

Planning and Rights of Way Panel 22 August 2017
Planning Application Report of the Service Lead – Planning, Infrastructure & Development

Application address: 54 Merridale Road, Southampton			
Proposed development: Erection of a single storey rear extension, hip to gable roof alterations including front and rear dormers to facilitate loft conversion.			
Application number	17/00772/FUL	Application type	FUL
Case officer	Matthew Griffiths	Public speaking time	5 minutes
Last date for determination:	05/07/2017	Ward	Peartree
Reason for Panel Referral:	More than 5 letters received from local residents	Ward Councillors	Cllr Lewzey Cllr Houghton Cllr Keogh

Applicant: Dr J Sargent	Agent: D W Marsh Architectural Design Ltd
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Recommendation Summary	Conditional Approval
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Community Infrastructure Levy Liable	N/A
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Reason for granting Permission

The development is acceptable taking into account the policies and proposals of the Development Plan as set out below. Other material considerations have been considered and are not judged to have sufficient weight to justify a refusal of the application, and where applicable conditions have been applied in order to satisfy these matters. The scheme is therefore judged to be in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and thus planning permission should therefore be granted. In reaching this decision the Local Planning Authority offered a pre-application planning service and has sought to work with the applicant in a positive and proactive manner as required by paragraphs 186-187 of the National Planning Policy Framework (2012). Policies - SDP1, SDP7, SDP9 of the City of Southampton Local Plan Review (as amended 2015) and CS10, CS13 of the Local Development Framework Core Strategy Development Plan Document (as amended 2015).

Appendix attached			
1	Development Plan Policies	2	Details of 08/00610/FUL
3	Details of 16/01805/FUL		

Recommendation in Full
Conditional Approval

Introduction

This is one of 3 similar planning applications on this Planning Panel agenda, and concerns the erection of an extension to an existing dwelling to facilitate ongoing care for residents within the property by Chessel Support Services (CSS).

1. The site and its context

- 1.1 The site lies within the ward of Peartree. The site consists of a bungalow located on the western side of Merridale Road. The surrounding area is mainly characterised by detached bungalows with a mix of hipped and gabled roofs with various extensions. The site contains a detached bungalow with a conservatory to the rear. The property is occupied by 3 residents receiving care from visiting carers, however, the property is classed as a family dwelling (Class C3(b)) use as the residents share communal facilities within the house including a lounge, kitchen and dining room.

2. Background

- 2.1 Under the primary legislation of the Care Act 2014, the Council's Social Services team is responsible for monitoring and reviewing the well-being of vulnerable adults receiving services from a care provider. In this case, the Council funds a care package for residents living at these properties to be supported by carers from Chessel Support Services (CSS – a Southampton registered business). CSS are also responsible for supporting residents living at 48 and 62 Merridale Road which are subject to planning applications to be extended:-

- 48 Merridale Road 3 to 5 bedrooms (ref no. 17/00770/FUL)
- 62 Merridale Road 2 to 5 bedrooms (ref no. 17/00771/FUL)

- 2.2 These properties are owned by Peartree House (care home), however, the care support is provided directly by CSS. This is the residents' main residence, whilst they have their own Assured Tenancy Agreement with the owner. The properties provide specialist housing to vulnerable adults which allows them more freedom to live within the community. There is shared access to communal facilities within the house including a kitchen, lounge/dining room and bathroom. The support given to the residents does not include medical care. The properties include a bedroom space and wash facilities where a carer can sleep if they are required to assist a resident during the night.

- 2.3 Since 2005, the use of these properties for up to 6 unrelated residents living as a single household and receiving care is classified as a form of a class C3 family dwelling under the Use Classes Order. In particular, the Use Classes Order makes provision for this use under section (b) of class C3. This use category includes supported housing schemes such as those for people with learning disabilities or mental health problems. The term 'care' is defined at Article 2 of the Order and 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 personal care of children and medical care and treatment'. Having inspected the properties, it is considered that building is lawfully being occupied as C3(b) use and, therefore, planning permission is not required for this type of use seeing that it was a family home to begin with.

- 2.4 The appeal decision attached to **Appendix 2** is based on similar circumstances to this application. The Inspector concluded the use of the home to be C3(b) use rather than a class C2 (residential institution), given that residents were receiving personal care; the distinction between class C2 and C3(b) use does not depend upon the extent of care provided; and the relationship of the carer in how they occupy the property does not have a bearing on how the group of residents is considered to live as a single household. The conclusion reached by the Inspector was based upon case law set by high court decisions. This decision is not an uncommon view taken by Inspectors' as seen by the appeal decision attached to **Appendix 3**.
- 2.5 The Social Services team and other responsible Local Authorities (that commission the services of CSS) are responsible for reviewing the mental capacity of residents of necessity to safeguard their wellbeing. This review allows the Local Authority consider whether the type of accommodation or placement is suitable for the residents' needs, and whether it is necessary to move the resident into residential care or change the care package. There is a contact point in the Social Services team for local residents to complain about incidences of residents causing anti-social behaviour.
- 2.6 As such, the Planning Panel are not being asked to consider the use but the physical development of the extension and its direct impacts upon the host building and its neighbours. The proposed intensification of use that may be facilitated is also a relevant planning consideration. The property is not a House in Multiple Occupation, as has been suggested by third parties, providing it is occupied as intended by the applicant.

3. Proposal

- 3.1 It is proposed to increase from 3 to 5 bedrooms through the erection of a single storey rear extension, hip to gable roof alterations including front and rear dormers and a rooflight to facilitate loft conversion (2 bedrooms in the roofspace). In place of the existing conservatory which will be removed, the single storey extension is proposed to match the depth of the conservatory and extend across the full width of the property, 3.4m beyond the existing rear wall.

4. Relevant Planning Policy

- 4.1 The Development Plan for Southampton currently comprises the "saved" policies of the City of Southampton Local Plan Review (as amended 2015) and the City of Southampton Core Strategy (as amended 2015). The most relevant policies to these proposals are set out at **Appendix 1**.
- 4.2 The National Planning Policy Framework (NPPF) came into force on 27th March 2012 and replaces the previous set of national planning policy guidance notes and statements. The Council has reviewed the Core Strategy to ensure that it is in compliance with the NPPF and are satisfied that the vast majority of policies accord with the aims of the NPPF and therefore retain their full material weight for decision making purposes, unless otherwise indicated.
- 4.3 Paragraph 7 of the NPPF highlights the social role of the planning system to support healthy communities to contribute to the achievement of sustainable development. Paragraph 69 of the NPPF emphasises that the planning system

can play an important role in facilitating social interaction and creating healthy, inclusive communities. Although withdrawn in 2014 (as replaced by broader guidance in the government's Planning Practice Guidance), Circular 03/2005 explained that small group homes play a major role in 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.

- 4.4 Saved Policy SDP1 (Quality of development) of the Local Plan Review allows development, providing that it does not unacceptably affect the health, safety and amenity of the city and its citizens. Policy SDP7 (Context) and SDP9 (Scale, Massing, and Appearance) allows development which will not harm the character and appearance of the local area, and the building design in terms of scale and massing should be high quality which respects the surrounding area. Policy CS13 (Fundamentals of Design) assesses the development against the principles of good design.

5. Relevant Planning History

- 5.1 There is no relevant planning history for this site. There are currently 2 other applications being considered at properties owned by the same applicant in Merridale Road:-

- 48 Merridale Road 3 to 5 bedrooms (ref no. 17/00770/FUL)
- 62 Merridale Road 2 to 5 bedrooms (ref no. 17/00771/FUL)

These applications are also on this Panel agenda.

6. Consultation Responses and Notification Representations

- 6.1 Following the receipt of the planning application a publicity exercise in line with department procedures was undertaken which included notifying adjoining and nearby landowners, and erecting a site notice (26.05.2017). At the time of writing the report **6** representations have been received from surrounding residents, including a petition signed by 60 local residents. The following is a summary of the points raised at the time of writing this report:

- 6.1.1 **Overdevelopment, out of character, and loss of amenity as the result of the enlargement of the properties for further care use. The increased usage of these properties, which is a commercial business, would not be appropriate within a residential area with young families and senior citizens. Increased incidents of anti-social behaviour and conflict affecting local residents following incidents already dealt with by the police. The character of the street has changed due to the cumulative impact, given that there are 5 of these homes out of 13 properties.**

Response

Only limited weight can be attached to these concerns as there will be no material change of use taking place. There is a point of contact within the responsible Social Services team where local residents are concerned about the well-being of residents living in these properties.

- 6.1.2 **The additional traffic associated with extra staff, deliveries and visitors, resulting in further degradation of the road surface and increased**

competition for on street parking.

Response

Only limited weight can be attached to these concerns as there will be no material change of use taking place. The residents of the building are less likely to own or have access to a car and the additional care needed to service the 2 extra bedrooms is unlikely to result in a significant increase in trips to the building. The existing highway network is maintained by the public purse.

6.1.3 Loss of amenity to 52 Merridale Road in terms of a loss of privacy from the dormers overlooking the neighbour's rear garden.

Response

There would be a limited impact to the occupiers of 52 Merridale Road (as well as 56) in terms of potential overlooking from the dormer windows to the rear. A restricted view of the neighbours' most private areas of the garden would be afforded by the dormers. Dormer windows could be implemented under the permitted development regime in any event as a fallback and it would not be reasonable to object on this alone. These impacts, on balance, are not considered to be harmful to the extent that a refusal of the application would be warranted.

6.1.4 There is a possibility that scaffolding could be erected upon the land of 52 Merridale Road

Response

This potential issue would be a civil law matter to be resolved between the landowners. There is legislation such as the Party Wall Act that protects the rights of neighbour's when affected by development adjacent to their party wall. Neighbours should seek further legal advice from a surveyor or solicitor if they are unable to resolve this matter by speaking directly to the property owner.

Consultation Responses

6.2 SCC Highways - No objection

7. Planning Consideration Key Issues

7.1 The application needs to be assessed against the following key issues:

- Principle of Development;
- Impact on Character and Amenity and;
- Impact on Highway Safety.

7.2 Principle of Development

7.2.1 The government recognises that this type of small group homes play a major role in 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. The classification of care supported housing (class C3(b)) as a form of family home under the Uses Classes Order allows this type of housing to live side by side as part of the community with other households within a typical residential street. As such, planning permission is not normally required for this type of use as long as the number of residents is not exceeded by 6 individuals.

This shouldn't be confused with a House in Multiple of Occupation which has its own classification under class C4. Furthermore, the use of the property does not fall under a class C2 use as the residents can live independently and receive care from visitors.

7.2.2 In this case, the use of the property is considered to be C3(b) use. The use would remain as class C3(b) when the property is extended to provide 5 bedrooms. As effectively no material change of use occurring, only limited weight can be given to the issues associated with the intensification of use. This includes on-street parking competition, cumulative effect on the local character from increased occupation, and so on. Only limited weight can be given to concerns about residents' causing antisocial behaviour and the possibility of increased incidents, because as again up to 6 residents living at this property within this use class, and this matter would be dealt with under separate legislation by either the Police, Care Provider, or the responsible Local Authority.

7.2.3 The principle of development can therefore be supported to extend the property, however, this is subject to an assessment of the relevant material considerations.

7.3 Impact on Character and Amenity

7.3.1 Merridale Road is mainly characterised by detached bungalows in a mixed style of gabled and hipped roofs with various built extensions. There are examples of roof alterations to these bungalows including flat roof dormers and gabled enlargements to a number of the properties. The property itself has a hipped roof. The proposed roof alterations to the property would result in a significant change to the character of the dwelling. The change in roof form from a hipped roof to one with gable ends will result in an increased maximum roof height of 0.6m, with the gable ends 3.8m higher than the current height at the eaves. Furthermore two dormer windows would be installed to the rear elevation and one to the front elevation.

7.3.2 There are properties within the street that feature a gable ended roof rather than a pitched roof, including the neighbouring dwelling 56 Merridale Road, and as such it is felt that the change would not have a detrimental impact on the character of the street. The rear extension would add further floorspace to the dwelling, but as much of the extension would replace the existing conservatory this extension is not considered to be excessive in size or depth. Furthermore, following the proposed changes the dwelling would not appear oversized either in relation to the surrounding properties nor the plot within which the house sits. The dormer windows to the rear of the site would not be visible from the street, and therefore would not harm the character of the dwelling. The dormer window to the front would potentially have a greater impact, however many of the dwelling within Merridale Road and Maldon Road feature dormer windows to side elevations visible from the street, and this dormer would be of modest size at 2m wide.

7.3.3 In terms of the impact to neighbouring properties, the extension to the rear is not considered to have a harmful impact. Whilst the property is located directly on the boundary to 52 Merridale Road, from this perspective there would be little change. There is currently a brick wall on the boundary forming the side wall of the conservatory, a wall to the same depth would remain with the maximum roof height slightly lower than that of the conservatory. In terms of the impact to No. 56, whilst additional depth to the dwelling would be created to the rear, a 2m gap

between the extension and the boundary would remain which would ensure no harm is caused by this.

- 7.3.4 The raising of the roof and introduction of a gable ended roof would not have a significant impact to the light and the outlook of both 52 and 56 Merridale Road. Neither property has a side facing window that would be affected (56 has a small obscurely glazed window). The introduction of two dormer windows to the rear elevation will afford only limited oblique views into the most useable and private areas of the neighbouring gardens. It is therefore considered that the views possible would not represent a significantly harmful impact on the privacy of the neighbours.

7.4 Highway Safety

- 7.4.1 There is space for one vehicle on the driveway of the property, and space in front of the dropped kerb. Merridale Road does not feature any parking restrictions. Concerns have been raised regarding the traffic and parking impact that would arise from increasing the number of residents and visitors at the property. Although this would be a result of increasing the number of occupants within the dwelling, limited weight can only be given the impact as the use will still remain the same with a Class C3(b) allowance for up to 6 residents. In addition, the Highways Officer has raised no objection to the proposal.

8. Summary

- 8.1 In summary, the expansion of this specialist housing would help contribute towards the government's aim to enable disabled and mentally disordered people to live as normal lives as possible in touch with the community. The concerns and fears of the local residents' can be appreciated, however, the care provider and Social Services team are responsible for safeguarding the well-being of residents that receive care. Where necessary the responsible Local Authority has a duty to review the care needs of a resident. It has been assessed that the proposed extensions would not harm the character or amenity, and highway safety of the local area is maintained

9. Conclusion

- 9.1 In conclusion, the proposal would have an acceptable impact in accordance with the Council's policies and guidance and conditional approval is recommended.

Local Government (Access to Information) Act 1985

Documents used in the preparation of this report Background Papers

1(a), (b), (c), (d), 2 (b), (d), 4(f), (g), (vv), 6(a), (b), 7(a)

MG for 22/08/17 PROW Panel

PLANNING CONDITIONS

01. Full Permission Timing Condition

The development hereby permitted shall begin no later than three years from the date on which this planning permission was granted.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

02. Hours of work for Demolition / Clearance / Construction

All works relating to the demolition, clearance and construction of the development hereby granted shall only take place between the hours of:

Monday to Friday 08:00 to 18:00 hours

Saturdays 09:00 to 13:00 hours

And at no time on Sundays and recognised public holidays.

Any works outside the permitted hours shall be confined to the internal preparations of the buildings without audible noise from outside the building, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of the occupiers of existing nearby residential properties.

03. Approved Plans

The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule attached below, unless otherwise agreed in writing with the Local Planning Authority.

Reason: For the avoidance of doubt and in the interests of proper planning.

POLICY CONTEXT

Core Strategy - (as amended 2015)

CS10	A Healthy City
CS13	Fundamentals of Design

City of Southampton Local Plan Review – (as amended 2015)

SDP1	Quality of Development
SDP7	Context
SDP9	Scale, Massing & Appearance
H7	Residential Environment

Supplementary Planning Guidance

Residential Design Guide (Approved - September 2006)
Parking Standards SPD (September 2011)

Other Relevant Guidance

The National Planning Policy Framework (2012)



The Planning Inspectorate

Appeal Decision

Site visit made on 6 January 2015

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 12 February 2015

Appeal Ref: APP/L5240/X/14/2216851

31 Canterbury Road, Croydon CR0 3PY

- The appeal is made by Mrs Y P Wilson under section 195 of the Town and Country Planning Act 1990 against a refusal by the Council of the London Borough of Croydon to grant a lawful development certificate.
 - The application Ref: 13/03098/LP, dated 6 August 2013, was refused by notice dated 15 November 2013.
 - The application was made under section 192(1)(a).
 - The use for which the certificate is sought is "The building will be used by up to 6 people with learning difficulties living together as a single household and receiving care (C3(b))".
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Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the use described in the application, which I consider would be lawful if instituted at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the proposed use would be lawful if instituted at the time of the application. The planning merits of the use are not relevant and there is no planning application before me.
 3. 31 Canterbury Road is a dwellinghouse within the meaning of Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended. The appellant maintains that the proposed use will be within Class C3(b) and will therefore not constitute development for the purposes of the legislation. The Council maintain that planning permission is required because the proposed use will be within Class C2 (residential institutions).
 4. The proposal is that five residents with learning difficulties will live together in the house. They will each have an en-suite bedroom and will share a kitchen, a lounge and a dining and utility area. The appellant has not specifically stated that the five residents will be adults, but I have assumed this to be the case. The residents will be assisted by staff whose duties will mainly be to assist with their welfare and with some of their domestic activities. The staff will attend on a rota basis, one at a time, and will not be resident in the house. A study will be provided for staff use should it be necessary.
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5. The Council's case includes the following assertions: "If staff work on shift patterns throughout the day and night the property would not operate as a single household and it would be a C2 use (regardless of size). C3(b) use can include staff but these staff must live in on site (notwithstanding the requirement to have time off). C3(b) use can also be up to six persons without permanent live-in support. However, care workers must not work at the premises for regular/sustained periods."
6. Class C2 includes "Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))". Class C3(b) applies to "Use as a dwellinghouse (whether or not as a sole or main residence) by ... not more than six residents living together as a single household where care is provided for residents". Article 2 of the Order states that "'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". There is no dispute in this appeal that the proposal includes the provision of care within the meaning of Article 2.
7. Neither party has referred to any case law. There have been several judicial decisions over the years that are relevant to the issues arising in this appeal. They have been summarised in at least two appeal decisions – see, for example, APP/U5930/X/07/2061987 and APP/G1250/X/08/2089670.
8. Paragraph 3B-979 of the *Encyclopedia of Planning* includes the following statements: (a) "Class C3 is intended and apt to include small community care homes consisting of up to six people, 'living together under arrangements for providing care and support within the community'"; (b) "the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy is likely to be and the more apt, therefore, to describe it as a single household"; (c) "Where the household is one where care is provided for residents it remains in this class (provided the limitations are met) rather than class C2 (residential institutions)"; (d) "The Secretary of State does not accept that the distinction depends upon the extent of the care provided"; and (e) "the High Court has confirmed that the Class does not require that the staff providing care for residents need themselves be resident (*R. v Bromley LBC Ex p. Sinclair* [1991] 3 P.L.R. 60)".
9. The *Encyclopedia* does not refer specifically to the case of *Crawley Borough Council, R (on the application of) v Helberg (t/a The Evesleigh Group)* [2004] EWHC 160 (Admin). The facts in that case were similar to those in the current appeal. The house was to be occupied by four adults with learning difficulties, who would have had carers there at all times. The carers would not have lived in the house, but a shift system would have operated so that there were always two carers on site, even at night. The Court dismissed a challenge to the Inspector's finding that the proposed use was within Class C3(b), and not in Class 2.
10. The following are extracts from the judgment in *Crawley*:

"31. In my judgment, the correct position is that, in every case, the judgment 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 judgment 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 to the underlying policy.

32. If the carers are resident, the question is whether they, together with the other residents, constitute a single household. But if they are not resident, there remains a perfectly sensible question whether those who are resident, that is to say those who are in receipt of care, themselves constitute a single household. That is a question essentially to be answered on the facts. It was a question considered on the facts of this case by the inspector and answered affirmatively by him."
11. Having due regard to everything I have referred to above, I have no reason to disagree with the Council when they indicate in their appeal statement that the question requires factors such as the manner of use, the physical condition of the premises, the daily operation of the accommodation and the working arrangement of staff to be taken into account. It seems to me, however, that the unequivocal views of the Council set out in paragraph 5 above are not correct. As a matter of fact and degree, the proposed use, as described in paragraph 4 above, will in my view result in five residents living together as a single household with care being provided for them. It will therefore be within Class C3(b), and not Class C2, and an application for planning permission is not required. Should the actual use turn out to be materially different to that described, the position could be re-assessed and a different conclusion might be reached.
12. I am therefore satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR



Appeal Decisions

Hearing held on 24 February 2016

Site visit made on 24 February 2016

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 01 April 2016

Appeal A: Appeal Ref: APP/X3025/C/15/3006355

11 Lindhurst Lane, Mansfield, Nottinghamshire NG18 4JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr David Harrison (Heathcotes Care Ltd) against an enforcement notice issued by Mansfield District Council.
 - The Council's reference is 2014/0002/ST.
 - The notice was issued on 09 February 2015.
 - The breach of planning control as alleged in the notice is: without planning permission, the change of use from dwelling house (C3) to residential care home (C2).
 - The requirements of the notice are: Stop using the premises as a residential care home (C2).
 - The period for compliance with the requirements is 12 weeks after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)[a, c, e and g] of the Town and Country Planning Act 1990 as amended.
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Appeal B: Appeal Ref: APP/X3025/X/15/3003794

11 Lindhurst Lane, Mansfield, Nottinghamshire NG18 4JE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr David Harrison (Heathcotes Care Ltd) against the decision of Mansfield District Council.
 - The application Ref 2014/0002/ST, dated 05 January 2014, was refused by notice dated 01 August 2014.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described on the application form as: LDC for an existing use – 5 residents living together as a single household and receiving care as permitted by use class C3(b).
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Decisions

Appeal A:

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.
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Appeal B:

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary Matters

3. Two appeals have been submitted, one against the Council's decision to serve an enforcement notice regarding the alleged change of use and the other in relation to their decision to refuse to grant a certificate of lawful use for the existing use of the premises, under section 191 of the Town and Country Planning Act. I shall deal with both appeals within this decision letter.
4. An accompanied site visit was carried out by another Inspector, Mr George Mapson, on 06 October 2015. Further to that site visit, the Planning Inspectorate wrote to the parties on 19 November 2015 stating that a Hearing was considered to be the most appropriate procedure. Subsequently, I held a Hearing into both appeals on 24 February 2016. My decisions are based on the written information before me and the evidence put forward at the Hearing. I have not discussed the appeals, or their respective merits, with Mr Mapson.
5. At the accompanied site visit on 06 October, a number of minor discrepancies were noted between the original layout plan submitted in relation to Appeal B and the actual layout of the property. Following that visit an amended layout plan has been submitted by the appellant showing the layout of the property as it currently exists¹. I have taken account of that revised plan in reaching my decisions and am satisfied that no party will be prejudiced by my decision to do so.

Reasons

Appeal A

6. The appeal was brought on grounds (a), (c), (e) and (g). However, the appellant also questioned whether the Head of Planning and Regulatory Services (the Head of Planning), who signed and authorised the service of the enforcement notice, did, in fact, have the delegated authority to do so. Extracts of the Council's scheme of delegation were provided with the appellant's statement of case and the Council provided me with a full copy at the Hearing.
7. The scheme of delegation formed part of the Council's constitution and was approved on 19 April 2011, with subsequent changes on 20 September and 13 December of the same year. The Council noted at the Hearing that the scheme has been amended since the enforcement notice was served but I have not been provided with copies of the current version. In any event, for the purposes of this appeal, it is the scheme of delegation, as it existed at the time the enforcement notice was issued that is relevant. The Council confirmed that the version provided was the approved scheme at that time.
8. In support of their case that the Head of Planning had delegated authority to sign the notice the Council referred me to paragraph 1.25 on page 93 of the scheme. That paragraph falls under section 13.04 which is entitled 'Corporate Directors and Heads of Service'. The introductory sentence to that section

¹ Drawing number 1209M 9 Revision A

states that all delegated powers set out in the scheme which come under the responsibility of their service area shall be exercised at any time by the Corporate Directors and Heads of Service. The specific delegated powers for each Head of Service are subsequently listed and the powers of the Head of Planning, Community Safety and Regulatory Services are listed at section 13.10.

9. Paragraph 1.25 of section 13.04 authorises the Corporate Directors or Heads of Service to *'authorise any particular named officer to carry out inspection and enforcement duties where this is (i) authorised by law and (ii) necessary in the performance of any function or duty of the department'*. In effect, that paragraph would permit a Corporate Director or Head of Service to delegate those particular responsibilities to a named officer. However, in this case, the notice was signed by the Head of Planning and Regulatory Services himself and the decision was not taken by another named officer. Consequently, it is necessary to examine whether the decision of the Head of Planning and Regulatory Services fell within the scope of the powers delegated to him by the scheme of delegation, as listed at section 13.10.
10. Section 13.10 includes an extensive list of delegated powers, separated into sections (a) to (d). Sections (a) and (b) relate to the determination of 'applications' made to the Council and are not directly relevant to enforcement proceedings. Section (d) relates to building control matters and, likewise, is not relevant to enforcement under the Town and Country Planning Act 1990 (the Act). Section (c) lists a number of 'other development control functions delegated to the Head of Planning, Community Safety and Regulatory Services, Development and Building Control Manager and Principal Development Control Officers'. The listed powers are very specific and include, at paragraph 1.35, the authority to serve Planning Contravention Notices and Breach of Condition Notices. However, the power to serve enforcement notices under the Act is not listed. I cannot speculate as to whether that was an oversight or a deliberate omission but, whatever the background to the scheme, it is clear that the authority to serve enforcement notices is not listed within the powers delegated to the Head of Planning and Regulatory Services.
11. The Council suggest that the terms of paragraph 1.25 of section 13.04 were broadly drawn to enable a named individual to carry out any 'enforcement duties'. At the Hearing, the Council accepted that the term 'enforcement duties' was somewhat unclear and that it was difficult to be certain whether that was intended to relate to the service of an enforcement notice. In any event, as set out above, I consider that the terms of paragraph 1.25 were to enable specific enforcement duties to be delegated to a particular named officer. The delegated powers of the Head of Planning and Regulatory Services are fully set out within the scheme of delegation and do not include the power to authorise and serve enforcement notices under the terms of the Act. In my view, the terms of paragraph 1.25 of section 13.04 did not extend the delegated powers of that individual beyond those listed at section 13.10.
12. In view of the above, having considered the scheme of delegation in detail, I am not satisfied, on the balance of probabilities, that the Head of Planning and Regulatory Services had the proper authority to issue the enforcement notice. To my mind, a notice issued without proper authority must be ultra-vires and a nullity; without an authorised signature it cannot be an enforcement notice at all. For those reasons, I conclude that the notice is a nullity and take no

further action in connection with Appeal A. This does not prevent the Council from exercising its power under section 171B(4)(b) of the Act to issue another notice if it considers it expedient to do so and, of course, Appeal B remains to be considered.

Appeal B

Background and Main Issue

13. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal.
14. The burden of proof regarding decisive matters of fact rests on the appellant. He has asserted that the development is lawful and thus immune from enforcement action. An appellant must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).
15. Thus, the main issue in relation to Appeal B is whether the Council's decision to refuse to grant a certificate of lawful use was well founded.

Reasons

16. No. 11 Lindhurst Lane is a detached dormer bungalow, which is located close the junction with Berry Hill Lane. The character of the surrounding area is predominantly residential. The original building has been altered and extended by the addition of a single storey extension at the rear and a dormer to the front, which has provided first floor living space.
17. The property has four bedrooms on the ground floor and one bedroom on the first floor. Four bedrooms have en-suite shower and toilet facilities; the other is adjacent to the communal ground floor bathroom. The rest of the accommodation comprises a kitchen, living room, dining room, laundry room, hall and manager's office. Visitors to the premises enter through the front door where they are required to sign a register.
18. Aside from the locks on the bedrooms the layout of the property is largely what one would expect of any family home, with a communal lounge, kitchen and garden area. Locks are provided on bedroom doors to provide privacy and security but that, of itself, does not dictate that the residents do not form a single household, having regard to the prevailing sense of communal living, as described above. At the time of the site visit of Inspector George Mapson a small section of the garden was fenced off to provide a private area immediately to the rear of one of the ground floor bedrooms. I understand that the fencing was erected taking account of the needs of a particular resident who, on occasion, would benefit from a quiet space within the garden. That fencing had been removed at the time of my site visit. Taking account of the shared use of facilities within the house, it appears to me that the fencing

within the garden was not indicative of a separate unit of occupation or any significant sub-division.

19. A small manager's office contains a computer, paperwork and a store for prescription medicines. In proportion to the scale of the building as a whole the office is small and its presence is not unexpected in a home where care is provided. It seems to me that the inclusion of the office does not affect the way in which the residents interact with one another, nor does it alter the influence that they have on running the household including the communal tasks involved. Thus, there is nothing inherent within the layout of the property that would suggest that the use would fall outside Use Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order).
20. Class C3(b) is defined as the use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents. Having regard to the evidence presented, the fundamental question is whether the residents of the property form a single household. I have been referred to a number of appeal decisions and court judgements with regard to the question of whether residents in need of care are capable of forming a single household. In the '*North Devon*' judgement² it was held that children were not capable of forming a single household in the absence of a live-in carer on the basis that children are not generally capable of running a household themselves. In reaching his judgement Collins J held that the same would apply to adults who suffer from mental or physical disability who need care in the community. However, that judgement was considered in detail in the '*Eve Helberg*' case³. In reaching his judgement on that case Mr Justice Richards noted that he would be reluctant to read the comments of Collins J as laying down a principle that those who suffer from disability or are in need of care can never constitute a household.
21. He concluded that the correct position is that a judgement needs to be made based upon the specific facts of each individual case noting that '*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 be sensibly said to constitute a household, notwithstanding that they have some disability and need care. That is so even if the need is full-time care. I would reject any suggestion that in a case where care is needed for those under a disability, Class C3 can only apply 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 and to the underlying policy.*

If the carers are resident the question is whether they, together with other residents, constitute a single household. But if they are not resident, there remains a perfectly sensible question whether those who are resident, that is to say those in receipt of care, themselves constitute a single household. That is a question to be answered on the facts.'
22. Therefore, it is a matter of fact and degree, based upon the circumstances of any given case, as to whether residents are capable of forming a household.

² North Devon District Council v First Secretary of State [2003] JPL 1191

³ R (on the application of Crawley Borough Council) v FSS and Eve Helberg (Trading as the Evesleigh Group)

The fact that care is necessary does not preclude residents from forming a single household, in fact, the concept of care is an inherent part of Use Class C3(b).

23. In this case, the property contains shared facilities including the kitchen, lounge and external space. At the Hearing, the appellant confirmed that the residents themselves take responsibility for everyday household tasks, including cooking, cleaning and shopping, with assistance from carers when required. At my visit to the property I observed a rota posted on the fridge door which identified which resident was responsible for preparing dinner on specific days of the week. I understand that the residents eat communally and also undertake shopping trips together. Whilst not related to one another, the residents have formed friendship bonds and the communal living arrangements and the way in which household tasks are undertaken indicates to me that they are living as a single household.
24. At the date of the LDC application the property was occupied by five adult residents, who are described as having learning difficulties and mental health issues and require care by a team of carers 24 hours a day. That care is provided by a manager, who works on weekdays between 09.00 and 17.00; three day-support workers and two night-support workers. Care is provided on a shift basis such that none of the care workers are resident at the property and the night support workers undertake a 'waking shift' during the night.
25. In all eighteen members of staff are employed to offer general supervisory and personal care but the maximum number of staff on site at any one time would be five, including the manager. One resident requires personal care. The four other residents do not require personal care and are able to take a shower or bath or use the toilet on their own.
26. From the evidence presented it seems to me that the purpose of the carers is largely to assist the residents in day to day tasks as opposed to undertaking those tasks themselves on behalf of the residents. This was described as 'supported living' by the appellant at the Hearing. The appellant also explained the way in which those in need of care are assessed in terms of determining their suitability for being accommodated within an assisted living environment. The premises is not a 'secure' institution and those residing at the property are assessed as being suitable for living in the community with support from care workers.
27. The Council and interested parties have referred to disturbances related to the property and the Council have appended a witness statement from a Police Community Support Officer which was produced following a request for information under the Freedom of Information Act. That statement records 33 incidents at the property between 06 February 2013 and 20 March 2015. One arrest was made on 14 June 2014 on the charge of criminal damage and assault in relation to the actions of a resident who caused damage within the property. 16 of the 33 incidents related to situations where residents had 'absconded' from the premises. Those calls are generally logged by the Police as 'missing persons' or 'concern for safety' and the incidents were generated by care staff who were concerned for the welfare of the individual who had left the premises. There is nothing to indicate that the people in question were any danger to the wider public.

28. A number of calls were also logged under the heading of 'anti-social behaviour' and those incidents included situations where neighbouring residents have reported banging and disturbances within the premises but also outside the premises including incidents where the gates have been slammed and one incident where a resident was hitting fencing, gates, cars and the bus stop with a plastic 'swing-ball bat'. The appellant suggested that the incidents were examples of autistic traits and suggested that the majority related to a particular resident. In the view of the appellant, the incidents do not indicate that residents of the home are a danger to the public and drew the distinction between secure institutions, such as the St Andrew's Care Home, which has been referred to by interested parties, and the lower level of care required at the appeal premises.
29. Whilst I accept that there is nothing to suggest that the residents pose any danger to the public I have no doubt that the recorded incidents of noise and disturbance and anti-social behaviour would cause significant unease amongst neighbouring residents. Behaviour that may seem perfectly understandable to a professional who is used to caring for those with mental disorders could no doubt appear intimidating or disturbing for residents who are not trained in such matters.
30. However, notwithstanding that point, the incidents referred to do not dictate that the use of the premises falls outside Class C3(b) of the Order. Class C3(b) is defined as the use as a dwellinghouse by not more than six residents living together as a single household where care is provided for residents. The term 'care' is defined at Article 2 of the Order and 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 personal care of children and medical care and treatment'*.
31. Thus, it is inherent within the terms of the Order that those with mental disorders may fall within Class C3(b). It is reasonable to expect that the behaviour of those with such disorders will reflect their particular individual circumstances, whether that be autistic behaviour as described by the appellant, or other behavioural traits. Therefore, whilst I acknowledge that the behaviour may seem unusual or intimidating to neighbouring residents, the incidents recorded by the Police do not indicate that the residents are incapable of forming a household for the purposes of Class C3(b).
32. Fundamentally, the evidence suggests the residents take a full part in running the household, with assistance from carers, and that those residents live communally and have formed friendships with each other. Therefore, taking account of the *Eve Helberg* judgement, and the specific circumstances of the case before me, I conclude, on the balance of probability, that the way in which the property operates falls within Use Class C3(b).
33. The Council suggest that the overall level of activity generated by the use is such that a material change of use has occurred. As set out above, the terms of Class C3(b) explicitly include up to 6 residents living together as a household where care is provided. The definition of 'care' within the Order refers to 'personal care' which, to my mind, suggests that the Order envisages care packages tailored to the individual. In this case, five residents live at the premises with a maximum of up to 5 members of staff on site at any one time,

effectively providing one to one 'personal' care during the daytime. The numbers will generally be lower in the evening when the manager is not on the premises and two night staff are employed. To my mind, the level of care in this instance falls within what could reasonably be expected within Class C3(b), taking account of the terms and definitions within the Order.

34. Consequently, I am satisfied that the level of activity is not at a level where a change of use outside Class C3(b) has occurred. Full details have not been provided but the case in Bath and North-East Somerset would appear to be of a much greater scale than that before me, noting that the Inspector commented that up to 18 cars were parked outside the premises in that case. In this case, the maximum number would be 6.
35. It is clear, upon reading relevant judicial authority, including *Hossack*⁴ and *Eve Helberg*, that decisions of this nature are not straightforward and that each case must be determined on its individual merits. Levels of care, the number of residents, the particular circumstances of those residents, the layout of the property, and the level of activity associated with a use could all be subject to change depending on the specific circumstances of the case. The Council and the appellant have referred to various decisions relating to cases elsewhere in the country. Without full knowledge of those cases it is difficult to draw comparisons with the appeal before me and I have determined the appeal on the basis of the information presented in writing and the oral evidence gathered at the Hearing.

Conclusion

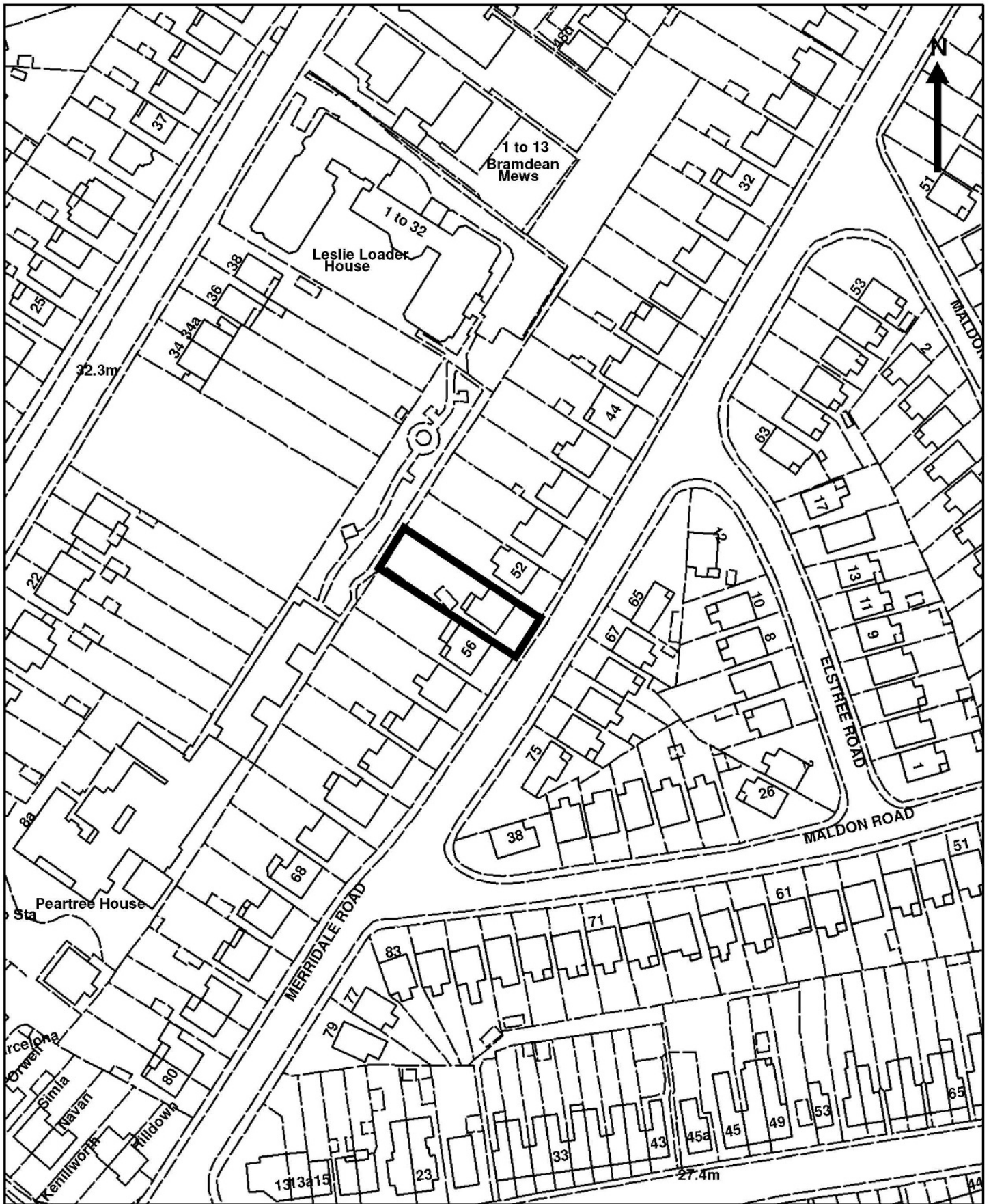
36. For the reasons given above I conclude that, at the time the application was made, the property was in use as a dwellinghouse as defined by Class C3(b) of the Order. As such, no material change of use had taken place from the previous use within Class C3(a) and, on the evidence now available, the Council's refusal to grant a certificate of lawful use or development in respect of an existing use consisting of 5 residents living together as a single household and receiving care as permitted by use class C3(b) was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Chris Preston

INSPECTOR

⁴ R (on the application of Yvonne Hossack) v Kettering Borough Council 7 English Churches Housing Group [2002] EWCA Civ 886

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