

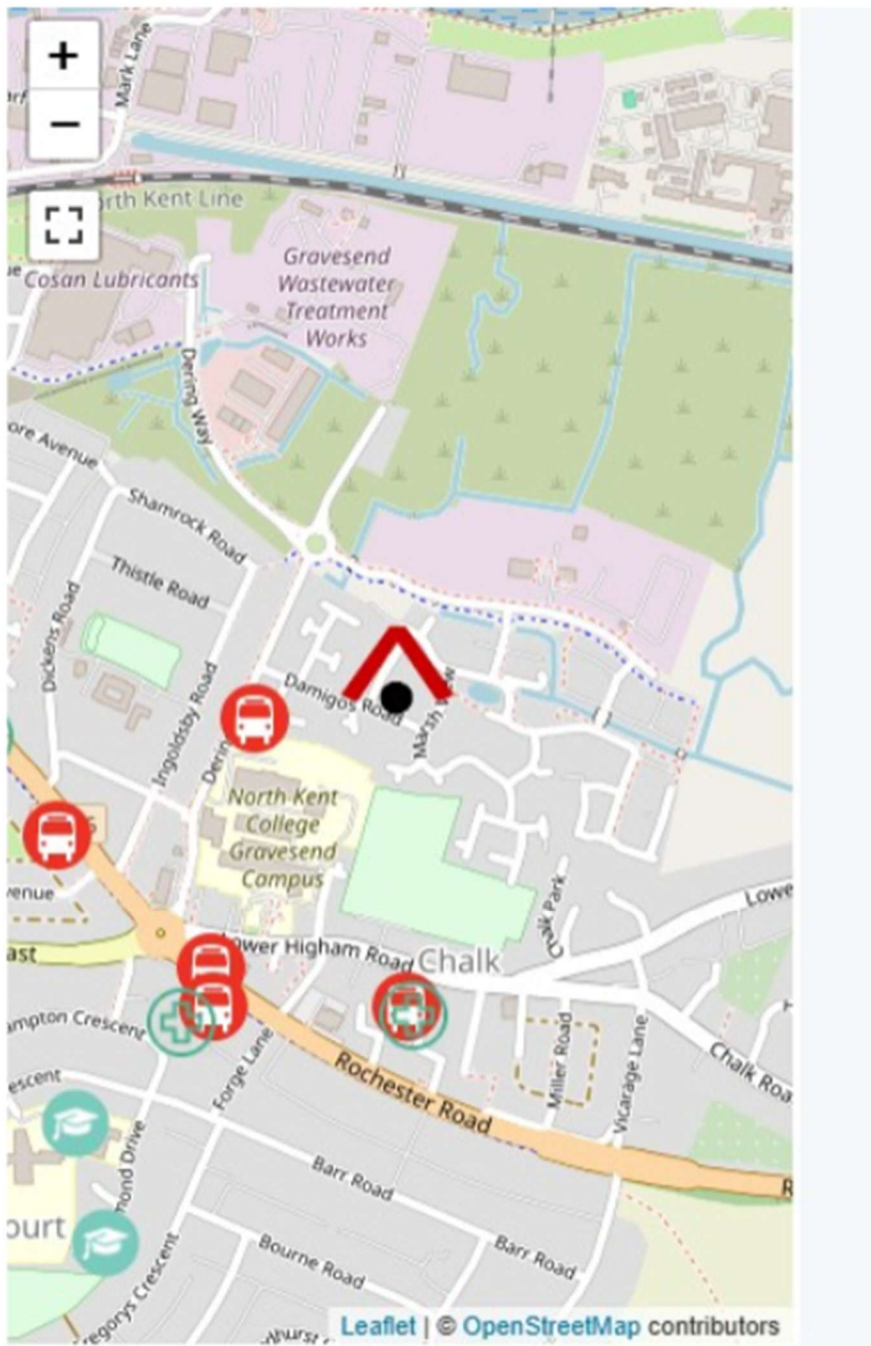
Planning Statement to support an application for a
Proposed Lawful Development Certificate of lawfulness of existing use under s191

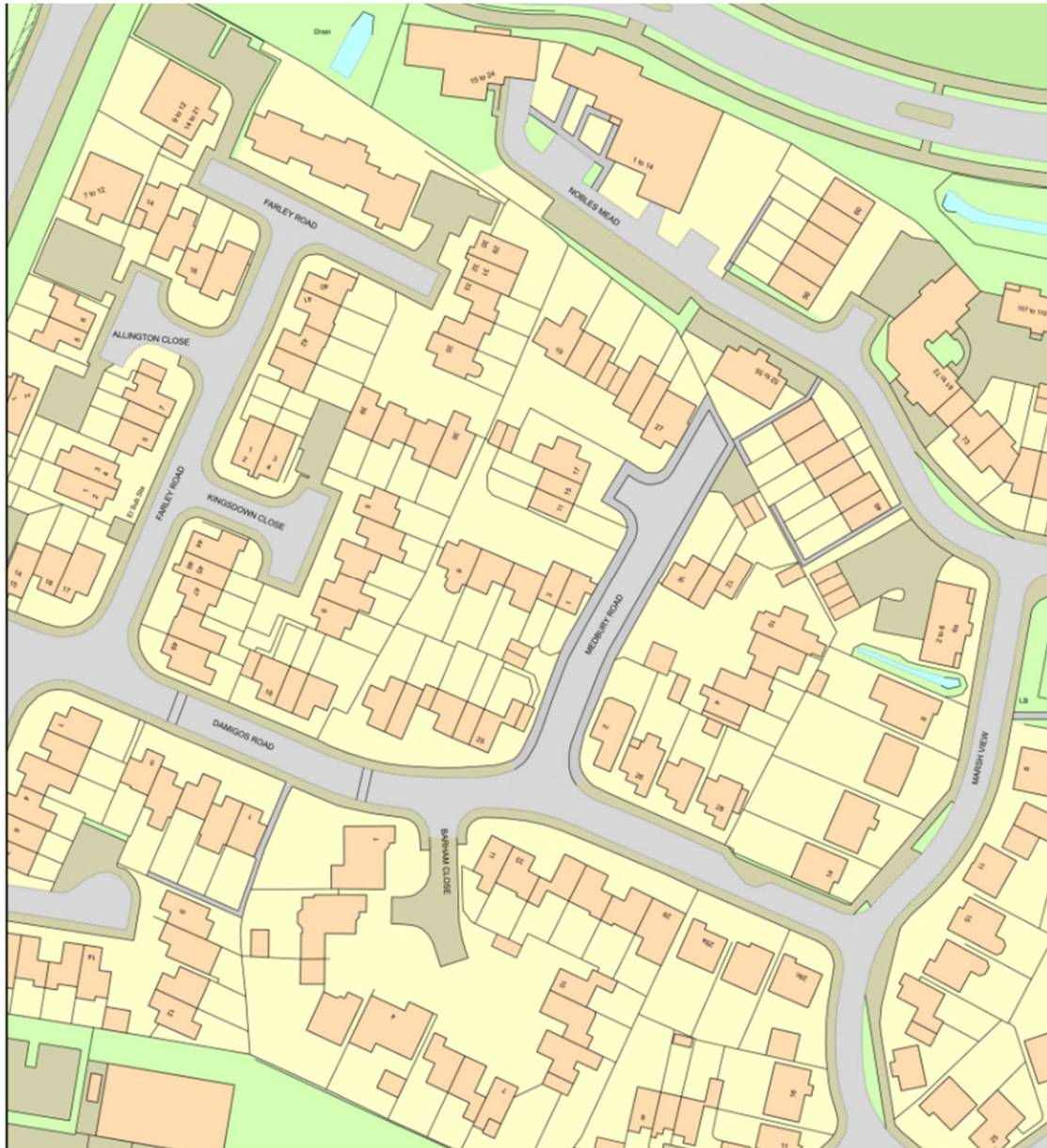
USE OF DWELLING AS A HOME FOR TWO CHILDREN PLACEMENT

5 Medbury Road,

Gravesend, DA12 2NT

WITH 2 NON- RESIDENT CARERS SLEEPING OVERNIGHT AND LIVING TOGETHER AS A
SINGLE FAMILY.





The main carers sleep over in shifts but they live elsewhere.

There is no material difference between the proposed use and anormal C3a household which would necessitate a planning application.

The dwelling comprises 3-bedrooms

2 young persons bedroom

1 staff office/sleep-in bedroom

A bathroom

A living room

A dinning area

A kitchen

An enclosed garden area.

The site is sustainable with several bus stops only 3- 4 mins walk away.

Two pictures

Local shops in 1 minute drive.

A Tesco Express: 1mile; Walking distance: about 22 Minutes. It is also accessible by car accessible by car or public transport as well.

Lidl : 2.1 miles; Walking distance: around 35-47 minutes

Asda: 1.9 miles; Walking distance: approximately 43 minutes

No internal or external changes are proposed to allow for the change of use.

There is no site history recorded.

Executive Summary

This application is for a Proposed Lawful Development Certificate for the use of **5 Medbury Road, Gravesend, DA12 2NT** as a children's care home for a duo placement children's home for a child aged 8-18 with 24 hour care provided by non-resident carers. Based on case law and Appeals this type of use is generally considered to be a C2 Use Class.

The existing use of the property is a C3 dwellinghouse.

As set out in s.55 of the Town and Country Planning Act 1990 development only occurs if the change of use is "material". There is no definition of a "material" change and it is therefore a question of fact and degree depending on the circumstances of each case.

If the use is C2, the change from C3 to C2 does not in itself need planning permission. It only needs permission if that change is material.

The application is put forward on the basis that there would be no material change of use of the property. It would not therefore constitute development and would not require permission.

The leading Court judgement on children's care homes is North Devon District Council v FSS & Southern Childcare Ltd (2003).

The judge considered the question as to whether the Use Class of the property was C3 or C2. He took the view that with no adult residing permanently in the property the arrangement did not constitute a "household" for the purposes of C3 and therefore it was a C2 residential institution.

The judge then went on to consider a subsidiary question whether, even if it was a different use class, the change of use was material. The materiality of any change was either in character of the use or the effect of the change on neighbouring uses and the locality. The judge observed that this depends entirely on the facts of each individual case and in that particular case concluded that there was not a material change and lawful use was confirmed.

This application should be considered in the same way as the North Devon case, firstly which use class does the use fall into and secondly, if it is C2 then would there be a material change of use?

It is our view that the proposed use of the property does not constitute development.

The proposed use would be very similar to a C3 dwellinghouse. Daily patterns of movement to and from the property would not be dissimilar to a family home or small care home. There would not be any greater number of trips to and from the property which might lead to traffic, parking, or other disturbance to amenity than one would expect in a normal family or small care home. On this basis the Applicant's therefore consider that the proposed development is lawful, and a Lawful Development Certificate should be granted.

2. Site Description

The application site is a 3-bedroom 1 bathroom semi-detached house, and the surrounding uses are residential.

The property is within 400m of several bus close by.

3. Planning History

The Council's online planning records show the planning history relating to the Property as indicated above.

4. Proposal

Existing Use

4.1.1 The existing use of the property is a C3 dwellinghouse.

Proposed Use

4.1.2 The proposal is to operate a small residential care home for two children aged 8-18 years.

It is a long-term placement.

4.1.3 There would be 1 care staff sleeping over and 1 care staff in attendance during the day.

The care staff would be non-resident working on a shift basis and are indicated in the accompanying Management Statement and are as follows:

The property is staffed with 2 x Support Worker 24/7. Support Workers will stay on duty from 10.00am until 10.30am the following day, from 11.00pm and 8.00am the Support Workers will be sleeping in, however, are expected to provide support during these hours to the young person should this be required. The staff members will keep the work mobile phone on charge by their bed, and this must not be on silent, to ensure they are contactable in emergencies.

There is a Home Manager and a Deputy Home Manager that oversees the home, and the Home Manager will visit the home at least three days per week. Home Manager is always in regular communication with the home and managing its activities and is accessible between the hours of 9.00am - 5.00pm, outside of these hours, there is always a duty on call Manager on hand to provide support.

4.1.4 The internal layout will remain the same as any other dwellinghouse with bedrooms, bathroom, kitchen, dining area and lounge. One of the existing bedrooms will be dedicated as a staff bedroom/office for overnight staff. There are no external

alterations to the building proposed and there will be no external signage so there will no changes to the appearance of the property to indicate that it is different to a dwellinghouse.

4.1.5 The children will attend school either locally or at other locations where appropriate and depending on their need.

The children will not receive family visits at the property as these will take place at other premises such as family centres.

4.1.6 In terms of the Care Standards Act 2000, residential children's homes (and the Registered Home managers who run the homes) are required to register with OFSTED as a social care provider before they can operate and it is an offence not to do so. This registration is essential in order that OFSTED can:

- protect children and young people
- ensure that the establishment meets the requirements of the relevant legislation
- ensure that providers and managers deliver good services
- provide information about the quality of an establishment to a range of stakeholders including: children/young people, parents, carers and commissioners.

4.17 This entails an initial very in-depth application process supported by a significant amount of information pertaining to the home e.g. Statement of Purpose, Location Assessment, Policies & Procedures, the Children's guide etc.

4.18 The Applicant is applying to OFSTED and by obtaining this proposed Lawful Use Certificate is the first step in the process.

5. Policies and Legislation

5.1.1 The application is submitted under Section 192 of the Town and Country Planning Act

1990 (As amended) which states:

192 Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whether—

(a) any proposed use of buildings or other land; or

(b) any operations proposed to be carried out in, on, over or under land,

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2) 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; and in any other case they shall refuse the application. (3) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use or operations to be lawful; and

(d) specify the date of the application for the certificate.

(4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

5.1.2 The Town and Country Planning Use Classes Order (1987) (as amended) (UCO) sets out a number of different use classes and states at 3.(1):

Subject to the provisions of this Order, 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.

A C3 dwellinghouse is defined as follows:

Class C3. Dwellinghouses

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).

5.1.4 A C2 Residential Institution is defined as follows

Class C2. Residential institutions

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.

5.1.5 The UCO, therefore, confirms that changes within each Use Class do not constitute development and therefore would not need planning permission. The UCO does not specify what changes of use do require permission.

5.1.6 Development is defined in Section 55(1) of the Town and Country Planning Act (1990) which states:

Meaning of “development” and “new development”.

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.

5.1.7 In addition Paragraph: 011 Reference ID: 13-011-20140306 of the national Planning

Practice Guidance (PPG) states:

5.1.8 When does a change of use require planning permission?

A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of ‘material change of use’; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.

5.1.9 Section 55 of the Town and Country Planning Act 1990 and the PPG both confirm that planning permission is only needed where there is a material change in use. The UCO only specifies what doesn't need permission not what does, therefore even though there is a change of use from one Use Class to another, planning permission is only needed if that change is material.

5.1.10 This application is put forward on the basis that the proposed change of use is not material. It does not therefore constitute development under section 55(1) of the TCPA, planning permission is not required and therefore it is lawful.

5.1.11 Paragraph: 005 (Reference ID: 17c-005-20140306) of the PPG states. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates.

5.1.12 This is important because it specifies the parameters of the use, in order that it sets out the limitations of any lawful use granted. This ensures that the authority retains control in the event that there is further change in the use which then might trigger a material change of use.

6. Assessment

6.1.1 As set out in 55(1) of the Town and Country Planning Act (1990) (as amended) the definition of development includes "the making of any material change in the use of any buildings or other land."

6.1.2 The Use Class Order sets out different classes of use and as set out in 3(1) of the Order any change within a Use Class is not deemed to be development. In other words the UCO sets out what does not require planning permission rather than what does.

Existing Use

6.1.3 The existing use is a C3 dwellinghouse currently the home is an unregulated semi-independence provision providing support for young people aged between 16 – 18 years of age, who are preparing for living alone in their own accommodation. This provision does not need planning regulations as it is considered a family home.

The property could of course be used for a C3(a), C3(b) or C3(c) use without the further need for planning permission as any change within C3 would not constitute development. The property is large enough that it could accommodate a family of 2 or 3 adults and 2 or more children. It could also be used by up to 6 adult residents under the C3(b)(small care home) (with non-resident carers who would not be included within the limit of 6) or C3(c) other 6 person household definition.

Proposed Use

6.1.5 The leading judgement regarding small care homes for children is North Devon District Council v FSS & Southern Childcare Ltd (2003) (Appendix 1). The house in this case was to be used to provide residential care for 2 children between the ages of 10 and 17 placed in the care of the operator by the local authority. Two resident staff were on duty at all times and the house was under the supervision of 6-7 carers operating on 8 hour shifts.

6.1.6 The court considered the question as to whether the Use Class of the property was C3 or C2. The judge took the view that the arrangement of children living in the property with no adult residing permanently in the property was not a “household” for the purposes of Class C3. Carers who do not live permanently at the premises cannot be considered to be living together as part of the household. The judge therefore concluded that the use was a C2 residential institution.

6.1.7 The judge then went on to consider a subsidiary question relating to whether, even if in a different use class, a change of use from a C3 use was material and the materiality of any change was either in character of the use or the effect of the change on neighbouring uses and the locality. The judge observed that this question depends entirely on the facts of each individual case and in that particular case

concluded that there was not. In that case he concluded that there was not a material change of use.

6.1.8 In light of this judgement a two-step approach should be taken when considering this application. The first consideration relates to which Use Class the proposed development falls into and if it is C2 then the second question is whether there would be a material change of use constituting development.

6.1.9 In relation to the Use Class our research for the application has shown that Appeal Inspectors when looking at similar cases of children's care homes with non-resident carers have determined that the Use Class is C2.

6.1.10 The applicant's proposal is similar to the North Devon case in that it involves a care home for 2 children with care staff on site at all times but not permanently resident. The lack of permanent residing carers indicates a C2 use.

6.1.11 Taking the lead from North Devon that children cannot be a "household" without a permanent residing carer then the applicant's proposed use would be C2 rather than C3b.

6.1.12 On the basis this is a C2 use this then leaves the subsidiary question as to whether the change from C3 to C2 is material and hence would require planning permission.

6.1.13 Three Appeal Decisions are submitted with this application which are also relevant and comparable to the applicant's proposals.

6.1.14 The first is an Appeal against refusal of a Lawful Development Certificate by Hinckley Borough Council (APP/K2420/X/11/2155849) which was allowed in 2011. It was for a similar change of use to a care home, for 3 children between 9 and 17.

6.1.15 The Inspector followed the same two step approach used in North Devon DC vs FSS in considering firstly whether the proposal was a C3(b) or C2 use and secondly whether there had been a material change of use. After concluding it was C2 he went on to look at the nature of the change of use. He reports that there would

be 3 shift changes for carers during the day together with other normal trips associated with everyday activities. In response to concerns about staff numbers he states:

“However, looking at the numbers involved, they are not materially different from what might be expected of a large family house in which, say, a parent and two teenagers or young adults live together and each uses a car to get to work or college and for socialising.”

6.1.16 The Applicant’s proposals are similar although they only involve two children and two shift changes and would lead to a level of activity very much in line with a family home of this size.

6.1.17 The Hinckley BC Appeal was allowed on the basis that no material change of use had taken place.

6.1.18 The second Appeal is also against refusal of a Lawful Development Certificate by Ashford Borough Council (APP/E2205/X/16/3161037) which was allowed in 2017. This was for a similar use of a house for 3 children with 2 adult carers aged 8 and 17. Again the Inspector concludes that this is a C2 use. He then goes on to consider if there has been a material change of use. He states:

A house of this size could easily accommodate a typical family with 2, 3 or more children and 2 adults and it seems to me that the use of the house as a home for a maximum of 3 young people and their carers would not be materially different from the authorised use as a 4 bedroom family home. It is likely that there would be vehicle movements created by the carers coming to and leaving the site on a daily basis as they start and leave their shifts and journeys undertaken by the children when being taken to and from school. Nevertheless, I do not consider that the number of such movements is likely to be significantly more than those undertaken by a family and certainly not enough to result in an intensification of use that would give rise to planning concerns.

6.1.19 The Ashford BC appeal was also allowed.

6.1.20 The third Appeal is against refusal of a Lawful Development Certificate by Bassetlaw District Council (APP/A3010/X/21/3277785) which was allowed in 2022. This is also similar as it was for 3 children with 2 non-resident carers providing 24 hour care plus a third carer present during weekday daytimes. Again the Inspector concluded that the change of use from C3 to C2 was not material.

6.1.21 We appreciate that the assessment as to whether there has been a material change of use is one of “fact and degree”. Whilst there are other examples where such a change from C3 to C2 has been considered to be material, the Appeal examples are provided to show that there are a number of cases where such use for 3 children has not been considered to constitute development.

6.1.22 The proposal involves the care of only one child by 2 carers who will be present overnight albeit they are not permanently resident, together with a weekday daytime home manager.

6.1.23 Research shows that similar proposals for C3 to C2 change of use have been granted Lawful Development Certificates in this Nottingham City LPA.

Considerations for **5 Medbury Road, Gravesend, DA12 2NT,**

6.1.24 The above cases illustrate that such uses can be considered to not involve a material change of use. We appreciate however that each case depends on the individual circumstances. These are examined further below in relation to the applicant’s proposals.

Staffing

6.1.25 **5 Medbury Road, Gravesend,** is staffed with 2 x Support Workers 24/7. Support Workers will stay on duty from 10.00am until 10.30am the following day, from 11.00pm and 8.00am the Support Workers will be sleeping in, however, are expected to provide support during these hours to the young person should this be required. The staff member will keep the work mobile phone on charge by their bed, and this must not be on silent, to ensure they are contactable in emergencies.

There is a Home Manager and a Deputy Home Manager that oversees **5 Medbury Road, Gravesend**, and the Home Manager will visit the home at least three days per week.

Home Manager is always in regular communication with the home and managing its activities and is accessible between the hours of 9.00am - 5.00pm, outside of these hours, there is always a duty on call Manager on hand to provide support.

6.1.26 This arrangement would not be dissimilar to a typical family home of this site (C3(a) use).

Transport

6.1.27 The site is within an urban area and in a highly sustainable location within 0.4miles of several bus stops.

6.1.28 There is on-site parking also.

6.1.29 There is also on road parking should this be required on an emergency basis. However, there are excellent public transport links allowing staff/visitors to get to the property without using a private car.

The Property

6.1.30 The submitted plans show the existing and proposed layout of the property. There are no changes proposed to the layout of the property. There are no external alterations proposed and no external signage proposed.

The Resident

6.1.31 Two children aged 8-18 years old will reside at the property as their principal residence.

6.1.32 The child will attend local schools where appropriate and use local facilities being part of the local community. It is intended that the placement will be long term.

6.1.33 A house of this size could accommodate a family of 2 adults and 3 children under Use Class C3a. It could also be used for a small care home/supported living of up to 6 adults receiving care from non-resident staff under C3b.

6.1.34 It is considered that one child and carers using the property is therefore not dissimilar to a family home or to a small care home for adults.

Visitors to the Property

6.1.35 There will be visits from social workers to the property about once a month and a looked after review conducted every 6 months. The child would not receive family visits at the home. Where these are arranged they would be held at other locations, for example at family contact centres. Other visitors to the property would be no different to a typical C3 use.

6.1.36 In a typical C3a family home of this size you might expect there to be many visitors to the property including friends, extended family for special occasions, birthdays, social events etc. This would not be the case with the proposed use, as family meetings would not be held at the house. The number and pattern of visitors from the proposed use is therefore, if anything, likely to be less than a family home of this size.

6.1.37 With C3(b) small care home for adults you would also expect there to be visits from other professionals, social workers or health professionals. Again, this pattern of use would not be dissimilar to the proposed C2 use.

The Care Programme

6.1.38 The care model proposed here similarly aims to replicate normal family life as far as possible. The placements will be long term so there will **not** be a continuous turnaround of residents.

6.1.39 This pattern of use would be constant as this is a long-term placement. This is similar to what you might expect with either a C3 family home or C3b small care home.

Summary

6.1.40 In the Hinkley, Ashford and Bassetlaw appeals the Inspector's followed the two stage approach set out in the North Devon case. The number of children in each case was 3 and although the age ranges are slightly different there are similarities to 5Medbury Road. The care model proposed here similarly aims to replicate normal family life as far as possible. Occupation in this case would be for 2 children with 2 x 24 hour carers and a third day time carer. In the Hinkley appeal there would 3 children and 3 carers, at Ashford 3 children and 2 carers and in the Bassetlaw case 3 children and 3 carers.

6.1.41 These levels are similar to the applicant's proposal, although in this case the proposed use is for 2 children. The shift patterns proposed in this case are slightly different to those Appeal examples shift changeovers as the Support Workers will stay on duty from 10.00am until 10.30am the following day, from 11.00pm and 8.00am the Support Workers will be sleeping in, however, are expected to provide support during these hours to the young person should this be required.

Indeed, in the Ashford case the pattern of movements was more frequent with 3 shift changes and a later finish at 10:00pm, however the Inspector concluded this was not materially different to a family home. The shift patterns, number and times of movements in the Applicant's proposals are not materially different in terms of the numbers, times or car movements than one would expect in a family home or in small care home for up to 6 adults within the C3 use class. Similarly, the number and frequency of visitors to the house is similar to what might be expected for a C3 use.

6.1.42 In addition it is noted that Lawful Development Certificates have been granted in Nottingham City area for similar proposals of between 2 and 4 children.

6.1.43 Notwithstanding that the use is likely to fall within C2 the proposal is very similar to a C3 use and there would be no material change by way of the use and character of the property, levels of comings and goings, traffic levels and parking requirements, or level of disturbance.

7.Conclusion

7.1.1 It is our view that the proposed use of the property does not constitute development.

Based on a review of case law and Appeals, this type of use, is generally considered to be a C2 use class. Indeed this has been the conclusion in many of the cases considered in recent years based on the North Devon judgement concluding that children without permanent resident carers cannot constitute a household. In practice at 5 Medbury Road, the shift patterns , and occupation by two children and two carers there would be little difference from a small care home for adults (C3(b), including the existing supported living use) or a family home under C3(a). If the use is C2 the change in use from C3 to C2 does not in itself lead to a need for planning permission. The Use Class Order only prescribes what does not need planning permission within the specified use classes not that a change from one to the other needs permission.

7.1.3 As set out in s.55 of the Town and Country Planning Act 1990 development only occurs if the change of use is “material”. The question of whether a change is material is a matter of fact and degree. If there was a noticeable change in terms of the impact of the use on the environment or amenity then it could be argued that the change was material, however we do not believe this to be the case.

7.1.4 The proposed use of the property to house a maximum of two children, with 2 adult carers present in an environment very similar to a small care home or family home, would not result in a material change. There would not be any greater number of trips to and from the property which might lead to traffic, parking, or other disturbance to amenity than one would expect in a normal family.

7.1.5 On this basis 4TABS therefore consider that the proposed development is lawful, and a Lawful Development Certificate should be granted.