

SUPPORTING STATEMENT

Certificate of Lawfulness of Existing Use or Development

Jasmine House Moor Row CA24 3JA

September 2022

Table of Contents

1	INTRODUCTION	1
2	THE LEGISLATION	1
3	THE FACTS	2
4	OUR INTERPRETATION	4
5	CONCLUSION	7

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

1 Introduction

- 1.1 This supporting statement (the Statement) has been prepared alongside an application (the Application) for a certificate of lawfulness for existing use or development application (CLEUD) for the continued use of Jasmine House, Moor Row, CA24 3JA (the Property) as a home for children in care.
- 1.2 The application for a CLEUD is submitted on behalf of A Wilderness Way Ltd - a leading childcare provider based in and operating throughout Cumbria and further afield (the Applicant). The Applicant already operates the Property as a home for children in care.
- 1.3 The CLEUD is sought to confirm that whilst the use of the dwelling as a home for children in care falls within Use Class C2 'Residential Institutions' of The Town and Country Planning Use Class Order 1987 (as amended) (The Order) the character of the use would be so similar to the existing lawful use as a dwellinghouse under Use Class C3 'Dwellinghouses', that there would be no material change of use and that therefore the continued use of the Property as a home for children in care is lawful.
- 1.4 The purpose of the Statement is to set out the relevant legislation, the key facts and set out our interpretation in support the Application.

2 The Legislation

- 2.1 Section 191 of the Town and Country Planning Act 1990 (as amended) (the Act) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, he may make an application to the local planning authority specifying the land and describing the use or operations in question.
- 2.2 Sub-section (2) of s191 of the Act confirms that "*for the purposes of this Act uses and operations are lawful at any time if — (a)no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) ...*"

- 2.3 Sub-section (4) of s191 of the Act confirms that *“If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application. Or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”*
- 2.4 Sub-section (5) of s191 of the Act provides for a certificate to specify the land to which it relates, describes the uses, (including if appropriate the relevant use class), give the reasons for determining the use to be lawful, and specify the date of the application for the certificate.
- 2.5 Sub-section (6) of s191 of the Act confirms that the *“The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed”*.
- 2.6 Sub-section (7) of s191 of the Act confirms that *“A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission...”*

3 The Facts

- 3.1 The Applicant proposes to operate the Property on the below terms:

The Children

- 3.2 A maximum of two children would 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

- 3.3 There would be no more than two carers living in the house at any one time. The carers would work on a rota basis with 2 days on, 4 days off.
- 3.4 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.
- 3.5 This would mean 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 would be replaced by two new carers who would then repeat the process. There would be six carers in total for the Property. Changeover times are during the day and there would not be any comings and goings at unsociable hours.
- 3.6 All areas would be accessible to the carers including the children's bedrooms if necessary.

Other Staff/Visitor/Movements

- 3.7 In addition to the carers, a manager would be based at the Property for up to 25 hours per week. This would mean that there could be up to three members of staff at any one time. A social worker may visit the Property every month for approximately 1.5 hours.
- 3.8 Family members will see the children either at the Property or at the family home, with visits varying in frequency, time and length.
- 3.9 There will be an external quality assurance visit to the Property once a month for approximately 2 hours.
- 3.10 Initially there will be 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:

- 3.11 Children would be aged between 12 and 18.
- 3.12 There would be no internal changes to the Property to accommodate the use. The Children would have their own rooms that could be locked for their own privacy with the carers having a master key should it be required.

- 3.13 The carers (no more than two at any one time) would have their own bedroom for when they were staying over which could be locked for their own privacy.
- 3.14 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.
- 3.15 All other areas of the house inside i.e., kitchens, bathrooms, sitting rooms etc. and outside i.e., garden would have unrestricted access.

4 Our Interpretation

- 4.1 We note that the lawful use of the Property is Class C3 'Dwellinghouses'.
- 4.2 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.
- 4.3 We consider that the existing use of the Property is Class C2 'Residential Institution' however, we do not believe that the existing use reflects a material change of use of the Property. This is on the basis that the character of the existing C2 use is not materially different from the lawful C3 use. 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.
- 4.4 Our interpretation is supported by the following cases:
- Wolverhampton 15/09/2006 DCS No: 100-044-775***
- 4.5 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:

¹ [East Barnet UDC v British Transport Commission \[1962\] 2 QB 484.](#)

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. 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

- 4.6 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.

- 4.7 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

- 4.8 We have previously presented our interpretation to both 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 would only accommodate two children so the change of the character in the Property would be significantly reduced with fewer comings and goings than in the examples provided.

5 Conclusion

- 5.1 Section 191 of the Act allows for a person to ascertain whether or not an existing use of a building and land is lawful by applying for a Certificate of Lawfulness of Existing Use or Development.

- 5.2 Our application for a CLEUD is made on the basis that whilst the existing use of the Property a C2 use, there has not been a material change of use from the lawful C3 use and that therefore the C2 use, based on fact and degree, constitutes a lawful use of the Property that does not in itself require an application to formally change the use of the Property.

Appendix A: Comparable certificates issued by the Yorkshire Dales National Park and Allerdale Borough Council

SCHEDULE 8

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

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)(ENGLAND) ORDER 2010 ARTICLE 35

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

YORKSHIRE DALES NATIONAL PARK AUTHORITY

To: Mr M Wyatt
JWPC Limited

Decision No: E/16/4/LDC

The YORKSHIRE DALES NATIONAL PARK AUTHORITY (as Local Planning Authority) hereby certify that on 25/09/2017 the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged RED on the plan attached to this certificate, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use falls within Class C2 (residential institutions) of the Town and Country Planning (Use Classes) Order 1987 and the existing lawful use falls within use Class C3 (dwellinghouses). It is however not considered that the proposed use would materially differ from the existing use and as such it would not amount to development requiring planning permission.

FIRST SCHEDULE

Use of the property as a care home for up to four children in which:

1. No more than four children are receiving care at any one time;
2. The children in care are under 18 years in age;
3. No more than two adult carers are providing care at the property at any one time.

SECOND SCHEDULE

Cloverdale, Beck Lane, Smardale

Signed:

SOLICITOR

On behalf of the YORKSHIRE DALES NATIONAL PARK AUTHORITY (as Local Planning Authority)

Date: 18 DEC 2017

FOR NOTES AND RIGHTS OF APPEAL SEE OVERLEAF

NOTES AND RIGHTS OF APPEAL

1. This Certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed when there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

If the applicant is aggrieved by the decision of the Local Planning Authority they may appeal to the Secretary of State for the Environment (The Planning Inspectorate) in accordance with Section 195 of the Town and Country Planning Act 1990.

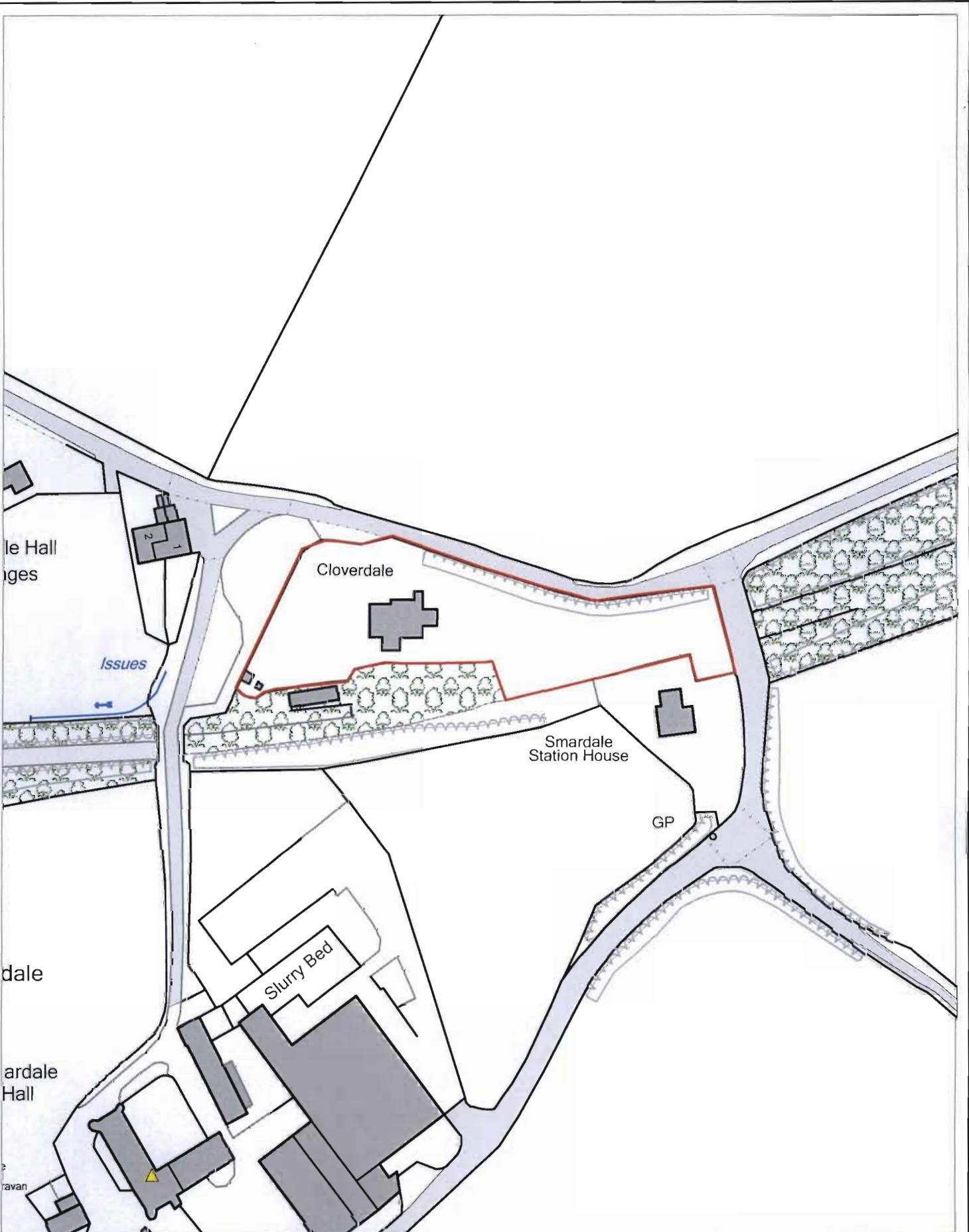
If you wish to exercise your right of appeal as mentioned above, you can do so online at: <https://www.gov.uk/planning-inspectorate>. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

LOCATION PLAN IN RESPECT OF LAWFUL DEVELOPMENT CERTIFICATE
CLOVERDALE, BECK LANE, SMARDALE
E/16/4/LDC

Compiled on 11 December 2017

Scale 1:1250



Allerdale Borough Council

Town and Country Planning Act 1990: Section 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

Town and Country Planning (General Development Procedure) Order 2015 Article 39

Certificate of Lawful Use or Development

To: Addis Town Planning Ltd
Greengage House
Little Salkeld
Penrith
Cumbria
CA10 1NN

Reference: CLD/2020/0016

Applicant: Addis Town Planning Ltd

Drawing Numbers: Application Form
Block Plan
Location plan
Supporting Statement
Letter
Additional information dated 29th September 2020
Email dated 16th October 2020
Email dated 20th October 2020

The use described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this certificate and edged in red on the plan attached to this certificate, would be lawful within the meaning of 192 (Proposed) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use falls within Class C2 (residential institutions) of the Town and Country Planning (Use classes) order 1987 (as amended) and the existing lawful use falls within landuse category Class C3 (dwellinghouse). However it is the opinion of the local planning authority that the scale and nature of the proposed use would not materially differ from the existing use and as such it would not amount to development requiring planning permission.

First Schedule

Certificate of Lawful Development for use of the property as a care home for up to four children and two adult carers.

All correspondence to: Head of Place Development
Allerdale House
Workington
Cumbria CA14 3YJ

Second Schedule

Kirkborough House Ellenborough Maryport Cumbria

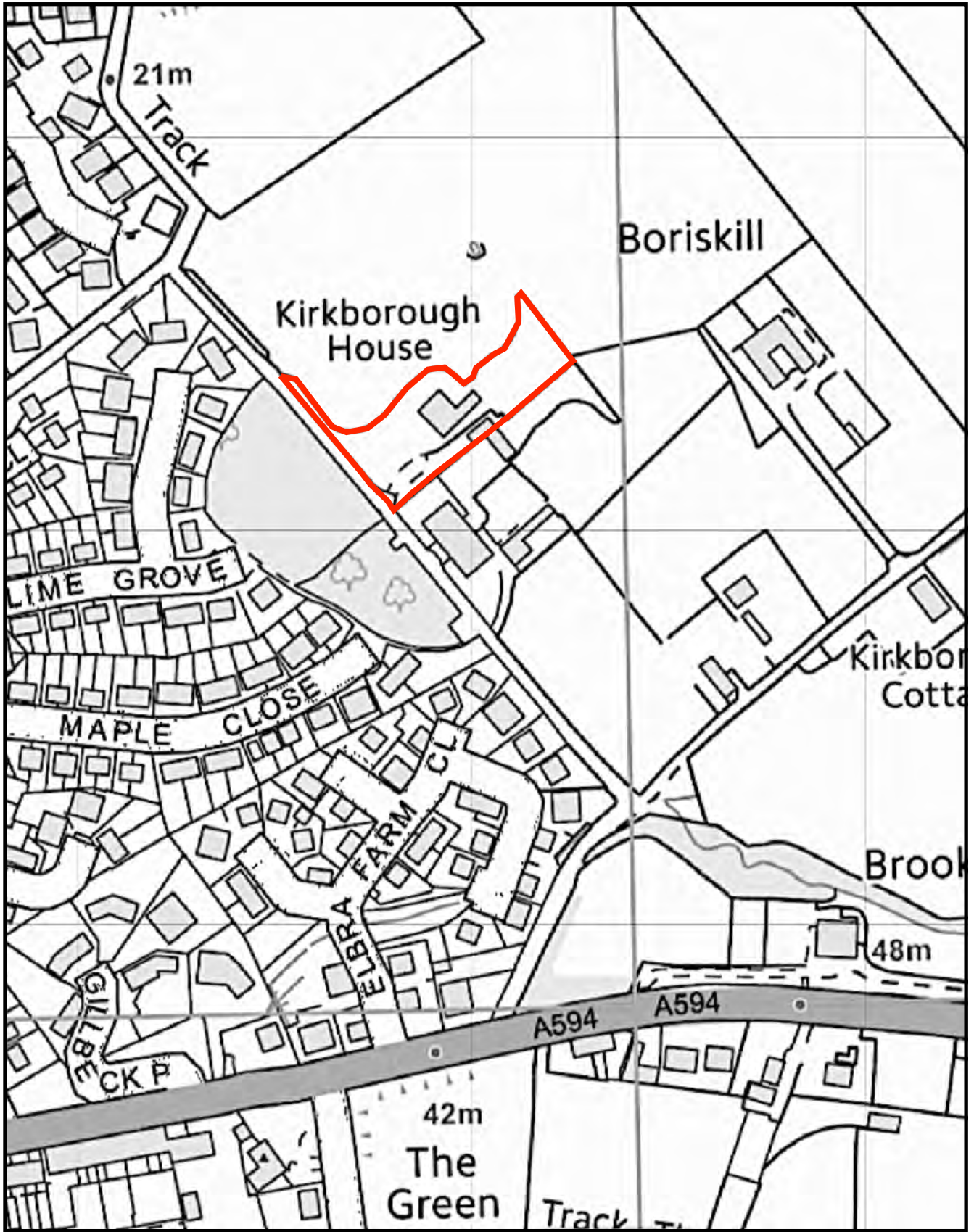
pp

Head of Governance and Regulatory Services

Dated: 23 October 2020

Notes

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule would be lawful, on the specified date and, thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relate(s) to other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.



Key: — Property Boundary

Location Plan
1:2500 @ A4



Kirkborough House

REVISIONS	
MM/DD/YY	REMARKS
1
2
3
4
5

01
A