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To: Gravesham Borough Council Planning Department

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

Proposal: Lawful Development Certificate (Proposed)

Subject: Cover Letter for Lawful Development Certificate - Legal Basis of Application

Date: December 22nd 2025

Following the recent planning history of the site, including the granted certificate Ref: 20240339 (Appendix A), this application seeks a Certificate of Lawful Development (Proposed) to confirm that the use of the premises as a small children's home for three residents (Use Class C2) is lawful and does not constitute a "material change of use".

1. Legal vs. Policy Assessment

We wish to clarify at the outset that this is an application for a Certificate of Lawful Development, not a Full Planning Application. As such, the determination must be made solely on the basis of Fact and Degree and legal precedent.

In accordance with the landmark judgment in *LB Lambeth v SSLUHC [2024] EWHC 1391 (Admin)*, the High Court has confirmed that local planning policies do not dictate the legal test for "materiality". The Council is legally required to assess only whether a "material change of use" occurs in land-use terms. If the residential character remains, the change is not material. (Appendix D)

2. The Established Position

The site already benefits from a lawful use as Class C3(b) for up to six residents receiving care under Ref: 20240339 (Gravesham Borough Council) (Appendix A). This granted status confirms that the residential character, internal layout, and intensity of use associated with a care-receiving household are acceptable and lawful at this location.

3. Application of the "Hossack" and "North Devon" Principles

Under the principle established in *Hossack v Kettering Borough Council* [2002], the key test for materiality is whether the level of activity is significantly different from the previous lawful use.

- **Occupancy:** The proposed C2 use involves only 3 children and 3 staff (Total 6), which is identical to the occupancy of the already-lawful C3(b) baseline.
- **Household Character:** Per *North Devon DC v FSS* [2003], the children will live as a single household. (Appendix E)
- **Activity Levels:** As confirmed by Gravesham Borough Council's own precedents at 5 Lower Range Road (Ref: 20250472) and 3 Struttons Avenue (Ref: 20250529), a small-scale C2 use does not generate movements beyond what is expected of a domestic dwelling. (Appendix B and Appendix C)

4. Materiality and Operational Character

As detailed in the attached Planning Statement, the physical and operational character of 12 Old Road West remains that of a private dwellinghouse. There are no institutional alterations or external changes. Due to the fact the "way of life" remains residential and the intensity of use does not increase over the C3(b) baseline, the change is not material.

We look forward to receiving the Council's confirmation of lawfulness.

Yours sincerely,

Moses David Motzen

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APPENDICES

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]