Statement to support a Lawful Development Certificate application

Small Acres
Hither Old Gate,
Holbeach,
Spalding
Lincolnshire PE12 7JG

'Use of premises 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'.

5/07/2020

1. Introduction

1.1. I am writing on behalf of my client, 'Esland Care', who is seeking permission via a Lawful Development Certificate, to use Small Acres (a C3a use), as a small specialist children's home falling within use class C2 of the Use Classes Order. It is maintained there is no material difference between the existing and proposed use, hence planning permission is not required.

1.2. This application is to ensure that the property acquired will meet the necessary planning requirements and will also be able to achieve Ofsted registration.

1.3. There will be no internal or external alterations to the building or surrounds.

1.4. The Esland Care Mission is to:

provide stability through inclusive, safe and nurturing care

develop resilience through creating trusting relationships to build attachments

facilitate transition through positive childhood experiences to support a meaningful future.

1.5. The property is a large three bedroomed detached house, with a substantial garden, currently used as a dwelling under C3a. It comes with 6 acres of land, a garage, other outbuildings and space for at least 5 cars.

1.6. Two children would live at the house, with two carers working on a rota basis sleeping overnight. A manager would be on site during weekdays from 9 am to 5pm. There would be the occasional visit by a social worker or clinician.

1.7. The purpose of the home would be to support children to build their confidence and help them in developing life skills and re-engaging them into education.

1.8. During the day it is expected that all the young people will engage in various activities: attend a DfES registered school, attend mainstream school or possibly receive home schooling.

2. Planning Assessment

2.1. Use class C3 (b) allows for dwelling houses to be used by not more than six residents living together as a single household where care is provided. However, in order to form a 'household' for the purposes of class C3 (b), the persons who live together need not be related as family members. Even so, Article 2 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) indicates that, for the purposes of the Order, 'care' means 'personal care' for people in need of such care […] and in class C2 also includes the personal care of children […]'.

2.2. There is some case law which establishes that if the carers work on a rota basis and that it is not their permanent residence, the use must be regarded as C2 and not C3b. In the judgement of Mr. Justice

Collins in North Devon District Council v First Secretary of State [2003]. J. Collins was clear on the facts of that particular case, that carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care cannot be regarded as living together and that, whilst there would be less than 6 residents, the children, without at least one adult living with them at the premises, would not be capable of being regarded in the true sense as a household.

2.3. In his judgement, Mr. Justice Collins went on to reason that in the case before him, where three children would reside and be cared for by non-resident staff in a three-bedroomed semi-detached property, the use would seem to clearly fall within Class C2 of the 'UCO 1987' as a 'residential institution' which includes a home that provides care for children. As such it is accepted that the proposed use here is C2.

2.4. In terms of the nature of the proposed use, as opposed to its Use Class, paragraph 25 of Circular 05/2010 is relevant. It states that the criteria for determining whether the use of particular premises should be classified within the C3 use class include both the manner of the use and the physical condition of the premises. The circular states that the premises can properly be regarded as being used as a single dwelling house where they are:

- a single, self-contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them.

- designed or adapted for residential purposes containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house.

2.5. In an appeal at Crewe & Nantwich (24/4/06) an Inspector noted that although the building would be fitted with an office [and fire alarm], this was not uncommon in many dwelling houses around the country, he decided, and would not materially alter its basic character as a dwellinghouse. There are no major modifications required to this property.

Nature of the use

2.6. Whether the change of use would be material is also well established by the courts. Notwithstanding whether the use is considered to be within Class C2, rather than Class C3, planning permission would not be required if the change would not be a 'material change' of use. The local planning authority must still consider therefore, whether that change of use would be 'material'. It is a matter of fact and degree, in the circumstances of an individual case, as to whether a change of use will be 'material'.

2.7. The issue is whether the differing use as set out and proposed by the applicant would be 'materially' different to that of a dwelling house and result in development requiring planning permission. 'The Act' does not define 'material change of use' and in general therefore, it is necessary to exercise some considered judgement in individual cases and this is regarded by the courts as being primarily a matter of fact and degree for the local planning authority. By way of a guide, differences which might be considered 'material' are those which are measurable or quantifiable as resulting in a significant or substantial change or step up in the character or impact of a use.

2.8. There is no limit on the size of 'family' that can occupy a dwellinghouse and it is likely that a sizeable property with ample grounds could be occupied by a relatively large family. Included, within the same C3 use class, the property might also be used and occupied by up to 6 people, who are not related as a family, but live together as a single household. This could include an arrangement where the residents are provided with care.

2.9. The task must then be to compare against that 'baseline' the character of the land use proposed by the applicant. In so many respects the use would operate in a way that is very similar to a normal family home. The property would provide the young people with their sole and main residence, with free and shared access to living, dining, and kitchen facilities, able to take shared meals prepared for them or make their own food or drink. The residents would be taken to and brought home from school each day and with their carers they would interact with the property and the residence in a way that is very similar to an adult resident, parent or guardian. The residents would eat together and get ready on a daily basis to attend school. The home seeks to foster lifestyles which would be the same as if the residents were normal teenage children living in a family home.

2.10. It is maintained that there is no material difference in planning terms between the proposed use and a typical residential household. The carers, working on a rota basis, would effectively live at the dwelling house to provide 24-hour care, as a single household. Facilities such as the bathroom/wc, kitchen and living rooms, would be shared and the living mode would be communal. The comings and

goings associated with the use would not be materially different from a typical residential household.

2.11. With regards to schooling, it is often the case that when young people comes into care, they have missed a proportion of their education or are affected in a way that they could not work effectively in a large classroom environment. Given this they would be tutored from home initially. They may then progress to a specialist unit (smaller class sizes) then hopefully onto mainstream. In some circumstances the children may have a home tutor. However, this is no different from an ordinary family who chose to have their children educated at home. It makes no difference to the planning status of the use.

2.12. The applicant's evidence is that the proposed use is to provide a stable home environment for the occupants as their main and sole residence and that the length of stay is generally more than temporary or passing. It would not be a 'half way' house or provide overnight emergency lodgings for example. However, in any event, the courts have provided some assistance in determining the significance of there being a commercial factor to a residential use or an arrangement where the occupants have generally only a limited period of stay.

2.13. Cases such as Blackpool BC v Secretary of State for the Environment [1980] and Moore v Secretary of State for the Environment [1998] where houses were used for holiday lettings on a limited basis, established that a change to holiday lettings is not necessarily 'material', since the character of the use need not have changed. Following Gravesham BC v Secretary of State for the Environment [1982], the court accepted that the distinctive

characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons, or if it was under commercial management for holiday or other temporary lettings.

2.14. The lawful use of a dwelling house, included in Class C3 of 'the UCO 1987', is broad in scope and could in association bring with it considerable activity, associated and ancillary use, or vehicle movement. The prevailing character of the proposed use would be that of a small group of children living together and using the property in a way similar to that of a family home where they would be supervised and cared for by adult guardians. While there might be identifiable differences, between proposed and existing uses, these would not be 'material' or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwellinghouse.

2.15. In addition to the above, the comings and goings are not considered to be any different from that associated with many dwelling houses. The comings and goings associated with the use will not be materially different from a typical residential household. See schedule below (represent single movements either in or out). It should be stressed that not all these movements in and out wil involve cars.

Activity	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Care worker for night shift	2	2	2	2	2	2	2
Home Manager		2	2	2	2	2	
School run		2	2	2	2	2	
Social/recreational outings	2						2
Visiting social worker/ clinician		2			2		
Total Movements (in and out)	**4**	**8**	**6**	**6**	**8**	**6**	**4**

2.16. On this basis it is maintained that the proposed use as detailed in this supporting statement would not be materially different than a typical household. This is supported by the Egerton Appeal (App/E/2205/x/16/3161037) where the Inspector concluded a similar use would not result in significantly more movements to give rise to planning concerns.

3. Conclusion

3.1. It is maintained that the nature of the use is not materially different from a normal household. Comings and goings would be no greater than a typical house, hence there would be no disturbance to any neighbours. The site has ample parking so parking on the surrounding highway would not create a problem.

3.2. The Council is respectfully requested to support the application to allow this important facility to be established.