



Supporting Planning Statement

Certificate of Lawfulness of Proposed Use or Development:

67 Grace Avenue, Maidstone, Kent ME16 0BS

Prepared by My Tribe Homes Ltd

November 2023

1.0 Background

- 1.1 This Supporting Planning Statement should be read in conjunction with the plans submitted with the application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) at the property known as 67 Grace Avenue, Maidstone, Kent ME16 0BS. The applicant seeks to confirm that the use of the property to accommodate a maximum of four children and two staff within the property is lawful under the existing C3 use.
- 1.2 The application is made under Section 192 of the Town and Country Planning Act 1990 as amended. Section 192 makes it clear that a CLOPUD application is to be determined as a matter of lawfulness i.e. whether on the facts, the proposed use would be lawful. The weighing of normal planning considerations such as policy and local opinion are not relevant and are not to be considered.
- 1.3 The applicant has assessed similar developments and appeal decisions in a variety of local planning authorities, including Maidstone Borough Council, which serve to set out the views of Planning Inspectors on the subject. Whilst it is acknowledged that each application should be judged upon its own merits in accordance with the Act, in the interests of consistent decision making it is considered that this application should be approved as it is a mirror image of those previously approved applications and appeals.
- 1.4 Reference is made to an appeal decision that was issued at The Cottage, Stonebridge Green Road, Ashford TN27 9AP (PINS Refers 3161037) which is appended to this Supporting Planning Statement. Much the same points were made in the Loyterton Farmhouse, ME9 OHW appeal also appended (APP/V2255/X/19/324363).
- 1.5 Please also find a schedule of recent applications in Appendix 1 in which CLOPUDs have been granted by Maidstone Borough Council in very similar applications.

2.0 Property & Surrounding

2.1 67 Grace Avenue is a 5-bedroom family home with three reception rooms and two bathrooms. It is located approximately 2 miles to the west of the town centre of Maidstone and is therefore a highly accessible and sustainable location well within the settlement boundary of the town.

2.1 More specifically it has a sizeable private rear garden.

Figure 1: Location of Applicant Site.



3.0 Analysis

3.1 The key issues in the determination of this application are whether the proposed use as a children's home accommodating a maximum of four children falls within the existing

C3 use and therefore is lawful and does not require a planning application for a change of use. If it is not considered to fall within the C3 use then the second issue to be addressed is whether there would be a material change of use. Floor plans have been provided which shows the layout of the property. The property will be able to offer medium to long term placements for four children between the ages of 5 to 17. Adult staff will work on a rota system to ensure on-site presence at all times.

- 3.2 The first item of planning legislation to assess is the Town & Country Planning (Use Classes) Order 1987 (as amended) and this Order does nothing other than to confirm that the intended use is that of a C3 dwellinghouse (which is the existing use). A C3 dwellinghouse is defined in the Order as “the use of a building, whether or not as a sole or main residence by....(b) not more than six residents living together as a single household where care is not provided for residents”.
- 3.3 In the case of the proposal there will be a maximum of four children living at the property as a single household at any one time and a maximum of two adults which is at the “six resident” threshold for the purposes of interpreting the Order. Therefore, the issue to be addressed is what constitutes a single household in planning terms.
- 3.4 The lawful interpretation of what constitutes a single household has been rehearsed in many appeal decisions. The appeal decision in Enfield (PINS Reference 2006017) is often referred to in officer’s reports as is the North Devon District Council v First Secretary of State [2004] 1P.&CR38 High Court case. It has been found by Planning Inspectors and Planning Officers that the proposed use fell within the C2 Use Class after much assessment of the various case law and appeal decisions on this subject.
- 3.5 Planning legislation allows for changes between use classes which in particular circumstances may not be material for planning purposes. The officer found in two Canterbury applications that there was a “low level” of C2 use and that was not materially different from that of a C3(a) use and therefore no material change of use had occurred.
- 3.6 The day to day activities and use of the property would be similar to that of a dwellinghouse use and therefore would be in accordance with the case law routinely referred to for applications of this nature. The local planning authority would not be able to take enforcement action against the proposed use. Annex 8 of Circular 10/97 confirms this assertion as there would not be a material change of use. In terms of the recent appeal decision at “The Cottage”, the Inspector decided to allow the appeal on the basis of the following justification extracts:
- 3.7 “A house of this size could easily accommodate a typical family with 2, 3 or more children and 2 adults and it seems to me that the use of the house as a home for a maximum of 3 young people and their carers would not be materially different from the authorised use as a 4-bedroom family home. It is likely that there would be vehicle movements created by the carers coming to and leaving the site on a daily basis as they start and leave their shifts and journeys undertaken by the children when being taken to and from school.

Nevertheless, I do not consider that the number of such movements is likely to be significantly more than those undertaken by a family and certainly not enough to result in an intensification of use that would give rise to planning concerns.

- 3.8 I have noted the village location and the lack of facilities available for young people in the immediate area, but again, there would be nothing to stop the property being occupied by a family, to whom the same concerns would apply.”
- 3.9 The inspectorate concludes “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.”
- 3.10 The same consideration is made for this Lawful Development Certificate the vehicle movements associated with the dwelling is unlikely to be significantly more than those undertaken by a family. “Not enough to result in an intensification of use that would give rise to planning concerns.” Any issues in the area would apply to the proposed occupants just the same as if it were occupied by a family.

4.0 Summary

4.1 It is respectfully requested that the Certificate of Lawful Use for a Proposed Development be issued on the basis that, although there has been a change of use to a low level C2 use, there would not be a material difference in the use of the property as a residential unit offering a home to a maximum of four young persons.

Appendix 1

Validation Date	Reference	Address	Proposal	Decision
19.04.23	23/501811/LDCEX	4 The Moorings Conyer Kent ME9 9HQ	Lawful Development Certificate (Existing) for use of property as a children's care home (Use Class C2).	Application Permitted
18.04.23	23/501808/LDCEX	32 Park Road Sittingbourne Kent ME10 1DR	Lawful Development Certificate (Existing) for use of property as a children's care home (Use Class C2).	Application Permitted
18.01.23	23/500287/LAWPRO	16 Upper Fant Road Maidstone Kent ME16 8DN	Lawful Development Certificate for the proposed use of the dwellinghouse (Class C3) as a low-level use children's home (Class C2) for up to 2 children together with adult carers working on a shift basis	Application Permitted
23.06.23	22/502994/LAWPRO	29 Charles Street Maidstone Kent ME16 8ET	Lawful Development Certificate the Proposed Change of Use from a C3 Dwellinghouse to a low level C2 use as a children's home for up to a maximum of 4 children living at the premises with adults working a shift rota.	Application Permitted
07.02.22	22/500507/LAWPRO	52 Florence Road Maidstone Kent ME16 8EL	Lawful Development Certificate (Proposed) for a change of use from C3 to C2.	Application Permitted

Appeal Decision

Site visit made on 17 February 2017

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28th February 2017

Appeal Ref: APP/E2205/X/16/3161037

The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Parkview Care against the decision of Ashford Borough Council.
 - The application Ref 16/01000/AS, dated 1 July 2016, was refused by notice dated 24 August 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is as a C3(b) private dwelling.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the matter constituting a proposed use which is considered to be lawful.

Procedural matters

2. At the time the application was considered, the Planning Statement submitted with the application form noted that the house was intended for use by 4 young people, between the ages of 8 and 17, and their carers. However, the appellants' Appeal Statement refers to a maximum of 3 children and 2 adult carers and their submissions justifying the proposed use are based on this number. As this is the latest information submitted in support of the appeal, I have considered the merits of the case on this basis.
 3. The appellants now appear to agree that this scenario would not constitute a 'household' as set out in Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and as defined in Government Circular 8/2010. This Class is defined as not more than 6 residents living together as a single household where care is provided for residents.
 4. A similar scenario to the appeal proposal was considered in the case of North Devon District Council v First Secretary of State [2004] 1 P. & C.R. 38 which determined that children alone cannot form a 'household' and that if their carers do not live permanently at the property, the use would fall within Class C2 of the UCO. This is defined as use for the provision of residential accommodation and care, other than within a Class C3 use. Examples given are as a hospital, nursing home, residential school, college or training centre.
-

5. Nevertheless, a change to a new use class only requires planning permission to authorise it if it is material in planning terms. The appellants consider that, in this instance, a change from Class C3(a) to C2 would not be material and planning permission is not therefore required for the proposed use. I have considered the appeal on this basis.

Main Issue

6. I therefore consider the main issue in this case is whether the proposed use is a material change from the lawful use as a single dwellinghouse falling within Class C3(a).

Site and surroundings

7. The appeal site is a detached house with a generous garden in an enclave of other properties on the outskirts of the village of Egerton. At present it has 2 living rooms, a kitchen and a cloakroom on the ground floor and 4 bedrooms and 2 bathrooms on the first floor. An entrance drive leads to a garage and off street parking.

Reasons

8. As noted above, the proposal is for the use of the property for a maximum of 3 young people between the ages of 8 and 17 who would live in the house under the care of 2 adults at all times, although the identity of the carers would change and the carers would not have the property as their main residence.
9. The Council relies on the report of the Officer who determined the application and this report concludes that the proposed use falls within in Class C2 and, given the findings of the judgement set out above, I concur with this view. However there is no assessment made in the report as to whether a change of use between Class 3(a) and Class 2 as described in this case would be material. To establish this, a comparison between the existing and proposed uses needs to be considered.
10. A house of this size could easily accommodate a typical family with 2, 3 or more children and 2 adults and it seems to me that the use of the house as a home for a maximum of 3 young people and their carers would not be materially different from the authorised use as a 4 bedroom family home. It is likely that there would be vehicle movements created by the carers coming to and leaving the site on a daily basis as they start and leave their shifts and journeys undertaken by the children when being taken to and from school. Nevertheless, I do not consider that the number of such movements is likely to be significantly more than those undertaken by a family and certainly not enough to result in an intensification of use that would give rise to planning concerns.
11. I have noted the village location and the lack of facilities available for young people in the immediate area, but again, there would be nothing to stop the property being occupied by a family, to whom the same concerns would apply.
12. 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.

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property for a class C2 use for 3 children and 2 adults was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

[REDACTED]

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 1 July 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), would not represent a material change from the authorised use of the site as a Class C3(a) dwellinghouse.

Signed

Katie Peerless

Inspector

Date

Reference: APP/E2205/X/16/3161037

First Schedule

The use of the dwellinghouse within Class C2 of the UCO, for occupation by no more than 3 children and 2 adults at any one time.

Second Schedule

Land at The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated:

by Katie Peerless Dip Arch RIBA

Land at: The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP

Reference: APP/E2205/X/16/3161037

Scale: NTS

