DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H09-0534-20**	**Applicant:**	**Esland Care**
Proposal:	Use of premises for a children's home		
Location:	Small Acres Hither Old Gate Holbeach		
Terminal Date:	1st September 2020		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Not applicable for a s192 application as it is a legal determination.

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	1	0	0

CASE OFFICER ASSESSMENT

Proposal

This is an application for a Lawful Development Certificate to confirm that the use of the premises for a children's home does not require planning permission.

Site Description

The site is located in the open countryside. There is only one other property (Ladysmith House) in the immediate vicinity of Small Acres. The property sits within a sizeable plot of land and agricultural fields extend to the east, south and west.

History

H09-0775-19 - Extension and alterations (approved October 2019)

H09-0554-14 - s191 application - Occupation of dwelling by persons not employed in agriculture (Condition 2 of EE368-73) - resubmission of H09-0622-13 (approved September 2014)

H09-0622-13 - Occupation of dwelling by persons not employed in agriculture (Condition 2 of

EE368-73) (withdrawn October 2013)

Consultation Responses

Cllr Biggadike - Ideal position to house people with special needs with ample room for outside recreation.

Planning Considerations

This application is a legal determination and planning policy is not relevant to the determination as to whether the proposed use would be lawful.

The application seeks the granting of a Lawful Development Certificate (LDC) for the use of the premises as a children's home (C3). This is following the amendment of the original submission which sought confirmation that a change from C3 to C2 (Residential Institution) could be classed as Permitted Development on the basis that there would be no material difference between the existing and proposed use. It is considered that the proposed use is more akin to that covered by Use Class C3 on the basis of the considerations set out below.

In the Town and Country Planning (Use Classes) Order 1987 (England) (as amended), C3 is defined as:
Use as a dwelling house (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).

The supporting statement submitted with the application outlines that the premises would be used as a home for up to two children or young people with up to two full-time resident carers working on a rota basis, sleeping overnight. A manager would be on site during weekdays from 9am to 5pm, with the occasional visit by a social worker or clinician. As this is a small scale care facility with a maximum of just 2 children and 2 carers its model emulates a household rather than the traditionally viewed large scale care facilities. It is therefore considered that the proposal has the scope to fall under C3(b) given that the proposal, as described, would not be substantially different from that of a normal household with similar 'comings' and 'goings'. Furthermore, this 'small family home' concept provides the security and safety needed for the specialist care the children require.

In terms of whether the proposed use can be considered as reflecting the characteristics of a single household, previous appeal decisions appear to indicate that facilities should be communal rather than individual. Based on the details that have been submitted, it appears that the use reflects the nature and character of a single household. There does not appear to be any proposals to make a major change the interior or the exterior of the property and facilities will be shared much like a family unit. Therefore, taking all considerations into account, there would be no material differences in planning terms between the proposal and a typical residential household.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity,

race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

Taking the above into account, it is considered that the use of the premises as proposed would not amount to development in accordance with s.55(2)(f) of the Town and Country Planning Act 1990.

The recommendation therefore is for a delegated approval.