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CERTIFICATE OF LAWFULNESS: PROPOSED USE or DEVELOPMENT

Site: 2C Kings Drive, Gravesend DA12

Proposal: Use as a home for up to 4 children (age 8-17) with 24 hour care from 2 adult staff living 24/7 on site can be considered to fall within the C3 (dwellinghouse) use class and not require planning permission.

1.0 Introduction/Reason for application

- 1.1 This statement has been prepared in support of an application for a Certificate of Lawfulness under Section 192 of the Town and Country Planning Act 1990. The application seeks confirmation from Gravesham Borough Council that the proposed use of the existing dwellinghouse at 2C Kings Drive, Gravesend as a small children's residential care home for up to 4 children aged between 8 and 17 would be lawful and would not require planning permission.
- 1.2 In particular it seeks to clarify that the proposed use falls within Use Class C3b and as it is still within the same C3 use class as a family dwellinghouse (Class C3a), no planning permission is required. In the event however that the Council concludes that the proposed use does not fall within Class 3b, it is argued that the proposed use is not materially different to the existing use as a family house and therefore again, planning permission is not required.
- 1.3 Attention is drawn later in this statement to the *2023 Ministerial Statement - Planning for accommodation for looked after children*, which sought to remind local planning authorities that planning permission is not always required for children's homes, citing the very same circumstances as set out in this application. (See below).

2.0 Description of the site and existing use

- 2.1 The application property is a two-storey end-of-terraced house comprising 5 bedrooms, a kitchen/diner, separate lounge and two family bathrooms. It has a small rear garden and parking for 3 cars on the front driveway. The property is located in a predominantly residential area and has been used continuously as a single family dwellinghouse under Use Class C3a.



3.0 Planning History

3.1 The most recent planning history relevant to the application site is set out below:-

- 20050638 - Amendment to planning permission reference number GR/2004/561 relating to the erection of a terrace of three, two storey, two bedroom dwellings and a detached two bedroom bungalow and laying out of four car parking spaces, to allow alterations to the bungalow and changing of the existing 1.6 metre high boundary fence to 4 Kings Drive to a 2.1 metre high brick wall. Permission 2005.
- 20040561 - Demolition of doctors surgery and erection of a terrace of three, two storey, two bedroom dwellings and a detached two bedroom bungalow and laying out of four car parking spaces. Permission 2004.
- 20030664 - Demolition of existing doctors surgery and erection of a two storey building with part single storey kitchen and bedroom additions, to provide six 1 and 2 bedroom self-contained flats and laying out of eight car parking spaces with vehicular access from Kitchener Avenue.

4.0 Proposed use

- 4.1 It is proposed to use the property as a small children's home to accommodate no more than four children/young people (aged 8–17) who are unable to live with their birth families. The children would live together in an ordinary domestic setting (sharing meals, recreation, communal facilities and domestic activities) with two adult qualified staff members resident on-site 24/7, providing on-site care and support. (In this case, the two staff members are a couple, sharing a bedroom). As such there will be up to 6 people occupying the property at any one time and forming a single household.
- 4.2 The care would include supporting the children to engage in domestic and social activities as well as encouraging and enabling education through attendance at school. The children would be supported to help them to thrive and grow into independent adults with the aim of them becoming active members of society.
- 4.3 Visitors to the home would be similar to a standard family home. There would be no disturbance or anti-social behavior anticipated over and above a standard family home due to staffing oversight, strict house rules and boundaries, and risk management.
- 4.4 No modifications or changes are required to the home, either externally or internally. It is a family style house and it will retain its residential appearance and character. No signs, etc. would be erected, and there would be nothing to distinguish it as a home for looked-after children.

5.0 Relevant Planning Legislation

- 5.1 Under Section 55(1) of the Town and Country Planning Act 1990, 'development' is defined as including the carrying out of building operations and the making of a material change in the use of any buildings or land. Whether a material change of use occurs is a matter of fact and degree (*Burdle & Williams v SSE* [1972] 1 WLR 1207).
- 5.2 Article 3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) provides that "*where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class is not to be taken to involve development of the land*".
- 5.3 The Use Classes Order therefore specifies when a change of use is not development (i.e. when existing and proposed uses are within the same use class). It does not however specify when a change of use is development requiring planning permission because that question requires an assessment of whether a change of use involves a material change of use.
- 5.4 Schedule 1, PART C of the Town and Country Planning (Use Classes) Order 1987 (as amended) relates to the use of a dwellinghouse. Class C3 Dwellinghouses are defined as follows:-
- *C3(a): use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child*
 - *C3(b) - up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems*
 - *C3(c) - allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.*
- 5.5 Class C2 of the Use Classes Order relates to Residential institutions which are defined as follows:
- *Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).*
 - *Use as a hospital or nursing home.*
 - *Use as a residential school, college or training centre.*

- 5.6 In terms of this application, it is considered that the existing and proposed uses both fall within Use Class C3 (dwellinghouses) and as such does not require planning permission.
- 5.7 When considering whether a use falls within Class C3(b), it is therefore only necessary to consider whether the requirements of Class C3(b) are met. Any on-site effects are irrelevant. This principle is supported by case law and appeals (See below).
- 5.8 It is also the case that a change of use between use classes can take place when the change is not considered to constitute 'development' under section 55(2)(f) of the Act, i.e. the change is not 'material'. This is confirmed by the leading case law in *Burdle & Williams v SSE* [1972] 1 WLR 1207.

6.0 Relevant Planning Case Law and planning appeal decisions

- High Court ruling in *North Devon DC v FSoS* [2003] EWHC 157 (Admin). The judge concluded that children living in the property with no adult residing permanently was not a 'household' for the purposes of Class C3 but was considered a C2 use.
- *R (oao Crawley BC) v FSS & the Evesleigh Group* [2004] EWHC 160 (Admin) establishes the need for full time care is not a reason to fall outside of class C3(b).
- APP/Z5060/C/18/3214506 Land at 316 Westrow Drive, Barking, IG11 9BX – Appeal was allowed and the site was considered to be a c3b use class for young person's residing in the property with care provision.
- APP/P2365/X/20/3263292 64 Square Lane, Burscough, L40 7RQ - Appeal dismissed for residential unit for an application for 4 young people and children ages 8 to 17 and for up to 5 adult carers.
- APP/Z4310/X/23/3316521 3 Measham Way, Liverpool L12 0NL – Lawful Development Certificate appeal allowed for C3(b) use for 2 disabled adult residents. The men required care throughout the day and night and had been assessed as not having capacity under the Mental Capacity Act 2005. Four support workers were required over a 24 hour period. The Inspector concluded in [14]. *"The last use of the appeal property was by a couple, but there is little evidence available explaining how they used the property or how they came and went from it for example. However, it is fair to say that the evidence indicates that this use fell squarely within Class C3(a). As such, the permissive regime of the UCO means that a change to Class C3(b) from Class C3(a) would not be development, and a determination as to whether a material change of use has occurred is not necessary. The Council's witness accepted that on and off-site effects are irrelevant to the consideration of whether the appeal property is a Class C3(b), despite the Council's closing submissions. The key is whether the requirements of Class C3(b) are met even if the character of the use is very*

different to its prior use, as there is no 'development'. This view is supported by Carpet Décor (Guildford) Ltd v SSE & Guildford DC [1981] JPL 806".

- APP/M4320/X/22/3300634 – 19 Winstanley Road, Waterloo, Liverpool L22 4QN – LDC allowed for 2 children with 2 carers. The Inspector concluded as follows: *"the scale of the proposed use would not reach the point where it would give rise to such materially different planning circumstances that it would result in such a change in the definable character of the use that it would amount to a material change of use".*
- APP/U2370/X/20/3264732 Wharf Cottage, Cabus Nook Lane, Cabus PR3 1AA. Relying on case law in R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin), the Inspector clarified that the North Devon case law 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. It would be counter to the language of Class C3 and the underlying policy to conclude that where care is needed, C3 only applies to where the carer-givers are resident".*

7.0 Relevant Policy

- 7.1 *Ministerial Statement - Planning for accommodation for looked after children – Made by Rachel Maclean (Minister of State for Housing and Planning) on 23 May 2023 (Statement UIN HCWS795).*
- 7.2 This Statement acted as a reminder to Local Planning Authorities that not all accommodation for children in care requires planning permission.

Ministerial Statement

I, with the support of my Rt Hon colleague the Secretary of State for Education, wish to set out the Government's commitment to support the development of accommodation for looked after children, and its delivery through the planning system.

The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children's communities. These need to be the right homes, in the right places with access to good schools and community support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love.

Today we use this joint statement to remind Local Planning Authorities that, as set out in paragraph 62 of the National Planning Policy Framework, local planning authorities should assess the size, type and tenure of housing needed for different groups in the community and reflect this in planning policies and decisions. Local planning authorities should consider whether it is appropriate

to include accommodation for children in need of social services care as part of that assessment.

Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country. It is important that prospective applicants talk to local planning authorities about whether their service is needed in that locality, using the location assessment (a regulatory requirement and part of the Ofsted registration process set out in paragraph 15.1 of the Guide to the Children's Homes Regulations) to demonstrate this.

To support effective delivery, unitary authorities should work with commissioners to assess local need and closely engage to support applications, where appropriate, for accommodation for looked after children as part of the authority's statutory duties for looked after children. In two tier authorities, we expect local planning authorities to support these vital developments where appropriate, to ensure that children in need of accommodation are provided for in their communities.

Children's homes developments

Planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate.

8.0 Planning Assessment

Argument (a) - Use Falls Within Class C3(b)

- 8.1 For the use of the property to fall within Class C3(b) it must comply with the requirements of Class C3(b): 'be a dwellinghouse; there be no more than six residents; those residents must live there as their sole or main residence; they must live together as a single household; and care is provided for the residents.'
- 8.2 Each of these points shall be addressed in turn in relation to the application site.
- No more than six residents to reside at the property
- 8.3 An appeal at 64 Square Lane, Burscough, L40 7RQ was dismissed as the level of care required for the children, in addition to the number of people residing the property being over and above a typical household. The unit was proposed to have 4 young people of ages as young as 8 in addition of up to 5 adult carers in a property designed to accommodate 4 children and 2 adults. The intensity of the

use and the level of need for care, as opposed supported living, meant that the use exceeded that of being C3(b) and instead had become a C2 use.

- 8.4 For this particular application, the home would have a maximum of 4 children plus 2 carers residing at the property at one time and therefore complies with the maximum number of residents.

Residents must live there as their sole or main residence

- 8.5 In the High Court ruling in North Devon DC v FSoS [2003] EWHC 157 (Admin) the Judge ruled that due to no adult permanently residing in the property, and that the young children were in need of care, the property could not be considered to be a household for the purposes of Class C3 but in fact was C2.
- 8.6 In the case of this particular application, however, the age of the children are such that they would not require the level of care referred to in the North Devon case. The care required in this case would be more support/assistance as opposed to care which can be adequately provided for by the on-site staff.

Residents should live as a single household

- 8.7 In the appeal at Land at 316 Westrow Drive the accommodation was considered to constitute a household with resident older children/young adults aged 12+ in need of assistance as opposed to care. The occupants shopped and cooked together and had a sense of communal living. Support workers on site were not resident and mainly assisted residents in day-to-day tasks rather than undertaking such tasks on their behalf. They were found to be capable of running a household themselves albeit with some support. Class C3(b) allows for up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems. Permission was therefore granted for supported living or older children/young adults for C3(b) use.
- 8.8 The above appeal is similar to the current proposal as it is for a maximum of 4 children residents with 2 carers. The family unit in this case would have support provided by the carers.

Care is provided for the residents

- 8.9 In the appeal at 3 Measham Way, Liverpool, the circumstances were that there were two male residents that required care throughout the day and night and had been assessed as not having capacity under the Mental Capacity Act 2005. Four support workers were required over a 24-hour period. The men had a relationship beyond that of a common need to live together as they dined together, shared the kitchen, lounge and garden. The occupants cleaned and maintained the home, ensuring its security, purchased food and prepared meals as part of the household. The appeal was granted as the unit was considered to be a household that met the definition of C3(b).
- 8.10 This is similar to the current application whereby the occupants of the residence would live as a single family unit and would eat and carry out activities and socialise together throughout the day.

- 8.11 To conclude, the appeal examples and case law above show that there is a level of balance and nuances to be understood between the level of care or assistance required by any occupants due to their ages or mental capabilities and the type of occupation by the carers. A live in carer is required for certain children or people with reduced capacity in some cases but not all. In some cases, a shift basis is sufficient to support the residents.

Argument (b) No material change of use will occur

- 8.12 Even if the Council disagrees with argument a) above and considers that the proposed use does not fall strictly within Class C3(b), but instead falls within Use Class C2, it is argued that there would not be a material change of use between the existing and proposed uses, and as emphasised by the leading case on such matters - *Burdle & Williams v SSE* [1972] 1 WLR 1207 no planning permission would be required.
- 8.13 Although there is no statutory definition of 'material change of use', it is considered that the proposed use would not amount to a material change of use because of the following:-
- The intensity of occupation (up to 4 children living with a couple) is comparable to a typical family household.
 - There are no physical alterations proposed to the property.
 - Daily activities such as meals, recreation, sleeping arrangements, and domestic routines will remain household in character.
 - The level of comings and goings, traffic generation, and amenity impacts will be indistinguishable from a normal family dwelling.

9.0 Summary

- 9.1 Use Class C3(b) allows for up to six people living together as a single dwellinghouse and receiving care. The certificate application submitted in this case is currently a dwelling house under Use Class C3(a). It is considered that the proposed use would maintain a C3 use and would be for 6 people residing at the property, with 4 children in care and 2 carers (a couple), residing on site as their main residence. The children will live as a single household with shared meals, shared entertainment and activities living as one family unit. As such the proposal can be considered to be retained as a C3 use class specifically falling under class C3(b) and as such no planning permission is required.
- 9.2 In the event that the Council does not agree with the above assessment and concludes the proposed use would not fall within Use Class C3(b) but instead within Use Class C2, it is argued that there would be no material change of use and therefore no planning permission would be required.