

# Delegated Report

## *Lawful Development Certificate (Proposed)*

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|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application no:</b> | 20250202                                                                                                                                                  |
| <b>Location</b>        | 5 Medbury Road Gravesend Kent DA12 2NT                                                                                                                    |
| <b>Proposal:</b>       | Application for a Lawful Development Certificate in respect of the proposed use of 5 Medbury Road as a Children's Home for up to two children (C3(b) Use) |
| <b>Applicant:</b>      | Mrs Angele Clarisse Tchuigoua                                                                                                                             |
| <b>Site Visit</b>      | N/A Desktop Assessment                                                                                                                                    |

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### **Procedural Matters**

It was considered that the information submitted with the application was insufficient. Therefore, the applicant was contacted for additional information, and a revised document was provided, and accepted by the Local Planning Authority on 20.05.25.

During the course of the application, it was ascertained that the development fell under the C3(b) Use Class. As such, the applicant was contacted in order to confirm whether the description change from:

*Application for a Lawful Development Certificate in respect of the proposed change of use of the existing C3 dwellinghouse to C2 Children's Home for 2 placements.*

To:

*Application for a Lawful Development Certificate in respect of the proposed use of 5 Medbury Road as a Children's Home for up to two children (C3(b) Use)*

would be acceptable.

On 21.05.25 the applicant confirmed the description change was acceptable.

### **Plans & Documents**

Application Form;  
Supplementary Information – REVISED Planning Statement;  
Drawing No. TI-4T001-001 – OS Plan;  
Drawing No. TI-4T001-002 – Site Plan;  
Drawing No. TI-4T001-003 – Floor Plans – Existing; and  
Drawing No. TI-4T001-004 – Floor Plans – Proposed.

*Superseded Plans and Documents*

~~Supplementary Information—Planning Statement (received 17.03.25).~~

## Plan Note

The plans refer to a bin store within the property frontage. It should be noted that this does not form part of this planning application for a Lawful Development Certificate, and may require planning permission. In addition, it is noted that the Planning Statement document refers to Nottingham City LPA. Whilst this is considered an error, it does not impact the assessment of this application.

## Property Type

5 Medbury Road is a two storey terraced property located north west of Medbury Road. The statement included with this application describes its current use as a C3 family dwellinghouse:

### 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.

## Use Class C3 is described as:

*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).*

Based on the information provided and the Use Class Order, it is considered that the property is currently in use as a C3(b) dwellinghouse, albeit for different purposes than set out in this application.

## Relevant Planning History

| Reference | Description                                                                               | Decision  | Decision Date |
|-----------|-------------------------------------------------------------------------------------------|-----------|---------------|
| 19880531  | Erection of 33 no. dwellings with associated garaging and the laying out of estate roads. | Permitted | 08.05.1989    |

## Material Consideration

- Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- The Town and Country Planning act 1990 (as amended); and
- The Use Classes Order 1987 (as amended) 2020.

## Relevant Case Law

### Court Cases:

North Devon District Council v First Secretary of State and Southern Childcare [2003]

## Consultations, Publicity and Representations

As confirmed in Para.008 Reference ID 17c-800-20140306 of the Government's Planning Practice Guidance, there is no statutory requirement to consult third parties on Lawful Development Certificate applications. Despite this, comments have been received from a third party, and have been included below for transparency.

### *Kent Police Designing Out Crime Team*

We have reviewed this application in regard to Crime Prevention Through Environmental Design (CPTED) and in accordance with the National Planning Policy Framework (NPPF).

Applicants/agents should consult us as Designing out Crime Officers (DOCO's) to address CPTED and incorporate Secured By Design (SBD) as appropriate. We use details of the site, relevant crime levels/type and intelligence information to help design out the opportunity for Crime, Fear of Crime, Anti-Social Behaviour (ASB), Nuisance and Conflict.

There is a carbon cost for crime and new developments give an opportunity to address it. Using CPTED along with attaining an SBD award using SBD guidance, policies and academic research would be evidence of the applicants' efforts to design out the opportunity for crime.

We recommend SBD guidance is utilised to address designing out crime to show a clear audit trail for Designing Out Crime, Crime Prevention and Community Safety and to meet our Local Authority statutory duties under Section 17 of the Crime and Disorder Act 1998. The points below identify my recommendations for the layout and design of this scheme.

1. Due to the proposed use of the site, we would recommend the applicant review current site security and boundary treatments. We advise boundary treatments to be a minimum of 1.8m in height with support beams facing inwards, any gates to a rear/ side access must also be securely lockable from both sides. It is essential that there is no unauthorised access to the rear of the site either via the side access route or via neighbouring premises.
2. We recommend CCTV be installed at the main entrance doors to monitor the movements of the occupiers. In some circumstances, it can be advisable for staff carry personal attack alarms and in some instances BWV cameras for safety purposes.
3. We recommend lighting to cover entrances to aid in natural surveillance.
4. We strongly recommend external doors and windows meet PAS 24: 2022 UKAS certified standard, STS 201 or LPS 2081 Security Rating B+. Existing rear doors and windows that are not being replaced may require limiters/ restrictors to help maintain security.

If approved, site security is required for the construction phase. There is a duty for the principle contractor "to take reasonable steps to prevent access by unauthorised persons to the construction site" under the Construction (Design and Management) Regulations 2007. The site security should incorporate plant, machinery, supplies, tools and other vehicles and be site specific to geography and site requirements.

We welcome a discussion with the applicant/agent about site specific designing out crime. If the points above are not addressed, they can affect the development and local policing.

This information is provided by Kent Police DOCO's and refers to situational crime prevention. This advice focuses on CPTED and Community Safety with regard to this specific planning application.

## Officer's Analysis

### *Permitted Developments Rights Restrictions*

|                                                 |   |
|-------------------------------------------------|---|
| Article 2 (3) Land (AONB, Conservation Area)    | N |
| Article 4 Direction                             | N |
| Permitted Development Rights Removed/Restricted | Y |

The decision notice for application 19880531, as detailed in the planning history section above, does restrict permitted development rights in relation to the garage. However, as no changes to the garage are proposed for this application, this restriction does not impact the assessment of this application.

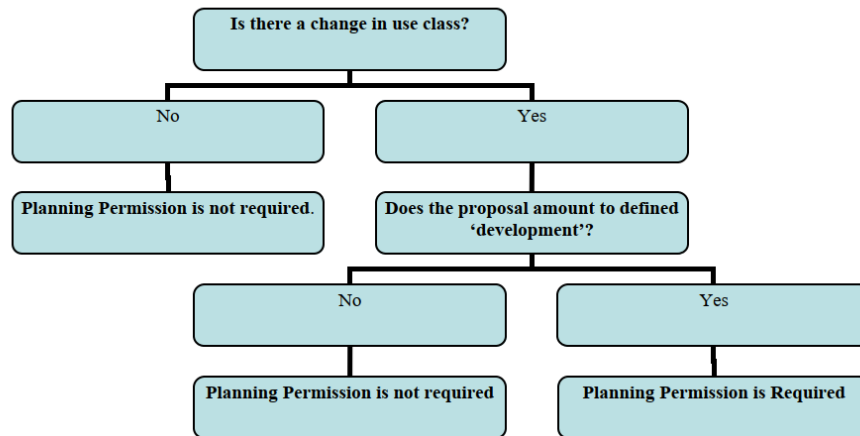
This application is for a Lawful Development Certificate (LDC) and not for an application for planning permission. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009). <https://www.gov.uk/guidance/lawful-development-certificates> As per paragraph 009 a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter would be lawful. Planning merits are not relevant at any stage in this particular application.

This proposal to use the existing dwellinghouse under use class C3, as a children's home for the occupation of up to 2 children at a time, aged between 8-18, and accompanying staff members, is determined by whether the new way of using the property would be considered development or not, under the definition applied by Section 55 of the Town and Country Planning Act 1990 (as amended) by virtue of being materially different to its existing use.

If the proposed use class is a material change of use and therefore falling within the definition of 'development', planning consent would be required as there are no existing permitted development rights for such a change of use. Whether the development would be considered to be 'Development', is a matter of fact and degree, a decision for the Local Planning Authority. However, this assessment is guided by the existing policy, definitions, and planning case law in order to achieve a consistent approach, whilst ensuring that planning legislation is applied in an appropriate way, reflective to the extent of the proposed change.

Therefore, there are two strands of assessment to be undertaken here. Firstly, does the proposed use result in a change of ascribed use class? If so, does the proposal result in a change which constitutes defined 'development'?

The below diagram explains the stepped process of this assessment.



### Use Class C3 is described as:

*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).*

### Use Class C2 is described as:

*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, used as sole or main residences)).*

*Use as a hospital or nursing home.*

*Use as a residential school, college or training centre.*

There is potential that the proposed use would fall under class C2 – Residential Institution.

### Assessment of Use Class

As stated, at present, based on the information provided, the use of the premises falls within the Class C3(b) use class. The information provided with the application indicates that the proposed use would (based on various case law and appeals) likely result in a change of use to C2 use, but argues that this would not amount to a 'material' change and therefore does not constitute development. Notwithstanding the case put forward by the applicant, it must be considered whether the proposal would instead remain under C3(b) (with the proposed use as a single household of not more than 6 residents where care is provided). In assessing, this application, it therefore needs to be ascertained whether the proposed use does indeed fall within the use class C3(b) classification.

### Definition of household

This is in regard as to the definition of 'household' and whether or not a care-worker should be living within the premises in order for it to be considered as a household.

Single household is not defined in planning legislation. Therefore, guidance is sought from High Court cases in order to establish what will constitute a household in any given case. There are two judgements that are relevant to this. In *R. v Bromley LBC Ex p. Sinclair* [1991] 3 P.L.R. 60, the High Court 'confirmed that the Class does not require that the staff providing care for residents need themselves to be resident'. However, in the more recent judgement in *North Devon District Council v The First Secretary of State* [2003] J.P.L. 1191, the judge held that 'the concept of living together as a household means that, as I have put it, a proper functioning household must exist and, in the context of a case such as this, that must mean that the children and a carer must reside at the premises'.

The applicant has confirmed in this case that the property would generally be for solo occupancy, but would be occupied by up to 2 children, where appropriate. The statement sets out:

*Original Model: Solo Placement (One Child)*

- *Day Shift: One care staff member on-site from 08:00am to 08:00pm.*
- *Night Shift: One care staff member on-site from 08:00pm to 08:00am, providing sleep-in cover. The staff member will remain available to support the young person if required during the night.*
- *The staff will keep the work mobile phone fully charged, beside their bed, and with the volume turned on at all times to ensure they are contactable in case of emergency.*

*Updated Rota: Dual Placement (Two Children)*

- *Day Shift (08:00am – 08:00pm): Two care staff present on-site.*
- *Night Shift (08:00pm – 08:00am): Two care staff on-site. One staff member will provide waking night cover, while the second will operate on a sleep-in basis, alternating roles as needed.*

*- Registered Manager: Present on site during daytime hours (typically Monday to Friday, 9:00am – 5:00pm), managing daily operations and supervising staff.*

*There is a Home Manager who oversees the operations at 5 Medbury Road, Gravesend. The Home Manager visits the home at least three days per week and maintains regular communication with staff to ensure effective day-to-day management. The Home Manager is available between 9:00am and 5:00pm, Monday to Friday. Outside of these hours, an on-call duty manager is always available to provide support.*

The information provided indicates the property would be occupied by a maximum of two children and attended by a maximum of 4 members of staff at any one time, on a shift pattern. The planning statement confirms that there are 3 rooms available; *'one bedroom will be allocated to the child, one will serve as a staff office/sleep-in room, and one will remain available for potential use if a second child is admitted based on an assessment of need and compatibility'*. Staff members would have an office/sleep in space, but all members of staff would be working on a shift pattern, which would not involve residing at the property themselves.

*Number of people forming a household*

A second point to consider is the number of people forming the "household". It is established in case law (a judgement by the Court of Appeal in *R (Hossack) v Kettering BC* [2002] EWCA Civ 886) that the limit in Class C3 to no more than six persons is an important consideration as, with no more than that number, it would be likely that persons would be living as a single household than if there were significantly more than six; 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.

In an appeal decision in *Enfield (Land at 11 Osborne Road, Enfield – APP/Q5300/X06/2006017)* the Inspector argued that whilst a care worker might not reside in a care home, he or she should still be counted as a household member whilst on site.

On balance it is considered that what is clear is that carers, whether resident or not, must be included in the total number of people forming the household.

The household therefore made up of residents and those carers providing care, must not exceed a total number of 6 persons in the premises at any one time. In the case of this application, there would be a maximum of 2 residents at any one time with a maximum of 4 staff members, on a shift pattern. As such, the maximum number of 6 persons forming the household would not be exceeded.

There are some differing views within the caselaw, as to whether there needs to be a permanent residing staff member on site, for the occupiers to be considered as forming a 'household'. A balanced judgement should therefore be applied, in cases such as this where there would be no permanent residence of a staff member. In this case, the total number of staff members and residents at the property would never exceed the maximum of 6, even when staff members are changing shifts, as the managers would finish at 5pm. It is also reasonable to consider different types of households. There are many different types of family, other than the nuclear, two parent family, living together. Some families, live together in multi-generational households, extended families, blended- families, single parent families etc... where caregiving is not extended to only the parents of the children. In some instances, parents will work away, or work night shifts and so care will shift to other trusted individuals. It would seem unreasonable therefore, to prevent the care of children for planning reasons alone, simply for not meeting the standard of a 'nuclear' family, when considering the definition of a 'household'.

In this case, the children (only 2), would have 24/7 care, as expected of a single household and, given the limited number of children and staff members in this case, the balanced judgement in this instance, is that the users of the building would form a household.

#### *Level of care*

A further consideration in this type of proposal is with regard to the "level of care" provided in such establishments.

From the information submitted it is considered the care provided would be a lower intensity of care as opposed to an intensive level of care; such as 'round the clock' nursing care for example. In this case the care provided would be looking after children who; *'may have experienced trauma, neglect, or abuse and may present with behavioural, emotional, or social difficulties. The home is designed to meet these needs through a structured daily routine, therapeutic support, and engagement with local services. The children will be supported to attend local schools, participate in activities, and access healthcare and mental health services as needed'*. It is therefore considered that this is a level of care that would be able to take place from this dwellinghouse without the need for a set-up of equipment etc that would be needed in the case of more intensive physical care such as with nursing care for example.

#### *Noise/Anti-social Behaviour*

A further consideration in this type of proposal is with regard to the impact of noise/anti-social behaviour.

In an appeal decision in Bromley (Foxhill Lodge, 51 Fox Hill, SE19 – APP/ G5180/A/94/238594/P5) the Inspector stated that the frequency of behaviour would be difficult to predict and would depend on individual children and the supervision they received, and these are personal matters not of concern with the use of the property.

In an appeal decision in Medway (20 Patterns Lane, Rochester - APP/ A2280/W/19/3222409) the Inspector stated:

*Concerns are raised about the likely behaviour of a children's home's residents. However, subject to*

*appropriate management practices, I have seen nothing which convinces me that they are likely to be noisier or more badly behaved than any other children. I recognise that the facility would be for unruly children or ones with behavioural difficulties although such children can and do live in traditional family dwellings.*

It is noted that 24-hour supervision of the child/children will take place with members of staff on the property at all times.

Therefore, there is no evidence that the proposed use would result in a material change in terms of increased noise/ anti-social behaviour.

#### Traffic and Parking Provision

The current property has 2 off-road parking spaces available, 1 within the garage and 1 within the driveway. The proposed use would consist of a long term residence for up to 2 children, with staff members on a rota shift. The property, as existing, is a 3 bedroom dwelling. There is a bus stop that is a 10 min walk away (approx.), with Gravesend Town Centre (and train links) nearby.

It is considered that the use of this property as a dwelling providing care under the circumstances laid out would be unlikely to generate a greater number of vehicle movements than the potential vehicle movements of the occupiers and visitors of a C3(a) dwellinghouse and there would be no material intensification.

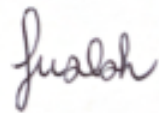
#### **Conclusion**

In assessing all of the issues with regards the proposed use, it is considered that residents and their carers would together constitute a single household. Moreover, it is clear that residents of the premises would be provided with care. The number of people forming a household would also not exceed 6 persons (maximum of two residents and four carers at any one time).

Having regard to the information submitted, relevant legislation and relevant case law and appeal decisions it is considered that the use described in the application documents falls within Class C3 (b) of the Town and Country Planning (Use Classes) Order 1987 (as amended). The existing use of the premises also falls within Class C3(b), based on the information provided. As the use remains within Use Class C3, this would not constitute development, in accordance with section 55(2)(f) of the Town and Country Planning Act 1990.

Accordingly planning permission is not required for the proposed use and a lawful development certificate should therefore be granted.

### **Recommendation: Grant Lawful Development Certificate**

|                      |                 |                     |                                                                                       |
|----------------------|-----------------|---------------------|---------------------------------------------------------------------------------------|
| <b>Case Officer:</b> | Mrs Lucy Hankin | <b>Team Leader:</b> | Mrs Faye Walsh                                                                        |
| <b>Signed:</b>       | L Hankin        | <b>Signed:</b>      |  |
| <b>Dated:</b>        | 21st May 2025   | <b>Dated:</b>       | 12 June 2025                                                                          |