

## **PLANNING STATEMENT**

Proposal: Lawful development certificate for a change of use from C3 dwelling house to C2 residential children's home to accommodate maximum of 2 children.

Site: 13 Mallows Drive, Raunds, Northamptonshire, NN9 6SF

Applicant: Charan Basra

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## **1. INTRODUCTION**

- 1.1 This planning statement has been prepared to accompany a certificate of lawful development for the change of use of 13 Mallows Drive, Raunds, Northamptonshire, NN9 6SF ('the proposal site') from a Class C3(a) (dwellinghouse - use by a single person or a family) to a Class C2 (residential institution). The proposal will provide care for a up to 2 children, aged between 8-18 years.
- 1.2 This planning statement should be read alongside the following:
- Location Plan;
  - Existing and Proposed Floor Plans;
  - Application Form.
- 1.3 The purpose of this statement is to demonstrate that the use of this property as a Class C2 use would not result in a material change of use from that of a Class C3(a) use.

## **2. LEGISLATION**

### **The Town and Country Planning Act 1990**

- 2.1 Section 336(1) defines "use" in relation to land as, not including the use of land for the carrying out of any buildings or other operations on it.
- 2.2 Section 192(1) provides that if any person wishes to ascertain whether any proposed use of buildings or other land is lawful or whether any operations which have been carried out in, on or under land are lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use.
- 2.3 Section 192(2) advises that 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.
- 2.4 Section 192(3) requires this certificate to detail the specific land to which it relates, describe the use or operations in question, give the reasons for determining the use or operation to be lawful and specify the date of the application on the certificate.
- 2.5 Section 192(4) provides that 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 (“the NPPG”)**

- 2.6 The NPPG provides advice regarding how applications should be determined alongside the National Planning Policy Framework (NPPF).
- 2.7 Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted. The application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.
- 2.8 The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.
- 2.9 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 not relevant at any stage in this particular application or appeal process. In determining an application for a prospective development under section 192 a local planning authority needs to ask “if this proposed change of use has occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?” A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however advisable to seek the applicant’s agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

## **3. DESCRIPTION OF PROPOSAL**

- 3.1 The proposal is for a change of use of a three-bedroom dwellinghouse (Class C3) to a Class C2 (Residential Institution) to accommodate up to 2 children aged 8-18, with the third bedroom available to staff.
- 3.2 A risk assessment would be undertaken to ensure that the residence is appropriate for the chosen children. All staff will hold the relevant NVQ qualifications and experience to satisfy the criteria set out by Ofsted. Ofsted registration would need to be obtained in order to run a care home and they stress the need for care homes

to be operated in an environment as close as possible to a traditional family home environment and are set out below:

- Children in residential child care should be loved, happy, healthy, safe from harm and able to develop, thrive and fulfil their potential.
  - Residential child care should value and nurture each child as an individual with talents, strengths and capabilities that can develop over time.
  - Residential child care should foster positive relationships, encouraging strong bonds between children and staff in the home on the basis of jointly undertaken activities, shared daily life, domestic and non-domestic routines and established boundaries of acceptable behaviour.
- 3.3 Care would be provided by trained carers 24 hours a day and 7 days a week. Care would be given in a communal environment with the children and their carers sharing facilities in a manner akin to a family.
- 3.4 The third bedroom would be available to one of the carers who would sleep overnight. The second carer would remain awake (known as 'waking night') during the night (and would therefore not need use of a bedroom), instead they would remain on the ground floor during the night unless required to provide support to the children during the night (i.e. should a child wake in distress during the night).
- 3.5 The carers for the children would not be permanent residents but would work on a regular 24-hour shift pattern to provide continuity with the children and create a family environment and bond with the children. Shifts are 12 hours with the two day shift starting at 7:30am and 8am and the two night shift starting at 7:30pm and 8pm. The shifts are staggered in the aim to substantially reduce the number of cars arriving and departing from the site at a time and preventing the need for handover periods. The staff members would remain on site supervising the children but would also accompany the children to school and other appointments.
- 3.6 There would be no more of a requirement for these children to be taken to any specialist schools or appointments (compared to if the house was utilised as a dwelling house). The children would attend school during the day and would also attend extra-curricular activities like any other family, subject to the appropriate risk assessment and assessment of a child's needs.
- 3.7 The manager may on occasions visit the proposed site to provide a more senior input. The manager provides an oversight to the operations, safeguarding responsibility, and deals with administration. Other visitations are generally not encouraged as the aim is to create a home environment as close to a family home as possible rather than a professional place of work so it is likely there may be prolonged periods where no visits occur.

3.8 The property's existing household facilities will be retained and used in the same way they would be by a Class C3 use. It is important to note that there will be no internal or external changes to the proposed site. The same also applies in respect to use of the rear garden, and the parking spaces on the frontage driveway.

#### 4. **ASSESSMENT OF PLANNING USE**

4.1 There is 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, that carers who do not live but who provide a continuous 24-hour care cannot be regarded as living together and without at least one adult living with them at the premises, it would not be capable of being regarded in the true sense as a household. As such it is accepted that the proposed use is C2. However, the case also went on to state that the change of use was not considered to be material.

4.2 Case law in the form of *Crewe and Nantwich* in 2006 (Ref DCS No 100-042-095) supports this wherein the Inspector confirmed that a Class C2 use which housed four children between the ages of 11 and 17 years (with a minimum of two carers operating on an 8 hour rota system) would not involve a material change in the use of a premises from Class C3.

4.3 The *Crewe and Nantwich* case also concluded there is no basis that anti-social behaviour and crime is inherent in the character of a residential institution involving the care of children even those with emotional and behaviour difficulties. It would be difficult for local authorities to sustain arguments that a children's home would cause additional noise, anti-social behaviour and crime.

4.4 The ethos behind the intended operations of this property would be for the residence to provide an environment as close as practically possible to normal family life in order to ensure that the children can live a life of normality in the local community. This in fact is a requirement of Ofsted. Such properties can offer a better and stable home environment than would be the case in larger institutions as they enable individual needs to be met and allow the children to integrate into their community and live as equal citizens. As a result, the whole structure of the operations is designed to ensure that the building functions as close as possible to a standard Class C3(a) use. The home has a typical layout as found across most homes in the UK; a living room where residents all relax and enjoy TV, games etc. A kitchen where all residents are expected to cook and eat together. Bedrooms and bathrooms upstairs, which are commonplace in modern homes.

4.5 The use would not increase the number of residents within the dwelling as the scheme would provide accommodation for maximum 2 children and cared for by 2 staff carers. The proposed use would therefore be a similar or lower occupation than if the property remained as a dwellinghouse (with the ability for a standard family to have a greater number of offspring who could share bedrooms). This

would mean that there is a finite space to accommodate persons under the residential care home use.

- 4.6 The comings and goings associated with the use will not be materially different from a typical residential household. It is not unrealistic to assume the proposed site could be occupied by 4 driving residents, all whom leave and return from work at different times. This is not materially different to staff changeovers. Any other comings and goings such as school runs or shopping trips would again be no different to a residential dwelling.
- 4.7 The property provides ample on-site parking, with space for up to 4 parking spaces on the driveway. With two staff members present on any given shift and visitations limited, the parking spaces are sufficient and in accordance with the Parking Standards.
- 4.8 The proposal is for a change of use of the application site therefore the application involves no external alterations and they will not be required by the Class C2 use.
- 4.9 This also applies in respect to internal alterations. The submitted drawings show that the existing layout of the building will remain the same. Essentially, the proposal is for a family living environment for children in need of care so there is no need for change.

#### **Other relevant case law**

- 4.10 In the case of Burbage (in Hinckley and Bosworth District Council) which was allowed at appeal in 2011 (Planning Inspectorate reference APP/K2420/X/11/2155849) for a care home to provide care for up to three children with emotional and behavioural difficulties. In this appeal the Inspector considered that the use fell within a Class C2 use. That proposal involved three shift patterns per day with three carers and a site manager providing care and it was not anticipated that more than three cars would be parked at the premises. The Inspector concluded that the proposal would not result in a material change of use.
- 4.11 A further appeal at The Cottage, Stonebridge Green Road, Egerton (Planning Inspectorate reference: APP/E2205/X/16/3161037) which was allowed in 2017 related to a certificate of lawfulness in respect of the use of a 4-bedroom dwelling to a proposed care home providing care for three children by two adult carers. The Inspector acknowledged that the use would fall within Class C2 but that the level of vehicle movements to and from the property would not be significantly more than if it were used as a family house. The Inspector concluded that: *“The appellants will be required to comply with all relevant rules governing the accommodation for children in care and their full-time supervision and, if the property can meet these regulations and the appellants can meet the staffing requirements, I see no reason why the use proposed would have any planning impacts that would cause it to be considered as a material change of use”*.

- 4.12 Another appeal decision in December 2020 for a site at 72 Oakdale Drive, Heald Green, Cheadle (Planning Inspectorate reference: APP/C4235/X/20/3244329) allowed the change of use from a 5-bedroom dwellinghouse to a care home caring for up to 3 children who would be cared for by two carers at any time, working 48 hour shift patterns. Importantly that decision recognised that the carers would sleep overnight at the property but the property would not be their main residence. The Inspector considered that that proposal would fall within Class C3b as it stated in paragraph 17 of that decision that:

*“In all, given the level of care involved in this case, the low frequency of visits by non-resident carers who stay overnight and work a shift pattern with the resident carer who guide and look after the resident children, the proposed use in my view, would constitute a single household. I conclude on the available evidence that the proposed use would fall within use class C3(b).”*

It is therefore, entirely feasible that the proposed use could fall within a Class C3(b) use.

- 4.13 North Northamptonshire Council have granted numerous certificates of lawfulness through both C3(b) and C2 routes, with particular reference to case NW/22/00658/LDP where local authority concluded:

*“It is understood from the evidence provided of other cases that the applicant has described the proposed use as akin to a family home and as such not a material change of use. The local planning authority therefore considers the applicant is suggesting the use (C3(b) or C2) is irrelevant as whichever class it would fall under the level of activity is of such similarity to the existing use that it would not be a material change of use.”*

- 4.14 We would also emphasise that small homes such as this play a significant role in the Government’s approach to social care policy, aiming to enable children in care to live as normal lives as possible within the community and the operation of such homes that seeks to create a ‘family-orientated’ environment where children thrive and achieve positive outcomes.

## 5. **CONCLUSION**

- 5.1 This statement clearly demonstrates that the proposed change of use of 13 Mallows Drive, Raunds, Northamptonshire, NN9 6SF to a Class C2 from its current use as a Class C3(a) would not result in a material change of use.

- 5.2 As a consequence, it is considered that the proposal would not require the submission of a planning application and that a certificate of lawfulness should be issued in accordance in accordance with Section 192 of the Town and Country Planning Act 1990.