Received Date:	16 November 2026
Expires:	11 January 2027
Application Number:	262668
Site:	Pond View, Wokingham Road, Hurst, Wokingham, RG10 0SB
Application:	Application for a certificate of lawfulness for the proposed continued use of the premises as a residential care home for no more than three children, cared for by no more than three care workers present at any one time working in shifts, including associated family visits and therapy sessions at the premises, with no material alterations to the property.

1. Relevant Planning History and Lawful Baseline

A Certificate of Lawfulness ref 091748 was granted on 09 November 2009 under Section 192 of the Town and Country Planning Act 1990 for the proposed use of the premises as a residential care home for no more than three children, cared for by no more than two care workers present at any one time working in shifts. The certified arrangements also provided for therapy sessions to take place off-site, for the children's families not to attend the premises and for no material alterations to be undertaken.

In determining that application, the Local Planning Authority considered that the proposed use fell within Class C2 of the Town and Country Planning (Use Classes) Order 1987 but, having regard to the limited nature and scale of the operation, concluded that the use would not amount to a material change of use requiring planning permission. Decision ref 091748 therefore conclusively establishes that the use described in that certificate would have been lawful if instituted in accordance with its terms and provides an important baseline against which the present proposal should be considered.

However, the current application must be determined having regard to the legislative framework and relevant planning law in force at the date of this application. The Use Classes Order has been materially amended since the previous certificate was issued, including by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. Accordingly, whilst the previous certificate establishes an important factual and lawful baseline, the reasoning underpinning that decision is not simply determinative of the present application.

2. Site Description

A detached residential dwelling on Wokingham Road in Hurst.

3. Land/ Property Designations

- There are no listed buildings at the site and the property is not within ‘Article 2(3) land’ (Town and Country Planning (General Permitted Development) Order 2015).
- The site is not subject to any wildlife or habitat designations.

4. Legislation

Town and Country Planning Act 1990 (as amended)

s.55 Defines "development" as including the making of any material change in the use of any buildings or other land

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s.57 Planning permission is needed for all development of land.

s.192 Applications for Certificates of Lawfulness of proposed use or development.

Section 55(1) of the Town and Country Planning Act 1990 defines "development" as including the making of any material change in the use of any buildings or other land. A change in the manner or intensity in which land is used does not therefore necessarily constitute development. The relevant question is whether, as a matter of fact and degree, the change is material for planning purposes.

Government guidance similarly recognises that a use may be lawful because a change of use is not, as a matter of fact and degree, materially different for planning purposes from the previous lawful use.

Section 192 of the Act provides the statutory mechanism for determining whether a proposed use or operation would be lawful. Where the Local Planning Authority is satisfied that the proposed use would be lawful if instituted at the date of the application, it must issue a certificate to that effect. The determination concerns the lawfulness of the proposal rather than its planning merits. The burden of demonstrating that the proposed use would be lawful rests with the applicant, with the relevant standard of proof being the balance of probability.

The Town and Country Planning (Use Classes) Order 1987, as amended, is relevant to determining the nature of the proposed use. Whilst the Order was substantially amended in 2020, including through the introduction of Class E and restructuring of a number of former use classes, Classes C2 and C3 remain relevant to residential care and dwellinghouse uses respectively. The application must therefore be considered against the current provisions of the Use Classes Order, rather than by simply adopting the classification exercise undertaken in 2009.

5. The Public Sector Equality Duty (Equality Act 2010):

In determining this application, the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

6. Proposal

The application seeks a Certificate of Lawfulness under Section 192 of the Town and Country Planning Act 1990 for the proposed continued use of the premises as a residential care home for no more than three children, cared for by no more than three care workers present at any one time working in shifts, including associated

family visits and therapy sessions at the premises. No material alterations to the property are proposed.

Compared with the use previously certified, the maximum number of children accommodated at the premises would remain unchanged at three. The principal change is the increase in the maximum number of care workers present at any one time from two to three. The proposal would also provide for associated family visits and therapy sessions to occur at the premises.

The application therefore falls to be considered on the basis of the particular nature and degree of the proposed use and whether the identified changes would result in a material change in the character of the established lawful use.

7. Assessment

The proposed use involves the residential accommodation and care of no more than three children. The children would reside at the premises and would receive care from staff working on a shift basis, with no more than three care workers present at any one time.

Having regard to the nature of the occupation, including the provision of residential accommodation together with care, the use falls to be considered in the context of the current provisions of the Use Classes Order, including Classes C2 and C3. However, classification under the Use Classes Order is not, by itself, determinative of whether development has occurred. The pertinent question for the purposes of Section 55 is whether the proposal would result in a material change in the character of the existing lawful use, assessed as a matter of fact and degree.

Having regard to the submitted operational arrangements, including the provision of care by staff working shifts rather than the children and carers living together as a single household, the proposed use is considered to fall within Class C2. The principal issue is therefore whether the proposed operational changes would materially alter the character of the established lawful use so as to constitute development under section 55 of the Act.

Lawful Baseline

The 2009 certificate conclusively establishes that the proposed residential care operation described in that certificate, involving no more than three children and no more than two care workers present at any one time, would have been lawful if instituted in accordance with its terms. The certificate does not, in itself, establish that the certificated use was subsequently commenced.

The previous certificate is therefore important in establishing the nature and scale of the operation which has previously been certified as lawful.

The present assessment is not, however, confined to determining whether the proposal complies precisely with the terms considered in 2009. It is necessary to determine, applying the current legislative framework, whether the characteristics of the use now proposed would be materially different from that lawful baseline.

Increase in Care Workers

The principal change is an increase from a maximum of two to a maximum of three care workers being present at the premises at any one time. The number of resident children would remain unchanged at a maximum of three. Accordingly, there would

be no increase in the maximum residential occupancy by the children for whom care is provided.

The presence of an additional care worker represents an increase in the intensity of staffing. However, an increase in intensity does not automatically result in a material change of use. The relevant consideration is whether the change is sufficient, as a matter of fact and degree, to materially alter the character of the use of the premises. The additional care worker would continue to perform the same fundamental function as the existing care staff, namely providing care and supervision to the children residing at the premises. The additional member of staff would not introduce a separate or independent use of the property, and the underlying purpose of the premises would remain the provision of residential care to a maximum of three children.

Having regard to the submitted operational information, the increase from two to three care workers present at any one time is considered to represent a change in the degree or intensity of the established operation rather than a material change in its character.

Family Visits and Therapy Sessions

The proposed description also provides for family visits and therapy sessions to take place at the premises. This differs from the circumstances considered in 2009, when therapy sessions were identified as taking place off-site and children's families were stated not to attend the premises. These activities must therefore be considered as part of the overall fact-and-degree assessment.

Family visits and therapeutic support are directly associated with the welfare and care of the children residing at the premises. Provided that the frequency, duration and scale of these activities remain ancillary and proportionate to the residential care function, they would not introduce a separate use of the premises.

The relevant consideration is therefore not simply the fact that such visits would occur, but whether their nature, scale or frequency, individually or cumulatively with the increased staffing arrangements, would materially alter the character of the use.

The applicant has submitted evidence that shift patterns indicate that three care workers would only be required occasionally, with two staff expected to remain the more typical arrangement. Where three staff are present, shift changes would occur at the same times as the existing two-person arrangement, between approximately 07:00hrs–07:30hrs and 21:30hrs–22:00hrs.

The additional care worker would typically generate one additional arrival and one additional departure within a 24-hour period, increasing maximum staff-related vehicle movements from four to six per day. Maximum staff parking demand would increase from three to four spaces during shift changeovers, reducing thereafter to three spaces. The applicant advises that the site can accommodate this parking demand and that the figures represent a maximum scenario, as not all staff travel independently by private car.

The applicant has also confirmed that occasional family visits and therapy sessions would take place at the premises and generate additional associated movements. Overall, the applicant considers that the additional staffing and associated activity would not materially alter the character or operation of the established use.

On the basis that family visits and therapy sessions are directly associated with the care of the resident children, it is considered that these activities would remain ancillary to the residential care use and, when considered together with the staffing arrangements, would not materially alter the overall character of the use.

Overall Fact and Degree Assessment:

The proposal should be considered as a whole rather than assessing each operational change in isolation. The lawful baseline permits residential care for no more than three children with two care workers present at any one time. The current proposal would retain the same maximum number of resident children and the same fundamental residential care function. The principal operational change would be one additional care worker, together with associated family visits and therapy sessions taking place at the premises.

Whilst these changes would result in some intensification of activity, intensification and material change of use are not synonymous. The relevant legal question is whether the difference is sufficient, as a matter of fact and degree, to materially alter the character of the use.

Having regard to:

- the unchanged maximum of three resident children;
- the limited increase of one care worker at any one time;
- the continued residential care function of the premises;
- the absence of material alterations to the property;
- the relationship of the additional staff to the care of the resident children;
- the limited increase in maximum staff-related vehicle movements from four to six per day; and
- the ancillary nature and stated scale of family visits and therapy sessions,

it is considered, on the balance of probability, that the proposal would represent an increase in the degree of activity associated with the established residential care operation, rather than a material change in the character of the use.

Accordingly, the proposal would not constitute a material change of use amounting to development for the purposes of Section 55 of the Town and Country Planning Act 1990.

8. Conclusion

The application has been considered having regard to the current legislative framework, including the Town and Country Planning Act 1990 and the Town and Country Planning (Use Classes) Order 1987, as amended. The 2009 Certificate of Lawfulness has been afforded appropriate weight as evidence of the lawful baseline but has not been treated as determinative of the current legal assessment.

The assessment does not turn solely upon the use-class classification but upon whether, as a matter of fact and degree, the proposed operational changes would result in a material change in the character of the lawful use. On the balance of probability, the proposed increase from two to three care workers present at any one time, together with associated family visits and therapy sessions, would not materially

alter the character of the established residential care operation. The maximum number of children residing at the premises would remain unchanged at three and the fundamental nature and purpose of the use would remain residential care.

The proposed changes are therefore considered to amount to an increase in the degree or intensity of the lawful operation, rather than a material change in the character of the use.

Accordingly, the proposed use would not amount to development requiring planning permission under Section 55 of the Town and Country Planning Act 1990 and would be lawful for the purposes of Section 192 of the Act. A Certificate of Lawfulness should therefore be granted.

9. Recommendation

Grant a Certificate of Lawfulness under Section 192 of the Town and Country Planning Act 1990 for the continued use of the premises as a residential care home for no more than three children, cared for by no more than three care workers present at any one time working in shifts, including associated family visits and therapy sessions at the premises, with no material alterations to the property.

DRAFT APPROVED

Development Management Team Leader



Date: 20/11/26