



Dated 13 December 2023

Supporting Statement

In relation to application for a

Certificate of Lawfulness for Existing Use or Development (Section 191 of the Town and Country Planning Act 1990)

Ashfield Farmhouse, Bolas Road, Howle, Shropshire TF6 6PN

Shropshire Council

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1 Introduction

1.1 This application is made on behalf of Esland North Limited (the **Applicant**) for a Certificate of Lawfulness of Existing Use or Development pursuant to Section 191 of the Town & Country Planning Act 1990 (as amended) (the **Act**) in respect of Ashfield Farmhouse, Bolas Road, Howle, Shropshire TF6 6PN (the **Property**) as shown edged red on the plan attached at **Appendix 1**.

1.2 The Applicant provides residential care homes for children across England and is committed to delivering the highest standards of care and support for those children in need of specialist care. The Applicant intends to acquire a leasehold interest in the Property taking over from Bryn Melyn Care Limited (**BMC** or the **Tenant**) who is the current tenant of the Property.

2 The Application

2.1 The Application seeks to establish that the existing use of the Property as a residential care home for children under Use Class C2 of the Use Classes Order 1987 (as amended) (the **Use Classes Order**) is lawful.

2.2 This Statement is submitted in support of the proposals setting out the basis on which the Certificate is sought. It is to be read in conjunction with the following documentation which forms the application:

2.2.1 Application Form

2.2.2 Site Location Plan (**Appendix 1**)

2.2.3 Statutory Declaration of Robert Anthony Morris-Eyton (the freehold owner of the Property) dated 3 August 2023 (**Appendix 2**)

2.2.4 Statutory Declaration of James Barlow (previously a Senior Care Worker for BMC, the current tenant of the Property) dated 28 November 2023 (**Appendix 3**) and the documents referred to therein

2.2.5 A copy of Ofsted Registration certificate confirming the Property was registered as a Children's Home with Ofsted (registration number SC372261) on 14 July 2008 (**Appendix 4**)

2.2.6 Ofsted Inspection of the Property reports dated 27 July 2009, 26 January 2010, 12 October 2010, 8 March 2011, 27 October 2011, 31 January 2012, 16 August 2012, 30 January 2013, 9 May 2013, 6 February 2014, 5 November 2014, 12 February 2015, 14 December 2015, 23 February 2016, 12 June 2016, 22 March 2017, 20 February 2018, 10 October 2018, 20 August 2019, 9 March 2020, 5 October 2021 and 24 January 2023 (collectively referred to as the **Ofsted reports**) (**Appendix 5**)

3 History of the Property

3.1 We have conducted a local search of Shropshire Council's land charges register which confirms that there is no planning history for the Property, and therefore there are no material planning consents that are relevant to the Application.

- 3.2 The Property is owned by Mr Robert Anthony Morris-Eyton (the **Owner**) who has provided a Statutory Declaration (please refer to **Appendix 2**) which confirms that the Property was first leased to BMC in 2001 and has thereafter operated continuously as a residential care home for children. Attached to the Statutory Declaration of the Owner at Appendix 2 is exhibit **RAME2** being rental records of the Property confirming BMC continuously paid rent to the Owner from 5 November 2001 until 3 July 2023.
- 3.3 Further, a senior care worker of the current Tenant of the Property has provided a Statutory Declaration (please refer to **Appendix 3**) which confirms that the Property has been operated by BMC as a residential care home for children under Use Class C2 of the Use Classes Order since it was first registered with Ofsted on 14 July 2008 and that such use has been continuous and uninterrupted.
- 3.4 The Ofsted Registration certificate at **Appendix 4** of this Statement confirms that the Property was registered as a Children's Home with Ofsted (registration number SC372261) on 14 July 2008. We further append at **Appendix 5** copies of the Ofsted reports which further evidence that the Property operated continuously and without interruption as a Children's Home from 14 July 2008.
- 3.5 The Property has operated as a care home for children with staff working in rotating shift patterns. None of the care staff have ever resided at the Property since operation began in July 2008, nor will they do so when the Property is operated by the Applicant.

4 **C2 Use**

- 4.1 The evidence submitted with this Application demonstrates that the use of the Property as a residential care home for children under Use Class C2 of the Use Classes Order has been continuous for over 10 years and is an established lawful use.
- 4.2 The Applicant intends to accommodate children in need of care as defined within the Use Classes Order in the same manner as the Tenant has done:

"care" means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment (Clause 2 of the Use Classes Order);

- 4.3 The following high court and appeal decisions support the proposition that the existing use falls within Class C2 (as opposed to Class C3(b)):

4.3.1 The case of *North Devon v. SSTLR[2003] EWHC 157* concerned a residential care home for children whereby two children occupied the premises under a supervision of carers who operated in a rotated shift pattern. The Court of Appeal determined that where care is provided to children in a residential setting, but the carers operate rotational shift patterns (as per the proposed and previous use of the Property), the use would fall within Class C2 and not within Class C3(b). A care home for children will not fall within Class C3(b) where rotational care is provided to resident children. This was because the Court of Appeal considered that the definition of "care" excludes care of children except in Class C2. The facts of the case are directly analogous with the BMC's operation of the Property as a residential care home for children with a rotating shift pattern.

4.3.2 In an appeal decision relating to *15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10* which was allowed at appeal on 7 November 2011 (*Planning Inspectorate reference APP/K2420/X/11/2155849*) the Inspector determined that the use of the property as a care home to provide care for up to three children with emotional and behavioural difficulties with carers operating in a rotating shift pattern fell within Use Class C2 of the Use Classes Order. Again the facts are analogous to the existing and proposed use of the Property.

4.3.3 In another appeal decision relating to *The Cottage, Stonebridge Green Road, Egerton* which was allowed at appeal on 28 February 2017 (*Planning Inspectorate reference: APP/E2205/X/16/3161037*) the Inspector determined that the use of the property as a care home to provide care for up to three children with two adult carers fell within Use Class C2 of the Use Classes Order.

5 Reason for the section 191 Application

5.1 The Property operated as a residential care home for children under Use Class C2 of the Use Classes Order since 14 July 2008. The Statutory Declarations and supporting evidence appended to this statement at **Appendix 2** and **Appendix 3** comprises clear and unequivocal evidence that the Property operated as a residential care home for children under Use Class C2 of the Use Classes Order since 14 July 2008 until 22 November 2023, a period of fourteen years in total.

5.2 The Applicant has elected to pursue a Section 191 application with the Council to provide certainty to ensure that it can continue operating the Property as a residential care home for children under Use Class C2 of the Use Classes Order when it acquires the lease from the current Tenant. As such, the Applicant seeks a certificate of lawful use in accordance with section 191 of the Town and Country Planning Act 1990 (the **Act**) on the grounds that the existing use of the Property as a residential care home for children under Use Class C2 of the Use Classes Order has been for a continuous period in excess of ten years prior to this application being submitted and is therefore an established lawful use.

6 Relevant Law

6.1 Pursuant to section 191(1) of the Act if any person wishes to ascertain whether any existing use of buildings or other land is lawful, he may submit an application for this purpose to the local planning authority specifying the land and describing the use in question. The land in this case is the Property, and the use is the residential care home for children within Use Class C2 of the Use Classes Order described above at paragraph 3 and as detailed within the Statutory Declarations at **Appendix 2** and **Appendix 3**.

6.2 Pursuant to section 191(2) of the Act a use is lawful at any time if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

6.3 The relevant time limit for this application is found at Section 171B (3) of the Act which states '*In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of **ten years** beginning with the date of the breach*'.

- 6.4 The Court of Appeal confirmed in *Thurrock Borough Council v Secretary of State for the Environment [2002] EWCA Civ 226* that development is lawful where the applicant is able to demonstrate, on the balance of probabilities, that the use in question was continuous throughout a 10 year period during which period enforcement action could have been taken at any time by the Local Planning Authority but was not. In such circumstances the use becomes immune from enforcement and the use becomes an established use.
- 6.5 As has been demonstrated by paragraph 3 and the Statutory Declaration of the Owner at **Appendix 2** and of the Tenant at **Appendix 3**, the Property has operated as a residential care home for children under Use Class C2 of the Use Classes Order for well in excess of 10 years, therefore, the time for enforcement action has passed in accordance with S171B(3) of the Act and the use is established.
- 6.6 Once established, a lawful use can only be lost in one of three ways, namely by abandonment, by the formation of a new planning unit, or by a material change of use. Since the use has become an established use a new planning unit has not been formed, there has been no material change of use, and there is no evidence of abandonment of the use (see *Hughes v Secretary of State for the Environment [2000]*).
- 6.7 Pursuant to section 191(4) of the Act if in an application the local planning authority are provided with information satisfying them that the of the lawfulness at the time of the application of the use, operations or other matters described in the application they shall issue a certificate to that effect.
- 6.8 Article 39 of the Town & Country Planning (Development Management Procedure (England) Order 2015 specifies the requirements for an application pursuant to section 191 of the Act. Article 39 states that an application must be accompanied by sufficient factual evidence and information in order for a local planning authority to be able to decide the application. The Applicant considers that the information and evidence submitted pursuant to the Application meets this requirement in full.

7 **Conclusion**

- 7.1 The Court has held in *F W Gabbittas v SSE and Newham BC [1985] JPL 630* that an applicant's evidence does not need to be corroborated by further independent evidence in order to be accepted. However, the Applicant has provided substantial corroborating evidence nonetheless.
- 7.2 Applications under Section 191 of the Act must be decided on the balance of probabilities. This means that the certificate sought must be granted if it is more likely than not that the Property has operated as a residential care home for children under Use Class C2 of the Use Classes Order for 10 years or more.
- 7.3 It is submitted that sufficient factual evidence has been provided to confirm that on the balance of probabilities the Property has operated as a residential care home for children under Use Class C2 of the Use Classes Order from 1 July 2009 to 22 November 2023. Such use has been continuous and uninterrupted.
- 7.4 The consequence of this is that the use of the Property as a as a residential care home for children under Use Class C2 of the Use Classes Order is therefore lawful by virtue of sections 171B(3) and 191(2) of the Act and we kindly request that a Certificate of Lawfulness of Existing Use or Development be issued pursuant to Section 191 of the Act.

Trowers & Hamlins LLP

13 December 2023

APPENDIX 1

Site location plan

APPENDIX 2

Statutory Declaration of Robert Anthony Morris-Eyton dated 3 August 2023

APPENDIX 3

Statutory Declaration of James Barlow dated 28 November 2023

APPENDIX 4

Ofsted Registration Certificate

Appendix 5
Ofsted Reports