

Application by Sandcastle Care Ltd

for a

**Certificate of Lawfulness for a
Proposed Use**

in respect of

**17 Forge Lane, Norristhorpe
Liversedge.
WF15 7AU**

Planning and Law Limited

The Old Office
Grange Farm
Grange Road
Singleton
Poulton-le-Fylde
Lancashire
FY6 8LP

Introduction

1. Planning and Law Ltd is instructed by Sandcastle Care Ltd to submit an application for a Certificate of Lawfulness for a Proposed Use in respect of an existing property at 17 Forge Lane, Norrithorpe, Liversedge. WF15 7AU.
2. The application is constituted in the following documents:
 - application form dated 25/02/19
 - Site Location Plan with red line
 - Plan A - Existing Floorplan
 - Plan B - Proposed Floorplan
 - Supplementary Statement - Questions Answered
 - Note Relating to Traffic Generation (including Appendices 1 and 2)
 - this Supporting Statement

The Property

3. Sandcastle Care Ltd, the applicant, is the intended operator of the property. The property is in the process of being purchased with the intention that it be used for a care home for young persons (see further below). Sandcastle Care has operated small homes since 2004 and its current operations are predominantly in respect of young people of less than 18 years of age. A typical home would be for up to 6 children, usually 2, 3 or 4, with carers in residence, but with carers changing in accordance with a rota.
4. The property is in residential use and was built for that purpose. The property does not appear to have any planning history of relevance.
5. As noted above, accompanying the application are floorplans (Plans A and B) representing the existing layout and the proposed layout (which are in reality very similar).
6. Plans provided set out both the existing accommodation in the property, and the proposed accommodation. The existing ground floor accommodation (Plan A) is as follows:
 - entrance hall leading to
 - a WC
 - a sitting room
 - a dining room
 - a breakfast/kitchen room
 - a lounge
 - and an integral garage
7. The existing first floor accommodation (also Plan A) is as follows:
 - a landing
 - a bathroom
 - 4 bedrooms with one bedroom with an ensuite facility

8. In terms of proposed usage, at ground floor level, there is no external change to the current layout, but the existing dining room is subdivided to provide a manager's office which accesses the main hallway.
9. At first floor level the physical layout remains physically the same, but the master bedroom becomes a staff bedroom and one of the other bedrooms becomes an upstairs lounge. The two remaining bedrooms are for the two children.

The Application

10. 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.
11. 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.
12. 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.
13. The legal background is contained in the Town & Country Planning (Use Classes) Order (SI 1987 764) and relevant case law as discussed below.
14. **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) "
15. **The Existing Use** - The relevance of the two use classes set out above is as follows.
16. The current use plainly lies within Use Class C3.
17. **The Proposed Use** - There is some flexibility to argue that the proposed use also falls within Class C3(b). 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.
18. The specifically proposed use is for a child and up to 2 members of staff who may sleep at the property, but these members of staff would be rotated according to a rota. In fact it would be likely that there would often only be one member of staff

sleeping at the property, again on 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.

19. Appeal decisions have found that even where staff providing care to other residents are on a shift system living in their own homes, the use may still be within use class C3(b). This was the case with a number of appeals reported in Development Control Practice.
20. 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).
21. Nevertheless, although, as noted above, there is some authority to the effect that this arrangement could lie within Class C3(b), 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.
22. 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.
23. This was essentially because any carers in the property would not always be the same people, because they change according to a rota, 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.
24. **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?
25. 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.
26. 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).
27. 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 that would not materially alter its basis (sic) character as a dwellinghouse. Consequently a LDC was justified."

28. It is therefore submitted that, if the current application is subject 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.

Particular Characteristics of the Site and Proposal of Relevance

29. It is not proposed to carry out any external building works and there are no works of physical alteration to the layout of the property as a result of the proposed use, with the exception of the creation of a manager's office by subdivision of the existing dining room at ground floor level. Essentially, the property will therefore continue to function in very much the same way as it does as a dwellinghouse.
30. In considering whether the proposed use would be material, the most powerful factors are those where the proposed land use has direct land-use effects. It is, however, difficult 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.

Additional Information

31. As noted at paragraph 2 above, supplementary information is supplied as follows (on the basis that it has been found to be useful in other cases in respect of similar applications):
- **Supplementary Statement - Questions Answered** - The document provides answers to questions previously raised in the context of similar proposals elsewhere. This information is intended to be helpful, but does not pretend to give the answers to all possible questions.
 - **Note Relating to Traffic Generation (including Appendices 1 & 2)** - The note is self-explanatory, and it addresses directly the issue of how many vehicular movements the proposal is likely to generate in comparison to its existing use as a dwellinghouse.

Summary and Conclusions

32. 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.

33. The proposed use is potentially capable of lying within use class C3(b) (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 home for 2 young persons in receipt of care as required with no more than 2 carers resident overnight"