



Supporting Statement

Certificate of Lawfulness of Proposed Use or Development
for change of use of from dwellinghouse (Class C3) to
Residential Care Home (Class C2) for up to 4 young adults

Site: Shangri-La, Drope Road, St George-super-Ely, Vale of
Glamorgan, CF5 6EW

for Bettercare Keys Ltd

EP Ref: 14-351

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Project : 14-351

Site address : Shangri-La, Drope Road,
St George-super-Ely,
Vale of Glamorgan,
CF5 6EW

Client : Bettercare Keys Ltd

Date : 08 December 2014

Author : Paul Forshaw

Approved by : Jill Naylor

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Contents:

1. Introduction	1
2. Context	2
3. The Application	3
4. Legislative and procedural context	5
5. Planning considerations	7
6. Summary and conclusions	11
7. Appendices	12

1. Introduction

- 1.1 This statement is submitted in support of an application made under Section 192 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) to certify that the use of Shangri-La, St George-super-Ely, Vale of Glamorgan as a children's home for up to 4 children is not materially different to the property's existing lawful use as a Class C3 dwellinghouse and therefore does not require planning permission.
- 1.2 This statement provides details of the current lawful use of the property and evidence to demonstrate that, whilst the proposed use does not fall within the same Use Class (as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended)) as the property's existing lawful use, there is no material difference in planning terms between the two uses. Therefore planning permission is not required for the proposed use as no material change of use would occur.

2. Context

The Applicant

- 2.1 Bettercare Keys Ltd currently operates a number of homes throughout the United Kingdom that provide specialist care for children. The proposed use would operate in a similar manner to the applicant's other homes.

Site Location and Description

- 2.2 The site is located in the village of St George's-super-Ely, approximately 1km west of the A4232. It is located within a small group of residential properties on the eastern side of the village. Open fields are located to the rear.
- 2.3 It comprises a traditional detached dwelling containing 6 bedrooms over two floors, with enclosed front and rear gardens. It has a gated driveway with private parking spaces for up to 5 cars.
- 2.4 A site location plan is attached at appendix EP1 and an extract from the Estate Agent's marketing particulars, which include further details of the property are attached at appendix EP2.

Relevant Planning History and Current Lawful Use

- 2.5 A search of the Vale of Glamorgan Council's online records of planning applications has identified no historic planning applications for the site.
- 2.6 A review of the Council Tax Validation List has revealed that the current property valuation as a dwelling dates from 2005. The details are attached at Appendix EP3. This, together with the information provided in the Estate Agent's particulars and the lack of any planning history to the contrary leads to a conclusion that the lawful use of the property is as a single dwellinghouse (Class C3).

3. The Application

- 3.1 This application seeks formal confirmation under Section 192 of the Town and Country Planning Act 1990 that the proposed use of Shangri-La as a children's care home for up to 4 young people (plus care staff) would not require planning permission.
- 3.2 The existing property has the layout, facilities and services of, and has the character of, a "normal" residential dwellinghouse. The proposed use would not change this and the external appearance of the building would not be altered.
- 3.3 Day-to-day living facilities, including bathroom, kitchen, dining and sitting rooms would be shared. Each child would have their own bedroom.
- 3.4 Bedrooms in the dwelling would be fitted with locks to meet legal requirements, including human rights legislation; however, the carers would have a key to each room.
- 3.5 The preparation of meals would be principally undertaken by the carers; however, the children would be encouraged to assist. The carers and children would eat their meals together at the dining table and the children would socialise together.
- 3.6 Up to four children, aged between 10 and 18 years, would live at the property as their principal residence. Children who are in the guardianship of Bettercare Keys have been taken into care for a variety of reasons, including fears for their physical wellbeing, a lack of suitable guardians or because of emotional or behavioural difficulties. They would usually be long-term residents and the majority would be expected to live independent lives as adults. Typically, the reason for the children needing care is simply that they are not yet old enough to live independently.
- 3.7 During both the day and night 2 care staff would normally be present at all times. Shangri-La would not be their permanent residence. They would live elsewhere but work at Shangri-La on a shift basis to cover the full 24 / 7 presence required. An additional member of staff may be present to facilitate activities after school, at weekends and during school holidays. A manager would also be present at varying times. On weekdays the children would usually attend school off-site during normal school hours and terms. Staffing ratios and schooling arrangements may change over time to respond to the needs of individual children.

- 3.8 The property has sufficient off-road parking and outdoor play space. This would be used in exactly the same way as if the property was occupied by a single household.
- 3.9 The use of the dwelling would therefore be very similar in character to a “normal” dwelling of this size, with similar activities taking place and similar numbers of vehicle trips to and from the site, as well as similar car parking needs.

4. Legislative and procedural context

Town and Country Planning Act 1990 (as amended)

- 4.1 Section 192 of the Town and Country Planning Act 1990 (as amended) (hereafter referred to as the 1990 Act) provides that an application may be made to the local planning authority (LPA) to ascertain whether any proposed use of land or buildings would be lawful. If such an application contains information to satisfy the LPA that the proposed use would be lawful if begun at the time of the application, they shall issue certificate to that effect.

Town and Country Planning (Use Classes) Order 1987 (as amended)

- 4.2 The Town and Country Planning (Use Classes) Order 1987 (as amended) (hereafter referred to as the Use Classes Order) classifies land uses and identifies certain uses which do not fall within any of the specified classes.
- 4.3 The classes of the Order relevant to this application are Class C2: Residential Institutions and Class C3: Dwellinghouses.
- 4.4 Amendments were made in 2010 to the 1987 Order. The effect of these amendments was to amend Class C2A, introduce a new Class 4 and to further sub-divide Class C3. It is the subdivision of Class C3 that is of some relevance to this application. The amended Class C3 reads 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).”***

- 4.5 The Use Class Order thus differentiates between dwellinghouses where residents live together as a single household and small houses in multiple occupation (which are not included in the new

Class C4), but class C3 specifically includes separate reference to a household of 6 or fewer people where care is provided for residents (Class 3(b)). Whilst the Order identifies three different types of dwellinghouse uses, it should be noted that the subdivisions remain within the overall Class C3. Consequently, permission is not required for a change between any of the subdivisions of the Class.

4.6 Class C2: Residential Institutions remains unchanged by the 2010 amendment and reads:

“Use for the provision of residential accommodation and care to people in need of care (other than within Class C3 (dwellinghouses)). Use as a hospital or nursing home. Use as a residential school, college or training centre.”

5. Planning considerations

5.1 Attached at appendices EP4 and EP5 are the following relevant documents:

- Barrister's opinion prepared by Mr J Barrett of Kings Chambers, Manchester (EP4); and
- Case law: North Devon District Council and the First Secretary of State (Queens Bench Division, 30th January 2003) – [2003] J.P.L. 1191.

5.2 The North Devon case and counsel's opinion provide very useful indicators for determination of this application. In addition, the specific circumstances of this case are a primary consideration.

5.3 In terms of the assessment of whether the premises could properly be regarded as a dwellinghouse, the physical condition of the premises accords with the characteristics outlined in paragraphs 24 and 25 of Circular 02/2010. Indeed the property has been used as a single family dwellinghouse for many years. It is not proposed to make any significant changes to the physical condition of the premises and it would retain all the elements for day-to-day private domestic existence when used as a children's care home. Therefore, in terms of its physical condition, the premises would retain all the characteristics of a dwellinghouse.

5.4 It is clear from paragraph 25 of the Circular that the classification of particular premises as Class C3 includes the manner of its use as well as its physical condition. In terms of occupation of a dwellinghouse (Class C3(a)), such a household may comprise adults and children living together with the children being cared for by either their parents or foster parents and possibly a nanny, governess or au-pair.

5.5 In the case of Shangri-La, the children would be resident in the dwellinghouse and would require all the facilities for day-to-day living. However, their carers would not be part of their family and would not be resident at the premises. We acknowledge, as determined in North Devon, that since only children would be resident at the property, they would not constitute a "household". A property must be occupied by a single household for it to be classified as C3. We therefore acknowledge that the proposed use is not C3 (dwellinghouses), but falls within Class C2 (residential institutions).

5.6 The outcome of North Devon, however, is that despite there being change of use between Class C3 and C2; that change was not material and planning permission was therefore not required. Mr Justice Collins made it clear that his judgment was based on the individual facts of

the case and that whether or not a change is material is a matter of fact and degree. Therefore, in respect of Shangri-La, it must be determined whether the change of use from a single family dwelling to the small children's care home proposed would be a material change, based on the facts of the specific case.

- 5.7 The existing large detached dwelling is capable of accommodating a large extended family; up to 6 adult house-sharers living as a single household in accordance with Class C3; or perhaps a family of two adults and 4 or more children. It has 6 bedrooms and generous living accommodation so this level of occupancy is a realistic expectation. As with many modern households, if it was an all adult household, it could be expected that many, if not all house-sharers could have their own private car, and use it on a daily basis for commuting, shopping, social and other journeys. If a family with children were resident it would not be unusual for the property to contain two or 3 private cars, which again could be used on a daily basis for the above mentioned journeys as well as for the school run. Such a household would be likely to generate a number of such trips each day.
- 5.8 We have mentioned that the physical condition of the premises would remain consistent with a dwellinghouse. With four resident children and 2 staff on site at any one time, the occupancy of the home would not be materially different to what could be anticipated with a Class C3 use. The difference would have no material planning impacts.
- 5.9 The level of care in the home would be supervisory in nature and it would not be a secure unit. The children would be long-term residents, and Shangri-La would be their home. They would develop social attachments to each other, to their care staff and within the local community. Upon maturity the children would be expected to go on to lead independent adult lives.
- 5.10 The vehicular movements that are necessary for shift changes, to take four children to and from school and for other errands are little different to what would be expected with a Class C3 dwelling. Children would usually be transported to and from school by carers.
- 5.11 The manner of the use of the dwelling would not be materially different in planning terms to its use by a single household and therefore it must be concluded that no material change of use would occur.

5.12 The applicant recently requested the opinion of the Vale of Glamorgan Council as to whether planning permission would be required for an identical application for a property on Gladstone Road in Barry. An informal written response was received on 1 April 2014 (Ref: P/DC/SJT/2014/00049/PD). This response confirmed that if the number of people residing at the property does not exceed 6 (including children and employees), the proposed use would not require planning permission:

“Your letter states that the number of people residing at the property at any one time will not exceed 6 which includes children and employees, I am therefore of the view that such a use being operated from the dwelling would have little or no impact on the character of the dwelling house or the residential area as a whole. It therefore would appear, without prejudice, that there would be no material change in the character of the dwelling and such a limited level of use would be de minimis. I am therefore of the view, based solely on the details set out in your email, that planning permission would not be required.”

5.13 A copy of this written response is attached at appendix EP6.

5.14 Following receipt of this advice, the Bettercare Keys applied for and received a positive certificate (ref: 2014/00409/LAW) confirming that the proposals would not result in a material change of use, and therefore planning permission was not required, was issued on the 11th June 2014. A copy of the decision is attached at Appendix EP7.

5.15 The grant of a positive certificate for Gladstone Road acknowledged that a change of use from a C3 dwellinghouse to a care home for up to 4 children can be considered to not be a material change. This application is very similar, if not identical to the Gladstone Road case. The proposed care home would contain a similar number of staff and children and would be operated in an identical way. Both properties are also of a comparable size in relation to the number of bedrooms.

5.16 We emphasise that it is not our position that there is no material difference between Class C3 and Class C2 in a general sense. Our position is very clearly that in this individual case, because of the specific characteristics of the proposed use, it would not be materially different than the current lawful use of the premises. We draw comparison to the Gladstone Road case, as the characteristics of both of these cases are very similar, if not identical.

- 5.17 On the merits of this individual case, based on the significance of the change and resulting impact on the use of land and building, it should be concluded that no material change of use would take place, and therefore planning permission is not required.
- 5.18 As stated above, we have searched the LPA's historic planning application records and have been unable to find any historic planning applications. We have therefore been unable to find any planning condition or other limitation that would prevent the use of the property as proposed in this application.

6. Summary and conclusions

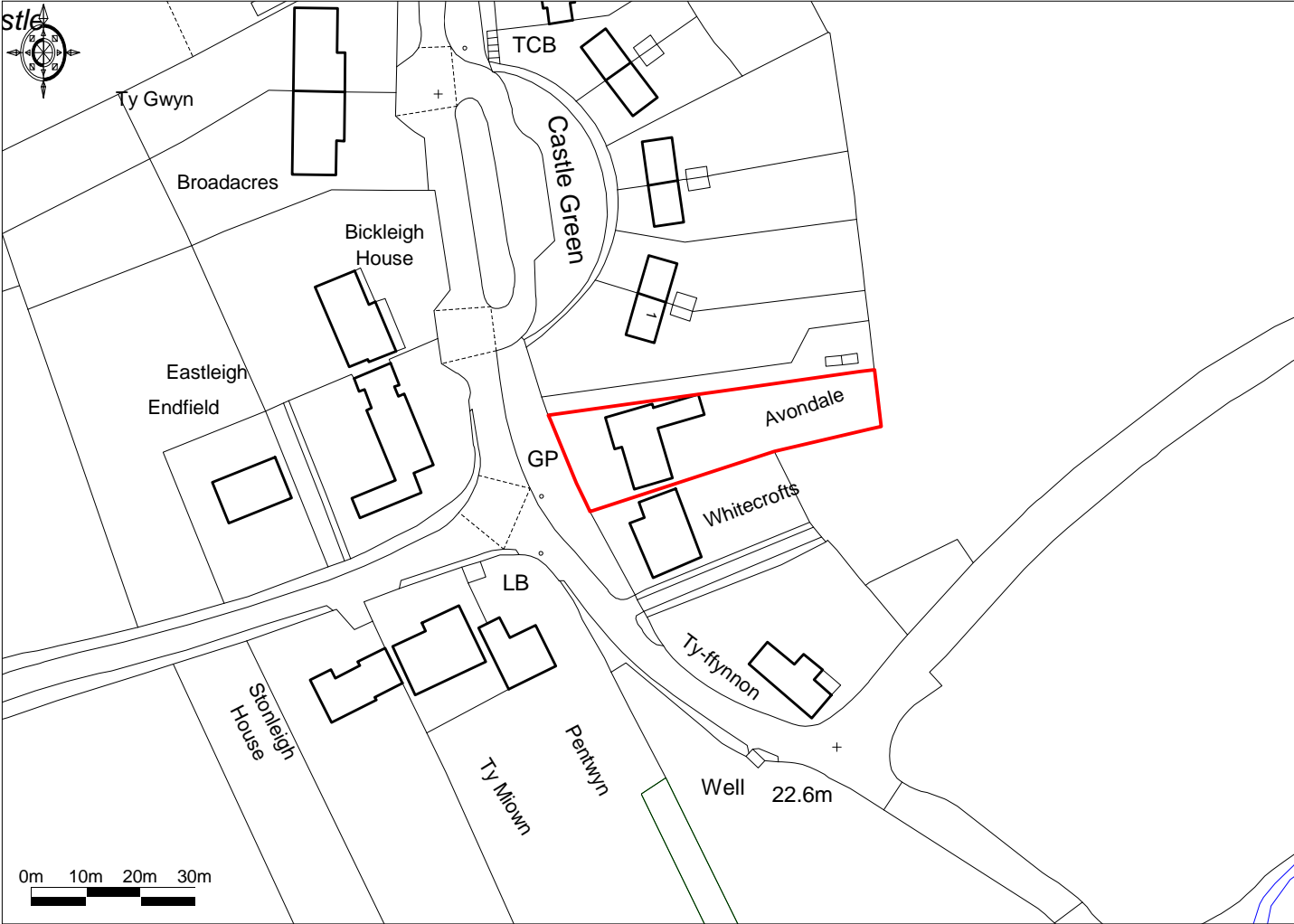
- 6.1 In accordance with Section 192 of the 1990 Act, and by virtue of case law presented in the North Devon case and the opinion submitted, the proposed use would not have any land use consequences that would lead to the conclusion that a material change of use would occur. Because there would be no material change of use, the proposed change from Class C3 to the specific use proposed (which falls within Class C2) would not be significant and planning permission would not be required. The same conclusion was reached by the LPA in the virtually identical case at Gladstone Road (ref: 2014/00409/LAW).
- 6.2 We conclude that in accordance with the said statutory framework, a certificate of lawfulness should be issued for the use of the property as proposed in this application.

7. Appendices

- EP1. Location plan
- EP2. Extracts from marketing particulars
- EP3. Council Tax Valuation List information for Shangri-La
- EP4. Barristers opinion prepared by Mr J Barrett of Kings Chambers, Manchester
- EP5. Case law: North Devon District Council and the First Secretary of State (Queens Bench Division, 30th January 2003) – [2003] J.P.L. 1191
- EP6. Informal advice letter received from the LPA in relation to Gladstone Road, Barry
- EP7. CLOPUD for Gladstone Road, Barry (ref: 2014/00409/LAW)

EP1

Shangri-La, St George-super-Ely, CF5 6EW



EP2



Deceptively Spacious

6 Bed - 3 Bath

Superb kitchen/living

Granny flat included

Countryside Views

Easy Access Cardiff

Deceptively spacious individual detached property enjoying wide ranging countryside views yet just a few minutes into the capital city. Usefully flexible including granny flat and comprising six bedrooms, two bathrooms, two reception, galleried reception hall, superb kitchen/living, extra kitchen etc.

Shangri-La offers very flexible accommodation with the ground floor wing of bedroom, bathroom and second kitchen ideal for use as a granny flat or working from home office suite. The location is a delight with a good size garden backing onto open fields enjoying wide ranging countryside views towards the woods above St Fagans. This tiny hamlet is pleasantly rural and comprises a mix of mostly individual detached houses including an interesting Grade I listed medieval house. It is only a few minutes drive into Cardiff with its excellent facilities. Equally close at hand is the village of Peterston Super Ely with excellent village facilities including Parish church, two village pubs, village shop, well regarded primary school which feeds both into Cowbridge Comprehensive and the Bishop of Llandaff, garage, village hall, playing fields etc.

An ideal family house for someone wanting to live in the country but still be within easy reach of excellent local facilities and ideal for commuting to major centres particularly the capital city.

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71 High Street,
Cowbridge,
Vale of Glamorgan.
CF71 7AF



ACCOMMODATION
GROUND FLOOR

ENTRANCE PORCH: Double glazed storm doorway with glazed side screen and side window. Slate style tiled floor. Feature stonework.

RECEPTION HALL: 13'3" x 10'. An impressive entrance approached via glazed inner doorway with matching side screen. With the height almost rising to 17' and half turned staircase leading up to the galleried landing with decorative leaded window. Light oak style laminate floor. Feature brickwork.

DRAWING ROOM: 23'3" x 13'. A well proportioned principal reception room stretching the full depth of the house with double glazed picture windows enjoying views out to the front and double glazed french doors leading out to the rear terrace and garden enjoying delightful views out over the garden, countryside and towards the woodland of St Fagans. Stone built decorative fireplace. Fitted carpet.

DINING ROOM: 13'3" x 10'. Double glazed bow window enjoying views over the front garden.

KITCHEN/BREAKFAST ROOM/LIVING ROOM: 23'6" x 13'9". Very much in the modern style of open plan kitchen/living/dining space creating the hub of the house with access directly off the reception hall and enjoying wide ranging views over the garden and countryside beyond. Recently fitted with a quality Sigma 3 kitchen in traditional shaker style units finished in cream with soft close drawers and oak style work tops with tiled splashbacks. Features include ceramic sink in white, built in oven finished in stainless steel and glass, built in fridge/freezer with decor panels, built under dishwasher with decor panel, four ring induction hob with stainless steel extractor set into glass curved canopy over. Matching moveable island unit with lots of cupboard space under and overhangs either end to create breakfast bar and fitted with recessed power points. Plenty of space for dining table and chairs, sitting area etc. This attractive room is prettily finished with slate style floor tiles, walls partly colour wash brick and painted boarded ceiling with spotlights.



GRANNY FLAT/WORKING FROM HOME OFFICE SUITE

The remainder of the downstairs accommodation has been laid out in such a way that it could easily be used as a granny flat or working from home office suite. A doorway from the kitchen leads to the rear hall which also has a doorway out to the garden which means that the flat/office accommodation can be fully self-contained if required. Leading off this hall is a cloakroom, kitchen/utility room, bedroom and en-suite bathroom. There is also incidentally a doorway through into the garage which could easily be made, subject to any necessary consents being obtained, into a sizeable living room/large additional office with its own front door completing the granny flat/office accommodation. Alternatively, as described here, this further accommodation provides useful space be it bedroom or living space.

REAR HALL: L shaped. Double glazed patio doors leading out to the rear terrace and garden enjoying delightful views. Ceramic tiled floor. Colour washed timber ceiling.

CLOAKROOM: Low level wc suite in white. Tiled floor. Tiled walls. Colour wash boarded ceiling. Glass brick wall.

KITCHEN/UTILITY ROOM: 11'6" x 8'. Newly fitted with a range of units with oak style wood surfaces. Features include inset stainless steel single sink and drainer, glass hob with stainless steel filter set into curved glass canopy over, built under glass fronted oven, space and plumbing for washing machine. Tiled floor. Walls part tiled and part colour wash brick. Worcester oil fired central heating boiler. Opaque glazed window to side. Integral doorway to garage.



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BEDROOM 6/LIVING ROOM: 10'9"x10' plus entrance lobby. Delightful countryside and garden views via the double glazed patio doors which lead out to the rear terrace. Ceramic tiled floor. Timber clad pitched ceiling. Walls part colour wash brick.

BATHROOM 3: 9'3"x7'. Modern suite in white comprising low level wc, pedestal wash hand basin and contoured bath with painted wooden side panel with electric shower unit over bath. Ceramic tiling to floor and walls. Colour wash timber finish to ceiling with spotlights. Window finished in glass block.

FIRST FLOOR

GALLERY LANDING: 14' x 13'3" including stairwell. Country themed stained glass window.

MASTER SUITE BEDROOM 1: 12'3" x 12'3". Enjoying wide ranging views over the rear garden and countryside beyond. Fitted carpet.

MASTER SUITE BATHROOM 1: Luxury modern suite in white comprising pedestal wash hand basin, low level wc and oversized shower enclosure with fully tiled walls and Bristan Colonial fixed head shower. Opaque glazed window. Colour wash timber ceiling with recessed spotlighting. Tiled floor.

BEDROOM 2: 13'x 10'9". Enjoying views to the front. Fitted carpet.

BEDROOM 3: 11' x 10'. Front views. Fitted carpet. Access to roof storage space.

BATHROOM 2: 9'9" x 9'. Luxury white suite comprising vanity unit with concealed cistern, low level wc, inset wash hand basin with cupboards under. Corner bath with hand shower. Tiled shower cubicle with mixer controls. Colour wash timber boarding to dado and ceramic tiling to walls. Colour wash timber ceiling. Spotlighting to ceiling. Airing cupboard.

BEDROOM 4: 12'x 10'. Delightful countryside views to the rear. Fitted carpet. Archway through to bedroom five allowing this to be used as a suite if required.

BEDROOM 5: 15'6" x 8'. Lovely rear countryside views. Pitched ceiling so restricted head room in parts. Spot lighting to ceiling.

OUTSIDE

Wide grass verge to village road. A stone wall to front with new wrought iron double gates leading to the good side courtyard parking area to the front laid to brick pavements. The front garden is laid principally to lawn with attractive established silver birch trees. **ATTACHED GARAGE** (18' x 11'9") narrowing at either end. Up and over doorway. Electric light and power. Roof storage space. Glass block window to side. Internal doorway to kitchen two. Wrought iron gate leading to pathway access to the rear of the house. Outside lighting. The principal garden is to the rear and mostly walled and fenced backing onto open fields with wide ranging rural views stretching towards the woodland of St Fagans. The garden is principally lawned with borders and beds and featuring a productive apple tree (the owner lost count at 250 last Summer). Brick paviour and paved pathways. Range of terraces and sitting areas including decked terrace with access directly from the rear hall and bedroom 6, brick paviour terrace with feature balustrade adjoining raised bed with access from the drawing room and further paved terrace enjoying countryside views. This is a good size rear garden and offers scope both for the enthusiastic gardener and for purchasers keen to have somewhere for children to play safely.

SERVICES

Mains water and electricity. Drainage to cesspit. No gas. Central heating by oil. Quality carpeting with quality soft Cloud 9 Underlay.

DIRECTIONS

St Georges Super Ely is a small hamlet and Shangri-La is in the middle of the hamlet with our board outside. **From Cardiff** At Culverhouse Cross take the road back towards the city centre and turn left at the traffic lights signposted St Fagans. Turn left after the school and pass through the small community known as "The Drope" until you enter the village of St Georges Super Ely. Shangri-La is on your right hand side.

THE PROPERTY MISDESCRIPTIONS ACT 1991

The Agent has not tested any apparatus, equipment, fixtures and fittings or services and so cannot verify that they are in working order or fit for the purpose. A Buyer is advised to obtain verification from their Solicitor or Surveyor. References to the Tenure of a Property are based on information supplied by the Seller. The Agent has not had sight of the title documents. A Buyer is advised to obtain verification from their Solicitor. Items shown in photographs are NOT included unless specifically mentioned within the sales particulars. They may however be available by separate negotiation. Buyers must check the availability of any property and make an appointment to view before embarking on any journey to see a property.

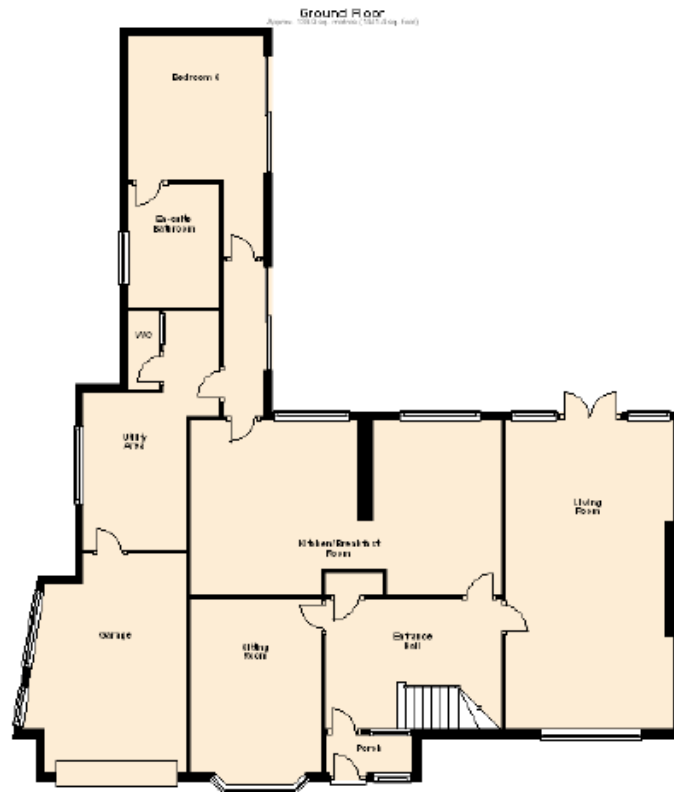
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Photo Gallery



Floorplan



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Energy Performance Certificate

Energy Performance Certificate



Shangri-La, St. George's-super-Ely, CARDIFF, CF5 6EW

Dwelling type: Detached house
Date of assessment: 07 November 2013
Date of certificate: 08 November 2013
Reference number: 9959-2873-6497-9607-1661
Type of assessment: RdSAP, existing dwelling
Total floor area: 209 m²

Use this document to:

- Compare current ratings of properties to see which properties are more energy efficient
- Find out how you can save energy and money by installing improvement measures

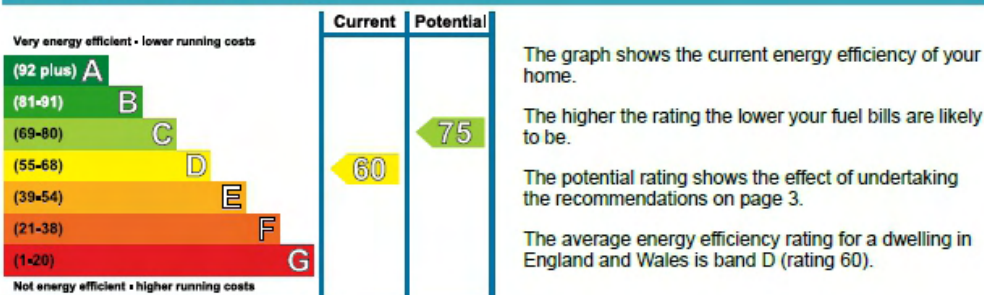
Estimated energy costs of dwelling for 3 years:	£ 5,559
Over 3 years you could save	£ 1,332

Estimated energy costs of this home

	Current costs	Potential costs	Potential future savings
Lighting	£ 246 over 3 years	£ 246 over 3 years	
Heating	£ 4,668 over 3 years	£ 3,387 over 3 years	
Hot Water	£ 645 over 3 years	£ 594 over 3 years	
Totals	£ 5,559	£ 4,227	

These figures show how much the average household would spend in this property for heating, lighting and hot water. This excludes energy use for running appliances like TVs, computers and cookers, and any electricity generated by microgeneration.

Energy Efficiency Rating



Top actions you can take to save money and make your home more efficient

Recommended measures	Indicative cost	Typical savings over 3 years	Available with Green Deal
1 Cavity wall insulation	£500 - £1,500	£ 495	✓
2 Floor insulation	£800 - £1,200	£ 561	✓
3 Replace boiler with new condensing boiler	£2,200 - £3,000	£ 276	✓

See page 3 for a full list of recommendations for this property.

To find out more about the recommended measures and other actions you could take today to save money, visit www.direct.gov.uk/savingenergy or call 0300 123 1234 (standard national rate). The Green Deal may allow you to make your home warmer and cheaper to run at no up-front cost.

EP3



Public services all in one place

Search the Council Tax valuation list

Council Tax band details

SHANGRI -LA, ST GEORGE'S-SUPER-ELY, CARDIFF, CF5 6EW

Last update on 23/11/2014

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use	Court property code
0104300600930	G		01/04/2005	No	

[Do you think this Council Tax band is wrong?](#)

Key to the table

Council Tax band - this determines how much Council Tax you pay.

Council Tax band

For Council Tax purposes, all properties have a Council Tax band (A-H in England, A-I in Wales). The band is based on the property's value on 1 April 1991 (for England) or 1 April 2003 (for Wales).

Improvement indicator - this shows that improvements have been made to the property that might result in the Council Tax band changing if a "relevant transaction" takes place, for example, if the property is sold.

Mixed use property - a property can have a domestic or mixed use - "yes" identifies a mixed use property.

Court code - a court code shows the Council Tax band has been reviewed by a Valuation Tribunal or the High Court.

Court code

A property will have a court code if the Council Tax band has been changed (determination) or confirmed (confirmation) by a Valuation Tribunal or High Court. The codes are:

V - Valuation Tribunal determination

C - Valuation Tribunal confirmation

D - High Court determination

H - High Court confirmation

R - Valuation Tribunal re-determination following High Court referral

E - High Court consent order

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Published: 31/03/2011

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EP4

RE: TOWN AND COUNTRY PLANNING ACT 1990

RE: LAND AT [REDACTED]
OLD TUPTON, CHESTERFIELD

RE: KEYS CHILDCARE LIMITED

OPINION

- 1 I am asked to advise Keys Childcare Limited ("KCC") who are providers of residential care and private education specifically focusing upon children.

Factual Background

- 2 KCC provide care for children in residential properties that are used for the care of children in small groups. Up to four children with care provided by two care workers over 24 hour per day by non-resident staff.
- 3 KCC are seeking guidance on whether a material change of use would occur from C3 to C2 of the Use Classes Order 1987 in respect of a residential property in Chesterfield. However KCC are seeking guidance that can be applied in a more general manner for properties that they are considering acquiring.

All ground floor facilities would be shared. The preparation of meals would be undertaken by the carers and the persons present would eat at the same time. Due to other legal requirements, all bedrooms would be fitted with locks. However the carers would have a key to each room. The carer's room at first floor would comprise a bed, a wardrobe and a desk in order to allow paperwork to be completed. In addition, a small office is anticipated to be provided at ground floor for general paperwork and other associated uses.

8 The children would be aged in the region of 7 to 17 years. They would be neither mentally nor physically disabled and would be housed on a permanent basis. The children involved may have been taken into care due to fears as to their physical wellbeing or in the unfortunate position of having no available guardians.

9 At all times, two carers would be at the premises with the children. The carers on site would comprise a Team Leader and a Residential Care Worker. Two non-resident staff would be on duty at all times. However the house may be under the supervision of a team of up to 6 or 7 adult carers who operate 8 hour shifts. The shift patterns can be amended to improve the service provided. In addition, at times of introduction of a new child to the premises a third care worker may visit the premises as a visitor. The Team Leader and Residential Care Worker would work on a shift basis with a half hour overlap between the new RCW or TL to be briefed on any

The Proposed Activities

- 4 The subject property [REDACTED] is a residential dwelling (C3). It is the intention to use this property as a children's care home. The premises will be vacated by the owners on completion of the purchase.

- 5 The property currently comprises at ground floor reception room, lounge, kitchen, utility room, ground floor shower room/WC, a family room/bedroom. At first floor it comprises a galleried landing and four further bedrooms, (some en suite) and a family bathroom. Outside the property the dwelling is set within a large site with a double garage and parking for several cars.

- 6 KCC proposes to carry out general works of repair and maintenance together with general alterations to the internal layout that may include the sub-division of a larger bedroom. It is not anticipated that the works would render the building not to benefit from the general facilities associated with a typical residential dwelling. No works to the external appearance (save for general repair and maintenance) are proposed.

- 7 The premises for the care of children would comprise the following accommodation at ground floor: living, dining room, kitchen, utility room and office/study. The first floor accommodation would be altered and would comprise 4 bedrooms for the children, a bedroom for the carer on duty and a bathroom.

new issues that have arisen on the previous shift. The changes of shift would be staggered.

10 The RCW night duty would be awake while the TL and the children sleep. If any matters arise such as a problem with one of the children, the carer is able to assist. The night shift would allow the RCW to attend to domestic chores such as ironing and tidying up. No noisy activities such as vacuuming would take place. The RCW would not sleep at the site; however, the TL could work either a 12 or 24 hour shift and so therefore may need to sleep at the premises. The carers would care for the children and cook, and all meals would be taken together in a family environment.

11 I am informed that KCC are looking for a number of sites throughout the UK. It is anticipated that they would be used in a similar manner; that is, two carers provided for up to 4 children. It is anticipated that providing the level of care and the requisite accommodation, properties that would be used would be large 5 bedroomed properties with sufficient space at ground floor for a study/office for the carers to use. In addition all such sites would have off-street parking or the use of a double garage so as to discourage parking on the highway.

A Statutory Framework

12 Section 55(1) of the Town and Country Planning Act 1990 defines development as including the "making of any material change of use"

subject to a number of exceptions. Section 55(2)(f) excludes from being a material change of use buildings or land used for the purpose of any Class specified in an Order made by the Secretary of State. The relevant Order is the Use Classes Order 1987.

- 13 Within that Order, Classes C2 and C3 are described in the following terms:

“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))
...”

A dwelling house is dealt with in Class C3 which is defined as follows:

“Use as a dwelling house (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).”

- 14 “Care” is defined in paragraph 2 as meaning:

"Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class C2 also includes the personal care of children and medical care and treatment".

- 15 The effect of Section 55(2)(f) is that a change of use from a conventional dwelling house as a family home to use for not more than 6 residents living together as a single household (including a household where care is provided for residents) will not constitute development. The Use Classes Order 1987 was accompanied by a ministerial circular 13/87 when introduced. Paragraph 37 of 13/87 states:

"The new dwelling houses class groups together the use as a dwelling house - whether or not as a sole or main residence - by a single person or any number of persons living together as a family, with use as a dwelling house by no more than 6 people living together as a single household. The key element in the use of the dwelling house for other than family purposes is a concept of a single household. In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class, regardless of the size of the home. The single household concept will provide

more certainty over the planning permission of small group homes which play a major role in the Government's community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community. Local Planning Authorities should include any resident care staff in their calculation of the number of people accommodated. The class includes not only families or people living together under arrangements for providing care and support within the community but also other groups of people such as students, not necessarily related to each other, who choose to live on a communal basis as a single household."

Legal Authorities

- 16 The application of Class C2 and C3 to a situation where occupants of a house are in receipt of full-time care was considered in *North Devon District Council v. First Secretary of State* [2003] JPL 1191. In that case the property in question was to be occupied by two children under the supervision of a team of non-resident adult carers operating shifts so that there were two non-resident staff on duty in the house at all times. Collins J held that that situation did not fall within Class C3. At paragraph 16 of his Judgment he stated:

"It seems to me that the Inspector's approach was, in this respect, correct inasmuch as he was regarding the

household as meaning more than just children. Children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home. Sometimes, of course, one recognises that they are forced to do so, but as a matter of principle and approach, the whole point of these homes is that the children are regarded as needing full-time care from an adult, someone to look after them, someone to run their lives for them, and someone to make sure that the household operates as it should. It seems to me that in the context "household" means more than merely the bodies. You have to consider whether the bodies are capable of being regarded in the true sense as a household. The same would apply to those who suffer, for example, from physical or mental disability and who need care in the community. They, if they are not capable of looking after themselves, would not be regarded as a household, hence the need for the carer, hence the need for that addition to make it a household within the meaning of the relevant class."

17 He continued at paragraph 17:

"One has to have regard to the need that they be living together as a single household. The question then arises whether carers who do not live but who provide, not necessarily through the same person, continuous

24 hour care can be regarded as living together. In my view, the answer to that is "no", consistent with the approach indicated by the Circular, what is required is indeed residential care with the carer living in full-time and looking after those in the premises who would otherwise be unable to live as a household."

- 18 Mr Justice Collins then expressed disagreement with the Judgment of Popplewell J in *R v. Bromley London Borough Council ex parte Sinclair* [1991] 3 PLR 60. That case involved three mentally handicapped persons who lived in a household and were supervised by Social Workers. The use, it was concluded, could properly be determined as Class C3(b) use. In the *Sinclair* case, Popplewell J had concluded that there was not a requirement within the 1987 Order that the staff had to be living together with the residents. Collins J in the *North Devon* case disagreed with that approach. He stated:

"A proper functioning household must exist, and, in the context of a case such as this, that must mean that the children and the carer must reside in the premises. Otherwise, as it seems to me, it clearly falls within Class C2."

- 19 Having concluded on the facts of that case, that the use fell within Class C3 rather than Class C2, Collins J held (on the basis of the

Inspector's findings of fact) that even if it was a Class C2 use, the change of use was not "material" and therefore did not constitute development requiring the grant of planning permission.

20 The North Devon case has been revisited in *R (on the application of Crawley Borough Council) v. Secretary of State for Transport and the Regions* [2004] EWHC 160 (Admin). This particular case concerned the use of a dwelling house for persons under a mental disability where non-residential care was provided. Richards J in his Judgment at paragraph 29 in referring to the North Devon case stated:

"It is not said, for example, by Collins J that the provision of full-time care by non-resident carers necessarily precludes a finding of occupation as a single household. What it does is focus, first, on those who are in occupation and ask whether they themselves do constitute a household. It holds, for reasons set out in the Judgment, that children cannot by themselves be regarded as constituting a household. Whether or not that is right is not something that I need to decide, because that is not this case. This case is not concerned with children, and what is said by Collins J in respect of children does not govern this case."

21 He continued at paragraphs 30 and 31:

"The observations he makes at the end of paragraph 16 of his Judgment do indeed appear to go wider, but for my part I would be very reluctant to read them as purporting to lay down a principle that those who suffer from disability and who need care in the community can never by themselves constitute a household, that is to say that the reasoning applied to children necessarily and invariably applies to them too. If the observations are intended to lay down such a principle, they are obiter, I do not need to follow them and I would decline to follow them.

In my judgement the correct position is that in every case the judgement to be made in the application of the criteria in Class C3 depends upon the specific facts of the individual case. There may indeed be cases where, having regard to the nature of the disability suffered and the degree of care required, persons resident in a house cannot sensibly be said to constitute a household. But there will be other cases, and in my judgement this is one of them, where persons resident in a house can sensibly be said to constitute a household notwithstanding that they have some disability and need care. That is so even if the need is for full-time care. I would reject any suggestion that in a case where care is needed for those under a disability Class C3 can apply only if the carers are in residence in the same property as those for whom they are caring. That would seem to me to run counter to the language of Class C3 itself and the underlying policy."

22 Richards J drew upon the case of *R (Hossack) v. Kettering Borough Council* [2002] JPL 1206 and *Simmons v. Pizzey* [1979] AC 37 as demonstrating the proposition that "household" used to be determined as a question of fact and degree.

Application of Law and Policy

23 The assessment that is required involves a two-stage process:

(a) A determination whether the residents live together as a single household; and

(b) In the event that it was concluded that the residents were not living together as a single household whether there was a material change of use of the relevant premises.

24 The North Devon case has clearly been the subject of significant criticism in the *Crawley Borough Council* case. It is my view that the proper question to be asked, in the first instance, is whether the residents are living together as a single household. Paragraph 29 of the Judgment of Richards J seems to me to leave open the question as to whether or not, depending on the facts of an individual case, children cannot by themselves be regarded as constituting a single household. Richards J expressly declined to decide that particular issue, as it was not necessary

for the purposes of the case before him. However, he plainly rejected the notion that persons resident in a house in need of full-time care are necessarily precluded from constituting a household. On that basis, it will be necessary on a case by case basis to determine whether the proposed occupants (the children, in this particular case) could not be regarded as capable of forming a single household.

25 However, it is plainly anticipated in my instructions that the probability is that the proposed occupants (ie. the children in this particular case) would not be regarded as capable of forming a single household.

26 In that eventuality, the question posed at (b) above needs to be addressed. It will be recalled that in the North Devon case itself, Collins J upheld the Inspector's finding that no material change of use was involved on the facts of that particular case. On this analysis, there would have occurred a change from Class C3 to Class C2. This, of itself, can be an indication that a material change had taken place but is far from conclusive. It is axiomatic that whilst the statute makes clear that changes within a Class are not development, it does not state that a change from one Class to another will be deemed to be material and therefore require an express grant of planning permission as representing development within the meaning of the 1990 Act.

27 It would therefore be necessary to make an informed judgement as to whether any change would be material in the use of premises giving rise to the need for a grant of planning permission.

28 As set out above, Section 55 of the 1990 Act includes within the definition of "development" a "material change of use". With considerable understatement the Encyclopaedia of Planning states:

"Assessing what constitutes a "material" change in use is not entirely straightforward."

29 Plainly a change is not material if it is de minimis or merely a change in the person conducting the use. The correct approach, in my view, is to judge materiality in land use consequences, having regard to the effect on local amenity and proper land use considerations: *East Barnett UDC v. British Transport Commission* [1962] QB 484. Some guidance is derived from the House of Lords case in *Westminster City Council v. British Waterways Board* [1985] AC 676. The Council in that particular case were alleging that a use of an area of premises was limited to that of a "street cleaning depot", the use to which the premises had been put historically. Lord Bridge stated:

"Those uses (operated from the site) as already indicated, included workshops, offices, stores, messing facilities and parking for a variety of vehicles, both under cover and in the

open. This is just such a mixture of uses as would be required by a wide variety of undertakings whose business was the operation of some kind of vehicular transport and who required a base from which to operate. Whether, in any particular case, the proposed use of the premises by such an undertaking would involve a material change of use would depend on the detailed nature of the proposal. But it would be of no relevance that the use of the premises to enquire for what purpose the vehicles parked there were to be used when they left their base."

30 In this particular case, the outward appearance of the building would remain unchanged. The internal arrangements within the building would be entirely consistent with that of a conventional family home. The essential question to determine is what, if any, actual changes would occur as a result of the use proposed and, if change can be identified, whether that would be material in land use planning sense.

It would seem, at least on a cursory analysis, that the operation of the rota system and its associated "comings and goings" could constitute a "change". However, in view of the Class C3 definition of dwelling house as capable of including 6 residents living together as a single household (for example students), the associated level of activity is not likely to constitute any significant (or even measurable) change. The difference, it seems to me, relates to the provision of care, that difference, whilst constituting a

change, is not the equivalent of a "material change" unless and until it is demonstrated that some land use consequence in planning terms occurs as a consequence of that change. For my part I have been unable to identify any land use consequences that are derived from the consequence of the provision of care.

31 In short, it is my analysis that it would be unlikely that up to four children could be regarded, in the circumstances proposed in this case, as living together as a single household. Nevertheless, I consider on the current evidence that the proposed use would be unlikely to constitute a "material change of use" and therefore constitute development. The change from a conventional dwelling house to the limited care provision that is referred to for up to four children and non-resident carers operating a rota at the property would not give rise to land use changes that could be regarded as "material", thereby triggering the requirement to obtain planning permission.

32 Whether the property enjoys the General Permitted Development Order 1995 rights to enlargement, improvement or other alteration is debatable. The Permitted Development Rights apply to a "dwellinghouse". The current burden of authority is that premises in, for example, mixed use, do not benefit from Permitted Development Rights: *Scurlock v. Secretary of State for Wales* [1976] JPL 431.

By analogy in this particular case, the property is not being used as a dwellinghouse but a use that would fall within Class C2 of the 1987 Order. Insofar as a residential care home (of whatever size) does not enjoy Permitted Development Rights, so too, applying the same logic, the property would not, in my view, enjoy such rights under the 1995 Order.

Practical Consequences

- 33 The burden of this Advice is that it is, in all cases, a question of fact and degree as to whether planning permission would be required.

Given the significant financial outlay in acquiring property, these considerations must be in the forefront of KCC's mind when proceeding with any acquisition:

- (a) An application, wherever possible, under Section 192 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of Proposed Use or Development should be made. This is an application whereby a detailed description of the proposed activity is submitted formally to the Local Planning Authority for their determination as to whether it constitutes development and whether planning permission is required for it. In the event of a determination that no planning permission is required for the proposal (in accordance with this Advice) the Certificate effectively grants immunity from any enforcement proceedings by the Local

Planning Authority based upon the factual premise that lies at the heart of the application for a Certificate; or

- (b) At the very least, prior to completion of any transaction, the informal view of the professional officers of the relevant Local Planning Authority should be sought. Whilst this would **not** provide the same degree of assuredness as a Certificate as indicated above, it would, in my view, give a degree of comfort to KCC in proceeding with their transaction. It is unlikely, on the state of current authority, that KCC would be entitled in the legal sense to rely upon the advice of the professional officer as binding the Local Planning Authority to the view expressed. Even taking that on board, it is still a sensible and prudent approach to adopt.

Overall Conclusion

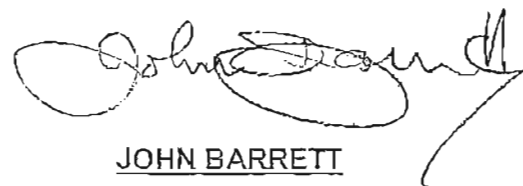
34 For the reasons I have set out above, my Opinion is as follows:

- (a) In light of the current authority, there is an obligation to consider whether the children themselves could constitute a single household
- (b) Whilst I consider, on the current information, it is unlikely that a conclusion could be reached that the resident children could constitute a household, it is then necessary to consider whether a "material change of use" has occurred.

- (c) On the information currently available to me and consistent with the *North Devon* case, the proposal here is unlikely to have land use consequences that lead one to the conclusion that a "material change of use" has occurred.
- (d) If so, no development within the meaning of Section 56 of the Town and Country Planning Act 1990 has occurred with the consequence that planning permission is not required.
- (e) I do not consider that Permitted Development Rights would apply in respect of the proposed use.
- (f) Prior to acquisition of a property, it would be prudent to make an application for a Certificate of Lawfulness of Proposed Use and Development in accordance with the 1990 Act.

35 I believe I have dealt with all the matters raised, but if I can assist further, do not hesitate to contact me.

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JOHN BARRETT

29th January 2007

EP5

Inspector Those reasons were (i) the absence of any substantive objections from English Heritage and Lambeth's conservation officer; (ii) whilst a symmetrical central archway would be preferred, there were highways reasons why this was not possible, although there were other significant constraints which also affected the design of the access/egress arrangements; (iii) the inclusion of the archway was the best achievable solution and would not materially diminish the scheme's overall benefit to the conservation area; (iv) consequently the Secretary of State agreed that the proposals as a whole constituted a well considered scheme of refurbishment and new development that would enhance the character and appearance of the conservation area.

44. I do not consider that the decision can be faulted for lack of reasoning. The Secretary of State was entitled to take into account the specialist advice of English Heritage and the specialist advice of the conservation officer from the local planning authority. It was appropriate for him as decision maker to reach the view that, taking into account these constraints, this solution would not materially diminish the overall benefit that the scheme had to offer to the area. The reasoning is clear, adequately detailed, and intelligible, and it is not suggested that immaterial considerations were taken into account.

45. The challenges by Wandsworth therefore fail.

Comment. It is surprising that this matter reached the Court of Appeal as Lawrence Collins J.'s decision appeared to me to be unimpeachable. And so it proved to be. Having lived close to Balham Hill for ten years I was a little surprised to see Wandsworth argue that it was not a neighbourhood or local centre or that the impressive but somewhat dilapidated South London Hospital for Women was not well and truly within the centre of Balham Hill.

Commentary by Martin Edwards.

North Devon District Council v The First Secretary of State (Queen's Bench Division, January 30, 2003)⁶

Dwelling house used as residential home for two children—non-resident carers—whether use fell within Class C2 or Class C3(b) of the Use Classes Order 1987—material change of use

The premises in question comprised a semi-detached 3 bedroom dwelling-house in a residential area. In February 2000, a company called Southern Childcare Limited (Childcare) began to use the premises to provide residential care for two children aged between 10 and 17. Outside the house looked like any other house in the street. Internally, there was a small office downstairs, otherwise it was laid out as an ordinary house. The children slept in individual bedrooms and there were the usual kitchen and bathroom facilities. Two non-resident staff were on duty at all times and the house was under the supervision of a team of 6 or 7 adults carers who operated 8 hour shifts. The children were never unsupervised while in the building. Childcare applied under s.19 of the Town and Country Planning Act 1990 for a certificate of lawful use. North Devon District Council (the Council) refused the application. Childcare appealed and an Inspector determined the appeal in Childcare's favour. The Inspector found that the household included both children and carers, but that carers did not need to be resident carers.

The Council appealed against that decision. The question for determination was whether the situation in this case fell within Class C2 or Class C3(b) of the Use Classes Order 1987. There was a subsidiary question whether even if it was within Class C2, there was a material change of use from its Class C3 use as a dwelling-house.

Held,

1. There was no doubt that unless the circumstances in this case meant that it fell within Class C3, the activity in question would clearly fall within Class C2, because it was use for the provision of

⁶ D. H. Fletcher (North Devon District Council); M. Gibbons (Treasury Solicitor).

residential accommodation and care to people in need of care. The definition of "care" which was applicable to Class C2 included care of children. So unless it fell within Class C3(b), it clearly fell within Class C2. There were certainly not more than 6 residents. But were they living together as a single household, including a household where care was provided for the residents? The parenthesis to Class C3(b) did not directly apply because care did not include care of children. Thus it was not a household where care was provided for residents. The question was what was the meaning in the context of Class C3(b) of "household"?

2. Children needed to be looked after. They could not run a house. They could not be expected to deal with all the matters that went to running a home. The whole point of these homes was that the children were regarded as needing full-time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operated as it should. In the context "household" meant more than merely bodies. One had to consider whether the bodies were capable of being regarded in the true sense as a household. One had to have regard to the need that they be living together as a single household. The question then arose whether carers who did not live but who provided, not necessarily through the same person, a continuous 24 hour care could be regarded as living together. The answer to that question was no. What was required was residential care with a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household. The concept of living together as a household meant a proper functioning household had to exist and, in the context of a case such as this, that meant that the children and a carer had to reside in the premises. Otherwise, the case fell within Class C2.
3. Notwithstanding that this case could fall within Class C2 rather than Class C3, planning permission may not have been required if the change of use was not a material change of use. If an Inspector was satisfied that the use fell within Class C2 rather than C3, then it would appear that there was *prima facie* a change of use. Nonetheless, the Inspector was entitled to consider whether that change of use was material. It would only be material if, as a matter of fact and degree in the circumstances of an individual case, the change of use was material. On the facts of this case (and limited to the facts of this case), the Inspector was correct to decide that there was no material change of use in the circumstances.
4. Appeal dismissed.

The following judgment was given.

Mr Justice Collins:

1. This appeal raises a short but not at all easy point of construction of two classes set out in the Use Classes Order of 1987. The two classes are contained in Part C and are: Class C2, which is headed "residential institutions", and Class C3 which is headed "dwelling houses". The question is whether the situation in this case fell within C2 or C3. There is a subsidiary question relating to whether even if it was within C2, nonetheless there was a material change of use from its C3 use as a dwelling house. That, of course, is a question which depends entirely on the facts of this individual case.
2. The facts are straightforward and, indeed, are agreed. The premises in question are an address in Barnstaple in North Devon. They comprise a semi-detached 3 bedroom dwellinghouse in a residential area. A company called Southern Childcare Limited runs a business operating registered children's homes. Since 2000, as a result of provisions contained in s.40 of the Care Standards Act 2000, which amended s.63 of the Children Act 1989, children's homes which provide for three or less children are required to be registered. That was not the position before that change in the law.
3. I gather from the information before me that there are a number of such small homes, that is to say homes catering for three children or less, which have sprung up. The reason for that is not entirely clear. It may have something to do with a lack of foster parents, or with the increased concern about the welfare of children and the need for them to be looked after in small units rather than in the larger

children's homes that used to be in existence in the past. In any event, the local planning authority, in this case North Devon District Council, are concerned about the effect on residential areas of these homes, and are concerned that there should be the possibility of planning control to deal with applications to set up these homes in residential areas.

4. In February 2000 Southern Childcare Limited began to use the premises to provide residential care for two children aged between 10 and 17. The Inspector who eventually had to decide on the issue described the premises. Outside was a semi-detached 3 bedroom house which looks like any other house in the street. Internally, it is in good decorative order; there is a small office downstairs, otherwise it is laid out as an ordinary house. The children sleep in individual bedrooms. There is the usual kitchen and bathroom facilities.

5. Southern Childcare Limited provide in the premises residential care for two children placed in their care by various local authorities. Two non-resident staff are on duty at all times and the house is under the supervision of a team of 6 or 7 adult carers who operate 8-hour shifts. The result is the children are never unsupervised whilst in the building. That means of course that the various carers will come and leave at the beginning and end of their shifts but otherwise the building is to all intents and purposes used as any other family house would be with two children there: shopping trips are needed; children have to be taken to school; the children assist to an extent in the preparation of meals and so on.

6. Because there was a question raised as to whether the use required planning permission, Southern Childcare Limited applied under s.191 of the Planning Act for a certificate of lawful use. That application was refused by the local planning authority. Southern Childcare Limited appealed and an inspector determined the appeal in their favour on August 5 of last year. Against that decision the Council appeals to this court.

7. I should go straightaway to the relevant provisions in the Use Classes Order. The purpose behind the Use Classes Order is well-known and is conveniently set out in Circular 13/87, issued by the Department in May 1987 when the Use Classes Order was about to come into effect. The purpose is set out in paragraph 3, and it is there indicated:

"The aim of the new Order is twofold:

- (i) to reduce the number of classes while retaining effective control over changes of use which, because of environmental consequences or relationship with other uses, need to be subject to specific planning applications and;
- (ii) to ensure that the scope of each class is wide enough to take in changes of use which generally do not need to be subject to specific control.

It serves no-one's interest to require planning permission for types of development that generally do not damage amenity. Equally, the Secretaries of State are in no doubt that effective control must be retained over changes of use that would have a material impact, in land-use planning terms, on the local amenity or environment."

That is doing no more in reality than setting out the general approach to planning control, but it helpfully indicates the rationale behind the Use Classes Order. By s.55 of the Act, provided that a use falls within a particular designated class, then no planning permission is needed for any change which falls within the same class.

8. The two classes are C2 and C3. C2 reads:

"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."

C3 reads:

"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)."

It will be noted that there is reference to care in both C2 and C3. Care is in fact defined in paragraph 2 (the interpretation clause of the Order) this:

"'care' means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment."

It is to be noted that that definition appears to exclude the personal care of children from the definition of care except in class C2. In class C3 there is reference (in the parenthesis to C3(b)) to care provided for residents. That care will not by the definition clause include care of children. Of course if the children happen to be disabled or to suffer from mental disorder, then care for them will fall within class C3(b), but it is not suggested that the children with whom this case is concerned would fall within that category. They are children who, for whatever reason, have been put into the care of the local authority, and the local authority is required to find somewhere for them to live and to be cared for during their minority.

9. The application by Southern Childcare Limited was "use as a dwelling providing care for up to 3 children living together as a single household with care provided by up to two non-resident staff." So it appears that the application was based on the contention that the children would constitute the single household living together and thus fall within C3(b), and that the non-resident staff would provide care but would not be regarded as part of the household because that would not be necessary.

10. When the matter came before the Inspector he considered the correct construction of the Order between paragraphs 12 and 19 of his determination. I do not propose to read them in any detail, but some parts I shall cite because they indicate the way in which the Inspector approached his task. In paragraph 16 he said:

"Living together incorporates dining together, sharing the kitchen, lounge and garden etc. A functioning family (parents and children/adopted children/foster children) is almost by definition a caring unit. Whilst clearly a husband and wife with two foster children would be considered as falling within Class C3(a) of the UCO, there is a close similarity with the situation on the appeal site except that the carers (guardians) whilst present all the time, are not resident in the same way as a husband and wife. The dictionary definition of a household is 'the occupants of a house regarded as a unit'. Although the care element in a household is less than that for a family there are joint shared responsibilities, the security of the house, the buying of food, the preparation of meals, the paying of bills and the maintenance of the property are some examples. There has to be a thread of care running through a household for it to function effectively."

In paragraph 19 he states:

"If one includes the children and the adults on the appeal premises, there are then four residents

living together as a single household. The High Court judgment in the case of *R. v Bromley London Borough Council Ex p. Sindair* [1991] 3 P.L.R. 60 has accepted that staff providing care for residents need not themselves be resident. 'Care' as defined in Art 2 does not come into play on the appeal site and I find that the use is within the constraints of Class 3(b) of the UCO; namely the use as a dwellinghouse by not more than six residents living together as a single household."

It seems to me that the natural meaning of what the Inspector says in paragraph 19 is that he is regarding (and what he sets out in paragraph 16 supports this conclusion) the household as being the children plus the carers. But, in his view, the case of *Sindair* means that carers need not be resident carers, in the sense that they need not have the premises as their residence, and live there as well as the children. That, in his view, is not necessary; provided they are present on the premises then they can be regarded as part of the household. It is true that when he came to give the lawful development certificate it was in these terms:

"The use of the premises as a dwelling house providing care for up to two children living together as a single household with care provided by up to two non-resident staff."

That, of course, is more consistent with the way in which the application was framed. Nonetheless the natural meaning of paragraphs 16 and 19 seem to me to point clearly in the direction that the Inspector is finding that the household includes both children and carers, but that carers do not need to be resident carers.

11. Mr Fletcher contends that that is wrong, and that insofar as *Sindair* may appear to support that approach it is wrongly decided. He submits that the purpose behind the division of classes C2 and C3, insofar as it applies in the circumstances of this case, is that small homes used for care in the community should not be regarded as falling outside the class as a dwellinghouse merely because there are carers, provided that those carers are resident. He submits that if one looks at the natural meaning of the words used in the Use Classes Order and couples that with the guidance given by the Circular, that conclusion is inevitable. The Circular in paragraph 5 states:

"The new Order is also intended to clarify the circumstances in which the establishment of small community care homes and hostels will require planning permission. For example, it provides that development is not involved when a dwellinghouse becomes used as a small community care home, provided that all the residents live together as a single household and that they number no more than 6 including resident staff."

That certainly on its face appears to me to be more consistent with the approach that Mr Fletcher submits is the correct one.

12. In paragraphs 25, 26, and 27 the Circular deals specifically with classes C2 and C3. In discussing C2 in paragraph 25 it states:

"The residential institutions class combines classes XX11 and XIV of the 1972 Order. Apart from educational establishments, the characteristic of the uses contained in this class that sets them apart from those in the hotels and hostels and dwellinghouses classes is, in the case of the former the provision of personal care and treatment, and in the case of the latter that the residents and staff do not form a single household."

In paragraph 27, which deals with class C3, it is said:

"The new *dwellinghouses* class groups together use as a dwellinghouse—whether or not as a sole or main residence—by a single person or any number of persons living together as a family, with use as a dwellinghouse by no more than 6 persons living together as a single household. The key

element in the use of a dwellinghouse for other than family purposes is the concept of a single household. In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class, regardless of the size of the home. The single household concept will provide more certainty over the planning position of small group homes which play a major role in the Government's community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community . . . Local planning authorities should include any resident care staff in their calculation of the number of people accommodated. The class includes not only families or people living together under arrangements for providing care and support within the community, but also other groups of people such as students, not necessarily related to each other, who choose to live on a communal basis as a single household."

That again, Mr Fletcher submits, and I agree, points in the direction of resident care staff and small residential homes and, indeed, the reference to the need for certainty over the planning position of small group homes playing a major role in the Government's community care policy, gives a clue why the definition of "care" as not including children should be applicable to C2 and not to C3 because children do not fall into the community care policy because they are not disabled or mentally disordered.

13. It seems to me that it is essential that all the words of the Order are given some meaning. There is no doubt that unless the circumstances here mean that it falls within C3, the activity in question would clearly fall within C2, because it is use for the provision of residential accommodation and care to people in need of care. The definition of "care" which is applicable to C2 includes care of children. So unless it falls within Class C3, it clearly will fall within C2. The question, therefore, is whether it does fall within C3.

14. It is not contended that it falls within C3(a) and the Inspector did not so find. Clearly, it is not being used by people living together as a family. The question therefore is whether it falls within C3(b). There are certainly not more than 6 residents. But are they living together as a single household, including a household where care is provided for residents? The parenthesis does not directly apply because care does not include care of children. Thus, it is not a household where care is provided for residents. The first question, as it seems to me, is what is the meaning in the context of C3(b) of "household"?

15. It is submitted by Mr Gibbon that the children can constitute the household. The children are living together as a single household and, therefore, it is a dwellinghouse. The parenthesis does not apply and, on the straightforward meaning of the words, you have here not more than 6 residents living together as a single household. Of course if any of the carers were resident, then they would have to be brought into account, but there would be no problem because obviously a resident carer would be properly regarded as part of the household, but the absence of a resident carer does not prevent it being a household.

16. It seems to me that the Inspector's approach was, in this respect, correct, inasmuch as he was regarding the household as needing more than just children. Children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home. Sometimes, of course, one recognises they are forced to do so, but as a matter of principle and approach the whole point of these homes is that the children are regarded as needing full-time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should. It seems to me that in the context "household" means more than merely the bodies. You have to consider whether the bodies are capable of being regarded in the true sense as a household. The same would apply to those who suffer, for example, from physical or mental

disability and who need care in the community. They, if they are not capable of looking after themselves, would not be regarded as a household, hence the need for the carer, hence the need for that addition to make it a household within the meaning of the relevant class.

17. One has to have regard to the need that they be living together as a single household. The question then arises whether carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care can be regarded as living together. In my view, the answer to that is no. Consistent with the approach indicated by the Circular, what is required is indeed residential care with a carer living in full-time and looking after those in the premises who otherwise would be unable to live as a household.

18. Now that I recognise is an approach which may well not accord with that set out by Popplewell J in the *Sindair* case, which I have already mentioned. In that case the Council proposed to use a house as a family home for three mentally handicapped persons. Twenty-four hour a day supervision was to be provided by social workers attending on a rota basis. They would not be living at the property although a room would be used as a bedroom by the care assistant who was there at night.

19. An application for judicial review of the decision that the proposed use was within Class C3(b), and so did not require planning permission, was made by a local resident. Permission had been refused on paper and the matter came before Popplewell J as a renewed application for permission to apply for judicial review. He cited Class C3(b), the relevant parts of paragraphs 25 and 27 of the Circular and went on at page 62B:

"The order does not say that the staff have to live together as a single household. It says the residents 'living together as a single household'. The residents here are the three residents and the staff come in from time to time. I do not find anything in the order which takes into account the presence of the staff as being involved in the concept of a single household. The bracketed words are simply '(including a household where care is provided for residents).'

I do not take the view that the staff have to be living together with the residents. I am of the view that this can properly be determined as a Class C3(b) case."

I am afraid I cannot agree with that approach. It seems to me 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 in the premises. Otherwise, as it seems to me, it clearly falls within Class C2. It is apparent that the size of the institution is irrelevant for the purposes of C2. If it falls within that definition it is not to be regarded as a dwellinghouse, then whether there are 1, 2, 10 or 15 children makes no difference to the Class. It does, however, clearly make a difference in planning terms when one considers the second point, which is whether there was, in the context of this case, a material change of use.

20. Although it may sound somewhat illogical, it is accepted by both Mr Fletcher and Mr Gibbon that, notwithstanding that this may fall within Class C2 rather than Class C3, nonetheless planning permission may not be required if the change of use was not a material change of use. I am bound to say that if an Inspector is satisfied that the use falls within C2 rather than C3, then it would appear that there is *prima facie* a change of use. Nonetheless, the Inspector is entitled, as indeed are the local planning authority, to consider whether that change of use was material. It will only be material if, as a matter of fact and degree in the circumstances of an individual case, the change of use was material.

21. The Inspector understandably deals with this very briefly. In paragraph 20 he states:

"In the alternative, the Council state that the change of use is a significant factor which when

weighed with other changes to the character of the use of the premises amounts to a material change of use. Since I have found that the use is as a dwelling house, the alternative does not fall to be considered. There is nevertheless no indication from my consideration of all the representations and from my detailed inspection of the site and the surroundings, that there has been a change of use from a dwelling house which could, as a matter of fact and degree, be considered as being a material one."

Mr Fletcher attacks that on the basis that it is unreasoned, and the Inspector appears to be saying from the use of the word "could" that there is not even an arguable case that there has been a change of use.

22. The parties put forward extensive submissions to the Inspector and he clearly had them before him and had regard to them. The Council dealt with materiality over some four pages of its submissions. It set out what it submitted were the principles referred to and cases in support, in particular in paragraph 6.9 of its submissions. It made the point that the case law established that whether there had been a material change was a question of fact and degree and the fact that, in the broadest sense, the property continued to be used for residential purposes did not mean that there could not have been a material change of use. The court in the case of *London Borough of Richmond upon Thames v Secretary of State* (2001) J.P.L. 84 indicated that matters which could be planning considerations might include the effects on the residential character of the area, strain on the welfare services and reduction on the stock of private accommodation available for renting. Points were made about traffic movements and various other factors were put forward.

23. True it is that the Inspector dealt very briefly with those matters. But it is plain that he had before him all the relevant submissions and all the relevant representations. He had inspected the site and he had considered all the issues. He sets out at the beginning of his determination a description of the site and surroundings and of the background. It would have been better, no doubt, had he referred in more detail to the submissions which had been made and explained why he rejected them. Nevertheless, it is, in my view, clearly implicit in what he says that he had considered them and that he had rejected them as being matters which indicated a material change of use.

24. Mr Fletcher accepts that it would have been open to the Inspector to have decided that the change of use was not material but he should, if he was to reach that conclusion, have indicated more clearly why. I do not dissent from that proposition in the sense that I too would have preferred that he had indicated more clearly why. But one has to be careful in accepting a reasons challenge. It seems to me that if, in reality, it is plain that the Inspector has considered the matters and has reached a decision, which in law was open to him, then it would take a very strong case to quash that purely on the ground that the reasons were not as extensively set out as they should have been.

25. The only matter which has given possible cause for concern is the use of the word "could." But, in my view, it does not bear the construction which Mr Fletcher suggests is the possible one. All that the Inspector is saying is that in his judgment the matters put forward do not mean that the change of use is a material one. It is true he does not express himself as happily as he might, but as a matter of pure English reading that sentence does not, in my view, lead one to conclude that he had misdirected himself in approaching it on the basis of arguability rather than fact.

26. Accordingly, in my view, the Inspector was wrong to regard this as falling within C3(b) rather than C2, and that the Council's contentions are and were correct. C3 does require at least one residential carer, together with of course those who are being cared for. On the facts of this case, and I emphasise limited to the facts of this case, the Inspector was correct to decide that there was no material change of use in the circumstances.

27. Accordingly, although it may be expressed slightly unhappily in the context of my decision, and indeed in the way the Inspector approached it in his decision, the use for up to two children, with care provided by up to two non-resident staff at these premises, and only at these premises, is, in the circumstances, a lawful use.

28. Accordingly, for those reasons, I dismiss this appeal.

Comment. For a discussion of the implications of this decision see [2003] J.P.L. 790.

EP6

Date/Dyddiad: 1 April 2014

Ask for/Gofynwch am: Mrs. Sara J. Thomas

Telephone/Rhif ffon: (01446) 704654

Fax/Ffacs: (01446) 704847

Your Ref/Eich Cyf:

My Ref/Cyf: P/DC/SJT/2014/00049/PD

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Adie Porter-Webster

Response by email

Dear Madam,

Town and Country Planning Act, 1990 (as amended)

Reference No. 2014/00049/PD

Proposal: Children's home

Location: Gladstone Road, Barry

I refer to your letter received on 20 March 2014 and note that you intend to use a residential dwelling as a small domestic children's home, with shared communal areas.

With regards to assessing whether planning permission is required for the operation of the above business from the private residence, the key test is whether the overall character of the dwelling will change as a result of the business being carried out and is assessed under the following broad criteria :

- i) Will your home no longer be used mainly as a private residence?
- ii) Will your business result in a marked rise in traffic or people calling?
- iii) Will your business involve any activities unusual in a residential area?
- (iv) Will your business disturb your neighbours at unreasonable hours or create other forms of nuisance such as noise or smells?

Your letter states that the number of people residing at the property at any one time will not exceed 6 which includes children and employees, I am therefore of the view that such a use being operated from the dwelling would have little or no impact on the character of the dwelling house or the residential area as a whole. It therefore would appear, without prejudice, that there would be no material change in the character of the dwelling and such a limited level of use would be *de minimis*. I am therefore of the view, based solely on the details set out in your email, that **planning permission would not be required.**

However, should the level of business activity at the dwelling increase, including an increase in children or employees exceeding 6 at any one time, the character of the house may alter sufficiently where it would no longer be considered as domestic.

Therefore the Council reserve the right to reconsider the matter should it be necessary. You should therefore advise the Council of any such changes.

Please note that the above comments are based solely on the information given in your letter and is an **informal opinion**, which is not binding on the Council. If you require a formal determination you may submit an application for a Certificate of Lawfulness under Section 192 of the Act. Forms and advice for such an application may be obtained from the above address, or by visiting www.valeofglamorgan.gov.uk. Alternatively, forms may be obtained by telephoning 01446 704656/704632.

Should you have any further questions regarding the above, please contact Mrs. Sara J. Thomas on the above number.

Yours faithfully,

Mrs. Sara J. Thomas
for Operational Manager Development & Building Control

EP7

THE VALE OF GLAMORGAN COUNCIL

Town and Country Planning Act 1990, Sections 191 and 192 (as amended)
Planning and Compulsory Purchase Act 2004

The Town and Country Planning (Development Management Procedure) (Wales)
Order 2012

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Agent:
Emery Planning Partnership Ltd,
2-4, South Park Court,
Hobson Street,
Macclesfield,
SK11 8BS

Applicant:
Bettercare Keys Ltd

Address or location: 277, Gladstone Road, Barry

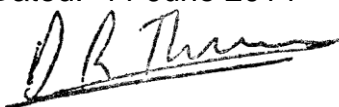
The Vale of Glamorgan Council hereby certify that on 17 April 2014 the use specified in the Schedule below in respect of the land shown edged red on the plan attached to this certificate would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):

1. In this case, it is considered that the proposal falls within the Town and Country Planning (Use Classes) Order 1987, Class C3 (b), and therefore a change of use will not occur at the property. The proposal therefore falls under 'permitted development' as defined within the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Therefore a Lawful Development Certificate shall be issued, and planning permission is not required.

SCHEDULE

The proposed use as a residential care home falls within the Town and Country Planning (Use Classes) Order 1987, Class C3 (b), which is the current use of the property, and therefore a change of use will not occur. The proposal therefore falls under 'permitted development' as defined within the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Therefore a Lawful Development Certificate shall be issued, and planning permission is not required.

Dated: 11 June 2014



Director of Development Services

NOTES:

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land as shown on the plan attached to the certificate would have been lawful on the specified date and, thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the Schedule and to the land shown on the plan attached to the Certificate. Any use which may be materially different from that described or which relates to other land may render the owner or occupier(s) liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in Section 192 (4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness. For example, such a material change of use may be any direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 removing "permitted development" rights on which the proposal relied for its lawfulness; a statutory amendment to the "permitted development" rights on which the proposal relied for its lawfulness, or revocation of the planning permission on which the proposal relied for its lawfulness. However, providing that the circumstances and the statutory provisions remain unchanged between the application date specified in the Lawful Development Certificate and the date the proposed use is instituted or the operations are begun, the change of use or the operations would be lawful, and may be lawfully completed, as the case may be.



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The Vale of Glamorgan Council
 Department: Development Control
 Title: 2014/00409/LAW
 Drawn By: CLP

	Scale	1:1250
	Time	09:17:11 AM
	Date	10 Jun 2014

plan to accompany Decision Notice