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PLANNING STATEMENT / STATEMENT OF LAWFULNESS

SITE: 12 Old Road West, Gravesend, Kent, DA11 0LJ

PROPOSAL: Certificate of Lawful Development (Proposed) for the use of the premises as a residential home for up to 3 children with up to 3 non-resident staff.

LEGAL BASIS: The proposed use does not constitute a "material change of use" from the established residential baseline.

1. INTRODUCTION (SITE & BACKGROUND)

1.1 This Statement is submitted in support of an application for a Certificate of Lawful Development (Proposed) under Section 192 of the Town and Country Planning Act 1990 (as amended).

1.2 The application site is a residential dwelling house at 12 Old Road West, Gravesend, Kent, DA11 0LJ. 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".

1.3 This application is a strictly legal submission focused on the status of the use as a matter of fact and law. Per *Gabbitas v SSE*, the burden of proof rests on the "balance of probabilities".

2. THE PRESENT POSITION (REF: 20240339)(Appendix A)

2.1 A critical material consideration in this case is the established "fallback" position. Gravesham Borough Council previously granted a Lawful Development Certificate (Ref: 20240339) (Appendix A) for Use Class C3(b) at this site.

2.2 This certificate confirms that the property can lawfully be used by up to six residents living together as a single household and receiving care. This establishes a definitive legal baseline: an occupancy of six persons in a care-receiving setting is already deemed non-material and lawful at this site.

3. LEGAL COMMENTARY (GRAVESHAM PRECEDENTS)

3.1 The Council's attention is drawn to its own recent determination in Ref: 20250472 (Appendix B) (5 Lower Range Road), where it was certified that a change from C3 to C2 for assisted living did not constitute a material change of use.

3.2 The legal test is strictly whether the character of the use has changed. Since the residential character is maintained and the site's residential nature is preserved, the change is not material.

4. OPERATIONAL ASSESSMENT (THE COMPARISON MATRIX)

4.1 To determine materiality, the proposed C2 use must be compared against the lawful C3(b) baseline established under Ref: 20240339 (Appendix A).

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

5. PRECEDENT ANALYSIS (GRAVESHAM BOROUGH COUNCIL)

5.1 In a mirroring scenario at 5 Lower Range Road (Ref: 20250472)(Appendix B), Gravesham Borough Council accepted that the level of operational movements for a C2 use "would not be greater than that of a large family".

5.2 Furthermore, in the report for 3 Struttons Avenue (Ref: 20250529)(Appendix C), the Council confirmed that for a small-scale children's home, the activity "mirrors that of a typical family home". The report noted that staff shifts (e.g., 8:00am and 8:00pm) and the lack of car ownership among care staff ensure no material increase in traffic or parking pressure.

6. THE HOSSACK TEST (ACTIVITY LEVELS)

6.1 In *Hossack v Kettering BC* [2002], the Court of Appeal established that a change of use is only material if the level of activity and the character of the use are significantly different from the previous lawful use.

6.2 The occupancy at 12 Old Road West remains at six persons. The "way of life" remains residential, with shared meals and communal living. As established in Gravesham Ref: 20250529 (Appendix C), there is no evidence that 3 children and staff generate more "intensity" than a standard household. Therefore, under the *Hossack* test, no material change has occurred.

7. RELEVANT LEGISLATION

7.1 Use Classes Order 1987

7.2 The Town and Country (Use Classes) Order (1987) (as amended)

7.3 The Town and Country Planning Act (1990) - S.192

8. PLANNING ASSESSMENT

8.1 The intention is that the house will continue to be used as a dwelling house, but for residents who will receive care.

8.2 The principal issue to consider is whether planning permission is required for the proposed use.

8.3 Section 55 of the Town and Country Planning Act 1990 sets out:

"Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

8.4 In assessing this application, it is necessary to understand the existing lawful use of the unit and the use class of the proposed use. Where the existing and proposed uses do not fall within the same use class, it is necessary to consider whether the proposed use would have a materially different impact on the environment and local amenities.

8.5 In respect of changes of use, Article 3(1) of the Town and Country Planning (Use Classes) Order 1987 sets out:

“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 shall not be taken to involve development of the land.”

8.6 Under the Use Classes Order 1987 (as amended), the wording of Class C3 covers the use of a dwellinghouse by:

8.6.1.1 (a) *a single person or by people to be regarded as forming a single household.*

8.6.1.2 (b) *not more than six residents living together as a single household where care is provided for residents: or*

8.6.1.3 (c) *not more than six residents living together as a single household where no care is provided to residents.*

8.7 While an element of care would be provided, it would still accord with C3(b) criteria.

8.8 Since the children would be living as a single household, the proposed use will be C3(b) and no permission is required to change within the same use class.

8.9 Should we still argue 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 albeit the use it is considered to be a C2 use, however it is lawful as it is similar to a family dwelling and is not considered a material change of use.

8.10 The building will be used as the residence for three children. Three caregivers will be at the home.

8.11 In terms of the care for the children, no additional staff will be required; the 3 staff members on the shift rota would do all the needed duties.

8.12 The use of the property is unlikely to be perceptibly different to that of a normal dwelling house.

8.13 The proposal is not considered to have a negative effect on the surrounding character of the area.

8.14 No external works are proposed, and the proposal will be compatible within the street scene.

8.15 The children will attend school during the day; this should not be considered to be different from a normal household.

8.16 There would also be a reasonable prospect of each child attending different schools or being educated outside a school setting.

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

9. CONCLUSION

9.1 Based on the information submitted, the proposal is not a material change of use and no planning is required.

9.2 The proposed use is lawful. It mirrors the intensity, occupancy, and character of the existing C3(b) use already certified by the Council under Ref: 20240339 (Appendix A).

9.3 In light of the Council's own recent decisions in Gravesham (Refs: 20250472 and 20250529)(Appendix C and Appendix D), the Council is respectfully requested to issue the Certificate of Lawful Development.

Appendix A: Decision Notice for 20240339 **Appendix B:** Gravesham Officer Report (Ref: 20250472) **Appendix C:** Gravesham Officer Report (Ref: 20250529) **Appendix D:** Summary of LB Lambeth v SSLUHC [2024] EWHC 1391 **Appendix E:** North Devon DC v FSS [2003]