THE APPEALS GUY

Planning statement to support the submission of an Application for a Lawful Development Certificate

for

Use of dwellinghouse (Use Class C3(a) to provide a residential care accommodation (use class C2) for 1 young person (with no material change of use taking place)

At

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APPENDIX 1 – MINISTERIAL STATEMENT

1.0 Introduction

1.1 The applicant intends to use the application site, 23 Wintermans Road, Manchester, (the Property) as a residential home for 1no. looked after child. The application therefore seeks a Certificate of Lawfulness of Proposed Use ("CLOPUD") confirming that the proposed use is lawful because:

i. it falls with Class C2 of the Use Classes Order 1987, but the C2 use is not materially different to a C3 use and is therefore lawful without further planning permission;

1.2 The property would operate as follows –

- No more than 2no. staff at a time would provide round the clock care and support for the looked after child (no more than the 6no. people living together as a single household as per the definition of a C3 dwelling under the General Permitted Development Order).
- At night, 2no. staff members will be present. Staff will sleep in the staff bedroom when necessary where 2no. single beds will be located.
- Sleeping arrangements would be in the existing bedrooms with no need for any physical alterations or extensions to the property. The property has three bedrooms. One would be used by staff members, one would be used by the looked after child, and one would be used as a home office;
- The young person be aged between 11 and 17 years old.
- The carers will be responsible for all care and welfare and will support the young people in going about their daily routines. They essentially fulfil a parental role and the site will, in practical terms, operate like a family home.
- Other staff/social workers/visitors would visit the site on an ad-hoc appointment only basis. This is no different to friends, relatives, business colleagues etc visiting a normal family home.
- The child and care staff would eat meals in the house, meaning there are no requirements for any specialist catering. The property benefits from a modern spacious kitchen where fresh home cooked food will be provided, just like in a family home. The staff will prepare meals, with the help of the children as it is considered that cooking is an important life skill that needs to be learnt.
- The child would attend Education/Training/Employment as part of their care;
- There would be no business activities on site or any commercial activities that would change the character of the dwelling house.
- Car borne journeys would be limited to care staff only;
- The property benefits from a decent sizes rear garden. The use of the garden area would remain incidental to the enjoyment of the property;
- Cycle parking will be provided for staff to use, with incentives offered to staff to bike to work. However, the property does benefit from 2no. car parking spaces.
- The Company will operate a centralised software system for the care professionals to use. This limits the amount of visits needed by external bodies, as all paperwork is now online, notes are uploaded rather than handed over, and it allows staff to do their paperwork from home.

- Due to the above hand over times are significantly reduced, ensuing a seamless transfer of information between shifts, all done electronically.
- Day time shifts will operate between 09.00 and 22.30 and the night shift will operate from 22.00 and 09.30. This will mean a 30 minute hand over period where up to 4no. members of staff would be present.

1.3 If the Council require any more specific details on the operation of the property, then we would welcome a discussion.

1.4 It is noteworthy that planning for accommodation for looked-after children was the subject of a Ministerial Statement in June 2023, this is provided at Appendix 1. The statement confirms that the planning system should not be a barrier to providing homes for the most vulnerable children in society.

1.5 Importantly, the statement also addresses the form of application being made here, where a lawful development certificate is sought for the use of a dwelling as a small children's home where there is no material change of use involved: *"Planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate."*

2.0 Site and Proposed Use

2.1 The application site is a terraced house located in Manchester.

2.2 The property benefits from a lounge/dining room, and a kitchen on the ground floor. At first floor level, the property benefits from a bathroom and three bedrooms. Externally, there is a substantial rear garden area along with parking for vehicles at the front of the property.



Figure 1 - Location of the site

2.2 It is the aim of this statement to provide evidence to demonstrate to the Council that a material change of use would not take place when being used as a care home for a looked after child. We submit that the use is similar enough to a C3(b) use that a material change of use would not take place should the property operate as a C2 use as described.

2.3 The home will be operated and managed by Nutrire Care Ltd, a care company that prides itself on ensuring that the homes they provide are welcoming and warm places to live which encourage young people to flourish and grow by undertaking education, hobbies and leisure activities.

2.4 The property will provide a ‘family home’ to the young person in its care, rather than an institutional setting. This approach is favoured by the statutory regulator, Ofsted, which has been encouraging providers to move away from the more traditional institutional model, having recognised that ‘institutionalised’ persons can then have difficulty transitioning effectively to independent living and the workplace.

2.5 The proposed use is as a ‘family home’ for the young person as their main residence. They will be in full time education/work and will have a normal day to day routine as would be expected for any child. This will include, for example, making and eating breakfast with the carer(s), attending school, and taking part in activities outside the home. In the evening, the young persons will have dinner with the carers and engage in normal household activities before going to bed in their own bedroom.

3.0 Statement of Case

3.1 The relevant law for determining a CLOPUD application is contained in section 192 TCPA 1990. Section 192(2) provides that:

"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."

3.2 Planning permission is required for the "carrying out of any development on land" (section 57(1), TCPA 1990). The definition of development includes the "making of any material change in the use of any buildings or other land" (section 55(1), TCPA 1990).

3.3 The Town and Country Planning (Use Classes) Order 1987 (as amended) defines a C2 and C3 use 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.

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).

3.4 The Town and Country Planning (Use Classes) (Amendment) Order 2005 (as amended) distinguishes a range of uses of buildings and specifically permits changes of use from one use to another within individual classes.

3.5 Art. 3 (1A) Use Classes Order 1987 (as amended) provides that where there is a change within a use class that is not to be taken as development of land and therefore does not require planning permission.

3.6 Where activity results in a material change of use of a building to a use falling within a different use class then planning permission will be required to authorise that change of use. Depending on the circumstances of each case, a children's home will fall into either a C2 or C3 use classification.

3.7 A **material** change of use from Class C3 to C2 amounts to development requiring planning permission. There is therefore a potential requirement for planning permission to use a dwelling house as a children's home.

3.8 The starting point is to first establish as a matter of fact and degree, whether such a use would constitute a change of use from C3 to C2. The issue largely centres on whether or not the children are in themselves capable of living together as a single household.

3.9 Appeal decisions have confirmed that a change between use classes is not necessarily a **material change of use** - appeal decision APP/P4605/X/21/3280997 states:

"a change from C3 (a) to C2 will not always be material. It will be a matter of fact and degree, depending upon the circumstances of the case in question."

3.10 So it is possible to conclude that no material change of use has occurred if there is no material difference in activity to that which may be anticipated in the case of a conventional residential use. So, if the premises have the look and character of a conventional residential dwelling, and the use gives rise to no greater level of disturbance or amenity effects than could be generated by a C3 use, then no material change of use has occurred. No external alterations are planned to accommodate the proposed use. When viewed from the public realm, or in fact viewed internally, the property would be indistinguishable from the other family homes on the street.

3.11 The applicant aims to provide a home for 1no. looked after child, providing them with the best start in life. They will provide a safe and nurturing home for the 1no. child within this dwelling. The applicant believes every child deserves a chance to live their childhood life to the fullest, getting love, and the correct support, guidance and care, to give themselves a brighter future.

3.12 The term "care" is defined in Art 2 Town and Country Planning (Use Classes) Order 1987 (as amended) as follows –

"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."

3.13 What constitutes 'Personal Care' is discussed in the case of Harrison v Cornwall CC [1991] 7 WLUK 320. In that case the court considered the true meaning of 'personal care' within the Registered Homes Act 1984 ("1984 Act"). Section 20(1) of the 1984 Act, defines 'Personal Care' as "care which includes assistance with bodily functions where such assistance is required." The court held that the definition does not purport to be exhaustive and "*embraces care in many forms, emotional or psychiatric as well as physical*". Some of the support to be given to these young persons who will reside in the application Property, will be emotional support as they make the transition to independent living. It is only to that extent that this support could fall within the definition of 'Personal Care'. No psychiatric or physical support will be provided.

3.14 Young persons at an age of transition from being cared for to caring for themselves independently, still require support workers to monitor them and guide them in that transition – a form of care. In terms of which use class the proposed use will fall, this is determined in part by whether they form a 'household' on their own (given no one support worker will reside permanently at the Property, it is generally considered that the support workers working there on a shift basis cannot form part of the household (North Devon DC v First Secretary of State– see below para 5.10)).

3.15 Section 57 of the TCPA 1990 informs us of when planning permission is required, namely for the carrying out of any development of land. Section 55(1) of the TCPA 1990 provides that the making of any **material change** in the use of any buildings or other land amounts to development and requires planning permission subject to certain exceptions.

3.16 The question of whether there has been a material change of use is a question of fact and degree as confirmed by the case of Moore v SOS (Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202).

3.17 Caselaw has held that whether or not there has been a material change of use should be determined by reference to the test of whether there has been a change in the character of the use (Hertfordshire ~County Council v Secretary of State for Communities and Local Government [2012] EWHC 277 (Admin)). Environmental impacts can be relevant as evidence that a material change has occurred because a use of the new character may be capable of yielding environmental impacts; however, they are not the sole determiner of whether the character has changed (Ricki Sage v Secretary of State for Housing, Local Government and Communities and LBB [2021] EWHC 2885).

3.18 Therefore, the particular characteristics of this Property are required to be taken into account when considering whether the proposed use will lead to a change in the character of the property. In particular, it is relevant whether such things as noise emanating from the house as perceived by neighbours and numbers of cars parked on the nearby roads would change. The key test is whether the character of the property would be altered.

3.19 The application property is clearly an existing single, self-contained unit of accommodation designed for residential purposes and containing facilities for cooking, eating, sleeping and living, which are normally and typically associated with use as a dwellinghouse. Such use falls within Use Class C3 of the Use Classes Order 1987, as amended, as discussed above. The proposed property is traditionally built with substantial brick walls limiting noise transfer and good sized rooms. This would ensure any noise and disturbance would be limited and no more than what is already experienced through the use of the property as a C3 use. The uses of the rooms would not be altered.

3.20 The proposed use of the property as a home for up to 1no. looked-after child can, and will, be accommodated with only minor alterations to its internal layout and no changes to its external appearance. Therefore, the proposed use of the property would not result in the property appearing to be anything other than a family home.

3.21 As noted above, the proposed use is as a home for up to 1 looked-after young person which would form their main residence. They will be in full time education and will have a normal day to day routine as would be expected for any young person. This will include, for example, making and eating breakfast as a household, attending school, having trips out and being responsible for day-to-day tasks as would be expected within a typical household, ensuring that the character of the property would not be altered.

3.22 This specific property is a 3no. bedroom dwelling. It would not be unreasonable for 2no parents and three teenagers (or older) to be living at the property as part of a household. This could potentially mean 5no. cars, and 5no. people of working age coming and going from the property at different times depending on their school/work schedule, which could include shift patterns leading to one or more person leaving the property in the night. It should be noted that the property, like the others in the area, has off street car parking (2no spaces to the front.

3.23 We submit to the Council that the use as a care home for 1no. looked after child would not have a detrimental impact on highway safety or lead to more vehicles parking on the road than is currently possible under the C3 use. The current C3 use, as explained above could quite feasibly accommodate 5no. cars. This family would also likely receive visitors in the form of boyfriends/girlfriends, delivery drivers, people providing professional services etc. All of which could potentially use cars to visit the property, and this traffic could happen at any time day or night. With people now much more likely to work remotely from home, and to get shopping and services delivered to their property, this volume of traffic, and movement in and out of the property would not be materially different from the use proposed, with 1no. looked after child and support staff residing at the property. As stated above, staff would work relatively long shifts, ensuring changes are kept to an absolute minimum, and due to the adopted of an electronic notes system, hand overs are very efficient, often lasting less than 30 minutes, and the need for external bodies to visit the site, has been drastically reduced. At a maximum, 4 members of staff will be at the property at any one time.

3.24 We therefore strongly contend that as the 2no. off street car parking spaces currently works for the C3 dwelling, the change of use to a C2 use, would also work. It would not intensify the use, would not lead to a greater demand for parking, and would not detrimentally impact on highway safety. This view was echoed by the Inspector when they allowed appeal - APP/M4320/X/22/3300634 for the approval of a Certificate of Lawful Development for the Change of use from C3 to C2 at 19 Winstanley Road, Waterloo, Liverpool

“For the vast majority of the time there would be a maximum of four persons present on site (two children and two adults). There would be comings and goings to and from school, and at staff handover times, plus social, recreational and other outings.

However, I agree this would not be materially different from the number or pattern that would be reasonably expected with a family of four carrying out their day-to-day activities. While there would be additional visits from other professionals, this would likely be comparable with social visits from friends and family associated with a household of four."

3.25 It is important to note that the above appeal site did not benefit from any off street car parking, and was a 4 bedroom terraced property in a densely packed residential area.

3.26 In light of the above, it will be clear that activity levels at the site and the general scale and nature of the use will not be materially different than if the property was occupied by a normal Class C3 use. Use of the property will specifically be arranged to mirror the routine of a normal home, as this is the best means of providing the focused care needed to the residents. The property will be the young persons' permanent place of residence, and they will have a 'traditional' family routine (eating meals together, attending school, going on trips, etc.). The residents and small number of carers will essentially create a family setting which provides continuity and assists in maintaining the residential character (as would be expected for a Class C3 use).

3.27 Similarly, when allowing appeal APP/H4315/X/22/3294620 at 81 Penny Lane, Haydock, St Helens the Inspector stated –

"I understand that the children would attend local schools and there would be visits by other professionals associated with the use. The activity resulting from attending school and other outings by the two children and their carers would not be materially different from a family of four. The Council is concerned the visits by professionals and social workers would generate significantly more activity than would normally be expected. I agree that professional visits would be required, but this is unlikely to be daily. In my opinion, visits associated with two children would not lead to more activity than a single household with visiting friends and relatives. I appreciate that there would be more carers present during shift changeovers, but this would only be for a limited time. There is a small area for parking on the driveway and, despite parking restrictions nearby, there is additional parking on local streets. There is nothing to suggest the levels of vehicular activity would be in excess of that generated by a family dwelling."

3.28 Again, this appeal decision highlights that the Inspector shares our view that the traffic generated by the C2 use would be no greater than the traffic generated by the C3 use. Therefore, there is no identifiable need for on-street parking.

3.29 As highlighted above, and as discussed below, it is important to note that there have been a number of appeals and Court decisions that have considered the boundaries between classes C2 and C3 and what would constitute a material change of use. Some additional key appeal decisions are cited below. Copies of these appeal decisions can be forwarded to the Planning Officer if required.

3.30 In the case of Kartikeya Solutions v Waltham Forest [2012] PAD 15, the court considered the issue of whether even if the use had changed from class C3 (b) to C2, was such a change material. In that case there were up to 6 children (mostly teenagers) who were cared for by carers on a shift basis. The change of use from C3(b) to C2 was found to be material, because the emotional and behavioural difficulties encountered by the children meant that unpredictable outbursts were common and would go beyond what could be expected of a usual family household with teenagers. In addition, it was also likely there would be more comings and goings from various regulatory agencies, including the police, than would usually occur for a class C3 household. In addition, the presence of the fire alarms, reinforced fire doors and locks to the rooms were key to finding that the class C2 use was materially different to C3.

3.31 The Kartikeya case (above) differs from the proposed use at the application Property that is the subject of this certificate, as the young person will not have any regular visits at the Property from third party professionals and the level of activity at the Property will be no different to what would occur in a class C3 use as described above. Doors will not be locked, doors will not be reinforced etc. Visits may occur from Social Workers or family members, or other members of staff but this would very much be on an ad-hoc basis.

3.32 As discussed above, in a standard C3 use, residents of the Property make trips to and from the Property on a daily basis, whether it is from school or work or visiting friends and family. A normal C3 use would also experience visitors to the property on a regular basis, whether this would be friends/family, delivery drivers, and it is even commonplace for people to visit residential properties to deliver a service such as a hair cut/massage. The level of activity for the proposed use, with the limited shift changes as outlined above, and the residents going to school or work would be similar to the comings/goings of a family who could lawfully reside in this three bedroom house. The numbers of comings/goings would in this case be no different to the proposed use. The amount of activity that will arise therefore will be no different to that of any of the lawful class C3 uses that could take place at the Property.

3.33 In the appeal decision APP/K2420/X/11/21558499 (15 Crownhill Road, Burbage, Hinckley, Leicestershire LE10 2LD), where the facts were similar to this current application, the inspector found that whilst the use would be within C2 it would not be materially different to C3, and therefore granted the Certificate of Lawfulness. The pattern of activity at the house was decided to be no different to that of a large family. The appeal was in relation to the council's decision to refuse to grant a lawful development certificate of proposed use. It proposed to operate a care home for three children/young persons between the ages of 9-17 yrs. with learning difficulties. The pre-existing lawful use of the property was a C3 dwelling. It is important to note in that case the limitations on the proposed use which were key to the decision that the proposed use was not materially different to C3. There were as follows:

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.

3.34 Similarly, in the appeal decision APP/P9502/X/13/220539410 (Ty Rhos Bach, Heol Senni, Breacon, Powys), the Inspector allowed a lawful development certificate on the basis that whilst the use was within class C2 there was no material change use from class C3 because the use would display features associated with a family dwelling. There were up to five children between 11-17 years old plus two staff sleeping in (on a rota) plus additional carers in the day (on a rota). The coming and goings of staff would not materially impact the surrounding area and therefore there was no material change of use. This is similar to the proposed use that is subject to this application, whereby the Property is of a reasonable size, and the limited coming and goings are unlikely to affect the surrounding area over and above what would reasonably expected at a residential dwelling. The Inspector stated that in this case, and given the ages of the children, they could not look after themselves and form a “household” on their own and could not fall within class C3 (b), but there was no material change of use between C3 and C2 given the limited changes to the character of the site. We submit that the findings above, are directly comparable with the proposed use of the application Property.

3.35 These decisions, and many more up and down the country, clearly indicate that, on any reasonable assessment of the current application, a lawful development certificate for the proposed use should be issued on the basis that ‘on the balance of probability’ no material change of use is involved and, therefore, planning permission is not required.

4.0 Conclusion

4.1 In conclusion, it is our opinion that any change from C3 to C2 use will not be a material change of use. The Property and its curtilage would retain the look and character of the neighbouring houses and a normal residential dwelling. The use and associated activity, including comings and goings of support workers would be unlikely to cause a greater level of disturbance or amenity harm than could be expected by a C3 use of the family home. Given the 3 bedrooms in the Property, it could be expected that a family of two parents and up to 3no. teenage children or young adults could live there. These residents would likely have visitors coming and going from the property, which would include boyfriends/girlfriends, school friends, delivery drivers, professional services etc. Therefore 1 young person plus support staff indicated would have a similar level of activity.

4.2 It will be clear from the above that the proposed scale and nature of the proposed use of the application property will not give rise to any activity levels or character/nature of use that would be materially different than that which could occur under this substantial property's occupation by a large family or by up to six adult residents living as a single household and in receipt of care – both existing lawful uses of the property.

4.3 For the reasons given above it is our opinion that the Proposed Use of the Property is lawful because it falls within use class C2 and will not be materially different to a C3(b) use because there will be no change in the character of the use from one that would be lawful within C3.

4.4 Under such circumstances, no material change of use results and planning permission is not required for the proposed use. Therefore, we trust that a lawful development certificate for the proposed use of the application property will be issued in the terms sought.

APPENDIX 1 –

Planning for accommodation for looked after children

Statement made on 23 May 2023

Statement UIN HCWS795

Statement made by

Rachel Maclean
Minister of State for Housing and Planning
Conservative
Redditch

Statement

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

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

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

Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development

process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country. It is important that prospective applicants talk to local planning authorities about whether their service is needed in that locality, using the location assessment (a regulatory requirement and part of the Ofsted registration process set out in paragraph 15.1 of the Guide to the Children's Homes Regulations) to demonstrate this.

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

Children's homes developments

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