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## Appeal Decision

Site visit made on 14 December 2021

**by Mark Harbottle BSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 January 2022**

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### **Appeal Ref: APP/A3010/X/21/3277785**

### **Chestnut House, Town Street, Cottam DN22 0EZ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development.
  - The appeal is made by Mrs Tasmine Silver, Kids Inc Residential Services, against the decision of Bassetlaw District Council.
  - The application Ref 21/00759/CTP, dated 11 May 2021, was refused by notice dated 24 June 2021.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
  - The use for which a certificate of lawful use or development is sought is use of a C3a dwelling for a children's home for a maximum of three children, with two carers sleeping overnight, working on a rota basis (C2).
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### **Decision**

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed use which is found to be lawful.

### **Preliminary Matter**

2. The Council's decision notice and the appeal form describe the use as 'use of a dwelling (C3) for a children's home (C2) for a maximum of 3 children, where care is provided'. However, I shall determine the appeal in accordance with the wording in the application form, as set out in the header above.

### **Main Issue**

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. If, on an application under section 192 of the Act, the local planning authority is provided with information satisfying it that the use described in the application would be lawful if instituted at the time of the application, it shall issue a certificate to that effect; and in any other case shall refuse the application.

### **Reasons**

4. The appeal relates to a detached 4-bedroom house. As proposed, it would be the sole or main residence of no more than 3 children aged up to 18. Care for the children would be provided continuously by 2 non-resident staff working 48-hour shifts and sharing facilities with them. A third carer would visit on weekdays and use one room as an office for administrative tasks relating to the

- premises. The house would otherwise only be adapted by providing locks to the children's bedroom doors and fire doors to the kitchen area.
5. Children alone are unable to form a household because they are reliant on adults to care for them and to run the home. Where care is provided in a dwelling that is not the main residence of the carers, those providing care do not form part of a household. In those circumstances, the use falls within Class C2 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 as amended and is not a dwellinghouse use within Class C3 of the same Order. While that is so, it must be determined, on the facts of the case, whether there would be a significant difference in the character of activities from the present use, such that a material change of use would occur.
  6. At most, on non-school weekdays, there would be 6 people within the house. The expected movements would primarily be the turnover of the 2 main carers at the start and end of their shifts, the weekday visits by the third carer, and school runs. Calculations provided by the appellant indicate this would result in 2 more vehicular movements in a typical week than the previous occupation by a single family. While children may need home tutoring from time to time, this would be provided remotely, with no additional visitors. There would be annual inspections by Ofsted and social care services but no regular welfare or wellbeing visits. As such, the comings and goings associated with the proposed use would not differ significantly from a typical occupation of a 4-bedroom house by a single household.
  7. The use of a room as an office or study is not unusual in domestic settings. While the length of any child's stay will depend on factors particular to that child, it is anticipated that each stay will be generally more than temporary or passing. Occupation as a halfway house or as overnight emergency lodgings is not proposed. Accordingly, while the children's lengths of residence may be shorter, their occupation of the house would be comparable with children forming part of a household. The proposed adaptations to the fabric of the house are minor and would not facilitate any significant changes in the character of occupation. Furthermore, they would not be apparent from outside, so they would not alter perceptions of how the house is used.
  8. In view of the foregoing, the information provided demonstrates that the proposed use would not be materially different in character from the occupation of the house by a single household.

### **Conclusion**

9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC was not well-founded. The appeal succeeds accordingly, and I will exercise the powers transferred to me under section 195(2) of the Act.

*Mark Harbottle*

INSPECTOR



## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 11 May 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use, while falling within Class C2 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 as amended, would not be materially different in character from use as a dwellinghouse within Class C3 of the same Order.

Signed

*Mark Harbottle*

Inspector

Date: 27 January 2022

Reference: APP/A3010/X/21/3277785

### **First Schedule**

Use of a dwelling for a children's home for a maximum of three children, with two carers sleeping overnight, working on a rota basis

### **Second Schedule**

Land at Chestnut House, Town Street, Cottam DN22 0EZ

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified 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 which were relevant to the decision about lawfulness.



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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 January 2022

by **Mark Harbottle BSc MRTPI**

**Land at: Chestnut House, Town Street, Cottam DN22 0EZ**

**Reference: APP/A3010/X/21/3277785**

Not to scale

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