Absolute Town Planning Ltd
Parkers – Cornelius House
178-180 Church Road Hove
East Sussex
BN3 2DJ

Adur & Worthing Councils
Development Management
The Shoreham Centre,
Pond Road,
Shoreham-by-Sea,
West Sussex,
BN43 5WU

Date: 20/01/2025
Our Ref: ATP/CL2Wordsworth
Your Ref:

Dear Development Management,

Lawful Development Certificate - Use of a (C3) dwelling as a children's home for a maximum of 4 children with up to three carers, two sleeping overnight working on a rota basis at 2 Wordsworth Road, Worthing BN11 3NH

I am acting as an agent in this case and lodge this letter as the Statement of Case to assist the LPA in reaching a decision. This letter will set out more detail pertaining to the nature of the proposed use and make clear the degree of materiality including a comparison between the current and proposed uses.

Proposal

In summary, the property is currently in HMO use and the proposal is to accommodate a 4-bedroom children's home and the nature and intensity of use are not considered discernibly different from its current use.

A floor plan is shown in the submitted documents of a scheme that has already been built at the site is shown really just for information on Plan No 0510 BR.01 Rev A.

Registration

The home will be registered with Ofsted and the West Sussex Children's Commissioner accepts an urgent need for new homes such as this. Before any home can open, it must gain the approval of Ofsted which has regulatory powers outside of planning controls.

Ofsted will require a local risk assessment before approving the property as a care home. Planning is therefore not the only form of regulation on which controls the suitability of the location. This has been reaffirmed in a recent appeal decision (APP/A3010/W/23/3322527).

ian@absolutetownplanning.com
www.absolutetownplanning.com

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Nature of Use

This application seeks a certificate of lawfulness for the proposed use of a C3 dwelling as a children's home for a maximum of four children with up to three carers, two of whom will sleep overnight, working on a rota basis.

The home will provide a smooth transition for children who come to live there. No changes are proposed to the external appearance of the building or surrounding land and the submitted floor plan simply shows the 'as built' building regs plans.

It is expected that children will attend school, and the children's home will seek to replicate as closely as possible a normal family environment. The carers and children will function as a household, doing shopping, cooking, and household chores in the same way as living at the house.

Children will undergo a stringent impact risk assessment to ensure they integrate with the local community. This considers the home, the environment, the community, plus peer groups and assesses against each child as an individual prior to admission into the home. The children will live at the property long term, hopefully for many years.

The principle is that the children and carers living at the dwelling house will function as a household with the carers who sleep overnight at the site changing on a rota system.

It is argued that there is little material difference between the current and proposed use and therefore planning permission is not required.

The Legal Basis

Section 55(1) of The Planning Act defines 'development' as including the:

> *"..the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."*

Section 55(2) of the Planning Act then allows for scenarios where 'operations or uses' shall not be taken to involve development with Part (f) expressly saying:

> *(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.*

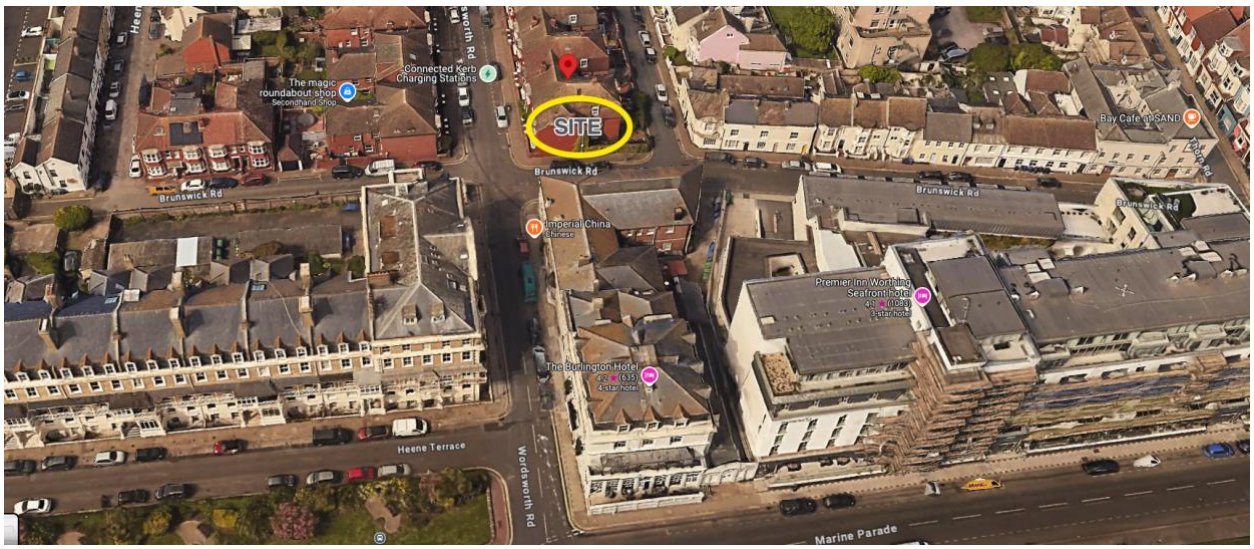
Section 192 of The Planning Act (as amended) makes provision for an application to be made to the local planning authority to ascertain whether any proposed use of a building would be lawful, and which is the purpose of this application.

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The Site

The application site is a two-storey end terrace dwelling with 6 bedrooms within a street of residential properties. It is one street removed from the seafront and Marine Parade but otherwise nestled within a domestic scale of a residential street – with separate access on a different street to the rear.



Charging points are installed for eclectic vehicles on the street, and the site is well placed for local infrastructure, including public transport.



Need for Children's Homes

Many politicians have expressed a need to ensure the most vulnerable in society are cared for, and homes are provided. In March 2023, Rachel Maclean (Minister) is quoted as saying:

> *'The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, the care system must provide stable, loving homes close to children's communities. These need to be the right homes, in the right places, with access to good schools and community support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love."*

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Precedents

Similar proposals have been submitted

- 72 Sedbury Road Sompting
  AWDM/1216/23 was for 2 children and 3 carers.
- Normandy House, Old Shoreham Road, Lancing
  AWDM/1687/23 2 children and 3 carers.
- 6 Freshbook Road, Lancing
  AWDM/0790/24 3 Children 3 carers

These cases were not deemed to constitute a material change of use. The material considerations and nature of use proposed in this current application are essentially the same as those in the above cases.

Use Classes

Class C3 Dwellinghouses – is formed of 3 parts.

- C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
- C3(b) covers up to six people living together as a single household and receiving care, e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
- C3(c) allows groups of people (up to six) to live together as a single household. This allows for those groupings that do not fall within the C4 HMO definition but which fell within the previous C3 use class to be provided for, i.e. a small religious community may fall into this section, as could a homeowner living with a lodger.

Class C2 Residential Institutions

- Use Class C2 (residential institutions) relates to residential care homes, hospitals, nursing homes, boarding schools, residential colleges, and training centres. This use class also has a subcategory C2A for 'secure residential institutions, ' including prisons, detention centres, custody centres, secure hospitals, and secure local authority accommodation.

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Case Law

There has been case law to show that using the property as a children's home would constitute a change of use from Class C3 (dwellinghouse) to C2 (residential institution). The property will not stay in the same use class, i.e. C3, because carers will operate in a shift pattern and will not properly reside at the property. Case law demonstrates that it is essential that the carers live at the property for it to remain as a dwelling.

In the Judgement of Mr. Justice Collins in North Devon District Council v First Secretary of State (2003), J Collins was clear on the facts of that particular case, that carers who do not live but who provide, a continuous 24 hour care cannot be regarded as living together and that, whilst there would be less than six residents, the children, without at least one adult living with them at the premises, would not be capable of being regarded in the true sense as a household.

Material Considerations

Local planning authorities should give due weight to and support applications, where appropriate, for all types of accommodation for looked-after children in their area that reflect local needs. All parties in the development process should work together closely to facilitate the delivery of such vital accommodation.

The proposed use is not dissimilar to any family residing at the address with 4 children, and comings and goings are not materially different in the proposed use. On the balance of probabilities, the proposed use will not give rise to greater disturbance or amenity effects than could be generated using it as a dwelling.

It is hoped this application provides sufficient information to determine the application favourably.

The determination of applications for Certificates of Lawfulness and the considerations are restricted to the lawfulness of the proposal. The issue for consideration is whether the proposal needs planning permission using an application or may be carried out without any such need. This could be because the development is 'permitted development', is *de minimis*, is not a 'material' change of use, or is immune from enforcement, and so has achieved lawfulness.

The relevant test for such an application is whether, on the balance of probabilities, the applicant has proven the proposed use is lawful. The onus is upon the applicant to demonstrate proof, and this statement is aimed at providing this evidence.

<u>Materiality</u>

The key issue here is whether the proposed use versus the existing use is materially different. Would the number of people at the property, activities and traffic movements be materially different? ·

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Up to four children or young people and up to three staff members will be present—a similar intensity of occupation as any other residential dwelling in the street. Visitors would generally be the daily carers, social workers once every six weeks, and Ofsted inspectors annually. Hence, traffic movements would be like those of a family with car drivers, older children, and friends.

The property would provide the young people with their sole and main residence, with free and shared access to living, dining, and kitchen facilities. The residents would be taken to and brought home from school each day, and with their carers, they would interact with the property and the residence in a way that is very similar to that of an adult resident, parent, or guardian.

The residents would eat together and carry out domestic chores. The home would seek to foster lifestyles which could be the same as if the residents were living in a family home.

Children would have visits from their friends when deemed appropriate, which would be in accordance with their care plan and would, therefore, be no different from a typical household.

The property would look no different from the adjacent houses visually. During the day, three staff members could be in the property at any one time, but this would have no impact on the area's amenities.

In terms of the nature of the proposed use, Paragraph 25 of Circular 05/2010, now replaced by Paragraph 9 of Circular 08/2010, sets out where [remises can be properly regarded as being used as a single dwellinghouse where they are:

- *a single, self-contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them;*
- *designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse;*

An appeal judgement at 9 Whitburn Road, London (Ref. 32993519) provides a useful assessment and insight of a similar care home:

> *"Whilst there will be some additional comings and goings associated with the use as a residential care home, there is no evidence before me to dispute the appellant's case that the use will not give rise to a greater level of disturbance than could be generated by the lawful use as a C3 dwellinghouse. The additional comings and goings identified by the appellant and Council are at a sufficiently low level so as to remain within the parameters of what could be usually expected of a family home and not therefore materially different so as to change the character of the property. Similarly, the number of people who will be typically present at the property, and therefore the associated waste generated, is not significantly higher than could be expected with its current lawful use".* Paragraph 12

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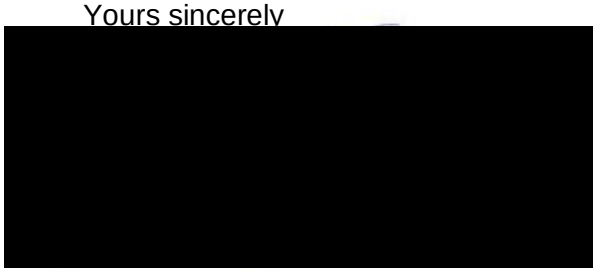
Conclusions

It is hoped that the applicant in this case, through this statement, fully meets the onus of proof and demonstrates (on balance of probabilities) that there will not be a material change of use. The size and layout of the property, the use as a children's home for up to 4 no. children with 3 full time carers, would not constitute a material change of use.

The proposal constitutes a change of use from Use Class C3(a) dwellinghouse to C2 Residential Institution, but this is not considered a material change of use and does not require planning permission.

The use of a dwellinghouse as a children's home for up to 4 children or young persons with up to 3 carers two of whom will sleep overnight. The use is not liable to enforcement action under Section 172 of the Act.

Yours sincerely



Ian Comber BA(Hons) Cert TP MRTPI
Founder of Absolute Town Planning Ltd

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