

**Application by Therapeutic Care
Ltd.**

for a

**Certificate of Lawfulness for a
Proposed Use**

in respect of

**20 Preston Road
Longridge
Preston
PR3 3AN**

Planning and Law Limited
107 Lawsons Road
Thornton-Cleveleys
Lancashire
FY5 4PP

Introduction

1. Planning and Law Ltd is instructed by Therapeutic Care Limited to submit an application for a Certificate of Lawfulness for a Proposed Use in respect of an existing property at 20 Preston Road, Longridge, Preston PR3 3AN
2. The application is constituted in the following documents:
 - o application form
 - o Site Location Plan with red line
 - o Existing Floor Plan
 - o Proposed Floor Plan
 - o this Supporting Statement
 - o Supplementary Statement – Questions Answered
 - o Plan Showing Parking

The Property

3. Therapeutic Care Limited, the applicant, is the intended operator of this property. The property is in the process of being purchased with the intention that it be used as a care home for 2 young persons (see further below).
4. Bradley Yates, Director of the applicant Company, has been involved with operating small homes in the north west since 2017.
5. The applicants are not aware of any relevant planning history of any significance . The existing property is a dwellinghouse in planning use terms.
6. As noted above, accompanying the application are existing floorplans
7. The existing ground floor accommodation is as follows:
 - hallway leading to
 - a bedroom, and
 - a kitchen/ diner, leading to
 - a living room, and a utility room, and
 - a conservatory
8. The existing first floor accommodation is:
 - three bedrooms, and
 - a bathroom
9. The proposed layout plan supplied shows that there are no internal physical changes and there are no alterations to the external parts of the building. The only use changes to rooms downstairs is that the bedroom becomes a staff office.
10. Upstairs 2 of the bedrooms become bedrooms for the children, and one for overnight staff.

11. Accompanying the application is a plan showing parking. Hardstanding areas which could accommodate parked cars are hatched on the plan. There is room on site to accommodate three cars, and there is also an attached existing garage.

The Application

12. The application is for the use of the property as a home for 2 young persons in receipt of care as required with no more than 2 carers resident overnight.

13. Certificate applications are said to be a matter of fact and law. In the case of Certificates for a proposed use, the onus of proof that the use would be lawful is on the applicant, and the relevant test is the balance of probability.

14. So, the factual background to this application is that a dwellinghouse currently exists and is plainly lawful in that use. The proposal is to use the property as a home for 2 young persons in need of care with carers attending as necessary, but no more than two carers in residence overnight, and with carers rotated on a rota.

15. The legal background is contained in the Town & Country Planning (Use Classes) Order (SI 1987 764) and relevant case law as discussed below.

16. **Use Classes Order** - The relevant use classes are:

"C2", Residential Institutions, defined as:

"Use for the provision of residential accommodation and care to people in need of care (other than the use within class C3 [dwellinghouse]) use as a nursing home, use as residential school, college or training centre"; and

Class C3, Dwelling House defined as:

"Use as a dwellinghouse (whether or not as a sole or main residence)-

- a) by a single person or by people living together as a family; or*
- b) by not more than 6 residents living together as a single household (including a household where care is provided for residents)*
- c)*
- d)"*

17. **The Existing Use** - The relevance of the two use classes set out above is as follows.

18. The current use plainly lies within Use Class C3. It is a dwellinghouse.

19. **The Proposed Use** - There is some flexibility to argue that the proposed use also falls within Class C3. This is because there would not be more than six residents living together and they are arguably living together as a single household, and various care is being provided for the residents.

20. The specifically proposed use is for 2 children, and up to 2 members of staff, but these members of staff would be rotated according to a rota. Other members of staff providing care would be utilised as necessary, without their being resident in any way, and so it is conceivable that at times there may be more than two members of staff present in the house, but this would be unusual (although there would normally also be a manager present at times during daytime working hours - managers sometimes manage more than one property).

21. Appeal decisions have found that even where staff providing care to other residents are on a shift system are living in their own homes, the use may still, on its facts, be within use class C3. This was the case with a number of appeals reported in Development Control Practice.
22. In one of these, four residents were looked after by three staff on a shift system providing 24-hour cover with one of them staying on the premises for a maximum of eight hours (Enfield 11/7/06). In another case an Inspector noted that residents and staff would share all facilities and take meals together, and that it was a group home and not a care home, and that it would not have an institutional character. On that basis the Inspector concluded that the use would fall squarely within C3 (Croydon 8/1/03).
23. Nevertheless, although, as noted above, there is some authority to the effect that this arrangement could lie within Class C3, this was a question that was considered most extensively in the case of *North Devon District Council v. Secretary of State* [2003], and very helpfully the case also considered what would apply if it did lie outside of this use class.
24. The case considered, in the first instance, whether a dwellinghouse used as a residential home for two children with care provided by two non-resident carers fell within class C2 or class C3. Collins, J in the *North Devon* case disagreed with the earlier case of *Sinclair* (which found that the use under these circumstances was C3(b)), and found that the use would be class C2.
25. This was essentially because any carers in the property would not always be the same people, because they change according to a rota, so this would **not** be up to six people living together as a **single household**, and the use would fall outside C3, and in fact be within C2.
26. **Application of Case Law and Appeals to this Application** - It is submitted that the effect of the *North Devon* case is to confirm a two-stage test as follows:
 - a. does the use lie within C3?
 - b. in any event is there a material change of use involved?
27. As noted above the use in this case most likely lies outside C3, and probably within C2, because of the way in which the residents interact, including with the staff, to the extent that they may not be regarded as living together as a single household. However, that is not the end of the analysis.
28. In the *North Devon* case Collins J specifically found that it was lawful for the Inspector in the planning appeal underlying that case to consider whether the proposed use was materially different from the existing use. This has been applied in subsequent appeal cases including, for instance, the following : (DCS *Crewe and Nantwich* 24/04/2006).
29. In this case the appellant proposed to use the property to house 4 children between the ages of 11 and 17 years who would be cared for by a minimum of two carers who would operate on an 8 hour rota system. As set out by DCS, the Inspector concluded that:

"Although the carers when visiting the site would increase the number of comings and goings, this would not disturb local residents or affect the character of the area. Additionally although local residents were fearful about the children

*committing antisocial acts or increasing crime levels, he decided that it was not inherent in the character of a children's home that the proposed use of the property would have an adverse impact upon the local community and welfare services. Consequently this was not a factor which would affect its character, he ruled. Although the building would be fitted with an office and fire alarm, this was not uncommon in many dwellinghouses around the country he decided and would not materially alter its basis (*sic*) character as a dwellinghouse. Consequently a LDC was justified."*

30. In a similar vein DCS also reports the following case:

*"A similar line of reasoning was taken in Wolverhampton 15/09/2006 DCS No 100-044-775. In this case the use of a detached dwelling for accommodating children with emotional and behavioural difficulties was judged by an Inspector not to be materially different from its lawful residential use and accordingly he issued a LDC confirming his conclusion. The appellants explained that the three bedrooomed dwelling would be occupied by children aged between ten and sixteen. Care would be provided on a 24-hour basis with staff being rotated in shifts of eight hours each, they explained. The children would where appropriate attend schools in the area and would also be visited by therapists from time to time. The inspector decided that the use did not strictly fall within Class3(b) of the Use Classes Order which related to dwellinghouses. This was because the children would require care and could not in the true sense be regarded as living together as a household because the carers would not live within them, being rotated every eight hours on a shift system. However that was not the end of the matter he opined, because it was also necessary to assess whether in planning terms the scheme would trigger a material change in the use of the premises. On this latter point he noted that the children would occupy the premises for between six months and two years. **The day-to-day activity associated with the use would be similar to that of a dwellinghouse, he decided, with people coming and going as children were taken to school and returned in the afternoon. The maximum number of cars at any one time associated with employees would be three and this would not be materially different from its use as a dwelling in a suburban location, he determined, and issued a LDC.**" (our emphasis)*

Particular Characteristics of the Site and Proposal of Relevance

31. It is not proposed to carry out any external alterations, and in addition there are only minor alterations to the internal layout of the property as a result of the proposed use. Essentially, this property will therefore continue to function in very much the same way as it does as a dwellinghouse.
32. In considering whether the proposed change of use would be material, the most powerful factors are those where the proposed land use has direct land-use effects. It is, however, difficult, on the facts of the case, to see how the proposed use would have any significant effect on the surrounding properties and land uses. It is consequently also difficult to see how there would be any material change of use involved in moving from the existing to the proposed use.
33. Accompanying this Statement is a Supplementary Statement answering questions that have been raised by Planning Authorities in the past. Those questions and answers show that the use proposed is very similar to a dwellinghouse.

34. In the Supplementary Statement vehicle movements and parking are briefly analysed with reference to the Table A which is set out there.
35. There is ample on site parking (3 spaces and a garage). It can be seen that the usual position would normally be two cars on the site with the possibility that this may rise to three. This is very similar to the position which the Inspector found (at paragraph 30 above), and his conclusions bear repeating:

"The day-to-day activity associated with the use would be similar to that of a dwellinghouse, he decided, with people coming and going as children were taken to school and returned in the afternoon. The maximum number of cars at any one time associated with employees would be three and this would not be materially different from its use as a dwelling in a suburban location, he determined, and issued a LDC." (our emphasis)
36. It is therefore submitted that, if the current application is subjected to the second test, that on the facts of the case, the conclusion must be reached that there is no material change of use involved. The second stage test would therefore be passed, there would be no requirement for planning permission for the development involved, and the Certificate should be granted.

Summary and Conclusions

37. The application is made in respect of a dwellinghouse lying within Use Class C3. It is proposed to use the property as a home for 2 young persons in receipt of care with carers as required, but no more than two carers resident overnight. Carers would be rotated in accordance with a rota. Additional care would be provided as and when necessary, if at all, on a non-residential basis.
38. The proposed use is potentially capable of lying within use class C3 (in which case it does not require a specific planning consent due to the operation of the Act and the Use Classes Order), but is more likely to lie within use class C2. If it does lie within use class C2, then there is in any event no material land use difference between the existing C3 use and the use as proposed. Accordingly, whether or not the proposed use lies within C3, or within C2, there is no requirement for planning permission to move from the existing to the proposed use described in this application. Accordingly a Certificate is requested for use as:

"A CERTIFICATE OF LAWFUL DEVELOPMENT FOR THE PROPOSED USE OF A DWELLINGHOUSE (USE CLASS C3) AS A HOME FOR UP TO TWO YOUNG PEOPLE (NO OLDER THAN 18 YEARS OF AGE) WITH CARE PROVIDED 24 HOURS A DAY BY UP TO TWO NON-RESIDENT CARERS AND ONE MANAGER WORKING IN SHIFTS (USE CLASS C2)"