

Supplementary Planning & Operational Clarification Note

Lawful Development Certificate

67 Painters Ash Lane, Gravesend, Kent, DA11 8EG

1. Purpose of this Supplementary Note

1.1

This Supplementary Planning & Operational Clarification Note is submitted in support of the application for a Proposed Lawful Development Certificate (LDC) for the use of 67 Painters Ash Lane, Gravesend, Kent, DA11 8EG as a small children's residential home.

1.2

The purpose of this note is to:

- a) address matters commonly raised in LDC assessments for children's homes;
- b) provide further factual clarification where matters are described as "unclear", "potential", or "likely";
- c) demonstrate consistency with previously approved LDCs within the Borough of Gravesham; and
- d) confirm that, on a matter of fact and degree, the proposal does not result in a material change in the character of the dwelling.

1.3

This note should be read alongside the following documents submitted with the application:

- Planning Statement
- Noise Management Plan
- Management Scheme

2. Statutory Context and Assessment Framework

2.1

An application for a Lawful Development Certificate is determined under Section 192 of the Town and Country Planning Act 1990. The statutory test is whether, on the balance of probabilities, the proposed use would be lawful.

2.2

As confirmed in Planning Practice Guidance, planning merits are not relevant. The assessment must be based on:

- the facts of the proposed use; and
- relevant planning law and case law.

2.3

Where the proposed use may fall outside Use Class C3, the authority must then assess whether the proposal constitutes development, which is a matter of fact and degree, focusing on whether there is a material change in the character of the use.

2.4

This two-stage assessment framework is expressly adopted by Gravesham Borough Council in its delegated LDC decisions, including:

- 2C Kings Drive, Gravesend, Kent, DA12 5BG

3. Description of the Lawful Baseline and Proposed Use

3.1 Lawful Baseline

- The site comprises a single residential dwellinghouse (Use Class C3(a)).
- The dwelling is capable of accommodating a family household, visitors, vehicles, and normal domestic activity.

3.2 Proposed Use

- Maximum **two children** accommodated at any time.
- Maximum **two carers**.

- No physical alterations to the property.
- No signage and no public access.
- All rooms used domestically.

4. Noise and Residential Amenity

4.1

Noise impacts are commonly raised in LDC assessments for children's homes. However, case law and appeal decisions consistently confirm that anticipated behaviour of children is not, in itself, a material planning consideration.

4.2

The submitted Noise Management Plan confirms:

- quiet hours between 11:00pm and 7:00am;
- no night-time external activity;
- supervised outdoor use only; and
- staff training, logging, and escalation procedures.

4.3

In its delegated LDC approval for 5 Medbury Road, Gravesend, Kent, Gravesham Borough Council expressly concluded:

"There is no evidence that the proposed use would result in a material change in terms of increased noise or anti-social behaviour."

This finding was made despite rotating staff and children in care, and relied on Inspector reasoning that children in care are not inherently noisier than those in family dwellings, subject to appropriate management.

4.4

The proposed use at 67 Painters Ash Lane is less intensive than Medbury Road (two children rather than four), reinforcing the absence of any material change in noise impact.

5. Traffic, Parking and Accessibility

5.1

The property benefits from substantial on-site parking, exceeding provision at some previously approved LDC sites within the Borough.

5.2

Staffing levels are capped at two carers at any one time, with staggered shifts to minimise overlap and clustering.

5.3

A proportion of staff will utilise public transport, consistent with assumptions accepted in previous Gravesham LDCs. The site is served by regular bus routes along Painters Ash Lane and nearby arterial roads, providing access to Gravesend town centre and rail services.

5.4

In the delegated decision for 5 Medbury Road, the officer concluded:

“It is considered that the use of this property... would be unlikely to generate a greater number of vehicle movements than the potential vehicle movements of a C3(a) dwellinghouse and there would be no material intensification.”

That reasoning applies with greater force here, given the lower occupancy proposed.

6. Patterns of Use and Character of the Dwelling

6.1

The correct test is not the nature of the occupants, but whether the character of the dwelling changes.

6.2

Daily patterns at 67 Painters Ash Lane will mirror those of a family home, including:

- school attendance;
- daytime absence;

- shared meals;
- quiet evenings; and
- supervised leisure.

6.3

There will be:

- no institutional routines;
- no group activities;
- no office or commercial use; and
- no external manifestation of care use.

6.4

This mirrors circumstances accepted by Gravesham Borough Council at:

- 56 St James Avenue, Gravesend, Kent; and
- 2C Kings Drive, Gravesend, Kent, DA12 5BG, notwithstanding higher occupancy.

7. Staffing, Household Definition and Case Law

7.1 Balanced Case Law Position

7.1.1

It is acknowledged that North Devon DC v First Secretary of State [2003] confirms that children alone cannot form a household and that, in some circumstances, carers must reside at the premises.

7.1.2

However, Gravesham's own delegated decisions correctly recognise that North Devon is not determinative and must be balanced with earlier and subsequent authority, including:

- **R v Bromley LBC ex p. Sinclair [1991]**, where the High Court confirmed that *“the Class does not require that the staff providing care for residents need themselves to be resident”*; and
- **R (Hossack) v Kettering BC [2002]**, which emphasises that smaller numbers are more likely to result in cohesive household living.

7.1.3

In its delegated approval for 5 Medbury Road, Gravesend, Kent, Gravesham Borough Council explicitly adopted this balanced approach, stating:

“Single household is not defined in planning legislation... In R v Bromley LBC ex p Sinclair [1991] the High Court confirmed that the Class does not require that the staff providing care for residents need themselves to be resident.”

The same decision also applied **Hossack**, noting:

“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.”

7.2 Application to Painters Ash Lane

- Expected total occupancy at any time: 4 persons (2 children + 2 carers). With the exception of days, the Manager is present at the property between 9 to 5pm on weekdays.
- Well below the six-person threshold relied upon by Gravesham officers in approved LDCs.
- Level of care expressly characterised as low intensity, not institutional or medical.

7.2.1

Even if the authority were to conclude that the use falls within Class C2, the second limb of the statutory test remains decisive: whether the change is material. For the reasons set out in Sections 4–6, it is not.

8. Consistency with Approved LDCs in the Borough

8.1

The following LDCs have been granted by Gravesham Borough Council on materially similar or more intensive facts:

- 2C Kings Drive, Gravesend, Kent, DA12 5BG – up to four children;
- 5 Medbury Road, Gravesend, Kent – children’s home with rotating staff;
- 56 St James Avenue, Gravesend, Kent – small children’s home within a residential setting.

8.2

Each decision:

- applied a fact-and-degree assessment;
- rejected speculative noise and traffic concerns; and
- focused on character and intensity, not labels alone.

8.3

The proposal at 67 Painters Ash Lane is less intensive than each of the above.

9. Overall Conclusion

9.1

When assessed properly on the evidence:

- noise impacts are controlled and comparable to family living;
- traffic movements are not materially intensified;
- daily patterns remain domestic; and
- staffing arrangements align with accepted Gravesham precedent.

9.2

On the authority's own previous decisions, the proposed use at 67 Painters Ash Lane, Gravesend, Kent, DA11 8EG does not result in a material change in the character of the dwelling.

9.3

Accordingly, the use described is lawful and the statutory test for the grant of a Lawful Development Certificate is met.