

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H09-1053-25 **Applicant:** Silver Birch Care
(Residential Services) Ltd.

Proposal: Use of Dwelling (Class C3a) as Childrens Home for up to 2 children with a manager and 2 carers (Class C2)

Location: Threeways Northons Lane Holbeach

Terminal Date: 24th December 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
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
RESIDENTS	0	1	0	0

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the proposed use of Threeways, Northons Lane, Holbeach, as a children's home for up to two children with a manager and two carers (Use Class C2).

The application is submitted under Section 192 of the Town and Country Planning Act (1990) (as amended).

This Section 192 application has been submitted with the view that a full planning application to change the use of the site would not be required as it would not be a material change from a character perspective, despite changing from Class C3a to Class C2.

Site Description

The site is located within the defined settlement boundary of Holbeach as outlined within the South East Lincolnshire Local Plan, 2019. Northons Lane features residential dwellings and leads towards allocated housing land which has ongoing applications.

Threeways features white rendering on the walls and a tiled roof and has one direct neighbour with another separated by a small drain.

History

H09-0843-21 - Residential Development - Erection of Dwelling - Approved.

Consultation Responses

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.

South Holland Internal Drainage Board

Byelaw 3 - Consent may be required

Section 23 - Consent not currently required

Byelaw 10 - Consent may be required - Further information requested

Public Representation

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, one letter of representation has been received, these have been summarised below:

I consider this change of use planning application to be a commendable proposal for this dwelling and would not foresee any detrimental consequences arising from it's approval. I would endorse the application.

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 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.]"

Therefore, the LPA needs 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 application seeks consent to establish that the proposed use of the site under Use Class C2 is lawful. No operational development is proposed such as external changes to the building.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Use Class C2 as follows:

'Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3. Dwellinghouses, used as sole or main residences).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.'

The current use class of the site is Use Class C3a as it has been occupied as a dwelling.

A Planning Statement has been submitted that discusses the nature of the proposal, and outlines that both of the above matters; in that the application site has a current use as a conventional residential dwelling, use class C3a and that the proposed use would constitute a C2 use.

The Planning Statement details the case of North Devon District Council v The Secretary of State (2003) EWHC 157 Admin, and outlines that the proposed use falls within Use Class C2 meaning that a change of use would not be an automatic permitted change. This goes on to say that that it is 'argued that there is little material difference between the current and proposed use, meaning that planning permission is not required'.

This statement also discusses other case law which reinforces their claim that 'where care is provided and this is not the main residence of the carers, the use falls within C2 and not C3b'. The North Devon case law as detailed above, stated 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 six 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.

The above, in that the proposed use would fall with Use Class C2, is not disputed by the Local Planning Authority and the proposed use, as detailed within the submission, is considered to constitute a C2 use.

Whilst a change in the use would occur, it must be discussed and established whether this would constitute a 'material' change of use. The statement defines a material change as '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'.

The submission goes on to discuss whether there would be a change or step up to the character of the area that would be considered as material, via the comings and goings to the site when it would be used as a children's home.

This states that *"There would be little difference in terms of numbers or the times of these visits from the current use"*. This has been supported through a table comparing the vehicle movements under the current and proposed uses. Currently, there is anywhere between 6 - 12 movements per day whereas the proposed table shows this would be between 8 - 10 movements per day. There would be a similar level of vehicle movement on site with the average movements per day both being around 8.

As such, the character of the area may not see a material difference, or one that would quantify needing full planning permission. It is noted that the carers would not be living on site full time and it would not be their permanent residence; however, the extent of activity for these carers to change between siffs is not considered to be extensive or unreasonable for a residential site.

Although the proposal would technically change the use of the site from a C3 dwellinghouse to a C2 use, given the reasons outlined above and in line with the case law discussed, it is considered that this would not constitute a 'material' change, in that there would be no material impact, including on the character of the area.

As such, the certificate can be granted in this case as the change of use would be lawful.

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

Notwithstanding that a change of use between Use Class C3 to Use Class C2 would occur on site; case law including that of North Devon District Council v The Secretary of State (2003) EWHC 157 Admin outline that a proposal such as this, subject to specific circumstances, may not constitute a 'material' change of use due to there not being a change or impact to the character of the area.

The built form would not be altered, the vehicle movements on site would not be significantly altered and there would not be a material increase in activity, in comparison to the movements on site through the current C3a use.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be deemed

lawful under Delegated Authority.