 Parental visits may occur at the property depending on the children and nature of the relationships.
- 4.1.8 The internal layout will remain unchanged and very like a family home with bedrooms, bathroom, kitchen/dining room and sitting room. The back garden will be retained. A ground floor room is dedicated to support staff as an office. There are no external alterations to the building proposed and there will be no external signage so there will no changes to the appearance of the property to indicate that it is different to a dwellinghouse.
- 4.1.9 The property is within 70m of bus stops. There are three off-street parking spaces. One space will be dedicated to the home's vehicle (used by staff to transport the children for activities or any other purposes). The other spaces will be available for carers or visitors
- 4.1.10 There is also on-street parking available on the surrounding roads.
- 4.1.11 In terms of the Care Standards Act 2000, residential children's homes (and the Registered Home managers who run the homes) are required to register with OFSTED as a social care provider before they can operate and it is an offence not to do so. This registration is essential in order that OFSTED can:
 - protect children and young people
 - ensure that the establishment meets the requirements of the relevant legislation
 - ensure that providers and managers deliver good services
 - provide information about the quality of an establishment to a range of stakeholders including: children/young people, parents, carers and commissioners.
- 4.1.12 This entails an initial very in-depth application process supported by a significant amount of information pertaining to the home eg. Statement of Purpose, Location Assessment, Policies & Procedures, the Children's guide etc.
- 4.1.13 OFSTED place a strong emphasis on the importance of a children's home being a "home" and not an institution. For the wellbeing of the children, they need to feel like they are in a home.
- 4.1.14 The Applicant will submit their OFSTED registration once the Lawful Development Certificate has been determined.

5. Policies and Legislation

- 5.1.1 The application is submitted under Section 192 of the Town and Country Planning Act 1990 (As amended) which states:

192 Certificate of lawfulness of proposed use or development.

(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 operations 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. (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.

- 5.1.2 The Town and Country Planning Use Classes Order (1987) (as amended) (UCO) sets out a number of different use classes and states at 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 development of the land.

- 5.1.3 A C3 dwellinghouse is defined as follows:

Class C3. Dwellinghouses

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).

5.1.4 A C2 Residential Institution is defined as follows

Class C2. Residential institutions

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.

5.1.5 The UCO, therefore, confirms that changes within each Use Class do not constitute development and therefore would not need planning permission. The UCO does not specify what changes of use do require permission.

5.1.6 Development is defined in Section 55(1) of the Town and Country Planning Act (1990) which states:

Meaning of “development” and “new development”.

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “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.

5.1.7 In addition Paragraph 011 of the national Planning Practice Guidance (PPG) states:

5.1.8 When does a change of use require planning permission?

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

5.1.9 Section 55 of the Town and Country Planning Act 1990 and the PPG both confirm that planning permission is only needed where there is a material change in use. The UCO only specifies what doesn’t need permission not what does, therefore even though there is a change of use from one Use Class to another, planning permission is only needed if that change is material.

5.1.10 This application is put forward on the basis that the proposed change of use is not material. It does not therefore constitute development under section 55(1) of the TCPA, planning permission is not required and therefore it is lawful.

- 5.1.11 Paragraph: 005 (Reference ID: 17c-005-20140306) of the PPG states.

An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates.

- 5.1.12 This is important because it specifies the parameters of the use, in order that it sets out the limitations of any lawful use granted. This ensures that the authority retains control in the event that there is further change in the use which then might trigger a material change of use.

6. Assessment

- 6.1.1 As set out in 55(1) of the Town and Country Planning Act (1990) (as amended) the definition of development includes “the making of any material change in the use of any buildings or other land.”
- 6.1.2 The Use Class Order sets out different classes of use and as set out in 3(1) of the Order any change within a Use Class is not deemed to be development. In other words the UCO sets out what does not require planning permission rather than what does.

Existing Use

- 6.1.3 The existing use is as a C3 dwellinghouse. The property could therefore be used for any of the three sub-categories under the C3 definition. This includes C3(b) with up to six people living as a single household where care is provided (although not where there are children with non-resident carers-see below). Non-resident carers would not be included within the 6 person limit in line with the High Court case of in *Crawley BC vs SSETR* [2004] EWHC 160 (Admin). It also includes a shared household of up to 6 people (C3(c)).
- 6.1.4 The property of course be used for a C3(a), C3(b) or C3(c) use without the further need for planning permission as any change within C3 would not constitute development. The property is large enough that it could accommodate a large family of 2 adults and 3 children. It could also be used by 6 adults residents under the C3(b)(small care home) (with non-resident carers who would not be included within the limit of 6) or C3(c) other 6 person household definition.

Proposed Use

- 6.1.5 The leading judgement regarding small care homes for children is *North Devon District Council v FSS & Southern Childcare Ltd* (2003) (Appendix 1). The house in this case was to be used to provide residential care for 2 children between the ages of 10 and 17 placed in the care of the operator by the local authority. Two resident staff were on duty at all times and the house was under the supervision of 6-7 carers operating on 8 hour shifts.
- 6.1.6 The court considered the question as to whether the Use Class of the property was C3 or C2. The judge took the view that the arrangement of children living in the property with no adult residing permanently in the property was not a “household” for the purposes of Class C3. Carers who do not live permanently at the premises cannot be considered to be living together as part of the household. The judge therefore concluded that the use was a C2 residential institution.

- 6.1.7 The judge then went on to consider a subsidiary question relating to whether, even if in a different use class, a change of use from a C3 use was material and the materiality of any change was either in character of the use or the effect of the change on neighbouring uses and the locality. The judge observed that this question depends entirely on the facts of each individual case and in that particular case concluded that there was not. In that case he concluded that there was not a material change of use.
- 6.1.8 In light of this judgement the main considerations relating to this application are 1) which Use Class the proposed development falls into and 2) whether there would be a material change of use constituting development.
- 6.1.9 In relation to point 1) our research for the application has shown that there has been much debate in similar cases as to whether the Use Class for this type of proposal should be C3(b) or C2. As Court decisions have frequently confirmed it is a matter of fact and degree depending on individual circumstances. It can of course be appropriate to draw comparisons with other cases where they are sufficiently similar in nature.
- 6.1.10 There are several examples of similar proposals being considered by Manchester City Council. These have been viewed as C2 care homes and been granted Lawful development Certificates on the basis of no material change of use. These include applications 130549/LP/2021 143 Whitchurch Rd for 2 children, 129679/LP/2021 for 3 children and 23 Hill Lane 127362/LP/2020 29 Wood road for 3 children.
- 6.1.11 The applicant's proposal is similar to the North Devon case in that it involves a care home with two staff on site at all times but not permanently resident. The differences are that this proposal involves 3 children although the nature of the shift changes every 8 hours is similar. The lack of permanent residing carers indicates a C2 use.
- 6.1.12 Taking the lead from North Devon that children cannot be a "household" without a permanent residing carer then the applicant's proposed use would be C2 rather than C3b.
- 6.1.13 On the basis this is a C2 use this then leaves the subsidiary question as to whether the change from C3 to C2 is material and hence would require planning permission.
- 6.1.14 Two Appeal Decisions are attached at Appendix 2 which are also relevant and comparable to the applicant's proposals.
- 6.1.15 The first is an Appeal against refusal of a Lawful Development Certificate by Hinckley Borough Council (APP/K2420/X/11/2155849) which was allowed in 2011. It was for a similar change of use to a care home, except in that case it was for 3 children between 9 and 17.
- 6.1.16 The Inspector followed the same two step approach used in North Devon DC vs FSS in considering firstly whether the proposal was a C3(b) or C2 use and secondly whether there had been a material change of use. After concluding it was C2 he went on to look at the nature of the change of use. He reports that there would be 3 shift changes for carers during the day and up to 3 carers at any one time, together with other normal trips associated with everyday activities. In responded to concerns about staff numbers he states

“However, looking at the numbers involved, they are not materially different from what might be expected of a large family house in which, say, a parent and two teenagers or young adults live together and each uses a car to get to work or college and for socialising.”

- 6.1.17 The Applicant’s proposals are similar. It is for 3 children with 3 shift changes and up to 3 carers present during the day. As with the Hinckley example the property could have been used lawfully as a large family home, or small adult care home/other household for up to 6 people which would generate similar levels of activity to the proposal.
- 6.1.18 The Hinckley BC Appeal was allowed on the basis that no material change of use had taken place.
- 6.1.19 The other Appeal is also against refusal of a Lawful Development Certificate by Ashford Borough Council (APP/E2205/X/16/3161037) which was allowed in 2017. This was for a similar use of a house for 3 children with 2 adult carers aged 8 and 17. Again the Inspector concludes that this is a C2 use. He then goes on to consider if there has been a material change of use. He states:

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.

- 6.1.20 The Ashford BC appeal was also allowed and again is similar to the applicants proposal for 92 Wilbraham Road.
- 6.1.21 We appreciate that the assessment as to whether there has been a material change of use is one of “fact and degree”. Whilst there are other examples where such a change from C3 to C2 has been considered to be material, the Appeal examples are provided to show that there are cases where such use has not been considered to constitute development.

The proposal involves the care of 3 children by 2 carers who will be present overnight albeit they are not permanently resident.

Considerations for 92 Wilbraham Road

- 6.1.22 The above cases illustrate that such uses can be considered to not involve a material change of use. We appreciate however that each case depends on the individual circumstances. These are examined further below in relation to the applicant’s proposals.

Staffing

- 6.1.23 The proposed staff structure is based on a rota system of two primary non-resident care staff. There would be a 3 shift system during the day with changeover at 08:00 and 15:00 and 22:30. The day shifts are 7.5 – 8 hours and the night shift is 10 hours. There would also be a Home Manager who may be present from 9.00 to 17.00 Monday to Friday. This would result in there being 2 carers and 3 children using the property and a third adult present during the day.
- 6.1.24 The property is of sufficient size that it could accommodate a large family or equally could be lawfully used under Class C3(b) as a small adult care home for up to 6 people where there may well be non-resident carers visiting the property to provide care on a shift basis. It could also be used under C3(c) as a shared household for 6 people. The level of activity with this proposal is very much in line with a larger family home (C3(a), small C3(b) care home or C3(c) use all of which would be lawful at the property without planning permission.

Car Movements

- 6.1.25 The property is within 70m of bus stops on Wilbraham Road
- 6.1.26 There are however 3 off-road parking spaces at the property as well as available on street parking nearby. The combination of good public transport and available parking will ensure that there is no impact on highways or parking provision.
- The main car movements at the property could be during the shift changeovers at 08:00, 15:00 and 22:30 as well as at school drop off and pick up times. Again, this would not be dissimilar from car movements associated with a normal family home or a small care home for adults in terms of cars leaving and arriving to go to work, to school/college and other activities.

The Property

- 6.1.27 The submitted plans show the proposed layout of the property. There are no changes proposed to the layout of the property. There are no external alterations proposed. One of the ground floor rooms will be a dedicated staff office however this is ancillary to the main use of the property and would be little different to an adult resident using a room as a home office. However overall this would not constitute a material change.

The Residents

- 6.1.28 A maximum of 3 children/young people aged between 13 and 16 years old will reside at the property as their principal residence. The children will live in the house communally, and will contribute to the household and be involved in the preparation of meals with staff and children eating together.
- 6.1.29 Children will attend local schools where appropriate and use local facilities being part of the local community. It is intended that the placements will be long term and the dwelling will be their permanent residence.
- 6.1.30 A house of this size could accommodate a large family of 2 adults and 3 children under Use Class C3a. It could also be used for a small care home of up to 6 adults receiving care from non-resident staff under C3b and this is how it is currently used for supported living.

- 6.1.31 The proposed number of residents using the property is therefore not dissimilar to a large family home or to a small care home for adults.

Visitors to the Property

- 6.1.32 There will be visits from social workers to the property every 1-3 months. There may be parental visits to the home, depending on the nature of the relationships (weekly or less frequently). There would be a monthly inspection of the home by an independent visitor. Other visitors to the property would be no different to a typical C3 use.
- 6.1.33 In a typical C3(a) family home of this size you might expect there to be many visitors to the property including friends, extended family for special occasions, birthdays, social events etc. The number and pattern of visitors from the proposed use is therefore, very similar to a larger family home.
- 6.1.34 With C3(b) small care home for adults you would also expect there to be visits from family, other professionals, social workers or health professionals. Again this pattern of use would not be dissimilar to the proposed C2 use.

The Applicant's Care Programme

- 6.1.35 The care model proposed here similarly aims to replicate normal family life as far as possible. The placements will be long term so there will not be a continuous turnaround of residents.
- 6.1.36 This pattern of use would be a periodic, but not frequent, change of residents. This is similar to what you might expect with either a C3 family home or C3b small care home.

Summary

- 6.1.37 In both the Hinkley and Ashford appeals the Inspector's followed the two stage approach set out in the North Devon case. The number of children in each cases was 3, the same as for 92 Wilbraham Road and the age ranges slightly different there are similarities to 2 Victoria Road. The care model proposed here similarly aims to replicate normal family life as far as possible. Occupation in this case would be for 3 children with 2 (max.3) carers. In the Hinkley appeal there would 3 children and 3 carers and at Ashford 3 children and 2 carers.
- 6.1.38 These levels are very similar to the applicant's proposal. The shift patterns proposed in this case are similar in that there would be three shifts over a 24 hour period. In both cases the pattern of movements was more similar, and the Inspector concluded this was not materially different to a family home. The shift patterns, number and times of movements in the Applicant's proposals are not materially different in terms of the numbers, times or car movements than one would expect in a family home or in small care home for up to 6 adults both within the C3 use class. Similarly the number and frequency of visitors to the house is similar to what might be expected for a C3 use.
- 6.1.39 Notwithstanding that the use is likely to fall within C2 the proposal is very similar to a C3 use and there would be no material change by way of the use and character of the

property, levels of comings and goings, traffic levels and parking requirements, or level of disturbance.

7. Conclusion

- 7.1.1 It is our view that the proposed use of the property does not constitute development.
- 7.1.2 Based on a review of case law and Appeals, this type of use, is generally considered to be a C2 use class. Indeed this has been the conclusion in many of the cases considered in recent years based on the North Devon judgement concluding that children without permanent resident carers cannot constitute a household. In practice at 92 Wilbraham Road, given the proposed shift patterns , and occupation by 3 children and two carers there would be little difference from a small care home for adults (C3(b), including the existing supported living use) or a large family home under C3(a). If the use is C2 the change in use from C3 to C2 does not in itself lead to a need for planning permission. The Use Class Order only prescribes what does not need planning permission within the specified use classes not that a change from one to the other needs permission.
- 7.1.3 As set out in s.55 of the Town and Country Planning Act 1990 development only occurs if the change of use is “material”. The question of whether a change is material is a matter of fact and degree. If there was a noticeable change in terms of the impact of the use on the environment or amenity then it could be argued that the change was material, however we do not believe this to be the case.
- 7.1.4 The proposed use of the property to house a maximum of 3 children, with 2 adult carers (plus daytime home manager) present an environment very similar to a small care home or large family home, would not result in a material change. There would not be any greater number of trips to and from the property which might lead to traffic, parking, or other disturbance to amenity than one would expect in a normal family.
- 7.1.5 On this basis the Applicant’s therefore consider that the proposed development is lawful, and a Lawful Development Certificate should be granted.

Appendix 1: North Devon District Council v FSS & Southern Childcare Ltd (2003)

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

- - - - -

NORTH DEVON DISTRICT COUNCIL

(CLAIMANT)

-v-

THE FIRST SECRETARY OF STATE

(DEFENDANT)

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(Official Shorthand Writers to the Court)

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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
(As Approved by the Court)

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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 to 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 4: Relevant Appeal Decisions



Appeal Decision

Site visit made on 25 October 2011

by Chris Hoult BA BPhil MRTPI MIQ

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

Decision date: 7 November 2011

Appeal Ref: APP/K2420/X/11/2155849

15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

- 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 Chartwell Care Limited against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00279/CLU, dated 24 March 2011, was refused by notice dated 6 June 2011.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a certificate of lawful use or development is sought is the use of a dwellinghouse as a children's care home.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Application for costs

1. An application for costs was made by the appellants against the Council. This application is the subject of a separate decision.

Preliminary matter

2. The description of the proposed use on the application form refers the reader to a statement from the appellants. I adopt the shorthand description on the Council's decision notice.

Main issue

3. The single main issue for consideration is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. The appeal property is a large modern detached house with an open frontage to the street on a residential estate on the southern edge of Burbage. It is proposed to operate it as a care home for children/young people between the ages of 9 and 17 with learning disabilities, in which the age range at any one time would be no more than 3 years¹. Although the evidence indicates that the property was previously in use as a care home for children, the parties are agreed that its lawful use is as a dwellinghouse in Use Class C3 of the Use

¹ Although the initial application referred to children between the ages of 10 and 18 with an age range of 5 years at any one time, these figures were revised in a subsequent e-mail to the Council from the appellants dated 20 May 2011.

Classes Order². The appellants contend that the proposed use could be argued to fall within part (b) of Class C3. In the alternative, if the use were to fall within Use Class C2 (residential institutions), any change of use from Class C3 would, they argue, not be a material change of use and would not therefore amount to development for purposes of the 1990 Act.

5. Under the Order, Class C3 includes use by "...*(b) not more than six residents living together as a single household where care is provided for residents*". Care homes more typically fall under Class C2 as use "*for the provision of residential accommodation and care to people in need of care*". The definition of "care" as set out in Article 2 of the Order includes, in Class C2, the personal care of children. There is therefore some overlap between classes C2 and C3 in so far as they relate to care homes, a point which the appellants emphasise in making their case. 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 material³. That applies to the overall character of the use not just to certain aspects of it.
6. No alterations are proposed to the appeal property. A previous application for a LDC, made in November 2010, was refused by the Council on the basis of insufficient information. The Council took the view that, in the absence of evidence to the contrary, a material change of use from a C3 use to C2 requiring planning permission would occur. The current application seeks to demonstrate by reference to details of the operation that it would amount to a use of a character which would be largely the same as if the property were used as a family dwelling (Class C3). Any change of use to use in Class C2 would not therefore be material and would not amount to development. In refusing to grant a LDC, the Council refers to the number of staff required to operate the home as a basis for its view that the proposal would "materially alter the character of the property" (as it is put in the reason for refusal).
7. I deal firstly with which Use Class the use should fall into before going on, in the event that it falls into Class C2, to consider whether any change of use would be material.

Whether C2 or C3(b)

8. The home would provide for care for up to 3 children, administered by non-resident care staff who would work in shifts, thereby providing round-the-clock care. The appellants give details in the application of the numbers involved and the pattern of working. The case of *North Devon DC v FSS and Southern Childcare Ltd* [2003] EWHC 157 Admin provides authority for the view that use as a care home for children, where carers are non-resident, falls within Class C2. Children need to be looked after and could not, on their own, be regarded in the true sense as a household without the presence of a carer. Carers who provide 24-hour care but who are not resident could not be regarded as living together in a household. The concept of living together as a household means, in the context of Class C3(b), that a proper functioning household must exist.
9. The facts of this case align with those of *North Devon* and, while the appellants refer me to an appeal decision from 1992 which comes to a contrary view, any authority deriving from it must be regarded as being superseded by that case.

² The Town and Country (Use Classes) Order 1987 as amended.

³ See s55(1) of the 1990 Act wherein "development" is defined as (among other things) "...the making of any material change in the use of any buildings or other land." (My emphasis)

In the light of this, I conclude that the proposed use falls into Class C2 and that a change of use from a use in Class C3 has taken place.

Whether material change of use

10. By way of a forerunner, it may be noted that, in *North Devon*, the Inspector determined that, although the use fell within Class C2, the change from Class C3 use was not material. *North Devon* therefore provides authority for the two-stage assessment process which I have outlined. The appellants explain that the model of care provided seeks to replicate, as far as possible, typical family life in an ordinary local community. It is emphasised that young people with emotional and behavioural difficulties would not be cared for.
11. At any one time, and excluding short-term changeover periods in the early mornings and mid-afternoons, there would be up to three children and three carers present. The pattern of working means that vehicle movements to and from the property would peak at the following times: (a) 07.00 to 08.00 – two staff and the manager arriving and one night staff departing; (b) 14.30 to 15.00 – three staff arriving and two departing; and (c) around 22.00 – two staff departing. To these movements should be added school transport and transport related to outings etc. at weekends and during school holidays. The appellants give assurances that no activity involving vehicle movements would occur before 07.30 or after 22.00.⁴
12. In refusing a LDC, staff numbers are cited by the Council as the sole cause for concern. However, looking at the numbers involved, they are not materially different from what might be expected of a large family house in which, say, a parent and two teenagers or young adults live together and each uses a car to get to work or college and for socialising. Peak daytime vehicle movements, setting aside the potential for the use of car sharing or public transport by staff, coincide broadly with school run periods when there would be similar activity associated with neighbouring properties and the locality in general. Transport associated with school and weekend outings would not be an untypical occurrence in a family house. Up to two vehicles departing from the property late at night would not, on its own, be a sufficient basis for determining that a materially different character of use would be taking place.
13. I acknowledge that the Council, in its statement, highlights that these figures are qualified by reference to “normally” and that the potential exists for greater staff numbers to be at the property to deal with particular difficulties. However, this should be regarded as an exception and not part of the typical day-to-day operation of the home. As regards the Stockport appeal decision which is referred to by the Council⁵, that can be distinguished from this case as it appears to involve young people with a history of behavioural difficulties.
14. A number of arguments are put forward by neighbouring residents in support of a view that a material change of use would occur. However, there is no reason to suppose that suppliers and visitors would be attending on a 24-hour basis. The appellants explain that parents are unlikely to visit the home as the care will, to an extent, be respite care for their benefit. There are two parking spaces, with the possibility of more on the gravelled area alongside them and ample safe on-street parking close by. The appellants have given assurances

⁴ See e-mail from appellants to Council dated 20 May 2011.

⁵ Appeal Ref. APP/C4235/X/10/2132351 – 73 The Crescent, Stockport, SK3 8SL

that not more than three cars would be parked at any one time at the property. The garage would be converted to a sensory room and there are no proposals for office facilities or the holding of meetings. Much of the objection stems from a mistrust of assurances given by the appellants in the light of residents' previous experience of a home for young people with behavioural difficulties.

15. In bringing matters to a conclusion, the nature of a LDC and the relatively narrow remit of the decision-maker should be borne in mind. Planning merits are not for consideration. The application relates to a use taken in a snapshot in time, which is capable of being described in precise terms. The lawfulness of the use relates to the use as so described and it is lawful only so long as it conforms to the description on the LDC. It is incumbent on the applicant to describe precisely the proposed use for this very reason. Given this, and in the light of a fact and degree assessment, I conclude that the proposed use would not, as a use within Class C2, amount to a material change of use from Class C3 use as a dwellinghouse. The change of use would not therefore amount to development for which planning permission would be required.
16. For these reasons, I conclude, on the available evidence, that the Council's refusal to grant a LDC in respect of the use of a dwellinghouse as a children's care home 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.

Decision

17. 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.

C M Hoult

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 24 March 2011 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Although a change of use from a use in Use Class C3 dwellinghouse to Use Class C2 residential institutions would occur, it does not amount to a material change of use and no development requiring planning permission would therefore take place.

Signed

C M Hoult

INSPECTOR

Date 7 November 2011

Reference: APP/K2420/X/11/2155849

First Schedule

The use of a dwellinghouse as a children's care home pursuant to the Children's Act 2000 for children who fall within the Ofsted registration for children with learning disabilities, in which:

- (1) no more than three children are receiving care at any one time;
- (2) the children in care are aged from 9 to 17 years' old with an age range of no more than three years at any one time;
- (3) the home at no time provides care for children with emotional and/or behavioural difficulties;
- (4) there are no more than (a) two staff on duty between 07.00 and 08.00 to prepare the children for school or between 14.30 and 22.30, unless

exceptionally a further member of staff is required to meet individual needs (b) no more than three staff on duty at weekends and during school holidays, and (c) normally no more than one waking staff at night to provide support to the children with a further member of staff sleeping in who would be available should further assistance be required;

- (5) no parental visits to children normally take place;
- (6) no room is used as an office and no business meetings of any kind take place;
- (7) no more than three vehicles are parked at or around the home at any one time;
- (8) no activity in relation to staff vehicle movements takes place before 07.30 or after 22.00.

Second Schedule

Land at 15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

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

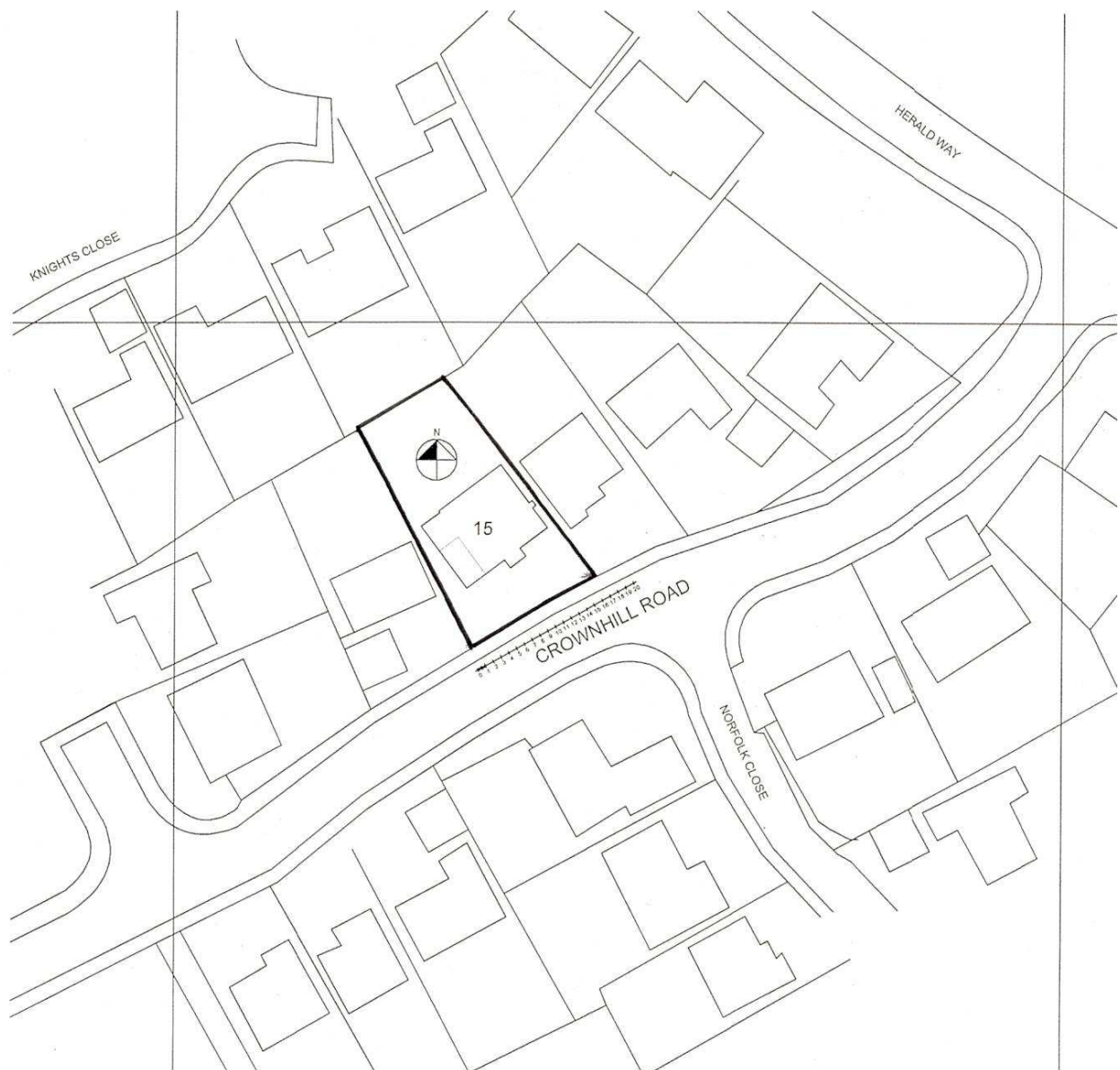
This is the plan referred to in the Lawful Development Certificate dated: 7 November 2011

by C M Hoults BA BPhil MRTPI MIQ

Land at: 15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD

Reference: APP/K2420/X/11/2155849

Scale: not to scale



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.
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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.
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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**

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Scale: NTS

