



Planning

Planning Statement

Client:

Storry Homes and Group

69 Eastcourt Avenue

Earley, RG6 1HH

Certificate of lawfulness to demonstrate that no development or material change of use will occur in the use of the dwellinghouse for supported accommodation

Katie Walker **BA(Hons) MSc MRTPI**

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1. Introduction

- 1.1 This statement is produced to support an application for a Certificate of Lawfulness at 69 Eastcourt Avenue, Earley, RG6 1HH ('the site') on behalf of Storyy Homes and Group ('the applicant'). This application is a resubmission of refused certificate application 243011.
- 1.2 This Certificate application seeks to revise and clarify the information the information submitted under 243011 and establish that a material change of use is not occurring from the lawful use of the site as a dwellinghouse, and that no material change of use would occur thereby negating the need for planning permission.
- 1.3 The proposal is for 5 individuals to live at the property. The individuals are between 16-18 in age. In addition, there will be a minimum of 1 member of staff at the property at any one time with a maximum of 2 staff members .
- 1.4 In addition to this planning statement, the application is accompanied by the appropriate application forms and ownership certificate, duly signed and completed, as well as a Location Plan, outlining the extent of the site.
- 1.5 The relevant application fee will be submitted by the applicant separately.

2. The Applicant

- 2.1 Storyy Homes and Group was established in 2022.
- 2.2 The company have 4 other supported accommodation properties (16+) and 1 children's home across the wider region, with a certified OFSTED registration. This was passed following an inspection in the first quarter of the year.
- 2.3 The company aims to provide high quality homes for children and young people so that they have a stable and nurturing environment to enjoy their childhood and achieve the best possible outcomes for their future.
- 2.4 In this respect, the applicant aims to create a home that replicates the typical functioning of a nuclear family dwelling so as to give the young people who live there as normal a life as possible especially for when they are unable to live with their parents through no fault of their own.

3. Site Location and Description

- 3.1 The application site comprises a 6-bedroom detached property located on Eastcourt Avenue.
- 3.2 The surrounding area is characterised by dwellings of a similar built form and architectural style.
- 3.3 The site benefits from being in a sustainable location with bus stops along Church Road which provide onward connections to the surrounding area.
- 3.4 The site is in close proximity to a number of amenities including Bulmershe Leisure, Goals Reading and Bulmershe Park.

4. Development Proposals and Contextual Information

- 4.1 The site relates to an existing 6-bedroom dwellinghouse which is in Class C3 use.
- 4.2 The proposal is semi-independent, supported living for up to 5 young people age 16-18 under the ward of the Local Authority to live at the property. For the purposes of OFSTED, children are classified as such up to 18. Regardless of their age, the intended occupants would live together as one nuclear family akin to a typically family home.
- 4.3 There will be a maximum of 2 no. permanent members of staff at the property during the day with one staff member present overnight. There are 6 bedrooms at the property and dedicated office for staff to use during their time at the property.
- 4.4 Whilst the duration of the stay for individuals will vary as this will depend on the needs of the individual, it is anticipated that the property would be the long-term home for the individuals, where the minimum stay will likely be one year. The property would be the individual's primary living accommodation for the duration of their stay.
- 4.5 In terms of staffing there will be a rota system with no more than 2 members of staff at the property at any one time. The rotas are planned to ensure minimal changes the occupants and a consistent 'parenting' group. Once the staff member arrives in the home, they do not leave for at least an 8-hour period which reduces staff movement in and out of the home.
- 4.6 No staff will permanently reside at the property. The proposed shift times are:
 - Day staff 1: 8am- 4pm

- Day Staff 2: 12:30 pm – 8:30 pm
- Waking night staff: 8:15pm – 8:15 am

- 4.7 Given the semi-independent nature of the proposal, staff will be at the property to assist with tasks. It is important to note that other tasks can be carried out by the individuals and so they will be able to undertake some tasks required to accord with the definition of a household outlined in case law.
- 4.8 The shift pattern identified meets OFSTED regulations and working time regulations for the care sector. The rota pattern is very common across such proposals to ensure a consistent group of staff and limited changeover whilst also providing a degree of independence in line with the aims of the proposal.
- 4.9 No external changes are required to the property.
- 4.10 The property will provide a much-needed family style home for vulnerable individuals who are unable to live with their families but have the capacity and skills to live alone albeit with some support. The proposed accommodation is much needed in the area.
- 4.11 It should be noted that several similar Certificate of Lawfulness applications have been approved by other Councils, representing a nationally consistent approach, and these add further weight to the proposal. Due to the nature of this application and in the interests of consistent decision making, these are relevant material considerations in the determination of this application. These examples include:

- 22/01048/LDPU – 254 Old Worting Road, Basingstoke, RG22 6PD (**Appendix 1**)
- 22/02240/LDPU – 38 Impstone Road, Pamber Heath, RG26 3EQ (**Appendix 2**)
- 20/02131/LDPU – Silver Birches, Pamber Heath, RG26 3EB (**Appendix 3**)
- 22/00631/LDPU – Cap D’or, Bramley, RG26 5BW (**Appendix 4**)
- 23/00575/LDPU – Willowbrae, The Glen, Pamber Heath, Hampshire, RG26 3DY (**Appendix 5**)
- 7 – 2023 – 11369 – A – 40 Ensbury Park Road, Bournemouth, BH9 2SJ (**Appendix 6**)
- CAPP/21/01633/K – 12 Taverner Close, Poole, BH15 1UW (**Appendix 7**)
- APP/21/00893/K – 99 Labrador Drive, Poole, BH15 1UY (**Appendix 8**)
- 7-2019-3152-J – 33 Mayfield Road, Bournemouth, BH9 1TQ (**Appendix 9**)
- 22/00538/CLPUD – Illingworth Grove, RG12 2QH (**Appendix 10**)

4.12 Supported accommodation proposals have also be supported at appeal such as:

- 3 Measham Way, Liverpool L12 0NL – APP/Z4310/X/23/3316521 (**Appendix 11**)
- Red Thorns, 98 Westbury Road, Kingston KT3 5AN – APP/Z5630/X/23/3318074 (**Appendix 12**)

- 4.13 The Measham Way case is a key consideration within the determination of this application. Both individuals within this case did not have capacity under the Mental Capacity Act 2005. Despite this, the certificate was issued notwithstanding the provisions of what a household is under established case law and the Use Classes Order.
- 4.14 Using this as a lens through which to examine this proposal, similar schemes have been granted elsewhere where individuals have required more intervention than the individuals who are proposed to occupy this property. The Measham Way case therefore provides a key litmus test for proposals such as this to be tested against.

5. Assessment of Proposal

- 5.1 Section 55(1) of the Town and Country Planning Act 1990 defines the meaning of 'development'. Included within this definition is a material change in the use of any buildings or other land. Section 55(2) sets out what operations or uses of land which shall not be taken to involve the development of the land. These include:

- *(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 use class. (emphasis added)*

- 5.2 The definition of Class C3 in the Town and Country Planning (Use Classes) Order as amended reads:

- *Use as a dwelling house (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).*

5.3 The North Devon District Council v First Secretary of State and Southern Childcare [2003] goes onto state that the definition of a household is not exclusively related to the number of people.

5.4 The consideration is therefore turned to whether the proposal comes under Class C3 (notably (b)) or a change of use has occurred, in particular to Class C2 (residential institution) which is:

- *Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)).*
- *Use as a hospital or nursing home.*
- *Use as a residential school, college or training centre.*

5.5 North Devon District Council v First Secretary of State and Southern Childcare [2003] explored the definition of a household (it concluded that this is not exclusively related to the number of people). Therefore, consideration as to whether residents make up a single household will depend on the specific facts of each case.

5.6 Case law and appeal decisions demonstrate the idea of living together as a single household is determined by several of the criteria below:

- *Living conditions – general layout of the dwelling house is that of a conventional residential dwelling for private domestic use.*
- *Communal use of areas such as a living room, kitchen, bathrooms /shared utilities amongst the residents;*
- *Carrying out of household duties together such as cooking, cleaning, shopping / an agreed rota;*
- *The residents are capable of running the house as a conventional residential dwelling;*
- *The nature of the relationship between the residents (a material consideration but it is not determinative);*

5.7 The North Devon Case Law outlines there also needs to be an assessment of whether a material change of use would occur from the existing situation. As such, this is a two-stage assessment process. In particular this would assess whether the change of use was material taking into account the activity of the site compared with the use as a dwellinghouse.

5.8 Furthermore, in an appeal in Brecon Beacons National Park (reference APP/P9502/X/12/2205394, decision date 18/02/2014) (**Appendix 10**), it was found that the change of use from a family dwelling to a community home for 5 young persons would not be material at that, as such, it would not require planning permission. The Inspector concluded at paragraph 19 that the proposal would display many features of a family dwelling, for example it was intended that staff would seek to provide a stable family environment for those in care, and that the overall number of children was small, and that the coming and going of staff and family would not materially impact on the surrounding area.

5.9 Consideration around whether the individuals form a single household and therefore whether the property as a whole can be assessed under C3b is a key consideration.

5.10 The leading judgment on the meaning of '*living together as a single household*' remains R.(oao Hossack) v Kettering BC [2002] EWCA Civ 886. In that case, Mr Justice Lightman had, at first instance, determined that for people to be considered to be living together as a single household, they must be bound by a relationship that of '*a common need for accommodation, support and resettlement*' (para 7 of the judgment).

5.11 Further, the Court of Appeal held that the smaller the number of occupants, the more likely it is that they are living together as a household:

If there are no more than six residents living together in the same house, it seems to me altogether more likely that they are doing so as a single household than if there are (significantly) more than six: the smaller the number of occupants, the more intimate, integrated and cohesive their occupancy is likely to be and the more apt, therefore, to describe it as a single household.

5.12 That is particularly relevant here, given that there are no more than 5 permanent members of the household.

5.13 Further, the judgment in R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin) is particularly relevant, wherein Mr Justice Richards held as follows:

In my judgment, the correct position is that, in every case, the judgment to be made in the application of the criteria in Class C3 depends upon the specific facts of the individual case. There

may indeed be cases where, having regard to the nature of the disability suffered and the degree of care required, persons resident in a house cannot sensibly be said to constitute a household. But there will be other cases, and in my judgment this is one of them, where persons resident in a house can sensibly be said to constitute a household notwithstanding that they have some disability and need care. That is so even if the need is for full-time care. I would reject any suggestion that in a case where care is needed for those under a disability, Class C3 can apply only if the carers are in residence in the same property as those for whom they are caring. That would seem to me to run counter to the language of Class C3 itself and to the underlying policy.

- 5.14 Thus, even if full-time care is required (which is not the case here), that does not preclude the property from being a Class C3(b) use. To suggest otherwise would mean that Class C3(b) is reserved for those residents who require care, but only up to some ill-defined limit. There is no such restriction within Class C3(b), nor would such a finding be consistent with the public sector equality duty.
- 5.15 The subject proposal is, for all intents and purposes, a family home. The young people would be between the ages of 16-18 years of age and will reside in the house under the provision of the carer, eat meals together, share the living rooms, bathrooms, and sleep under a shared roof. Thus, it is our view that it would be unreasonable to treat this family sized unit any differently, simply on the basis that the children are unable to reside with their birth parents, which is typically due to extenuating circumstances. The carer provides the surrogate care and support in the absence of 'traditional' parents.

5.16 The proposals therefore fall within Use Class C3. There will be no more than 5 young people and 2 carers present on site at any one time, which qualifies as a low-intensity use. The nature of the proposals (including the duration of the stay), and the number of people on site (and resultant activity and vehicle movements) would not be materially different from the lawful use of the site as a dwellinghouse. The proposal will operate in a very similar way to a normal family home, functioning as a single household, with carers undertaking tasks such as cooking, and cleaning associated with a functional dwellinghouse.

5.17 The officer's report for the refused certificate states that

"while the proposed use is not described as a children's home within the applicant's submission, and it is stated that the property would provide "semi-independent living" for the intended occupants, the proposal ultimately comprises residential accommodation for children under the age of 18 with on-site staff members providing care and support to the residents. Notwithstanding that the intended occupants would not have complex or specific needs which requiring specialist care, the residents of the property would be children who cannot live independently and would require the care, albeit to a limited degree if that is the case, and support/supervision of staff throughout their stay. The staff members are ultimately responsible for the care and wellbeing of the residents throughout their stay at the property.

In this case, the children would be unrelated and given their age, would be unable to form a household by themselves. The carers in this instance would not permanently reside at the site and would operate on a shift basis. Therefore, the proposed use would not operate as a single household based on these facts".

- 5.18 The proposal has been revised from that previously refused, from a home for 13-18 year olds; to supported accommodation for 16-18 year olds. Legally, 16 year olds have the right to leave home without parents' consent at age 16. This means that 16-18 year olds living together can form a household. The proposal would therefore comfortably meet the definition of a C3(b) dwellinghouse, ie *not more than six residents living together as a single household where care is provided for residents*.
- 5.19 In the Officer's report for the refused application, the Council has quoted the initial part of the North Devon Case law, in particular:
- "It was necessary to assess whether they could truly be regarded as a household and carers who did not live there all the time meant that the use fell within Class C2"* [Council's emphasis]. However, and crucially, the same case law concluded that the certificate could be granted as no material change of use had occurred. The Judgement states that *"the inspector was correct to conclude that there was no material change in use in the circumstances"* and that this was because *"the use for up to two children, with care provided by up to two non-resident staff at these premises, and only at these premises, is, in the circumstances, a lawful use"*.
- 5.20 The applicant maintains that the proposal falls comfortably within Use Class C3 (b) due to the age of the young people and the function of the property as a home for those living as a household. In any event, the North Devon case law is clear that even if the Council considers it to fall within Use Class C2, the certificate can be granted as no material change of use has occurred.
- 5.21 In this case, five young people aged 16-18 would live together as a single household with carers on site simply for support. While the

carers would not permanently reside at the house, there would always be a carer on site, including overnight, to provide support to the residents. This would operate in the same way as, for example, parents who worked shift patterns. It cannot reasonably be said that the proposal would result in a material change of use from a C3 dwelling as it would operate in the same way as a dwelling.

- 5.22 To confirm this, allowed Appeal decision APP/Z5630/X/23/3318074 at 98 Westbury Road in Kingston upon Thames [**Appendix 12**] was for a certificate of lawful use or development described as *“change of use from C3 dwelling to C2 but a C2 use that is not materially different to a C3(b) for use of premises as a home for up to six children or young people with up to 1 full-time carer sleeping overnight”*.
- 5.23 In that case, the home would have been for 6 young people between the ages of 16 and 18 years of age. The subject proposal is for 5 young people between 16 and 18 years of age so is directly comparable.
- 5.24 The approved Appeal proposal mentioned above had two staff on duty 8am-11am and 5pm-10pm; 3 members of staff on duty 11am – 5pm; 2 staff on duty at weekends from 8am – 10pm unless additional staff were required to meet additional needs; and one waking staff on duty in the night time period. The subject application proposal is for a maximum of 2 staff on site at any one time, except at night when there would be 1 waking staff member. This is considerably less intensive than the approved Appeal proposal.
- 5.25 As explained in paragraphs 30 – 34 of that Appeal decision, the allowed Appeal proposal was for the use of the house as semi-independent supported accommodation for up to six young persons

with no medical or psychiatric care. The Inspector found that the supported accommodation fell within Class 2, on the balance of probabilities. However, as detailed, the North Devon case law sets out a 2-pronged approach to whether a certificate can be granted.

- 5.26 Following the North Devon and R (aoa Crawley BC) v FSS & the Evesleigh Group [2004], the Inspector, for the Kingston Appeal, found that *"while there are no permitted development rights to change the existing Class C3 use to a Class C2 use, it does not necessarily follow that a change from one to the other amounts to development requiring planning permission. The key issue is whether the change from one to the other amounts to development requiring planning permission. The key issue is whether the change is material as a matter of fact and degree"*.
- 5.27 It continues, to set out that *"For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. So, a LDC could be granted for a Class C2 use on the basis that it would not be materially different to a Class C3 use"*. The Inspector found that *"the change of use would not therefore amount to development for which planning permission would be required"*. As set out above, that Appeal proposal is similar to the application proposal, but with a more intense shift pattern for the carers. The lower intensity use does, in the Applicant's view, maintain the use of the property as a C3(b) use. However it is clear that, even if the Council considers the proposal to fall within Use Class C2, a certificate can be granted for this application.
- 5.28 The Council has sought to address the second part of case law, ie whether a material change of use has occurred. The Officer's report states *"The difference in use class C3 and C2 fulfils a proper planning*

purposes, in particular by calculating and addressing housing land supply requirements, the types of housing required and for whom. This is a key function of the planning system set out in section 5 of the NPPF. Therefore, the change between C2 and C3 is not inconsequential for strategic planning and housing delivery. It highlights that there is a crucial and legitimate planning purpose for a separate C2 and C3 Use Class and the different uses would materially affect the character of the use of land".

5.29 In essence, this is suggesting that the difference between a C2 and C3 use class is, in itself, justification to consider them as materially different. This is a tautology and is contrary to all of the case law cited, whether it falls in favour of granting a certificate or not. In other words, if the Council were correct in this line of thinking, a certificate under C3 could never be granted for a children's home or supported accommodation which fell within Use Class C2, and this is clearly contrary to established case law as outlined in this statement; and contrary to both the Applicant's statement and Officer's report for the refused certificate.

5.30 The Council has continued, to state that "*Whether the proposed use is subject to different development plan policies is also an indicator of whether a change of use has occurred. MDD Local Plan policy TB09 refers specifically to care homes and is not applicable to C3 dwellings. C2 accommodation is also calculated differently for housing land supply purposes and impacts the boroughs housing stock. The loss of a C3 dwelling is also contrary to Core Strategy policy CP3.*

Applying for different C Use Classes would also cause a decision maker to give weight to that particular use based on the need for it. For example, a lack of care homes bed spaces may give rise to a

decision maker giving greater weight to such a use than a C3 dwellinghouse.”

- 5.31 Again, it is acknowledged that the proposal could be considered to fall within Use Class C2, which would naturally have a different development plan policy basis than C3, but this in itself still does not justify the refusal of the certificate. Again, if this were the case, none of the case law could have granted certificates for the children’s homes and supported accommodation.
- 5.32 The salient point is not whether a change of use has occurred, which is what the Officer’s report is referring to; but whether that change of use is material. The Officer’s report has referred to the Sage v Secretary of State for Housing, Local Government and Communities [2021] Judgement, quoting that : *“Treating environmental impact as the seemingly crucial issue for the judgment as to whether a material change of use has occurred, or a purpose is reasonably incidental is not consistent with clearly established law. The crucial test is whether there has been change in the character of the use. Environmental impact can be relevant as evidence that a material change has occurred, because a use of the new character may be capable of yielding environmental impacts or have done so already. The Guidance [PPG] as written is apt to mislead as to what the real question is, and as to the true but limited relevance of environmental impact”*.
- 5.33 This actually supports the proposal because, while there would be very little difference in terms of environmental impacts, i.e. car movements generated and the external appearance of the dwelling. The use of the property as a supported home for five young people maintains the building’s residential character and appearance, preserving the streetscene and residential amenity. In addition, its

function would be maintained and, as such, there would also be a negligible difference in the character of the use. The proposal would involve 5 young people and up to 2 adults being present in the property. The young people would be 16-18 years old, which differs from the previous application which was for children aged 13-18. This means that the residents could form a single household; and the level of care would be supervisory, in the same manner as older teenagers living with their parents. The only differences are that the young people are not biologically related, which can occur in traditionally family settings with, for example, friends or partners of young people living in the same house or, as set out above, through 16-18 year olds legally being allowed to leave home and potentially live together; and the adults are carers as opposed to parents. This is not materially different from, for example, a foster family, for which no change of use would have occurred. The supported accommodation would function in exactly the same way as a family dwelling and, therefore, the character of the use has not changed.

- 5.34 Therefore, while the 16-18 year olds can form a single household, meaning that the proposals meet all of the criteria of a C3(b) dwelling, even if the local authority does consider that the proposal comprises a change of use, the certificate should still be granted in line with case law as it clearly does not result in a material change of use from a C3 dwelling.

6. Conclusion

- 6.1 This statement has demonstrated that the proposal accords with C3(b) of the Use Classes Order supported by precedent and case law. If the Council are of the view that the use falls within C2, this statement has also demonstrated that the use of the property would not constitute a material change of use compared to its lawful use

(as per North Devon District Council v First Secretary of State and Southern Childcare [2003]) and other relevant case law, including that cited in the Officer's report for the refused certificate.

- 6.2 Regardless of how the Council seek to assess the application, the certificate for the proposed use can be granted.
- 6.3 Furthermore, relevant case law has been considered as part of this application and adds further weight to the proposed argument put forward as part of this application.

Gareth Jones BSc (Hons) MSc MRTPI

Principal Planner | ET Planning

200 Dukes Ride Crowthorne RG45 6DS

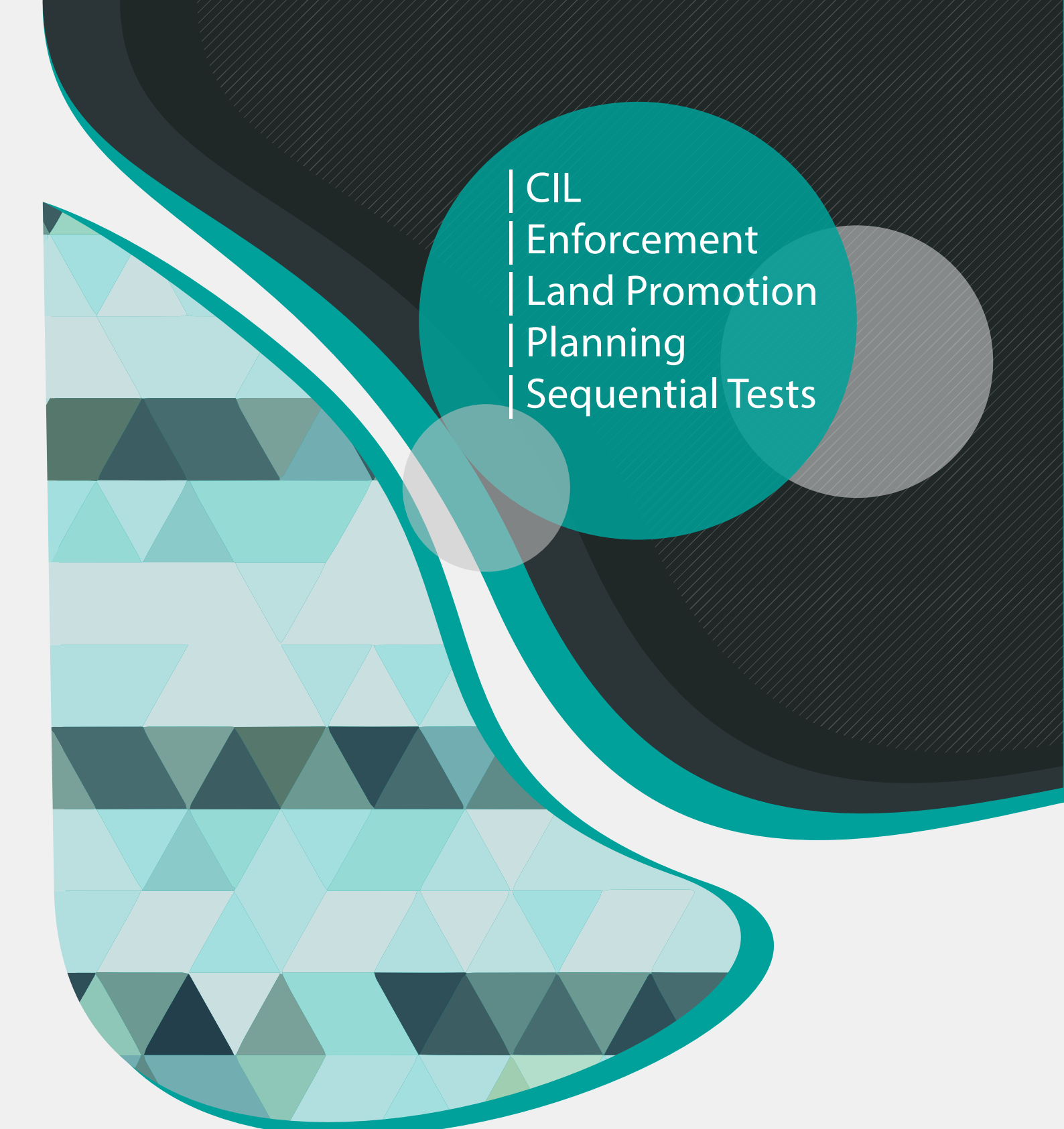
gareth@etplanning.co.uk 01344 508048

Katie Walker BA (Hons) MSc MRTPI

Associate Director | ET Planning

200 Dukes Ride Crowthorne RG45 6DS

katie.walker@etplanning.co.uk 01344 508048



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Contact

Address

200 Dukes Ride RG45 6DS

Phone

01344 508048
01865 507265
01483 363950
01743 612043
01392 691384

Web & Mail

Email: office@etplanning.co.uk
ET Planning Ltd | 10646740

Web: www.etplanning.co.uk