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# Supporting Statement

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Use of existing  
Dwelling house as  
a Children's Home

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15 Moresby Close,  
West Swindon,  
SN5 7BX

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## **1.0 INTRODUCTION**

1.1 This supporting statement is submitted in support of the lawful development certificate (proposed use) application for use of 15 Moresby Close, West Swindon, SN5 7BX as a children's home for 2 young people (aged 8-17) and a dedicated small team of support staff living together as a single household.

## **2.0 SITE AND SURROUNDING AREA**

2.1 The application property is a two-storey detached house located on the eastern side of Moresby Close. The existing use falls within Use Class C3 of the Town and Country Planning Use Classes Order. A D4 HMO License was granted on 10.02.2020 due renewal 10.02.2021, however with the last tenant moving out on 31<sup>st</sup> October 2020 the use of the home has now returned to C3. A request was made to revoke the licence.

2.2 The surrounding area is residential in character and is made up of detached properties.

## **3.0 PROPOSAL**

3.1 Lawful development certificate (for proposed use) is sought for the use of existing house as a children's home for 2 young people (aged 8-17) and a team of 2 support staff plus 1 manager living together as a single household. The total number of residents and carers will not exceed 5. We shall be employing for the home a total number of 7 staff consisting of a Registered Manager and six Support Workers. For the majority of time (excluding 10.00 – 10.30 hand-over, we expect there to be three of the staff on site. Additional, occasional visitors to the home would include:

- Regulation 44 monthly inspection for half a day
- Social Worker visits every six weeks
- Six monthly Looked After Children Review meetings

Whilst we expect children to attend mainstream education some children may for a limited time be receive education from home. This would be no more than

2 hours a day after 10.30 am handover is completed and before 1.00 pm. This we envisage would be for a limited time period until the child was able to re-engage with mainstream education.

Based on our review of the regional demand for Childrens Residential Care we envisage the vast majority of children to be aged 8 to 15. However, due to mental health capacity not all children on reaching 16 shall be ready to move into supported living. For this reason the application is for children aged 8 to 17. We believe this shall ensure we meet all possible needs of the local authority.

- 3.2 The home would be the main or sole residence of the children (medium to long term placement). It will operate as a single household with all communal spaces shared, the carers and children will cook and eat together. They would be engaging in activities within the home, both educational and recreational. Children will attend school, clubs, after school activities and excursions in line with the child's interests and those of children of a similar age.
- 3.3 The support staff would work on a 24 hour shift basis from 10:00am to 10:00am the following day. The manager would work from 9:00am to 5:00pm. There would ordinarily be no additional staff attending the premises before 8:00am or after 9:00pm. Hand-over between shifts shall take place at 10.00 am to 10.30 shall be outside the busier morning traffic window of 7.30 am to 9.00 am.
- 3.4 The site can accommodate 3 vehicles on the front drive. We would expect key staff to be transporting children to school daily in their private cars. As a responsible employer we shall ensure each driving staff member has adequate car insurance to carry the children. We do not then envisage taxis or mini-buses coming to the home for collection of the children for education or any other purposes. We shall also minimise traffic by encouraging staff to walk or cycle to work, use public transport or car pool. Externally, the home shall look like any other residential home in the location. No external signage, no additional refuse bins with no planned changes to the exterior of the home.

#### **4.0 RELEVANT LEGISLATION**

4.1 Town and Country Planning Act 1990 (as amended).

#### **5.0 PLANNING ASSESSMENT**

5.1 The principal issue to be considered is:

- Whether planning permission is required for the proposed use of the existing as a children's home.

5.2 The proposal involves use which is associated with family unit, with the children attending school, being looked after, cared for, eating meals together and spending time engaging in family activities in the home and recreationally. They would live together as a household or family. The number of children to be cared for plus the carers would for most of the day be no more than 5 people which would not be materially different to what might be expected within a typical family dwelling.

5.3 Given the shift patterns including hours of work and staff change over frequency, together with the parking provided at the property, the proposal would not cause disruption to the neighbouring occupiers above what might be expected for the existing house or a typical family dwelling with up to 6 occupants. Consequently, the proposed use would not constitute a material change of use. Therefore it does not require planning permission.

5.4 Indeed the courts have held in *North Devon District Council v First Secretary of State and Southern Childcare [2003]* that change of use to a children's home do not always constitute material change of use. An assessment therefore must be made as to whether the level of daily activity at the site would be more intensive and constant than what might reasonably be expected to be generated within a residential area. In this case the scale and daily operation is akin to a single-family dwelling.

5.5 Inspectors have also considered in the following appeals:

- 15 Crownhill Road - APP/K2420/X/11/2155849
- 1 Craven Street - APP/D4635/X/06/2013826

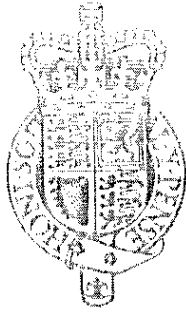
5.6 That the proposed use as children's home fell within Class C2. However, they further considered that the change of use was not material in considering the staff numbers and shift patterns. See **Appendix A** for copy of the appeal decision.

5.7 The council has also recently considered in an identical proposal (7 Kingscote Close -S/LDP/20/0864) that although a change of use from C3 to C2 would take place, it does not amount to a material change of use and no development requiring planning permission would take place.

## **6.0 CONCLUSION**

6.1 In conclusion, given the operation of the proposed use in terms of the number of children, staff numbers, shift patterns and parking provision, the proposal would not significantly intensify the use of the house. It would not amount to a material change of use and no development requiring planning permission would take place. Therefore, there should be no objection to granting of certificate of lawfulness for the proposed use.

## **APPENDIX A**



# Appeal Decision

Site visit on 29 August 2006

by Alan Upward BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail: enquiries@planning-  
inspectorate.gsi.gov.uk

Date

15 Sep 2006

**Appeal Ref: APP/D4635/X/06/2013826**

**1 Craven Street, Parkfields, Wolverhampton WV2 2EN**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs S S Perrin against the decision of Wolverhampton City Council.
- The application Ref 05/2073CE/R, dated 6 December 2005, was refused by notice dated 27 April 2006.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is "TO USE THE 3 BED DETACHED HOUSE AS A SMALL, FAMILY STYLE 2 - BED UNIT FOR CHILDREN AGED BETWEEN 10 - 16 WITH EMOTIONAL + BEHAVIOURAL DIFFICULTIES. (NO SCHEDULE 1 OFFENDERS) 24 HOUR CARE WILL BE PROVIDED AT THIS RESIDENTIAL CHILDREN'S HOME. A SHIFT WILL BE 15 HRS + SLEEP IN. STAFF CHANGE OVER WILL THEREFORE ONLY OCCUR ONCE EVERY 48 HOURS. THIS WILL MEAN MINIMAL MOVEMENT TO + FROM THE PROPERTY."

**Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.**

## The appeal site

1. No.1 Craven Street is a modern detached 2 storey house within a short residential street to the north of Parkfield Road, a distributor road within the city classified as A4039. The street is suburban in pattern with a variety of 2 storey dwellings, those on the western side being terraced and semi-detached. Off-street parking facilities appear mainly to be within front garden spaces.
2. Plans accompanying the application showed the layout of number 1 with a kitchen and 2 living rooms on the ground floor, and 3 bedrooms and a bathroom on the first floor. The house is built closely up to its northern boundary with 1a, a further detached house. On the southern side is a driveway of single vehicle width passing alongside the building. This was said to be able to accommodate 3 parked cars with a fourth in the garage at the site. Relatively close to the driveway is the principal rear elevation of a larger house, number 43, which faces towards Parkfield Road.

## Clarification of the proposal

3. The appeal was on the basis that use as a residential children's home in the detailed manner specified would not amount to a material change of use of the property from a dwellinghouse last occupied by a family of 2 adults and 2 children. The application had explained in greater detail proposed staffing arrangements as part of the intention to model a 2 child, 2 parent family. External interventions in the form of educators and therapists would be minimal. The majority of therapy would be carried out by staff rather than external therapists. There would be nothing to distinguish the property from a dwelling as there would be no signage or external alterations to the building. In the appeal it was said that references to educators and therapists had been made on a "worse case scenario" as therapy away from the home would be the norm, as more effective, and following discussions with the LPA in March 2006 it had been agreed that all education would take place away from the home in a mainstream setting.
4. The proposal was therefore regarded as falling within the same Use Class C3 as a dwellinghouse, that being the last and lawful use of the property. There would be no material change of use as the impact upon local amenities would not differ from the former occupation by a household of 2 parents and 2 children. The additional presence at the site of the home manager as a third adult would not be a material change by comparison to the former tenants who had had family



members from abroad staying with them for long periods of time, and who had employed a child carer. The maximum number of cars parked on the driveway on a daily basis at 3 vehicles would have been the same as proposed. Regular family visits to the site would not be the norm. Communication with social workers would be largely by telephone, very rarely via a physical home visit. Integration of children into mainstream education would be the norm, with no regular visits by educators to the home.

## Appraisal

5. In relation to the claim that the use would fall within Use Class C3(b), this involves *Use as a dwellinghouse ..... by not more than six residents living together as a single household (including a household where care is provided for residents)*". Within the detailed description of the appeal proposal it is referred to as a "residential children's home". Children residing at the property would expressly require care, and could not on their own be regarded in the true sense as a household without the presence of a carer. The concept of "living together as a household" would require a proper functioning household to exist, and in the context of this appeal this would mean that the 2 children and a carer or 2 carers must reside in the premises. Although 24 hour care was to be provided with 2 adult carers present at all times, they would not be resident as such. They would be staff working a shift pattern and then leaving the premises at the end of each shift. They could not therefore be regarded as living together with the children in a household.
6. The use would therefore not fall within C3(b). Having regard to the wording of Class C2 *Residential institutions*, and the interpretation of "Care" at Article 2 of the UCO 1987, it is clear that the proposed use would be one for the provision of residential accommodation and care of 2 children within Use Class C2. That would of course not be the end of the matter, as it is necessary to assess whether in terms of its detailed operation it would amount to a material change of use of the property from that as a C3 dwelling, last used as a family house by 2 parents with 2 children.
7. The residential accommodation of 2 children "WITH EMOTIONAL AND BEHAVIOURAL DIFFICULTIES (NO SCHEDULE 1 OFFENDERS)" would not automatically result in a use of a materially different character. This would depend upon the detailed operational and management measures applied at the home and their likely impact in practice. These effects would need to be compared with what had happened when the property was last used and what might generally be expected to occur in association with family occupation of a 3 bedroomed detached house in this locality. No physical external alterations were being proposed.
8. Modifications of proposed working arrangements between the application and latest appeal representations are capable of affecting the overall character of the use in terms of the numbers of persons visiting the premises and the extent of such activity. This would apply to off-site mainstream education and current intentions that most therapy would either take place off-site or involve only resident carers. On this latter subject the situation appeared not to be sufficiently clear cut to allow it to be formally incorporated into the description of the use, although the probability is that it would lead to fewer external visitors coming and going at the property. The Council appear to have assumed that children might stay for between 1 month and 12/18 months. More recent representations from the Appellant indicated that the home would be required by the Commission for Social Care and Inspections [CSCI] to focus on medium to long term provision with placements normally of between 6 months and up to 2 years. This would have the effect of reducing activity explicitly associated with 'changes-over', and involve a more stable pattern of residential occupation.
9. On the overall question of whether activity would affect the amenity of the neighbourhood to a greater degree than a family dwelling, many aspects of occupation would be similar to a dwelling use. Day to day activity associated with occupation of the premises would be of the same kind, and matters such as household cleaning and maintenance, shopping for food and its preparation were intended to follow the pattern which a family household would operate without external agencies.
10. Arrivals and departures of residents, staff and visitors would be an important element of activity requiring comparison, particularly where cars were used and parked at or around the site. The maximum of 3 employee cars likely to be parked at the site would not differ materially from what

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was recorded as having happened in the recent past or what might be expected at a dwelling of this kind in a suburban location. As with residential occupiers, not all employees might bring cars to the site. Such a level of parking could be accommodated within the site. Although involving more off-road space than most houses along Craven Street, the parking of 3 cars on the driveway, some of which would be placed at the side of the house rather than in front of its street building line, would not materially alter the character of the street as a residential road. Shift changes could be associated with a number of extra vehicle movements, including the moving around of cars between the street and driveway. On the basis of the shift pattern being proposed, these would be relatively few in number.

11. Trips undertaken by staff to take children to school by car would probably differ little from the choices made by parents living in a family household. In their use of local amenities there would be no clear reason why resident children and carers should operate differently from a parent and child household in terms of the choice of car use or walking. There would be some visits by external agencies such as CSCI and social workers, but on the evidence these would be few in number per annum. Nothing suggests that these and other visitors to the property would be of a magnitude likely to impact materially upon the neighbourhood or affect the overall character of the use.
12. Concerns expressed by a third party over the promotion of ant-social behaviour around the home would clearly be capable of affecting the amenity of local residents if realised on a significant scale. The scope for such problems would depend upon the quality of management of the home. Having regard to the extent of staff presence at the site on a 24 hour basis, the physical relationship of the dwelling to the street and its neighbours, and the small scale of the facility involving only 2 children, I do not consider that incidents of the kinds feared would be an inherent part of the use bearing on its overall character. A similar conclusion would apply to the Council's fears that the emotional and behavioural difficulties of the children may result in outbursts triggering visits by professionals or emergency services, particularly at unsociable hours. I doubt that such events would be of a magnitude, frequency or impact to affect neighbours materially.
13. So long as management of the home was to the standards anticipated by the Appellant, it would be unlikely that incidents of the above kinds would materially change the local living environment by comparison with occupation by a family.
14. Drawing matters together, I consider that the use being proposed would not be of a materially different character to the lawful use of the property as a 3 bedroomed dwellinghouse. The Council's refusal was not therefore well-founded. I shall allow the appeal, and grant an LDC on the basis of the express terms sought. Child numbers, ages, periods of residence, staff numbers, shift patterns and educational arrangements will be specified in the LDC to define more precisely the use which is found to be lawful.

### **Formal Decision**

15. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed use which I consider to be lawful.

*Alan Upward*

INSPECTOR



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# Appeal Decision

Site visit made on 25 October 2011

**by Chris Hoult BA BPhil MRTPI MIQ**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 7 November 2011**

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**Appeal Ref: APP/K2420/X/11/2155849**

**15 Crownhill Road, Burbage, Hinckley, Leicestershire, LE10 2LD**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Chartwell Care Limited against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00279/CLU, dated 24 March 2011, was refused by notice dated 6 June 2011.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a certificate of lawful use or development is sought is the use of a dwellinghouse as a children's care home.

**Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.**

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## Application for costs

1. An application for costs was made by the appellants against the Council. This application is the subject of a separate decision.

## Preliminary matter

2. The description of the proposed use on the application form refers the reader to a statement from the appellants. I adopt the shorthand description on the Council's decision notice.

## Main issue

3. The single main issue for consideration is whether the Council's decision to refuse to grant a LDC was well-founded.

## Reasons

4. The appeal property is a large modern detached house with an open frontage to the street on a residential estate on the southern edge of Burbage. It is proposed to operate it as a care home for children/young people between the ages of 9 and 17 with learning disabilities, in which the age range at any one time would be no more than 3 years<sup>1</sup>. Although the evidence indicates that the property was previously in use as a care home for children, the parties are agreed that its lawful use is as a dwellinghouse in Use Class C3 of the Use

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<sup>1</sup> Although the initial application referred to children between the ages of 10 and 18 with an age range of 5 years at any one time, these figures were revised in a subsequent e-mail to the Council from the appellants dated 20 May 2011.

Classes Order<sup>2</sup>. The appellants contend that the proposed use could be argued to fall within part (b) of Class C3. In the alternative, if the use were to fall within Use Class C2 (residential institutions), any change of use from Class C3 would, they argue, not be a material change of use and would not therefore amount to development for purposes of the 1990 Act.

5. Under the Order, Class C3 includes use by "...*(b) not more than six residents living together as a single household where care is provided for residents*". Care homes more typically fall under Class C2 as use "*for the provision of residential accommodation and care to people in need of care*". The definition of "care" as set out in Article 2 of the Order includes, in Class C2, the personal care of children. There is therefore some overlap between classes C2 and C3 in so far as they relate to care homes, a point which the appellants emphasise in making their case. For a change of use from a use in Class C3 to a use in Class C2 to amount to development, and thereby require planning permission, the change of use has to be material<sup>3</sup>. That applies to the overall character of the use not just to certain aspects of it.
6. No alterations are proposed to the appeal property. A previous application for a LDC, made in November 2010, was refused by the Council on the basis of insufficient information. The Council took the view that, in the absence of evidence to the contrary, a material change of use from a C3 use to C2 requiring planning permission would occur. The current application seeks to demonstrate by reference to details of the operation that it would amount to a use of a character which would be largely the same as if the property were used as a family dwelling (Class C3). Any change of use to use in Class C2 would not therefore be material and would not amount to development. In refusing to grant a LDC, the Council refers to the number of staff required to operate the home as a basis for its view that the proposal would "materially alter the character of the property" (as it is put in the reason for refusal).
7. I deal firstly with which Use Class the use should fall into before going on, in the event that it falls into Class C2, to consider whether any change of use would be material.

#### *Whether C2 or C3(b)*

8. The home would provide for care for up to 3 children, administered by non-resident care staff who would work in shifts, thereby providing round-the-clock care. The appellants give details in the application of the numbers involved and the pattern of working. The case of *North Devon DC v FSS and Southern Childcare Ltd* [2003] EWHC 157 Admin provides authority for the view that use as a care home for children, where carers are non-resident, falls within Class C2. Children need to be looked after and could not, on their own, be regarded in the true sense as a household without the presence of a carer. Carers who provide 24-hour care but who are not resident could not be regarded as living together in a household. The concept of living together as a household means, in the context of Class C3(b), that a proper functioning household must exist.
9. The facts of this case align with those of *North Devon* and, while the appellants refer me to an appeal decision from 1992 which comes to a contrary view, any authority deriving from it must be regarded as being superseded by that case.

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<sup>2</sup> The Town and Country (Use Classes) Order 1987 as amended.

<sup>3</sup> See s55(1) of the 1990 Act wherein "development" is defined as (among other things) "...the making of any *material* change in the use of any buildings or other land." (My emphasis)

In the light of this, I conclude that the proposed use falls into Class C2 and that a change of use from a use in Class C3 has taken place.

*Whether material change of use*

10. By way of a forerunner, it may be noted that, in *North Devon*, the Inspector determined that, although the use fell within Class C2, the change from Class C3 use was not material. *North Devon* therefore provides authority for the two-stage assessment process which I have outlined. The appellants explain that the model of care provided seeks to replicate, as far as possible, typical family life in an ordinary local community. It is emphasised that young people with emotional and behavioural difficulties would not be cared for.
11. At any one time, and excluding short-term changeover periods in the early mornings and mid-afternoons, there would be up to three children and three carers present. The pattern of working means that vehicle movements to and from the property would peak at the following times: (a) 07.00 to 08.00 – two staff and the manager arriving and one night staff departing; (b) 14.30 to 15.00 – three staff arriving and two departing; and (c) around 22.00 – two staff departing. To these movements should be added school transport and transport related to outings etc. at weekends and during school holidays. The appellants give assurances that no activity involving vehicle movements would occur before 07.30 or after 22.00.<sup>4</sup>
12. In refusing a LDC, staff numbers are cited by the Council as the sole cause for concern. 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. Peak daytime vehicle movements, setting aside the potential for the use of car sharing or public transport by staff, coincide broadly with school run periods when there would be similar activity associated with neighbouring properties and the locality in general. Transport associated with school and weekend outings would not be an untypical occurrence in a family house. Up to two vehicles departing from the property late at night would not, on its own, be a sufficient basis for determining that a materially different character of use would be taking place.
13. I acknowledge that the Council, in its statement, highlights that these figures are qualified by reference to “normally” and that the potential exists for greater staff numbers to be at the property to deal with particular difficulties. However, this should be regarded as an exception and not part of the typical day-to-day operation of the home. As regards the Stockport appeal decision which is referred to by the Council<sup>5</sup>, that can be distinguished from this case as it appears to involve young people with a history of behavioural difficulties.
14. A number of arguments are put forward by neighbouring residents in support of a view that a material change of use would occur. However, there is no reason to suppose that suppliers and visitors would be attending on a 24-hour basis. The appellants explain that parents are unlikely to visit the home as the care will, to an extent, be respite care for their benefit. There are two parking spaces, with the possibility of more on the gravelled area alongside them and ample safe on-street parking close by. The appellants have given assurances

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<sup>4</sup> See e-mail from appellants to Council dated 20 May 2011.

<sup>5</sup> Appeal Ref. APP/C4235/X/10/2132351 – 73 The Crescent, Stockport, SK3 8SL

## **APPENDIX B**



# CERTIFICATE OF LAWFUL DEVELOPMENT

**Town & Country Planning Act (as amended) 1990, Section 192.  
Town & Country Planning (Development Management Procedure) (England) Order  
2015**

**Application  
Number:** S/LDP/20/0864/CHHO

**Ward:** Shaw  
**Parish:** West Swindon

**First Schedule:** Certificate of lawfulness (Proposed) for use of dwelling house as a children's home.

**Second Schedule:** 7 Kingscote Close, Nine Elms Swindon SN5 5UP

**Agent:**

**Applicant:**  
Mr Matthew Foley

Next Step Independence Limited  
Gotham Chambers  
Phoenix Lane  
Hammett Square  
Tiverton  
EX16 6LR

Swindon Borough Council as Local Planning Authority, under the provisions of Part III of the Town & Country Planning Act (as amended) **DO HEREBY GRANT A CERTIFICATE OF LAWFUL USE OR DEVELOPMENT.** This certificate is in respect of the **PROPOSED** development described above in the first schedule in respect of land specified in the second schedule and in respect of drawings detailed in the informatives section below.

## **Reason(s)**

1. Although a change of use from C3 to C2 would take place, it does not amount to a material change of use and no development requiring planning permission would take place. The development is lawful and a certificate of lawful development can be issued.

## **Informatives**

1. This decision shall be in respect of Location Plan (1:1250), Floor Plans, Lease Plan,

Cover Letter (dated 15th July 2020), Application Form all received by the Local Planning Authority on the 16th July 2020 and Supporting Statement (4th September 2020) received by the Local Planning Authority on the 4th September 2020.

2. CIL - Outside Meaning of Development: The development proposed does not constitute Community Infrastructure Levy (CIL) liable development as the proposed works fall outside the 'meaning of development' for CIL purposes in accordance with the Community Infrastructure Levy (England and Wales) CIL Regulations 2010 (as amended) Regulation 6.

**Authorised by Richard Bell,  
Head of Planning, Regulatory Services  
& Heritage**

**Decision Dated:** 18th September  
2020



**Notes**

- (a) This certificate is issued solely for the purpose of Section 192 of the Town & Country Planning Act 1990 (as amended) and does not include any consent or approval under any other enactment, byelaw, order or regulation. In particular approval under the Building Regulations, please contact Building Control on 01793-466128 for more information.
- (b) This certificate applied only to the extent of the development described above. Any development which is materially different from that described or which relates to other land, may render the owner or occupier liable to enforcement action.
- (c) The effect of this certificate is also qualified by the provision in Section 192 (4) of the 1990 Act, as amended, which states that the lawfulness of the described development is only conclusively presumed where there has been no material change, before the development has commenced in any of the matters relevant to determining such lawfulness.
- (d) This certificate has been issued on the basis of the plans, application form and other supporting evidence accompanying the application.



S/LDP/20/0864/CHHO