

OPERATIONAL STATEMENT

Jasmine House Moor Row CA24 3JA

June 2022

Table of Contents

1	INTRODUCTION	1
2	THE FACTS	1
3	OUR INTERPRETATION	3
4	CONCLUSION	5

APPENDIX 1 – COMPARABLE CERTIFICATES ISSUED BY THE YORKSHIRE DALES NATIONAL PARK AND ALLERDALE BOROUGH COUNCIL

1 Introduction

- 1.1 This operational statement (the Statement) has been prepared alongside an application (the Application) for the retrospective change of use of Jasmine House (the Property) from a Guest House (Use Class C1) to a Dwellinghouse (Use Class C3).
- 1.2 The purpose of the Statement is to set out how the Property would operate. We believe, based on the facts of the case, that the proposed operation of the Property would fall within Use Class C3 Dwellinghouse. Our interpretation of the facts has been supported by other local planning authorities in Cumbria including the Yorkshire Dales National Park, Allerdale Borough Council and Eden District Council. Certificates of lawful use issued by the Yorkshire Dales National Park and Allerdale Borough Council are included as Appendix A to this Statement.

2 The Facts

- 2.1 The Property would be operated on the below terms:

The Children

- 2.2 A maximum of two children stay at the Property at any one time with an envisaged length of stay of 12 months, with the Property being their primary residence for this duration.

The Carers

- 2.3 There are no more than two carers living in the Property at any one time. The carers work on a rota basis with 2 days on, 4 days off.
- 2.4 Hours worked would be:
- 10.30 start – 22.30 finish
 - 22.30 – 08.00 sleep in
 - 10.30 start – 22.30 finish
 - 22.30 – 08.00 sleep in

- 08.00 – 10.30 morning
- 10.30 - 11.00 handover
- 4 days off and repeat.

2.5 This means that two carers stay at the Property with the children for two days, and on the morning of the third day, about 10.30 in the morning, they are replaced by two new carers who then repeat the process. There are six carers in total for the Property. Changeover times are during the day and there are no comings and goings at unsociable hours.

2.6 All areas are accessible to the carers including the children's bedrooms if necessary.

Other Staff/Visitor/Movements

2.7 In addition to the carers, a manager is based at the Property for up to 25 hours per week. This means that there can be up to three members of staff at any one time. A social worker can visit the Property every month for approximately 1.5 hours.

2.8 Family members can see the children either at the Property or at the family member's home, with visits varying in frequency, time and length.

2.9 There is an external quality assurance visit to the Property once a month for approximately 2 hours.

2.10 Initially there is on-site learning with a tutor for an average of three hours per day, though this will change to be off-site learning/education provision.

The Detail:

2.11 The children are aged between 12 and 18.

2.12 There have been no internal changes to the Property to accommodate the use. The children have their own rooms that can be locked for their own privacy with the carers having a master key should it be required.

2.13 The carers (no more than two) have their own bedroom for when they are staying over which can be locked for their own privacy.

- 2.14 We do not consider that having internal rooms that can be locked to be exceptional or not what could reasonably be expected to be found in a normal dwelling house, particularly older houses.
- 2.15 All other areas of the house inside i.e., kitchens, bathrooms, sitting rooms etc. and outside i.e., garden have unrestricted access.

3 Our Interpretation

- 3.1 Case Law establishes that whether or not a change of use is material is based on fact and degree and ultimately for the decision maker to decide. Case Law confirms that certain changes of use of land and buildings will not be material. This is because in determining whether any activity constitutes a material change of use, it is the character of the use which has to be considered, not the particular purpose of a particular occupier¹.
- 3.2 We consider that the existing use of the Property can be accommodated under Use Class C3 Dwellinghouses. This is on the basis that comings and goings would be comparable or even less than a normal family house, particularly a family house with children who are able to drive and/or who are in employment – with the associated comings and goings that can entail.
- 3.3 Our interpretation is supported by the following cases:

Wolverhampton 15/09/2006 DCS No: 100-044-775

- 3.4 In this case the presence of rota staff and visiting therapists was found to be materially no different to a C3 dwelling in Wolverhampton 15/09/2006 DCS No: 100-044-775 where a dwelling was being used to accommodate children with emotional and behavioural difficulties. The appellants explained that the three-bedroomed dwelling would be occupied by children aged between 10 and 16. Care would be provided on a 24-hour basis with staff being rotated in shifts of eight hours each, they explained. The children would where appropriate attend schools in the area and would also be visited by therapists from time to time.

¹ *East Barnet UDC v British Transport Commission* [1962] 2 QB 484.

The Inspector decided that the use did not strictly fall with Class C3(b). This was because the children would require care and could not in the true sense be regarded as living together as a household because the carers would not live within them, being rotated every eight hours on a shift system. However, that was not the end of the matter, he opined, because it was also necessary to assess whether in planning terms the scheme would trigger a material change in the use of the premises. On this latter point he noted that the children would occupy the premises for between six months and two years. The day-to-day activity associated with the use would be similar to that of a dwellinghouse, he decided, with people coming and going as children were taken to school and returned in the afternoon. The maximum number of carers at any one time associated with employees would be three and this would not be materially different from its use as a dwelling in a suburban location, he determined, and issued an LDC.

Crewe & Nantwich 24/04/2006 DCS No: 100-042-095

- 3.5 In Crewe & Nantwich 24/04/2006 DCS No: 100-042-095 an Inspector concluded that even where a use was considered to lie under Use Class C2, it would not involve a material change in the use of the premises from C3. The appellants proposed to use the property to house four (we propose two) children between the ages of 11 and 17 years, who would be cared for by a minimum of two carers on a rota system. They accepted that the use fell within C2 in contrast with the existing use which fell within Class C3. The Inspector agreed that he had to determine whether the proposed C2 use would be materially different from its lawful use as a dwellinghouse. In this context he had regard to the judgment in North Devon (discussed below) where it was held that where the carers did not live permanently within the premises, the occupants would not be living together as a single household and consequently, would not fall within Class C3. The main issue he opined was whether the lack of any carers living within the property materially changed the character of the property as a dwellinghouse. In his opinion it did not. Although the carers when visiting the site would increase the number of comings and goings, this would not disturb local residents or affect the character of the area. Additionally, although local residents were fearful about the children committing anti-social acts or

increasing crime levels, he decided that it was not inherent in the character of a children's care home that the proposed use of the property would have an adverse impact upon the local community and welfare services. Consequently, this was not a factor which would affect its character, he ruled.

- 3.6 Although the building would be fitted with an office and fire alarm, this was not uncommon in many dwellinghouses around the country, he decided, and would not materially alter its basis character as a dwellinghouse. The children would have to obey a set of written rules but in his view, it was not uncommon for a family to have its own set of unwritten rules and simply committing them to writing did not change its character, he decided. Consequently, a LDC was justified.

Yorkshire Dales National Park and Allerdale Borough Council

- 3.7 We have presented our interpretation to two other local planning authorities – The Yorkshire Dales National Park and Allerdale Borough Council in the recent past and both planning authorities have issued CLEUDs confirming that whilst the use of the properties was a C2 use, based on the facts of the case, they did not consider that the use was a material change of use from the C3 Use. Copies of the issued certificates are included as Appendix A to this Statement. Please note that in both these cases up to four children were proposed to be housed in the properties. The Property only accommodates two children so the change of the character in the Property is significantly reduced with fewer comings and goings than in the examples provided.

4 Conclusion

- 4.1 The Application seeks planning permission to change the use of the Property from a Guest House to a Dwellinghouse. We consider that the current use of the Property is not materially different to a dwellinghouse and that therefore based on fact and degree, once the change of use to a dwellinghouse is approved, the Property can continue with no further change of use required.