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Our ref: AND193

By email only to: Hamish.evans@midsussex.gov.uk

5 [REDACTED] September 2025

Dear Mr Evans,

Your planning ref: DM/25/2830

65 Balcombe Road, Haywards Heath, West Sussex, RH16 1PE

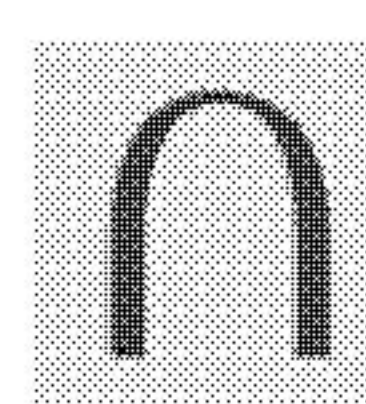
Proposed change of use from dwelling house (C3) to Children's Care Home (C2) for 3 children

We represent [REDACTED] at 63 Balcombe Road, next door to the application site. We write on their behalf to object to this application for a Lawful Development Certificate (LDC) made pursuant to section 192 of the Town and Country Planning Act 1990. As you are aware, this application seeks confirmation that the proposed use of the property as a children's residential care home in use class C2 would not constitute a material change of use from its current lawful residential use as a single dwelling in use class C3(a). In our view, for the reasons set out below, and on the basis of the applicant's submissions, it seems clear that the proposal should be regarded as amounting to a material change of use. Accordingly, it follows that the Council must refuse this application as the change of use requires planning permission.

Background

1. The courts are clear that the question of whether a change of use amounts to a "material change of use" is a matter of fact and degree in each case. Nonetheless it is important to carry out the analysis in a proper manner. In the case of *Howell v Secretary of State* (1964) 15 P. & C.R. 26 Upjohn L.J. stated: "when one is considering whether there has been a material change in the use of buildings or land one must first consider the site as a whole and then, as a matter of common sense, compare the user before the critical date and after the critical date." The more recent case of *SSETR v Waltham Forest LBC* [2002] EWCA Civ 330 clarified this further and confirmed that in carrying out such an analysis notional uses should be disregarded.

2. It follows then that the consideration of whether the proposed use amounts to a material change or not depends on considering the existing use of no. 65 together with the proposed use.
3. In that regard we understand that no. 65 has long been used as a single-family dwelling within use class C3(a), that is providing residential accommodation for a single household. For the last nine years the property has been occupied by just one person, Mr Desai, a widower. Prior to that he lived there with his wife and two children.
4. No. 65 is located in a typically suburban and leafy residential area, characterised by large, detached dwellings set in generous gardens with off-street parking. It lies within an Area of Townscape Character (ATC).
5. The proposed use is a commercially driven institutional use involving:
 - Up to three children in the care of local authorities living there full-time supported by staff working in shifts.
 - Two daily shift changeovers with three full time members of staff on site together with three children, plus a manager present during “business” hours.
 - Regular on-site managerial presence (Monday–Friday)
 - Frequent visits from professional third parties including social workers, Ofsted inspectors and so on.
 - Associated vehicular and pedestrian movements to support this use.
 - Internal and external physical changes, including fire alarms and doors, a staff office, room alarms and CCTV.
 - An estimated 140+ movements, many by car, per week, and way in excess of what was previously experienced at this house. (Note: This is just an estimate given by the applicant; it could easily be much more).
6. It could be expected that as a result of the proposed change of use, noise and disturbance would inevitably increase due to repeated vehicle movements and door slamming, the regular attendance of professional visitors, safeguarding interventions, including potential emergency service attendance. (We understand that Ofsted reports commonly acknowledge that children’s homes experience higher emergency call-out rates than family dwellings.)
7. Concerns have been expressed to us by our clients that the application misrepresents the parking provision, which is deemed to be inadequate to serve the proposed use. There is provision for a maximum of 2–3 vehicles and therefore no room for the 6 or even 7 cars that could be experienced at staff handover times. There is no capacity for vehicles to turn

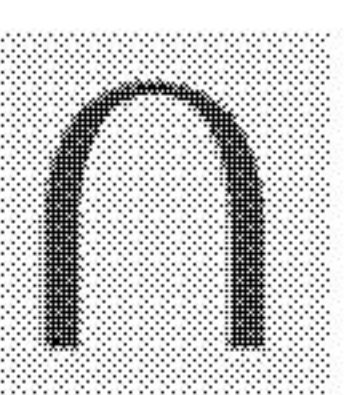


on-site when more than two cars are present, requiring reversing onto Balcombe Road — a location with restricted visibility and narrowing due to the dangerous nature of the road and previous near fatal accidents in this location.

8. There are no on-street parking spaces on Balcombe Road, there is no certainty that spaces elsewhere would be readily available. Any attempt to park on Balcombe Road would impede traffic flow and potentially harm highway safety.
9. In summary, and with respect to the applicant and the agents, it is clear from the above that the changes proposed are not “small”, nor is the proposed use “almost identical” to the existing lawful use of the house. They would amount to a significant change in how the house has been used historically.

Legal Framework

10. Section 55 of the Town and Country Planning Act 1990 defines the term “development”. There are two “limbs” to this definition: operational development and a material change of use. There is no general statutory definition for what constitutes a material change of use but some changes are expressly defined and other changes are expressly included. Furthermore some changes benefit from not being deemed development at all, such as a change within a use class, while other changes can be deemed permitted development.
11. The existing use and the proposed use are in different use classes and there is no permitted development right to change between them. Accordingly, the applicant is seeking to show that while there is a change of use the change is not material and so does not need permission anyway.
12. Assessing whether a change is material is not always straight-forward but nonetheless there are some useful principles that can be derived from Court judgments:
 - A material change of use requires “a material change in the definable character of the use of the land” and can include a wide number of factors including the effects of the change on local amenity, on highway safety, on the character of the area, on the supply of services and the impact of the change on the supply of housing; see *Hertfordshire CC v Secretary of State* [2012] EWHC 277 (Admin) and *R (Kensington) v Secretary of State* [2016] EWHC 1785 (Admin).
 - The character of each use is important – are they the same, or are they different?; see *Westminster CC v British Waterways* [1985] AC 676
 - As noted above, the comparison to be made in each case is between the actual existing use and the proposed use and not any notional use; see *SSETR v Waltham Forest LBC* [2002] EWCA Civ 330



13. In respect of cases concerning residential uses, the courts have held:

- That a material change of use may occur even though both the former use and the new use are residential; see *Birmingham Corporation v Habib Ullah* [1964] 1 QB 178 a case concerning the change from a single dwelling house to a house let in lodgings.
- That the nature of the relationship between residents is a material consideration; see *Hossack v Kettering* [2003] 2 P&CR 34.
- That a proper functioning household falling within Use Class C3(b) required both children and their carer(s) to be residing at the premises; see *North Devon DC v First Secretary of State* [2003] EWHC 157 (Admin).

14. More generally, it should be noted that government has placed residential institutions and residential dwellings into separate use classes, respectively use class C2 and C3.

15. The C2 use class is defined as:

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 boarding school, residential college or residential training centre.

16. Care is defined as '*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*'.

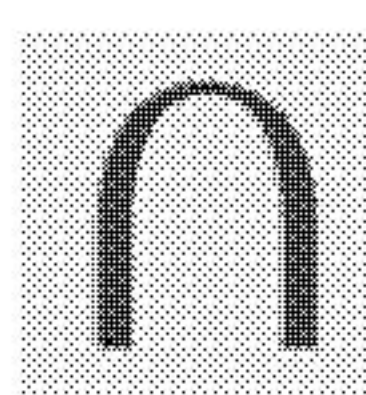
17. The C3 use class is defined as:

use as a dwellinghouse (whether or not as a sole or main residence) by—

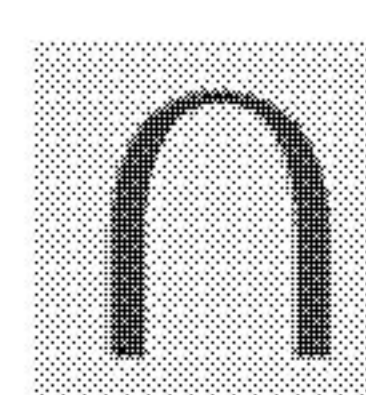
(a) a single person or by people to be regarded as forming a single household

(b) not more than six residents living together as a single household where care is provided for residents;

(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).



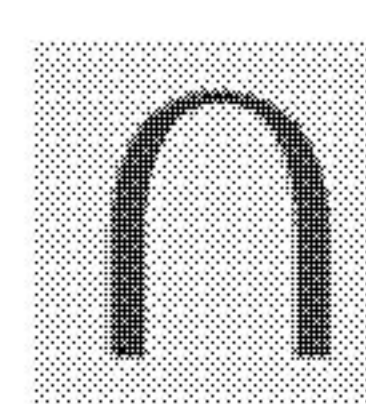
18. While the two use classes are distinct (as one would expect) there is a degree of overlap when it comes to premises being used for the provision of “care”. As noted above, however, the North Devon case makes clear that for a use to fall within C3(b) the carer has to be resident. Where there is no resident carer, as proposed here, the use falls within C2.
19. Against this background we should bring to your attention several appeal decisions where developers sought, unsuccessfully, to argue that a proposed change of use, from use class C3 to C2, was not material.
- Bootle – APP/V4305/X/24/3353196 (22 Diana Road)
LDC refused. The Inspector concluded that the level and nature of activity, including shift-based staffing and regular professional oversight, resulted in a material change of use.
 - West Sussex - APP/Q3820/X/24/3336877 (79 Denchers Plat)
LDC refused. The Inspector held that the appellant failed to demonstrate that the proposed operation would not constitute a material change of use due to a significant difference in the character of the activities on the land as a result of the change of use that would therefore be material and planning permission would be required.
 - Essex – APP/C1570/X/24/3352800 (32 Tyler Avenue)
LDC refused. The Inspector held that the appellant failed to demonstrate that the proposed operation would not constitute a material change of use.
 - Burnley – APP/Z2315/X/24/3351706 (1 Albion Terrace)
LDC refused. The pattern of institutional activity, including shift handovers, was held to be materially different from that of a single household.
 - Manchester - APP/G4240/X/23/3327733 (8 Richards Close)
LDC refused. The Inspector concluded that the level and nature of activity, including shift-based staffing and increase in comings and goings resulted in a material change of use.
20. These decisions are enclosed. It is of course accepted that these decisions are not determinative and each case has to be determined on its own merits. Nonetheless they are illustrative of the factors that can be considered when determining such applications.
21. We should also draw your attention to the case nearby at 1 Lucas Way, Haywards Heath, West Sussex, RH16 1JR; see your ref. DM/25/1968 and the officer’s report is also enclosed.



22. Like this case, the applicant sought a certificate of lawfulness that a change from a dwellinghouse (C3) to a children's home for a maximum of 3 children with up to three carers, two sleeping overnight working on a rota basis (C2) was not a material change of use. Your council found that the applicant had **not** demonstrated that such a change would **not** be material and therefore the application for the certificate was refused.
23. Against this backdrop it is very surprising that the pre-application advice given to the applicant in this case was so positive, finding that the proposed change (as outlined in the request) would not be material. One explanation for this might be that the pre-application submission was different from this application?

Assessment

24. We turn now to consider this framework against the matter at hand.
25. The proposal would introduce a commercially run enterprise into a residential area.
26. There would be a massive increase in comings-and-goings, resulting in an increase in noise and general disturbance.
27. It would be harmful to the character of the area because the change of use would result in and adverse effect on the level of amenities that our clients currently enjoy.
28. It would result in a significant increase in traffic movements, undermining highway safety on a busy road a harm exacerbated by the inadequate and unsafe parking arrangements for the greatly intensified use.
29. It would reduce the stock of housing and therefore reduce housing supply in an area where the Council can no longer demonstrate a five-year housing land supply as required by the National Planning Policy Framework.
30. The proposed use, with its institutional character, frequent comings and goings and associated noise and activity, would material harm and certainly fail to preserve or enhance this important townscape character.
31. The character of the existing use is fundamentally different from the proposed use. For example, in addition to many more comings-and-goings, the likelihood of emergency service attendance would increase.
32. The relationship between the occupiers would be completely different from one would expect to find in a C3(a) use.



33. The applicant suggests that the house could be used much more intensively than it has been used historically. While this may be the case, that is not a consideration the Council should take into account. This suggests that the judgement here should be between a notional and significantly more intensive use than is currently found and the proposed use. As the case of *Waltham Forest* makes clear that is not appropriate, and therefore all the submissions made by the applicant in that regard should be disregarded.

Summary

34. In our view, for the reasons set out above, the proposed change of use would clearly constitute a material change of use from Class C3(a) to Class C2. This means that the LDC cannot be granted.

35. The evidence presented by the applicant, far from assuring our clients that the difference would be “small”, actually indicates just how fundamental the change will be. In short, they will no longer be living next to a family dwelling but instead will be living next to business, managing a residential institution, providing care for vulnerable children that will operate 24 hours a day, 7 days a week with all the associated negative amenity impacts arising from that proposed use.

36. It is therefore wholly inappropriate in this location. It certainly cannot be regarded as a non-material change of use. In fact, it is exactly the opposite of this. It is a highly material change of use and so requires planning permission.

We trust these representations are clear and thank you for taking them into account when determining the application. Given the level of concern locally, we would ask that if officers are minded to allow the application, they should refer it to the planning committee so elected members can have the final say on whether the proposed change is or is not a material change of use.

Finally, we would be grateful if you could kindly acknowledge receipt of this letter. Please send this by email to: david.evans@keystonelaw.co.uk.

Yours sincerely,

