

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20251307
Location	12 Old Road West, Gravesend, Kent DA11 0LJ
Proposal:	Application for a lawful development certificate for the change of use from change from C3(a) to C2 for the use of the dwelling as a dwelling house providing care.
Applicant:	Mr Deutch
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form
Site Location Plan
Drawing no. PLOS rev RV-00 (location and site plan)
Drawing no. PL01 (existing floor plans)
Drawing no. PL02 (proposed floor plans)
Planning Statement / Statement of lawfulness
Evidence/Occupancy Statement
Management and Parking Plan
Covering Letter
Appendix A Lawful Development Certificate Decision for 20240339
Appendix B Lawful Development Certificate Decision for 20250472
Appendix C Planning permission 20250529
Appendix D London Borough of Lambeth - and – Secretary of State for Levelling Up, Housing and Communities
Appendix E North Devon District Council -v- The First Secretary of State

Property Type

The property comprises a two storey semi-detached dwelling.

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
The Town and Country Planning Act 1990 (as amended); and The Use Classes Order 1987 (as amended) 2020.

Consultations

As confirmed in Para.008 Reference ID 17c-800-20140306 of the Government's Planning Practice Guidance, there is no statutory requirement to consult third parties on Lawful Development Certificate applications. Despite this, comments have been received from a third party, and have been included below for transparency.

The Kent Police Designing Out Crime Officer has also responded with the following:

We have reviewed this application in regard to Crime Prevention Through Environmental Design (CPTED) and in accordance with the National Planning Policy Framework (NPPF).

Applicants/agents should consult us as Designing out Crime Officers (DOCO's) to address CPTED and incorporate Secured By Design (SBD) as appropriate. We use details of the site, relevant crime levels/type and intelligence information to help design out the opportunity for Crime, Fear of Crime, Anti-Social Behaviour (ASB), Nuisance and Conflict.

There is a carbon cost for crime and new developments give an opportunity to address it. Using CPTED along with attaining an SBD award using SBD guidance, policies and academic research would be evidence of the applicants' efforts to design out the opportunity for crime.

We recommend SBD guidance is utilised to address designing out crime to show a clear audit trail for Designing Out Crime, Crime Prevention and Community Safety and to meet our Local Authority statutory duties under Section 17 of the Crime and Disorder Act 1998. The points below identify my recommendations for the layout and design of this scheme.

1. Due to the proposed use of the site, we would recommend the applicant review current site security and boundary treatments. We advise boundary treatments to be a minimum of 1.8m in height with support beams facing inwards, any gates to a rear/ side access must also be securely lockable from both sides. It is essential that there is no unauthorised access to the rear of the site either via the side access route or via neighbouring premises.
2. We recommend CCTV be installed at the main entrance doors to monitor the movements of the occupiers. In some circumstances, it can be advisable for staff carry personal attack alarms and in some instances BWV cameras for safety purposes.
3. We recommend lighting to cover entrances to aid in natural surveillance.
4. If new external doors and windows are proposed, we recommend these to meet PAS 24: 2022 UKAS certified standard, STS 201 or LPS 2081 Security Rating B+. Existing rear doors and windows that are not being replaced may require limiters/ restrictors to help maintain security.

If approved, site security is required for the construction phase. There is a duty for the principle contractor "to take reasonable steps to prevent access by unauthorised persons to the construction site" under the Construction (Design and Management) Regulations 2007. The site security should incorporate plant, machinery, supplies, tools and other vehicles and be site specific to geography and site requirements.

We welcome a discussion with the applicant/agent about site specific designing out crime. If the points above are not addressed, they can affect the development and local policing.

This information is provided by Kent Police DOCO's and refers to situational crime prevention. This advice focuses on CPTED and Community Safety with regard to this specific planning application.

Relevant Planning History

20251121	Retrospective planning permission for the creation of hard standing and proposed creation of vehicular access.	Permitted	30.01.2026
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20240339	Application for a lawful development certificate for the change of use from change from C3(a) to C3(b) for the use of the dwelling as a dwelling house providing care.	Certificate Granted	26.06.2024
20100774	Formation of vehicular access on to a classified road and installation of a vehicle turntable in front garden.	Application Refused	19.10.2010
20090499	Formation of joint vehicular access on to a classified road and laying out of a hardstanding in the front gardens.	Application Refused	18.08.2009
20070755	Formation of a vehicular access on to a classified road and excavation of a parking bay at the front.	Application Refused	10.10.2007
19840698	Formation of joint vehicular access and use of the front gardens for car parking	Application Refused	28.09.1984

Officer Assessment

Assessment

A Lawful Development Certificate (LDC) is a legal document stating the lawfulness of past, present or future building use, operations, or other matters. If granted by the Local Planning Authority (LPA), the certificate signifies that enforcement action cannot be carried out against the development referred to in the certificate.

After receiving a valid application, the LPA will check whether the proposal being undertaken or that has been undertaken, meets the requirements of planning legislation. The LDC will then either be granted or refused.

An application for an LDC is not an application for planning permission. Its purpose is to enable the applicant and others to ascertain whether specific operations or activities would be lawful. The burden of proof is upon the applicant. The test of the evidence is one of balance of probability. The application concerns only the lawfulness of the matter for which the LDC is sought, not its planning merits. The decision is based solely on the facts of the case and relevant planning law and judicial authority.

Planning permission must still be acquired separately for any development or use which an LDC does not cover.

The application has been made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates 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. In any other case, they shall refuse the application.

The LPA agrees that the existing use of the property is a dwellinghouse, Class C3 of Part C of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO).

Use Class C3 is described in the UCO 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) 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).

The LPA has to have regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009). <https://www.gov.uk/guidance/lawful-development-certificates> As per paragraph 009 the local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter would be lawful. Planning merits are not relevant at any stage in this particular application.

The application site consists of a two storey semi-detached terraced dwelling located in the urban area of Gravesend. The house provides activity room, dining room, kitchen and conservatory at ground floor level, three bedrooms, a bathroom and a wc. at first floor level and a bedroom at second floor level.

The use for which a certificate of lawful use or development is sought is the proposed change of use from a residential dwellinghouse (C3a) to a single household of not more than 6 residents where care is provided (C2).

The proposed layout is an adult common room, dining room, kitchen and conservatory at ground floor level, two bedrooms, a 1 to 1 room, a bathroom and a wc. at first floor level and a bedroom at second floor level. It is therefore the same layout as existing and the only alteration is the change of one existing bedroom to a 1 to 1 room at first floor level.

The use for which a certificate of lawful use or development is sought is a dwelling for use as a residential home for up to 3 children with up to 3 non-resident staff. The proposal seeks to confirm that the use of the premises as a small residential children's home for up to three children with non-resident staff (Use Class C2) is lawful and does not constitute a 'material change of use' as stated in the submitted Planning Statement. It would appear from the Officer's Report for 20240339 that the difference between that application and this is that a member of staff will no longer reside at the property full time. There will also be three adult members of staff caring for the three children.

The two main issues for consideration are:

- Whether the proposed use falls within Class C2 or C3 of the UCO
- Whether the proposed use constitutes a material change of use

If the proposed use class is a material change of use and therefore falling within the definition of 'development', planning consent would be required as there are no existing permitted development rights for such a change of use. Whether the change of use would be considered to be 'Development', is a matter of fact and degree, a decision for the Local Planning Authority. However, this assessment is guided by the existing policy, definitions, and planning case law in order to achieve a consistent approach, whilst ensuring that planning legislation is applied in an appropriate way, reflective to the extent of the proposed change.

Therefore, there are two strands of assessment to be undertaken here. Firstly, does the proposed use result in a change of ascribed use class? If so, does the proposal result in a change which constitutes defined 'development'?

Whether the proposed use falls within Class C2 of the UCO

Use Class C2 is described as:

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses, used as sole or main residences)).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.

Class C3(b) of the UCO 1987 is defined as "Use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household where care is provided for residents."

The applicants consider the proposed use to fall within Class C2. Whether the proposed use falls within Class C2 or Class C3(b) is a matter of fact and degree and in reaching a determination as to which use class is relevant here, it is necessary to consider what is meant by a 'single household', 'care' and 'supported living'.

In this instance, the proposal would result in a change in the use of the property from a dwelling (Class C3) to a residential institution (Class C2). The following paragraphs will compare the characteristics of the existing and proposed uses, in order to determine whether this change would be material and therefore constitute development under Section 55(1).

The application includes a covering letter, planning statement / statement of lawfulness, evidence/occupancy statement and management and parking plan. The planning statement says that the applicant considers the proposed use to be C2 however does not consider that there will be a 'material change of use'.

A lawful development certificate for a change of use to Class C3(b) was submitted and approved under reference 20240339 for the property. As the planning application form states that the current use is Class C3 it is assumed this has never been implemented.

The planning statement goes on to refer to planning precedents in the Borough. It is important to note that there is no such thing as precedent in planning and each case is taken on its own merits.

The planning statement provides a table of comparisons between the operation of the business proposed under 20240339 and that which is now proposed. The table is shown below:

Operational Feature	Lawful Baseline (20240339) (Appendix A)	Proposed Use (C2)	Planning Variance
Total Occupancy	Up to 6 residents	3 children + 3 staff	Identical (6 total)
Care Model	Care provided on-site	Parental-style care	No Change
Internal Layout	Communal spaces	Communal spaces	Identical
Activity/Comings	Domestic movements	Domestic movements	Neutral

It is important to consider the number of people forming the “household”. It is established in case law (a judgement by the Court of Appeal in *R (Hossack) v Kettering BC*[2002] EWCA Civ 886) that the limit in Class C3 of no more than six persons is an important consideration as, with no more than that number, it would be likely that persons would be living as a single household than if there were significantly more than six; the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy would be likely to be and the more likely they are to be regarded as forming a single household.

In an appeal decision in *Enfield (Land at 11 Osbourne Road, Enfield – APP/Q5300/X06/2006017)* the Inspector argued that whilst a care worker might not reside in a care home, he or she should still be counted as a household member whilst on site.

The table above is clear that there would be no more than 6 residents at the property including the care givers.

In this case the application states that, as there is an element of care provided, the proposal would fall within class C3(b) and no permission is required to change within the same use class. Should it be argued that the proposal does not meet the C3(b) criteria, in *North Devon District Council v FSS & Southern Childcare Ltd* (2003) the judge ruled that although the use it is considered to be a C2 use it is lawful as it is similar to a family dwelling and is not considered a material change of use.

The building will be used as the residence for three children and three caregivers will be at the home. In terms of the care for the children, the planning statement says there will be no additional staff will be required; the 3 staff members on the shift rota would do all the needed duties. The statement goes on to say:

- The use of the property is unlikely to be perceptibly different to that of a normal dwelling house.
- The proposal is not considered to have a negative effect on the surrounding character of the area.
- No external works are proposed, and the proposal will be compatible within the street scene.
- The children will attend school during the day; this should not be considered to be different from a normal household.
- There would also be a reasonable prospect of each child attending different schools or being educated outside a school setting.

- There is no evidence that crime or anti-social behaviour would be increased by the presence of this use.

The applicant has also provided an occupancy schedule. This states:

- The property is configured to accommodate a maximum of three children as permanent residents.
- Care is provided by a maximum of three non-resident staff members present on-site at any one time.
- Occupancy Limit: The total number of persons on-site (residents plus staff) shall not exceed six.
- This is identical to the occupancy limit already established as lawful under the Gravesham Borough Council C3(b) Certificate Ref: 20240339.

The applicant has supplied a daily schedule which is shown below:

- 07:30 – 08:30: Wake up, breakfast prepared in the communal kitchen, and morning routine.
- 08:00: Shift handover. As confirmed in Gravesham Ref: 20250529 (Appendix B), staff do not drive to work, ensuring no cumulative parking impact during handover.
- 08:30 – 15:30: Children attend local schools or education. The house remains quiet, mirroring a typical family home where parents are at work.
- 16:00 – 18:00: After-school activities, homework in communal areas, and preparation of a shared evening meal.
- 18:00 – 20:00: Shared dinner. Staff and children eat together as a single household unit.
- 20:00: Evening shift handover.
- 21:00 onwards: Standard evening wind-down and bedtime, maintaining the quiet residential character of Old Road West.

The care provided is said to be parental-style care with a high staff to child ratio (three staff to three children). There is no proposed dedicated managers office or institutional admin hub and all record keeping is conducted by portable device. There will be no internal keypad locks or institutional signage. All kitchen, bathroom and living facilities are shared.

The statement says the intensity of the use measured by noise, waste generation and traffic is identical to the already-lawful C3(b) use at the site and the operational movements would not be greater than a larger family. It concludes by saying that:

Under the *Hossack v Kettering BC [2002]* test, the "way of life" at 12 Old Road West remains residential. There is no material change in the impact compared to a standard 6-person dwelling or the previously certified C3(b) use.

The management and parking plan states that care staff for these small-scale homes frequently use public transport or private taxis rather than personal vehicles. Visitors and healthcare professionals or social workers will visit by appointment only and, it is said, will not represent a material increase in highway pressure.

- Shift patterns will be 8am-8pm
- School runs, grocery deliveries and recreational trips will be conducted in a manner identical to a standard family home and no HGVs are required.
- There will be no external signage, commercial lighting or changes to external appearance
- No commercial waste collections
- No admin functions conducted within the communal living areas

Relevant case law relating to cases such as this is *North Devon District Council v FSS & Southern Childcare Ltd [2003] EWHC 157 (Admin)*; *[2003] JPL 1191*, which determined that children 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 Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). This is defined as the use for the provision of residential accommodation and care, other than within a Class C3 use.

Case law (R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin)) also confirms that North Devon does not lay down a principle that those who may need care can never constitute a household. It is necessary to focus first on those in occupation and ask whether they form a single household as a matter of fact and degree. However, in this case, since the children or young people (no details have been given with regards to the ages of the children other than they will be of school age) cannot themselves be said to form a household, as established by North Devon, the proposed use would fall within C2 (residential institutions) of the UCO.

In addition, whilst the proposed level of care may be described as being low, there would be a requirement for 24-hour care by non-resident carers, who would not be allocated specific sleeping quarters, with only an adult common room provided for staff onsite. That would suggest that a waking night shift may operate through the night, in the absence of fuller information, the information provided indicates that the proposed support would go beyond the level of care that one would expect in a functioning single household. This is in addition to the fact that the children / young people themselves are incapable of forming a household, as they are not capable of undertaking tasks associated with running and living within a dwellinghouse.

Therefore the proposed use would appear to involve occupation by a single household, as required under Use Class C3. As a matter of fact and degree, the use of the property would be one that falls within Class C2 of Part C of Schedule 1 of the UCO, and not within Class C3(b) of the same Part. It does not, however, automatically follow that the proposed change from a use falling within Class C3(a) to a use falling within Class C2 would be a material change of use, such that it would fall within the definition of development set out in section 55(1) of the 1990 Act and require planning permission. Despite the proposed change from one use class to another, for a 'material' change of use to occur, there would have to be some definable change in the character of the use when compared to what has gone on previously.

Whether the proposed use constitutes a material change of use

Although there is no statutory definition of 'material change of use', to establish whether there is a material difference is linked to the significance of a change between the existing primary use and the resulting impact of the proposed use on land and buildings. Whether a material change of use would occur is a matter of fact and degree and this is determined on the merits of the proposal.

The property is a two-storey detached dwelling situated in a residential street, where houses are predominantly in single occupancy as dwellinghouses. The only alteration is an adult common room in place of an activity room and a 1 to 1 room in place of a bedroom 3. There are no internal or external changes proposed.

To the front of the property is driveway with parking for one car although there is no dropped kerb at present to facilitate this. The applicant is not proposing to make alterations to the external fabric of the dwelling, as such there would be nothing to visually differentiate any change between the existing and proposed use of the property.

The applicant states that in their view, there would be little difference between the use of the dwelling by a family and the proposed use.

The shifts will not be staggered but the submitted information indicates that staff would walk to work or take public transport rather than drive. Care would be provided on a 24-hour basis, with support provided to the children to attend appointments, activities, etc. It is not suggested that the property would be the principal place of residence for any employee.

The potential activity that could arise on site is listed in the submitted information. It would appear from this that the property would function in a similar way to any other residential dwelling. The proposed change of use therefore would not appear to be material.

The proposal would appear to have no greater significant change in the character of the existing use or that which was proposed under the lawful development certificate for a C3(b) use. It would appear that the C2 use would come about from the fact that an adult will not be residing on site permanently however, this alone, would not result in a level of comings and goings and domestic usage that would be greater than that of a large family.

Taking into account all the factors, it is considered that the proposed use of the property would not have a significantly different character to that of the existing residential use and as such, there would not be a material change of use, that would constitute development under Section 55(1) of the Town and Country Planning Act 1990 (as amended).

Conclusion

The proposed development would result in a change in the use of the property from a dwelling (Class C3(a)) to a residential institution (Class C2) but it would not constitute a material change of use. As such and in line with section 55(1) of the Town and Country Planning Act 1990 (as amended), planning permission would not be required. The proposal would therefore be lawful and pursuant to section 192(2) of the Town and Country Planning Act 1990 (as amended), a Certificate of Proposed Lawful Development/Use can be granted.

Recommendation: <u>Permit</u> Lawful Development Certificate

Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	11 February 2026	Dated:	11th February 2026