

Planning Statement in support of
Application for a Certificate of Lawful Use at
1B Wyreside Drive, Hambleton, FY6 9DP



A Abbott - Hull
Associates

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Section 1. Introduction

- 1.1 This application is made on behalf of Fortitude Residential Childcare Ltd, the application is for a Certificate of Lawful Use in respect of an existing residential property at No. 1B Wyreside Drive, Hambleton, FY6 9DP.
- 1.2 The application is constituted in the following documents:
- o Application form dated 11th December 2023.
 - o 23155_LOC – Location Plan.
 - o 23155_100 – Existing Plans.
 - o 23155_110 – Proposed Plans.
 - o This supporting statement.
 - o Client supporting statement.

Section 2. Existing situation

- 2.1 Fortitude Residential Childcare Ltd, the applicant, is the intended operator of the property. The property is in the process of being purchased and will be refurbished with the intention that it be used as a care home for two young people.
- 2.2 The property is in residential use and was built for that purpose.
- 2.3 As noted above, accompanying this application are plans which depict the existing and proposed floor plans; the plans are similar as the proposed use will not materially alter the existing use.
- 2.4 Plans provided set out both the existing and proposed property layout. The existing ground floor accommodation is as follows:
- Entrance hall leading to,

- A large lounge which provides access to the first-floor and to the rear of the property.
- To the rear is an open-plan dining and kitchen area leading to a ground-floor WC, utility room and games room.
- The dining area leads to a conservatory which provides access to the rear garden.

2.5 The existing first-floor accommodation is as follows:

- A landing.
- Two double bedrooms.
- Two single bedrooms.
- A family bathroom.

2.6 In terms of proposed usage, at the ground-floor level there is no physical change to the current layout, however, it is proposed that the conservatory would be used as a staff office.

2.7 The first-floor level will remain unaltered. The two double bedrooms would be used for the young person's accommodation, one of the single bedrooms would be used for staff accommodation and the second single bedroom would be used as a study.

Section 3. The Application

3.1 The application is for the use of the property as a home for two young people in receipt of care as required with no more than two carers remaining overnight.

3.2 Certificate applications are said to be a matter of fact and law. In the case of Certificates for a proposed use, the onus of proof that the use would be lawful is on the applicant and the relevant test is the balance of probability.

3.3 The factual background to this application is that a dwellinghouse currently exists and is lawful in that use. The proposal is to use the property as a home for two young people in need of care with carers attending on a rotated basis as necessary, there will be no more than two carers in residence overnight.

3.4 The legal background is contained in the Town & Country Planning (Use Classes) Order (SI 1987 764) and relevant case law as discussed below.

Section 4. Use Class Order (Existing and Proposed Use)

4.1 The relevant use classes as defined with The Town and Country Planning (Use Classes) Order 1987 as amended are:

Class C2, Residential Institutions, defined as:

"Use for the provision of residential accommodation and care to people in need of care (other than the use within class C3 [dwellinghouse]) use as a nursing home, use as residential school, college or training centre"

Class C3, Dwellinghouse defined as:

"Use as a dwellinghouse (whether or not as a sole or main residence) by-

- a) a single person or by people to be regarded as forming a single household;*
- b) not more than six residents living together as a single household where care is provided for residents; or*
- c)*

4.2 The Existing Use

4.2.1 The current use lies within planning Use Class C3; Town and Country Planning (Use Classes) Order 1987 (as amended).

4.3 The Proposed Use

4.3.1 There is some flexibility to argue that the proposed use also falls within Class C3(b). This is because there would not be more than three residents living together and they are arguably living together as a single household, and various care is being provided for the residents.

4.3.2 The specifically proposed use is for two young people and up to two members of staff who may sleep at the property, but these members of staff would be alternated according to a rota. It would be likely that there would often only be one member of staff sleeping at the property, again on a rota. Other members of staff providing care would be utilised as necessary, without their being resident in any way, and so it is conceivable that at times there may be more than two members of staff present in the house, but this would be unusual.

4.3.3 Appeal decisions have found that even where staff providing care to other residents are on a shift system living in their own homes, the use may still be within use class C3(b). This was the case with several appeals reported in Development Control Practice.

4.3.4 In one of these, four residents were looked after by three staff on a shift system providing 24-hour cover with one of them staying on the premises for a maximum of eight hours (Enfield 11/7/06). In another case an Inspector noted that residents and staff would share all facilities and take meals together, and that it was a group home and not a care home, and that it would not have an institutional character. On that basis, the Inspector concluded that the use would fall squarely within C3 (Croydon 8/1/03).

4.3.5 Nevertheless, although, as noted above, there is some authority to the effect that this arrangement could lie within Class C3(b), and this was a question that was considered most extensively in the case of *North Devon District Council v. Secretary*

of State [2003], and very helpfully the case also considered what would apply if it did lie outside of this use class.

4.3.6 The case considered, in the first instance, whether a dwellinghouse used as a residential home for two children with care provided by two non-resident carers fell within class C2 or class C3. Collins, J in the *North Devon* case disagreed with the earlier case of *Sinclair* (which found that the use under these circumstances was C3(b)), and found that the use would be class C2.

4.3.7 This was in effect because any carers in the property would not always be the same people. After all, they change according to a rota, so this would **not** be up to six people living together as a **single household**, and the use would fall outside C3, and in fact be within C2.

4.4 Application of Case Law and Appeals to this Application - It is submitted that the effect of the *North Devon* case is to confirm a two-stage test as follows:

- a. does the use lie within C3?
- b. in any event is there a material change of use involved?

4.4.1 As noted above the use in this case most likely lies outside C3, and probably within C2, because of the way in which the residents interact, including with the staff, to the extent that they may not be regarded as living together as a single household. However, that is not the end of the analysis.

4.4.2 In the *North Devon* case Collins J specifically found that it was lawful for the Inspector in the planning appeal underlying that case to consider whether the proposed use was materially different from the existing use. This has been applied in subsequent appeal cases including, for instance, the following : (DCS *Crewe and Nantwich* 24/04/2006).

4.4.3 In this case the appellant proposed to use the property to house 4 children between the ages of 11 and 17 years who would be cared for by a minimum of two carers who would operate on an 8 hour rota system. As set out by DCS, the Inspector concluded that:

*"Although the carers when visiting the site would increase the number of comings and goings, this would not disturb local residents or affect the character of the area. Additionally although local residents were fearful about the children committing antisocial acts or increasing crime levels, he decided that it was not inherent in the character of a children's home that the proposed use of the property would have an adverse impact upon the local community and welfare services. Consequently this was not a factor which would affect its character, he ruled. Although the building would be fitted with an office and fire alarm, this was not uncommon in many dwellinghouses around the country he decided and would not materially alter its basis (**sic**) character as a dwellinghouse. Consequently a LDC was justified."*

Section 5. Matters of Consideration

5.1 There are no proposed works to extend or alter the external of the dwelling and there are only minor changes to the internal layout of the property as a result of the proposed use. Fundamentally, the property will continue to function in very much the same way as it does as a dwellinghouse.

5.2 In considering whether the proposed use would be material, the most powerful factors are those where the proposed land use has direct land-use effects. It is, however, difficult to see how the proposed use would have any significant effect on the surrounding properties and land uses. It is consequently also difficult to see how there would be any material change of use involved in moving from the existing to the proposed use.

5.3 It is therefore submitted that, if the current application is subject to the second *North Devon* test, that on the facts of the case, the conclusion must be reached that there is no material change of use involved. The second stage test would therefore be passed, there would be no requirement for planning permission for the development involved, and the Certificate should be granted.

5.4 Indeed, in a recent and local planning appeal for No. 12 Chiltern Avenue, Poulton-le-Fylde, FY6 7DY (PINS Ref: 3277997) the inspector confirmed that a care home for two young people would not represent a material change of use.

Section 6. Conclusion

6.1 The application is made in respect of a dwellinghouse lying within Use Class C3. It is proposed to use the property as a home for two young people in receipt of care with carers as required, but no more than two carers residing overnight. Carers would be rotated by a shift system. Additional care would be provided as and when necessary, if at all, on a non-residential basis.

6.2 The proposed use is capable of lying within use class C3(b) (in which case it does not require specific planning consent due to the operation of the Act and the Use Classes Order), however, it is more likely to lie within use class C2. If it does lie within use class C2, then there is in any event no material land use difference between the existing C3 use and the use as proposed. Accordingly, whether the proposed use lies within C3, or within C2, there is no requirement for planning permission to move from the existing to the proposed use described in this application. Therefore, a Certificate is requested for use as:

"A home for two young person in receipt of care as required with no more than two carers remaining overnight"

6.3 In conclusion, after taking account of the relevant facts and legal principles and the evidence submitted in support of this application, planning permission is not required for the proposed use which could lawfully take place on these premises. The Local Planning Authority should make their decision based on the facts and information provided and follow the approach taken by the Inspector for No. 12 Chiltern Avenue (PINS Ref: 3277997). In summary, a Lawful Development Certificate should be granted.