

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-1183-25 **Applicant:** Mr M G Jones

Proposal: Use of Dwelling (Use Class C3a) as Childrens Home for up to 3 children (Use Class C2)

Location: The Willows 290 Bourne Road Pode Hole

Terminal Date: 4th February 2026

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the proposed use of the site as a children's home.

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

Site Description

The application site comprises land at The Willows, 290 Bourne Road, Pode Hole. The site is located to the north of Bourne Road whereas the nearest dwellings are located to the south of Bourne Road. The site is located within a rural area as there are mostly agricultural fields around the site, except for the dwellings located to the south.

Planning History

H16-0852-98: (Full Application) New vehicular access - approved 30 September 1998

Consultation

There is no statutory obligation for the Local Planning Authority (LPA) to publicise an application for a certificate of lawful development; however, a site notice has been displayed next to the site for 21 days in the interests of transparency. During the consultation period, no responses have been

received from members of the public.

Lincolnshire County Council - Children's Services: No response received.

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 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 to a residential children's home is lawful.

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)

(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)."

The current use class of the site is Use Class C3 as the site has been occupied as a dwelling. According to the application form, the applicant considers that the proposed use of the site would fall under Use Class C3(b). The Local Planning Authority (LPA) does not agree with this and considers that the proposed use of the site as a children's home would fall under Use Class C2. This is because the proposal is for up to 3 children to live within the site, with staff members working shift patterns in order to look after the children. No adult would be a permanent resident and as such, it is considered that the proposed use would fall under Use Class C2.

This approach to assessing children's care homes has been established within case law, including the case of North Devon District Council v The Secretary of State (2003) EWHC 157 Admin. Within the relevant judgement from this case, it was established that children living together without a

permanent adult resident cannot form a functioning household independently. As such, in situations where staff members work shifts in order to look after children within a home, but are not resident within the home, the use class of such homes falls under Use Class C2.

Whilst a change in the use would occur, it must be discussed and established whether this would constitute a 'material' change of use. Whether a material change of use would occur is dependent on various factors, such as whether there would be a significant increase in noise and disturbance of if the comings and goings to the site would significantly increase.

According to the submitted information, the children will be cared for by staff members including:

- A Team Leader who works a 24 hour shift;
- A residential care worker who works a 12 hour day shift (for example from 10am to 10pm);
- A residential care worker who works a 12-hour night shift (for example from 10pm to 10am); and
- A Manager who typically works 9am to 5pm Monday to Friday.

As such, there would typically be between 2 and 3 members of staff within the site at any time. As set out previously there could also be 3 children living within the site, meaning that there could be up to 6 individuals within the site on a typical day. The children may also receive visitors; however, it is not considered that the number of visitors to the site would significantly exceed a typical family household.

Based on the submitted information, it is likely that there would be a staff changeover twice per day where one care worker replaces another at approximately 10am and 10pm. Furthermore, a manager would arrive at the site at 9am and leave at 5pm on a typical day and the Team Leader would need to enter and leave the site once per day. There might also be additional trips to and from the site if staff need to travel with the children to other locations as such as for school or appointments or social activities.

Compared with a typical household, it is considered that these anticipated comings and goings would be similar to occupants who might commute from the site. As such, it is considered that vehicles movements to and from the site would be comparable to a typical household that could occupy the site under Use Class C3.

As there would typically be 3 children and up to 3 adults within the home, it is not considered that this would lead to a significant increase in noise or disturbance to the area. The dwelling is set within a relatively spacious plot, providing room for off-road parking for staff members and visitors. As such, the proposed use should not result in a change to the character of the area through an increase of on-road parking next to the site.

No external changes are proposed to the buildings within the site to facilitate the proposed use and as such, physically the site would remain unchanged.

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 inline with the case law discussed, it is considered that this would not comprise a 'material' change of use. For example, there would be no material impact, including on the character or appearance 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 and the comings and goings to the site are not likely to significantly increase and there would not be a material increase in activity within the site, in comparison to the current C3 use.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be deemed lawful under delegated authority.