DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H09-1008-24**	**Applicant:**	**Mr D V John**
Proposal:	Use of premises as a home for up to five children or young people as a single household (Use Class C3)		
Location:	19 Langwith Drive Holbeach Spalding		
Terminal Date:	4th April 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	1
RESIDENTS	10	0	0	0

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the proposed use of 19 Langwith Drive, Holbeach as a home for up to five children or young people as a single household (Use Class C3). The application is submitted under Section 192 of the Town and Country Planning Act (1990) (as amended).

The applicant considers that a full planning application to change the use of the site would not be required as the existing use is Use Class C3, and the proposed use would also fall under C3 (specifically C3(b)).

Initially, the description of development was as follows:

"Change of use from residential dwelling (C3a) to dwelling house occupied by no more than six residents living together as a single household (including a household where care is provided for residents) (C3b)"

This was subsequently discussed and updated after the applicant agreed to change the description

on 20 January 2025. This is because the applicant was not seeking consent for a change of use. The application sought consent to establish if the proposed use of the home for young people would fall under Use Class C3(b). The updated description was therefore considered to more accurately reflect what the applicant sought consent for.

Site Description

The application site comprises land at 19 Langwith Drive, Holbeach. The site features a two-storey detached dwelling which is located at the end of Langwith Drive, which is a cul-de-sac, located to the south of Spalding Road.

Planning History

H09-0420-17: (Full Application) Proposed first floor extension and alterations - approved 18 September 2017

H09-0756-18: (Discharge of Conditions) Details of colour of render and roof tiles (Conditions 3 and 4 of H09-0420-17) - approved 03 August 2018

Consultation

There is no statutory obligation for the Local Authority to publicise an application for a certificate of lawful development. A site notice has however been displayed next to the site for 21 days in the interests of transparency. 12 representations have been received from members of the public, setting out objections to the proposals. A representation from Sir John Hayes (MP) has also been received. The key matters raised are set out within the 'Public Representations' section of this report.

Children's services have also been consulted on the application for reference. No response has been received.

A response from Holbeach Parish Council has also been received querying why they were not consulted. The parish council were contacted to explain that the council does not typically consult on lawful development certificate applications as there is no requirement to.

Key Planning Considerations

Relevant Legislation

Section 192 of the Town and Country Planning Act (1990) (as amended) sets out the following:

"Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whetherÃ¢??
(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 shallÃ¢??
(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.]"

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt. Therefore, the local planning authority need to be provided with sufficient information to demonstrate that, on the balance of probability, the proposed use is lawful in planning terms and would not require full planning permission for a change of use.

Assessment

The current use class of the site is Use Class C3 as there is a dwelling within the site. The application seeks consent to establish that the proposed use of the site would fall under Use Class C3(b). The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Use Class C3 as follows:

"Use as a dwellinghouse (whether or not as a sole or main residence) Ã¢??
(a) by a single person or by people regarded as forming a single household, or
(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 with Class C4)."

It is therefore necessary to determine whether the proposed use would fall under Use Class C3(b), or whether the use would fall under Use Class C2 (residential institutions including children's homes). If the proposed use is considered to fall under Use Class C2 as a material change of use would occur, then planning permission would be required to authorise the proposed use.

The application is accompanied by a supporting statement, within which the applicant clarifies that they intend to support and live with up to five young people. In circumstances where children are looked after within a home by a permanent occupant of the dwelling, this is generally considered to fall under Use Class C3.

The applicant sets out that they would not employ any staff. This is relevant as within a high court judgement, North Devon District Council v First Secretary of State EWHC 157 (Admin), it was established that carers who provide 24-hour care, but were not resident, could not be regarded as living together in a household. In this case, the applicant would not work shifts to look after the children, nor would they employ other staff members. The applicant considers that social workers would likely visit every six weeks and possibly other professionals might visit. The applicant does not specify who the other professionals are or how frequently this might be.

The applicant has set out that they do not know the anticipated ages of the young people who might be living within the site, however, they would be under the age of 18. The supporting statement does not clarify how long the young people might be living in the property for. The applicant set out within an email dated 20 January that they would be looking for long term placements. As the applicant does not yet know the young people that would be living with the site, it is difficult to establish if they would have specific needs that would need to be addressed by external staff.

It is also unclear how the applicant intends to care for up to five young people. The applicant clarified in an email dated 20 January 2025 that they intend to live with their cousin. The applicant clarified in an email dated 03 April 2025 that their cousin is an adult and that the 'remaining bedrooms can be used by up to 5 children'. The applicant then set out in an email dated 04 April that they would like to change the application 'to maximum of 4 children instead of 5'. There are therefore discrepancies within the submission as initially the applicant did not mention an additional adult within the household.

The submission, comprising the application form and supporting statement, in which the Local Planning Authority must assess the case, makes it clear that the proposal relates to 'up to five children'. This matter was further addressed within written correspondence, through emails dated on 16th and 20th January. Within this correspondence, as highlighted above, the applicant confirmed that the proposal would relate to 'up to five children' and the house would also be occupied by the applicant and their cousin. This corresponded also comprised written confirmation by the applicant, for the sake of clarity, that the description of proposal could be amended to explicitly state 'up to five children or young people'.

In respect of this additional information, with particular attention also drawn to the supporting statement submitted alongside the initial documents for this proposal, it is appropriate for the Local Planning Authority to assess the proposal as if it relates to 'up to five children'.

In light of this, including the applicant, the applicant's cousin, and the proposed occupation of up to five young people, this would result in seven occupants. Therefore, this would exceed the maximum number of people that can be allowed to live together as a household under Use Class C3(b) which is six people. The description of development refers to "up to five young people" and this was agreed with the applicant. There is therefore reasonable doubt as to how many occupants would actually be within the site.

As set out previously, the local planning authority needs to be submitted with sufficient and precise information to prove that on the balance of probability, the proposed use would be lawful. It is considered that there is a lack of information as to who would be living with the site, how the children would be looked after and the discrepancies as to how many adults there would be within the property. With the predominate evidence before us equating to seven occupants. As such, it is considered that there is insufficient information to demonstrate that the proposed use would be lawful.

Public Representations

It is acknowledged that members of the public have submitted representations setting out concerns with the proposals. This includes a representation from an MP. For lawful development certificates, planning policy guidance is clear that there is no statutory requirement to consult third parties including parish councils or neighbours (Paragraph: 008 Reference ID: 17c-008-20140306). A site notice has however been displayed in this case for transparency. Planning policy guidance is also clear that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are therefore not relevant (Paragraph: 009 Reference ID: 17c-009-20140306).

Planning practice guidance also sets out the following (Paragraph: 008 Reference ID: 17c-008-20140306):

"Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application."

As such, the application can only be determined on the basis of whether the proposed use is lawful, not whether the planning merits weigh in favour or against the proposals. Notwithstanding this, the issues raised within the public representations are summarised below, including an explanation as to how they have been considered to assist members in case they have similar queries.

-Concerns are raised with the lack of consultation with neighbours - as set out previously there is no requirement to consult neighbours and the local planning authority is not able to take into account third party representations, however, a site notice has been displayed in the interests of transparency.
-Concerns are raised with the possibility of anti-social behaviour and noise disturbance - this cannot be taken into account in this case.
-Concerns are raised that the applicant would not be able to care for 5 young people on their own without support - the applicant has provided further information.
-The property is subject to a restrictive covenant which prevents the proposed use - this is a civil matter which is separate from the current application process.
-Concerns are raised with the potential devaluation of neighbouring properties as a result of the proposals - this is not material planning consideration within any type of planning application.
-The cul-de-sac of Langwith Drive does not have the capacity to accommodate additional traffic and this could prevent emergency vehicles from accessing the road - as above this cannot be taken into account in this case.
-No evidence of the applicant's insurance or police checks has been provided - this is not relevant to the determination of the application.
-The landowner's details are redacted and the applicant is a lessee rather than the owner - personal details have been redacted from the application for data protection reasons (this is standard procedure for all application types), and the fact that the applicant is a lessee rather than the owner is not relevant to whether the certificate can be granted.

-The description of development was for a change of use - the description of development has been updated during the determination of the application to clarify that the proposed use would continue to fall under Class C3.
-The proposed plans were prepared by a company called Silver Birch Care which specialises in residential care homes and concerns are raised that Silver Birch Care intends to operate from the site through the applicant - this has been queried with the applicant. The applicant has set out that they currently work for Silver Birch Care and that they would not operate from the site and have merely prepared the plans.

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

As set out above, with the predominate evidence before us equating to seven occupants, it is considered that there is insufficient information to demonstrate that the proposed use would be lawful.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority, being considered as 'Unlawful'.