

Planning Statement

**Lawful Development Certificate to allow for the use of the dwelling as a Children's Home for up to four children**

43 Rotheram Avenue, Luton LU1 5PP

March 2024

Ref: 24038

Rev: #

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## 1. INTRODUCTION

- 1.1 Plande has been appointed to submit a supporting statement to establish that the use of the dwelling house as a children's home would be a lawful use of the dwelling house.
- 1.2 The Lawful Development Certificate seeks confirmation specifically that the use of the dwellinghouse for up to four children, with two non-resident carers on a shift basis would be lawful.
- 1.3 This statement, which should be read in conjunction with the supporting information submitted with the application, aims to give an appraisal of the planning issues and merits in context with planning and other policies, guidance and material considerations.
- 1.4 This planning statement seeks to provide an overall summary of the existing site and surroundings; the relevant planning history of the site, and to provide justification development, in order to support the Council in the determination of this application and demonstrate that the existing use is lawful. The report is structured in the following sections:
2. Site & Surroundings
  3. Planning History
  4. Original Property
  5. Layout of the Property
  6. The Occupiers & Day to Day Life in the Property
  7. Relevant Use Class
  8. Material Change of Use Assessment
  9. Conclusion
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## 2. SITE & SURROUNDINGS

- 2.1 The existing site comprises a two-storey semi-detached family home with hardstanding parking area to the front, providing several parking spaces, and typical residential private amenity space to the rear.
- 2.2 The property sits on a road of similar residential properties in a predominantly residential area although with a range of commercial properties and services in close proximity.



### 3. RELEVANT PLANNING HISTORY

- 3.1 A planning history search illustrates no relevant planning applications.
- 3.2 It is understood that the property has been used as a 6-person HMO (Use Class C4), although this has not been confirmed as lawful through any Lawful Development Certificate.

### 4. ORIGINAL PROPERTY

- 4.1 The original property is self-evidently “a single, self-contained unit of occupation which can be regarded as being a separate ‘planning unit’ designed for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse”.
- 4.2 There is currently no Article 4 Directive in place covering the property. As such the use of the property can change from Use Class C3 to Use Class C4 without the need for permission. Furthermore, the change back, from Use Class C4 to Use Class C3 is also lawful.
- 4.3 The original, and potential, use of the property falls within Class C3 of Town and Country Planning (Use Classes) Order 1987 (as amended).

### 5. LAYOUT OF THE PROPERTY

- 5.1 No material changes are to be made to the dwelling-house which needs no adaption to facilitate the proposed use.
- 5.2 The house features 6 bedrooms, with 3 bedrooms and 2 bathrooms on the first floor, with the remaining bedrooms and general living accommodation on the ground floor.
- 5.3 The property, therefore, will be used as a traditional “dwellinghouse”.
- 5.4 Each resident will have their own bedroom and share the communal kitchen and dining area on the ground floor and the carer will share and participates in the domestic and living activities with the residents.
- 5.5 One of the bedrooms will serve as a sleeping room for a staff member, who is on-site 24 hours per day on rota basis.

### 6. THE OCCUPIERS & DAY TO DAY LIFE IN THE PROPERTY

- 6.1 As above, there will be up to 4 residents of mixed sex, living together as a single household, and up to 2 members of staff (dependent on the complexity of user), on a shift basis, at the property generally, with members of staff providing 24-hour care and to support community access (i.e., someone going out for appointments or activities or to do shopping). 1 – 2 members of staff will be present during the daytime, depending upon the specific needs and requirements of the residents and one member of staff will also be at the property and sleep there at night (again depending upon the needs of the residents) although this will not be their principal place of residence
- 6.2 The property will provide care and support and help them live together as a single household, including helping them have meals together, share communal lounge space and participate in activities and facilitate learning and socialising, helping them to live a more independent and fulfilling life, effectively that of a typical family household.
- 6.3 There would be a maximum of 2 full-time carers based on the property at any one time working generally on a 12-hour shift basis. Handovers would likely be around 7pm and

9pm daily and take a few to 15 mins with a maximum of half an hour. This change over is just to go through any notes taken throughout shift. There will not be frequent visits by any other care staff or clinicians. Visits from the Local Authority (Social Workers) and the NHS would generally be undertaken at the day opportunity, doctor's surgery, or hospital if required.

- 6.4 No physical changes are required inside or outside of the property. The objective and remit of the residential children's home is to mirror a traditional family home is a 'normal' neighbourhood and community. The goal of a children's home is to, from the outside, be indistinguishable from any other family home on the street.
- 6.5 In terms of the residents' comings and goings, it is suggested that there would be little difference from the current use as a large family house to influence its character or impact on neighbouring amenity.
- 6.6 The nature of the use will not result in a material increase or change in vehicle or pedestrian movements to and from the site, or in the number of people coming and going especially when compared to potential maximum potential for the existing use. This is because the existing use could accommodate several adults, such as two parents and over 17-year-old children who all have their own cars and travel independently to work, school, for hobbies, social visits, and to receive visitors.
- 6.7 The property will provide care and support and help them live as a single household, helping them have meals together, share communal lounge space and participate in activities and facilitate learning and socialising, helping them to live a more independent and fulfilling life.

## 7. RELEVANT USE CLASS

- 7.1 Section 55(1) of Town and Country Planning Act 1990 (The Act) defines the meanings of the term “development” and which includes the making of any material change in the use of any buildings.
- 7.2 Section 57(1) of The Act provides that “planning permission is required for the carrying out of any development of land” which includes buildings.
- 7.3 Section 55(2) set out what shall not be taken to involve development and further states in (f) that “in the case of buildings ... which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or ... of any part of the buildings ... for any other purpose of the same class.”
- 7.4 Section 192 of The Act (as amended) makes provision for an application to be made to the local planning authority to ascertain whether any proposed use of a building is lawful.
- 7.5 It is suggested that the use of the property could be considered as either as falling within the use classes of C2, C3 or C4 as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended).

### **Class C2. Residential institutions**

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).

### **Class C3: Dwellinghouses**

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) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

### **Class C4: Houses in multiple occupation**

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation.

- 7.6 Schedule 2, Part 3, Class L of The Town and Country Planning (General Permitted Development) Order 1995 (as amended) confirms that the change of use “from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule” is permitted development.
- 7.7 The Government issued a circular (08/2010) in November 2010 entitled “Changes To Planning Regulations For Dwellinghouses And Houses In Multiple Occupation” which “... gives guidance on planning regulations, in particular on changes of use for dwelling houses and houses in multiple occupation following changes to legislation in April and October 2010. The general effect of these changes is to allow changes of use between dwellinghouses and houses in multiple occupation to take place without the need for an application for planning permission unless a local authority has specifically identified an area in which planning applications will be required.”
- 7.8 The Circular provided the following guidance which is useful in assessing which use class the relevant use falls:
- 7.8.1 *“Changes of use within a class do not require an application for planning permission.”*
  - 7.8.2 *“...for the purposes of C3(b) and (c) single household is not defined in the legislation.”*
  - 7.8.3 *“... in broad terms, the new C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.”*

- 7.8.4 “... a change of use from a dwellinghouse (class C3) to a house in multiple occupation (Class C4) and from a house in multiple occupation to a dwellinghouse is possible under permitted development rights and planning applications are not needed.”
- 7.8.5 “C3(b) continues to make provision for supported housing schemes, such as those for people with disabilities or mental health problems.”
- 7.8.6 A “single household” under C3(a) can be formed by a variety of people including “...a carer and the person receiving care ..”
- 7.8.7 “It remains the case that in small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class (Class C2), regardless of the size of the home. Local planning authorities should include any resident care staff in their calculation of the number of people accommodated.”
- 7.8.8 “Care homes and children’s homes” are excluded from the C4 use class
- 7.9 In addition, the Town and Country Planning (Use Classes) Order 1987 (as amended) defines “care” as “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”
- 7.10 It is suggested that the use is not that of C2A (Secure Residential Institutions) as there is no security preventing the residents from leaving.
- 7.11 It is further suggested that the proposed use is not that of C4 as, although the residents are unrelated by birth or marriage etc, there is an element of care and the individual bedrooms are not self-contained bed-sits.
- 7.12 It is therefore suggested that the occupiers within the property, therefore, meet the definition of “receiving care” as defined in Class C3(b) in that they are not children and will require “care”.
- 7.13 Where the use of a dwelling house is for “non-family” purposes the concept of a single household is key in order to establish a lawful use as Class C3(b), although as above, there is no statutory definition.
- 7.14 Whether the use of the dwellinghouse, particularly where 24-hour care is provided, falls within Class C2 or C3 requires careful consideration and has been the subject of various Lawful Development Certificates, planning appeals and case law, including:
- 7.14.1 North Devon District Council v First Secretary of State [2003] which confirmed that children could not on their own be considered to constitute a fully functioning household without a resident carer living full-time in the property. In this case even though a change of use from C3 to C2 had occurred at the property it was not deemed to be a material change of use and that as such, planning permission was not required. The Judgement clarified that “if the children happen to be disabled or to suffer from mental disorder, then care for them will fall within class C3(b).”
- 7.14.2 R v Bromley London Borough Council ex parte Sinclair (1991) which stated that staff providing care do not necessarily have to be resident at the property in order to be still classed as forming part of the household
- 7.14.3 R (Hossack) v Kettering BC [2002] EWCA Civ 886 concerned what could be construed as a single household and concluded that “if there are no more than six residents living together in the same house, it seems to me altogether more likely that they are doing so as a single household”. In addition, it was stated, “the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy would be likely to be and the more apt, therefore to describe it as a single household.”
- 7.14.4 Planning Appeals:

- Enfield 11/7/06 – 4 people with mental health problems with three staff on shift system sharing a kitchen, living room, dining room, toilet and bathroom
- Croydon 8/1/03 – 5 people with learning difficulties with staff on a shift system with staff and residents sharing facilities and taking meals together.
- Crewe & Nantwich 24/4/06
- DCS reference: 200-004-885 – Hearing in 2016 for mentally disabled residents living together under Class C3b. 5 bedroom house with locks on bedroom doors with day and night support workers. Purpose of carers to largely assist as opposed to undertaking day-to-day tasks
- APP/E2205/X/16/3161037 – LDC allowed for use of the house for 4 people and their carers (up-to 2)

7.14.5 Lawful Development Certificate Precedents:

- 2010/2137/S – Solihull – Proposed use of an existing house to a residential care home for up to 5 people
- APP/2015/0554 – Burnley - Proposed use as a residence by up to 4 young persons with care provided by two carers on a 24-hour non-residential basis
- F/YR15/1093/CERTLU – Fenland - Certificate of Lawful Use (Existing): Use of the dwelling under Class C3b (Care Home) for 3 residents and up to 4 staff on a rota basis
- 16/P/01281/CEU – Pontypool - Application for Certificate of Lawful Development to retain the existing C3b use offering supported living to a maximum of 5 residents.
- 18/0480 – Willenhall – LDC for 3 persons supervised by a carer.
- Wakefield Council – Ref: 17/02441/CPL – Four children and two staff in a six-bed detached property
- Burnley Council – Ref: APP/2015/0554 – Four children and two staff in a five-bed detached property.
- Kirklees Council – Ref: 2016/19/91341/W – Three children and three staff including fulltime manager in a four-bed detached property.
- East Riding of Yorkshire Council – Ref: 15/02533/CLP – One child and two staff
- Coventry Council – Ref: LDCP/2018/2934 - Four children and two staff providing 24-hour care.
- Trafford Council – 96180/CPL/18 - “The proposed use of 6 Harboro Grove, Sale, M33 5BA, as a children's residential home (Class C2) for up to 5no.persons between the ages of 10-18 years with a maximum of 2no. additional staff members staying overnight on a rota basis ... would not represent a material change of use .... and is therefore Lawful Development”.
- Trafford Council – 111821/CPL/23 - Application for Certificate of Proposed Lawful Development for change of use of existing dwellinghouse to Children's Care Home for up to 2 no. children

7.15 It is suggested that these examples lead to the conclusion that the use of the property as described above would fall under the definition of a single-household in that:

- 7.15.1 Staff, working on a shift basis, would not be resident at the property and therefore not be classed as forming part of the household or included when calculating the number of residents.
- 7.15.2 The number of people in the property would mean that the likelihood is that they would be living as a single household
- 7.15.3 Other than a bedroom, the carer or occupiers have no separate facilities with all facilities (kitchen and bathrooms etc) shared.
- 7.15.4 Use Class C3(b) places no limit on the number of non-residents or level or intensity of care received by the residents.
- 7.15.5 Use Class C2 specifically makes reference that such a use could fall under Use Class C3

7.16 Within the North Devon case above, the judgement it is clear that should the children have a mental disorder, then the use would fall under Use Class C3(b). As stated above, the children would have a variety of needs learning difficulties, autism, and emotional and



behavioural disorders. As such it is suggested that these would all fall under the definition of mental disorder and as such the use of the property would fall under Use Class C3(b).

- 7.17 Since the North Devon case above, the Use Classes Order has been amended (on the 6<sup>th</sup> of April 2010) which inserted the wording “(whether or not as a sole or main residence)”. As such it is suggested that the property does not need to be the carers sole or main residence to be considered as living in the property, in which case a single household can be formed for the Children.

## 8. MATERIAL CHANGE OF USE ASSESSMENT

- 8.1 Notwithstanding the above, if the Council were to consider a change of use from C3 to C2 it is proposed that this doesn't amount to a “material” change of use as there is no material difference in the activity to that which may be anticipated in the case of a conventional residential use. The premises retain the overall appearance and character of a conventional residential dwelling, with no alterations required to facilitate the use, and it is further suggested that there will not be a change in the character of the use or that the use would not give rise to any greater level of disturbance or amenity effects that could be generated by a C3 use.

- 8.2 Circular 13/87 provides further information and clarification in relation to Class C3: Dwellinghouses particularly in relation to the concept of a single household and care. The Circular states: “development is not involved when a dwelling house becomes used as a small community care home, provided that all the residents live together as a single household and that they number no more than six including resident staff” Furthermore, it states that “it serves no-one's interest to require planning permission for types of development that generally do not damage amenity.”

- 8.3 Specifically in the North Devon case, it is worth highlighting that the Lawful Development Certificate was granted in any case, on the basis that there was no material change of use.

- 8.4 Furthermore, the case considered that if the children were disabled or had mental health issues for example then the use would fall under C3(b) in any case.

- 8.5 Since the decision of the North Devon case, it is suggested that the situation has fundamentally changed. Circular 11/87 has been officially withdrawn. The Use Classes Order 1987 has also been amended.

- 8.6 The nature of the use will not result in a material increase or change in vehicle or pedestrian movements to and from the site, or in the number of people coming and going especially when compared to potential maximum potential for the existing use. This is because the existing use could accommodate several adults, such as two parents and over 17-year-old children who all have their own cars and travel independently to work, school, for hobbies, social visits, and to receive visitors.

- 8.7 Within Class C3(b) use, there is no mention of the level of care provided or any increase in service intensity. Therefore, it is suggested there is no basis for limiting the level of care that can be given and as such there is no support to the contention that any intensification of use would lead to a material change of use. It is suggested that there is no “normal” level of care to be considered against. This is corroborated in the Barking Appeal (APP/Z5060/C/18/3214506) which states:

- 8.7.1 “I note that the Council's reasons for issue of the notice include harm to the living conditions of neighbours with particular regard to noise and disturbance. Whilst the planning merits of the development are not relevant to this appeal I note that it is inherent within the terms of the Use Classes Order that vulnerable groups may fall



within Class C3(b) and therefore this is not an argument that suggests the residents are not living together as a single household.”

- 8.8 The proposal represents around 66.67% of the maximum allowance under Use Class C3(b).
- 8.9 Furthermore, should the property be used for Adults and not children, up to 6 residents could be accommodated within any level of care and support without it being a material change of use. As above, this would also be the case for children with disabilities or mental health issues. Since the property in that scenario, would be expected to have carers visiting on a regular basis, including full-time carers, the presence of additional parking is not uncommon or particularly significant. It is therefore suggested that in comparing whether there is a material change of use in this particular scenario the consideration should be given not only to the use as dwellinghouse in the narrow sense (as in one family unit) that that for up to six residents living together as a single household and receiving care.

## 9. CONCLUSION

- 9.1 In conclusion, it is suggested that the use of the property for up to 4 children, with up-to 2 carers living as a single household with the residents receiving care would be lawful as follows:
- 9.1.1 The lawful use of the property is or could revert to, without the need for planning permission, Use Class C3: Dwellinghouses
  - 9.1.2 The dwelling house would retain its original layout and comprises “a single, self-contained unit of occupation which can be regarded as being a separate ‘planning unit’ designed for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse”.
  - 9.1.3 The residents will live together as a single household, generally forming friendship bonds, share facilities and have communal living arrangements.
  - 9.1.4 The residents receive “care” as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) and as Class C3(b) makes provision for supported housing schemes, such as those for people with mental health problems.”
  - 9.1.5 The level of activity, comings and goings and overall function of the building would be no different than associated with many dwelling houses.
  - 9.1.6 There would be no change in the character of the use.
  - 9.1.7 The purpose of the carers is largely to assist the residents with day-to-day tasks as opposed to undertaking those tasks themselves on behalf of the residents.
  - 9.1.8 Even if a change of use from C3 to C2 occurs at the property it is not a material change of use and that as such, planning permission is not required.
- 9.2 Based on the information above, it is considered that no “development” will occur, and a Certificate of Lawfulness of Proposed Use of Development should be issued accordingly.