

TOWN AND COUNTRY PLANNING ACT 1990

TOWN AND COUNTRY PLANNING (USE CLASSES) ORDER 1987

IN THE MATTER OF:

BRIGHTER HOMES & 515 READING ROAD, WINNERSH RG41 5EX

OPINION

1. I am asked to provide a legal opinion to Brighter Homes in relation to Wokingham Borough Council's ("the Council") refusal to grant a Certificate of Proposed Lawful Use pursuant to s.192 of the Town and Country Planning Act 1990 ('TCPA'). Brighter Homes propose to use a dwellinghouse at 515 Reading Road, Winnersh, as a children's home for up to four children.
2. The key issue is whether or not "development" as defined under s.55 of the TCPA will have taken place once the use proposed by Brighter Homes is implemented. In respect of land uses, only a material change of use constitutes "development" and therefore needs planning permission.
3. The refusal of the Certificate¹ by Wokingham Borough Council is based on a flawed and confused legal approach. Once the baseline impacts of the lawful C3 use are compared with the predicted impacts of the children's home activity, the clear conclusion is that the change of use will not be a material one. This opinion addresses different carer changeover times than were set out in the Planning Statement accompanying the application. Rather than carers changing over at noon and midnight, the typical changeover times will be 7.00am, 2.30pm and 9.30pm, with typically one carer on night shift from 9.30pm to 7am.

Main Facts

4. 515 Reading Road is a detached chalet bungalow with a recent planning permission for enlargement, which has been implemented. The property has a front forecourt parking area

¹ CLOPUD application refused on 7 July 2025

for up to 5 vehicles, a rear garden and the internal accommodation includes 6 ensuite bedrooms. The property is located in a predominantly residential area with direct access off Reading Road (which is an A road). The dwelling is about 20m from the Bearwood Path bus stop and is about 650m from Winnersh Triangle Station and about 1km from Winnersh Station. Reading Road also has dedicated cycles lanes in the vicinity of the site. The site, therefore, has multiple sustainable transport options for staff working at the childrens' home to enable them to avoid use of the private car.

5. The proposed use is as a children's home for up to four children with learning difficulties and autism. The children will be looked after by carers. The home is intended to replicate a family-style environment, with children sharing meals and living spaces, and carers undertaking typical domestic tasks including helping with homework, cooking, cleaning and school runs and providing as near a parental role as possible, without being a resident of the property.
6. Caring would typically be undertaken with a daytime carer-to-child ratio of 1:2. Changeover times would be 7.00am, 2.30pm and 9.30pm with typically one carer carrying out a night shift from 9.30pm to 7am. The dwelling will have a dedicated House Car. Other than carer movements, vehicle movements generated by the site are envisaged to be two school runs a day (one in morning and one in the afternoon), one shopping trip per week, one shopping delivery a week, occasional visiting to friends' houses or having friends visit (after school), an OFSTED visit about once every 6 months and social worker visits about once every 6 weeks.

The Law

7. The property is an existing dwellinghouse and falls into Class C3 Use, pursuant to The Town and Country Planning (Use Classes) Order 1987 ("the Order"). The use class is as follows:

"Class C3. Dwellinghouses

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; or

(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).

Interpretation of Class C3

For the purposes of Class C3(a) “single household” is to be construed in accordance with section 258 of the Housing Act 2004”.²

8. Care is defined in paragraph 2 of the interpretation clause of the Order: “‘care’ means 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”.

9. Use class “C2” is headed Residential Institutions and reads as follows:

“Class C2. Residential institutions

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3. Dwellinghouses, used as sole or main residences).

Use as a hospital or nursing home.

Use as a residential school, college or training centre.”

10. Looking at use class C3(b), it may be thought that the proposed use by Brighter Homes could fall into category (b) because there would be fewer than 6 residents at the dwelling and they would be receiving care. However, there needs to be not more than 6 residents living together “as a single household”. The carers would not be residents. It is established case law that children by themselves cannot constitute a single household³; Class C3 requires at least one residential carer who is living as part of the household.

² Section 258: provides that persons do not form a single household for the purpose of section 254 unless they are members of the same family or they form a prescribed relationship under regulations made by the appropriate national authority. The section defines “family” for these purposes. The use contemplated in this Opinion is not a C3(a) use and the definition of single household in s.258 is not relevant to C3(b) or (c).

³ Children cannot look after themselves and so cannot be regarded as being a single household. *North Devon District Council v First Secretary of State (Southern Childcare Ltd)* [2003] EWHC 157 (Admin).

11. The question then arises, will the use at 515 Reading Road fall into another Class C category, the most obvious one being the first limb of Class C2 ? This reads

Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3. Dwellinghouses, used as sole or main residences).

12. 515 Reading Road will provide residential accommodation and will also provide care to those residents who are children and therefore in need of care. There is no class C3 use category that the proposed use will fit into. Consequently, for the purposes of this Opinion, it is probable that the proposed use will be a Class C2 (first limb) use. I have some hesitation in branding the proposed use at 515 Reading Road within Use Class C2 (any limb) because the use class describes “Residential Institutions” and the proposal will not be an “institution” but more akin to a hybrid residential use offering care embedded in the community, and so there are arguments for finding it to be sui generis/in a category of its own. Nevertheless, for the purposes of this Opinion, it is treated as becoming a C2 limb 1 use.

Material Change of Use

13. Even if the proposal falls properly within Class C2, it does not necessarily follow that the proposed change of use is “material” so as to amount to development pursuant to s.55 of the Town and County Planning Act 1990.⁴ In the case of *Rann v. Secretary of State for the Environment and Thanet DC* [1980] JPL 109, the judge, Sir Douglas Frank QC, properly pointed out that the Use Classes Order does not define what **is** development but rather what is deemed **not to be** development. Changes within the use classes themselves are deemed as not constituting “development” - it does not go further than that. So, a change from a use within Class C3 to a use within Class C2 will not automatically be development. “The Use Classes Order cannot be used to treat [a change from one use class to another] as representing in itself a material change in the use of the land.”⁵ The first question must always be whether there has been a change of use which is “material” in planning terms.⁶

⁴ *Epping Forest DC v Somani* [2025] EWHC 2183 (KB) and not reversed on this point in the Court of Appeal.

⁵ *Ipswich BC v Fairview Hotels* [2022] EWHC 2868 (KB) at [71]

⁶ Wokingham Borough Council’s decision notice refusing the Certificate of Proposed Lawful Use is clearly flawed in that it states “The proposed use of the existing dwelling as a residential care home for up to 4 children constitutes development requiring planning permission as it would result in a material change of use from Use Class C3 to C2. The description provided in the Planning Statement falls squarely within a C2 Use Class...” It is flawed in finding that the proposed use constitutes development requiring planning permission as it would result in a material change of use from Use Class C3 to C2. A change of use from

14. There is no statutory definition of “material change of use”. It is necessary therefore to consider what the general baseline impacts of the lawful C3 use entail and decide, as a matter of fact and degree, whether the proposed use would generate impacts within that ambit or would generate impacts which would be so materially outside that ambit that it can be concluded that a material change of use will take place⁷. PPG advice makes it clear each case must be determined on its own individual merits.⁸
15. The Courts have accepted that it is proper to assess materiality in planning terms by having regard to the possible effect on the change on local amenity⁹. This involves assessing on-site and off-site impacts such as vehicle movement generation, noise, odour, light pollution and impact on parking. It is necessary to establish a ‘baseline’ of what may typically be encompassed within the permitted lawful use. It is the change from the general ‘boundary’ of the permitted use which must be material.¹⁰
16. In this case, the baseline lawful use is a detached residential dwelling which includes 6 ensuite bedrooms, a rear garden and on-site parking for 5 vehicles. That could reasonably encompass a single household comprising two parents, four children (perhaps some with vehicles) and possibly a grandparent.¹¹ There are going to be a number of possible combinations, but vehicles parked on the property would typically be 4 or 5 in number. There would also be vehicle-borne visitors (and walk-in visitors) such as friends, supermarket delivery lorries or a cleaner.
17. The proposed use at 515 Reading Road would, on a no-school day, have a manager working 0900 to 1700 who would not be one of the children’s allocated carers. There would be up to 4 children with a typical carer-to-child ratio of 1:2. So, simply in terms of occupants, the proposal for four children and two non-resident adult carers present on a day-to-day basis

one class to another is not sufficient reason for a finding of development needing planning permission. It is necessary to identify a baseline ambit of C3 use and compare the ambit of the proposed use. See paragraph 14 of this Opinion.

⁷ Wokingham Borough Council correctly granted a Certificate of Lawfulness of Proposed Use for a children’s home from a family dwelling at 23 Almond Close, Barkham (Ref:240778) in 2024 on the basis that there was no material change of use as a matter of fact and degree.

⁸ From PPG Paragraph: 011 Reference ID: 13-011-20140306

⁹ See e.g. *Devonshire County Council v Allens Caravans (Estates) Ltd* (1963) 14 P. & C.R. 440, 441; *East Barnet Urban District Council v British Transport Commission* [1962] 2 Q.B. 484, 490.

¹⁰ *Hertfordshire CC v Secretary of State for Communities and Local Government* [2012] EWHC 277 (Admin).

¹¹ Recent Census data demonstrates that adult children living with parents and also households with a grandparent are both becoming much more common.

plus a daytime manager, would not be materially different from a large family occupying the six bedroomed dwelling.

18. It is envisaged that one carer would be a 'sleep-in', commencing work at 9.30pm. There would be carers arriving at about 7am, and then changeovers at 2.30pm and 9.30pm. The times of these changeovers would not be any more intrusive than Class C3 family members in a six bedroom household leaving for work or school at similar times in the morning or making a daytime trip around 2.30pm or arriving back from evening engagements. Given the highly sustainable location of 515 Reading Road near to public transport and easy cycling routes, it is reasonable to expect some carers to arrive and leave on foot or by cycle, and not by car. The existence of a House Car for use by the carers also supports that conclusion.
19. The visits from OFSTED and social workers are not envisaged to be at a level greater than one might expect from visitors to a large family with 4 children. Consequently, the pattern of arrivals and departures by vehicle are likely to be similar to those of a large family and the character of this 6 bedroomed dwelling will continue to be residential.
20. In respect of vehicle parking, with a House Vehicle and easy options for staff to use public transport or cycle, the proposed use is likely to provide sufficient parking with its 5 on-site parking spaces and a parking demand no higher than that of a large family occupying the dwelling.
21. Turning to potential impacts of the proposed use from noise, odour from cooking and light pollution, there is no reason to conclude that children with learning difficulties or children with autism would cause noise disturbance to neighbours more frequently than children without those traits, and there is no reason to conclude that even if that were the case the noise levels would be so increased as to be material in planning terms. In terms of light pollution or odour from cooking, those potential impacts would not be materially different than those created by a large family occupying a six bedroomed house.
22. I conclude, therefore, that the use proposed by Brighter Homes at 515 Reading Road would not constitute a material change of use from its use as a C3 dwellinghouse. "Development" as defined by s.55 of the TCPA 1990 would not occur and a Certificate of Lawful Proposed Use under s.192 should be issued. Essentially the character of the use would not change. It would

continue as a building providing a residential use, albeit the residential use is undertaken by children rather than children cohabiting with their parents.

Inspector Appeal Decisions

23. The Planning Inspectorate has consistently held that small-scale children's homes can operate in a manner indistinguishable from large family dwellings. These decisions make clear that scale and operational characteristics are determinative. Some relevant examples are:

- a) Loyterton Farmhouse - This house had 7 bedrooms. The children's home use was for 5 children and two non-resident carers and the Inspector found:

"The vehicular movements to and from school, work, social and recreational events are not likely to be significantly different for a children's home compared to a large family. Whilst I recognise that during shift changes there are likely to be up to four carers on site during handovers and therefore potentially four cars this is not likely to be atypical for a large family in a house of this size"

(Loyterton Farmhouse, Tickham Lane, Lynsted, Sittingbourne, Kent, ME9 OHW Appeal ref:3224363 dated 14 February 2020).

- b) The Cottage - The Inspector considered a house with 2 living rooms, a kitchen and a cloakroom on the ground floor and 4 bedrooms and 2 bathrooms on the first floor. It had a garage and further on-site parking. In relation to potential occupation of the property for a maximum of 3 young people between the ages of 8 and 17 who would have two non-resident carers, she stated:

"A house of this size could easily accommodate a typical family with 2, 3 or more children and 2 adults and it seems to me that the use of the house as a home for a maximum of 3 young people and their carers would not be materially different from the authorised use as a 4 bedroom family home. It is likely that there would be vehicle movements created by the carers coming to and leaving the site on a daily basis as they start and leave their shifts and journeys undertaken by the children when being taken to and from school. Nevertheless, I do not consider that the number of such movements is likely to be significantly more than those

undertaken by a family and certainly not enough to result in an intensification of use that would give rise to planning concerns.”

(The Cottage, Stonebridge Green Road, Egerton, Ashford TN27 9AP Appeal ref: 3161037 dated 28 February 2017.)

- c) *Ty Rhos Bach* - The existing dwelling had 6 bedrooms and was detached with off-road parking. It had other residential properties opposite it. The proposed use was for a children’s home for 5 children aged between 11 to 17. Schooling was to take place at the premises. A 1:1 carer-to-child ratio was envisaged on occasions, but would not normally be as high as that. Two staff would be likely to sleep in. The Inspector concluded that on the balance of probability the proposed use would not result in a significant change in the character of the existing lawful use of the dwelling and that it would not have a material impact on local amenity. The change of use from a family dwelling to a community home for no more than 5 young persons would not be material and planning permission would not be required.

(Ty Rhos Bach, Heol Senni, Brecon, Powys LD3 8SU dated 18 February 2014 APP/P9502/X/13/2205394)

Conclusion

24. No material change of use constituting development will occur when the six bedroomed, detached dwellinghouse at 515 Reading Road is used as a children’s home for up to 4 children with learning difficulties and autism. The Council’s decision was incorrect and a Certificate of Proposed Lawful Use for no.515 can be issued if a second application, as envisaged in this Opinion, is made.

Megan Thomas KC

Six Pump Court

Temple

5th September 2025