

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL  
PLANNING APPLICATIONS COMMITTEE**

**16<sup>th</sup> December 2021**

<b>Application No:</b>	SMD/2021/0649 - COLP	
<b>Location</b>	Oak Lodge, Sandy Lane, Brown Edge	
<b>Proposal</b>	Certificate of Lawfulness for Change of use from Class C3 (dwellinghouse) to Class C2 (residential institution)	
<b>Applicant</b>	Bedspace Resource Ltd	
<b>Agent</b>	Knights PLC	
<b>Parish/ward</b>	Brown Edge	
<b>If you have a question about this report please contact:</b> Chris Johnston 01538 395400 (Ext. 4123) <a href="mailto:Christopher.johnston@staffsmoorlands.gov.uk">Christopher.johnston@staffsmoorlands.gov.uk</a>		

## **REFERRAL**

The application has been brought before Committee at the request of Councillor Lea.

### **1. SUMMARY OF RECOMMENDATION**

<b>APPROVE</b>
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### **2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

- 2.1 The site comprises a modern 5-bed semi-detached house (currently vacant according to the agent) a short distance to the north of the centre of Brown Edge village. It faces Sandy Lane to the west and the attached semi-detached neighbouring dwelling is on the north side. The area to the front of the house is a hard-surfaced parking area and the area to the rear of the house is a private back garden. To the south side of the site is a Methodist Church and community centre building and there are further dwellings on the other side also facing Sandy Lane. Opposite the site on the other side of the road to the west lie further dwellings facing the road. To the south of these is a fish and chip shop and hair/beauty salon. There are further dwellings further to the north of the site and also to the rear (to the east of the site).

### **3. THE APPLICATION**

- 3.1 This is an application for a Certificate of Lawfulness for a proposed change of use from a dwellinghouse to a residential care dwelling for three children and two carers who will stay overnight as part of a shift arrangement to provide the required care but this will not be their main residence. It is understood that "Bedspace Resource Ltd", the company providing the care, will be leasing the property from the owners.

- 3.2 Any person can apply to the local planning authority to obtain a decision on whether a proposed use or development is lawful for planning purposes or not. The applicants seek confirmation, in the form of a 'Certificate of Lawfulness', that the proposed use of the property as a small care dwelling would not require planning permission.
- 3.3 A local planning authority can grant a certificate confirming that a proposed use of buildings or other land would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990. In summary, lawful development is development against which no enforcement action may be taken or, for which planning permission is not required. The planning merits of the case are irrelevant when determining the application.
- 3.4 Such an application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application. An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. An appeal can be made to the Secretary of State against the refusal of a lawful development certificate.
- 3.5 It is proposed to use the property to provide a home for up to three 3no. children with ages between 8 and 18 and with a minimum of 2no. carers on-site during the day and night and a visiting manager whom attends the property during the week (day light hours). The Planning Statement submitted by the applicant states the following:

*The children would be cared for by trained carers 24 hours a day and 7 days a week. Care would be given in a communal environment with the children and their carers sharing facilities in a manner akin to a family. For example, there would be no locks on bedroom doors. There are five bedrooms and bathroom on the first floor and a kitchen, living area, conservatory and bathroom on the ground floor. Two of the bedrooms on the first floor would be for the staff members whilst the other three bedrooms would be utilised individually by the three children in care. There would be no home office on-site. Although the property does not contain a home office, a desk space with a lockable filing cabinet for paperwork will be provided within the living area to allow members of staff to undertake administration work (normally when the children are at school). This is a requirement to satisfy GDPR regulations. Other than the two dedicated staff bedrooms, all of the other rooms would be communal.*

*The carers for the children would not be permanent residents but their working hours would be split between 3 shifts. The first shift would likely be between 7am to 3pm; the second would be between 2:30pm to 10:30pm and the third shift would be between 10pm to 7:30am. One of the staff during the*

*nightshift would be a waking night staff. The handover period between shifts would generally last around 30 minutes. On occasions the site manager would be present during this time. During the daily operations, the staff members would remain on site supervising the children but would also accompany the children to school and other appointments (e.g doctors, dentists etc).*

*One of the carers would be a more experienced member of staff in a senior role in order to meet the requirements of Ofsted regulations. The site manager would be present at the property anytime between 9am to 5pm on various the days of the week (as required) to provide more senior input. The manager provides an over sight to the operations, safeguarding responsibility and deals with administration. They are a senior member of staff who are more qualified (i.e. hold a level 5 children's residential care qualification - whereas the other staff would hold a level 3 qualification). The manager may on occasions be on site during shifts change overs and to cover shortfalls (i.e. where one of the other carers is unable to attend).*

*The children would be cared for on a medium to long term basis in order for them to integrate properly into the community and build strong relationships with the carers and the environment. Other visitors to the property (i.e. family and friends of the children) would be strictly limited. Typically children would visit family and friends in neutral locations with the carers present.*

*There would be the children cared for by two staff members during the day. This is a standard arrangement throughout the care home arrangement regardless of the level of care provided. Food would also be cooked and served by the carers. During the night 2 carers would remain on site and would work the night shift between 10pm to 7:30am.*

*The residents would attend school during the day and would utilise services and facilities in the surrounding area. The three children would be taken to appointments by an individual. Where suitable, many of these trips (including school trips) would be taken on foot or on public transport. There would be no more requirement for these children to be taken to any specialist schools or appointments. The applicant would employ carers in partnership with Staffordshire Moorlands District Council. The applicant would be registered with Ofsted as the proprietor with the home registered for up to three children.*

*A risk assessment would be undertaken to ensure that the residence is appropriate for the chosen children. In order to run a care home it is necessary to obtain a registration from Ofsted. Ofsted stress the need for care homes to be operated in an environment as close as possible to a traditional family home environment and are set out below:*

- Children in residential child care should be loved, happy, healthy, safe from harm and able to develop, thrive and fulfil their potential.*

- Residential child care should value and nurture each child as an individual with talents, strengths and capabilities that can develop over time.
- Residential child care should foster positive relationships, encouraging
- Strong bonds between children and staff in the home on the basis of jointly undertaken activities, shared daily life, domestic and non-domestic routines and established boundaries of acceptable behaviour.

3.6 An email was received from the agent on 6.12.21 which gives further information about the care children, as follows:

*They would be children who may have suffered a difficult and sometimes traumatic upbringing. This might include abuse, neglect, family or placement breakdown and/or bereavement. They may have complex emotional and behavioural difficulties or mild to moderate learning difficulties and might not easily be placed with normal foster care arrangements immediately. Children living at the home would not be detained offenders or have any medical or clinical condition requiring secured facility or hands on attention. All referrals for a placement at the home would be subject to a matching document and an impact risk assessment (to consider whether a the referred child is a match to children already living at the home and suited to the home and the area it is in. This would include identified local risks (in this case there is a pre-school next door so a child with identified risk e.g. sexual offences to young children) would not be deemed suitable for a placement at the home. The proposed staffing ratios and rota patterns proposed have taken this in to account already (i.e. the ratio would be higher if it were the case that the children had more server care requirements.*

#### **4. RELEVANT PLANNING HISTORY**

4.1 The property was purpose built as a dwelling under planning permissions in 1980s and last used as a dwellinghouse.

#### **5. PUBLICITY**

5.1 There is no statutory requirement to consult third parties including Parish Councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application. The Committee can only take into account representations relating to the application and interpretation of the Town and Country Planning Use Classes Order 1987 (as amended); and/ or the materiality of any identified change of use.

5.2 In this case the application has not been publicised, as it was not considered that evidence from these sources could usefully inform the process. However, members will be able to exercise their judgement as to whether, on the

individual facts of the case, the applicant's proposed use, would be 'materially' different to the existing dwellinghouse use.

5.3 Although no consultation was carried out, thirty letters of objection were received from local residents mainly concerned about the impact on the local area, immediate neighbours due to noise, the safety of the community, safeguarding and traffic created by the proposed care home use.

5.4 The objections can be read in full at

<http://publicaccess.staffs Moorlands.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=153485>

5.4 The Parish Council has also raised several points of objection which are as follows:

- Brown Edge Parish Council Neighbourhood Planning Committee have had a housing needs survey done as part of their Neighbourhood Development Plan and this indicated no need for a facility of this kind in the village. The National Planning Policy Framework states that housing should be relevant to the area it is proposed. No survey has identified this need in Brown Edge including the latest housing needs assessment carried out by AECOM. Therefore young people housed in the facility will certainly be from outside the area. Thus depriving Brown Edge of a quality residential house that the AECOM report did identify as being needed.
- There is already a residence for this purpose in a detached property near to Tinster's Wood which is a much better location and a detached residential care home for adults with learning disabilities at Hill Top.
- The proposed property is Semi Detached and residents in the adjoining and facing properties will be overlooked by workers and residents with potential noise and disruption to normal village life. This is a residential area. There will be potential of 24-hour disturbance
- There is only car parking for residential use. Several staff and other support workers will not have room to park, this will cause obstruction on Sandy Lane and disruption at all different times of day as staff shifts change over.
- The Council debated that this application is purely for profit of the owners in the fees they will receive, and of no benefit to the Moorlands or the village of Brown Edge.
- Bus services are very limited. Links to bus timetables <https://bustimes.org/services/8b-hanley-norton-brown-edge-schools> & Stanton's Timetable attached.
- Staff needing to travel to work by public transport as promoted in the Planning Statement would also struggle with the current transport available.

- Brown Edge village has no facility to entertain young people. There is no Youth Club provision
- Police officers attending the meeting on 3rd November, informed us that reported incidents of anti-social behaviour in Brown Edge had increased by 3% already.
- This could have a negative impact on village life Brown Edge young people will become influenced and potentially fall into bad relationships.
- Brown Edge elderly generation could become subject to abuse as the young people get bored of their village surroundings.
- Parents have expressed concern for safeguarding of their children, business owners from Busy Bees Nursery at the Sandy Lane Centre are worried about the detrimental effect it will not only have on their businesses but on the viability of Sandy Lane Centre itself.

## **6 OFFICER COMMENT AND PLANNING BALANCE**

### The key legal tests

- 6.1 The proposed use of a property would be lawful and not require planning permission in circumstances where either:
- there would be a change between two uses within a class of the Use Classes Order 1987 (as amended); or
  - there would be a change that is not a 'material change' and so would not be development that is subject to the controls of the planning system.

### Explaining the Use Classes Order

- 6.2 The Town and Country (Use Classes) Order 1987 ("UCO 1987") groups and specifies different uses within broad categories of classification. By s55(2)(f) of the Town and Country Planning Act 1990 ("the Act"), where a use falls within a particular designated class, then no planning permission is needed for any change which falls within the same class. One of those classification categories is Class C3 'Dwellinghouses' which specifically includes the use of any dwellinghouse by either, a single person or family (Class C3a); up to six people living together as a household and receiving care (Class C3b); or groups of up to six people living together as a household, not receiving care (Class C3c). Additionally, by the exception at s55(2)(d) of "the Act", the dwelling and its curtilage can, without planning permission, be used for any purpose that is incidental to the enjoyment of the dwellinghouse.

### Which 'Use Class' would the proposed use fall?

- 6.3 The building in this case is a purpose built conventional family dwellinghouse (Class C3a). The applicant proposes to provide a home for up to three unrelated children who would live together and be cared for by non-resident

staff. It is clear that these residents would not be a family and therefore, not included at Class C3a.

- 6.4 Turning to whether this proposed use would then remain with Class C3 but fall within Class C3b instead, we have the benefit of the judgement of Mr. Justice Collins in *North Devon District Council v First Secretary of State* [2003]. Collins J was clear, on the facts of that particular case, that carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care can not be regarded as living together and that, whilst there would be less than 6 residents, the children, without at least one adult living with them at the premises, would not be capable of being regarded in the true sense as a household. Taking all of this on board it seems clear that, applying Mr Justice Collins precepts from *North Devon*, the proposed use would not fall within Class C3(b).
- 6.5 In his judgement, Mr. Justice Collins went on to reason that in the case before him, where three children would reside and be cared for by non resident staff in a three bedroom semi detached property, the use would seem to clearly fall within Class C2 of the "UCO 1987" as a 'residential institution' which includes a home that provides care for children. The similarities between the *North Devon* case and the applicant's proposed use are enough to indicate that the proposed use of The Oaklands would also be included at Class C2 rather than C3(b). The applicant is applying for a certificate to state that the change of use to Class C2 would be lawful.

#### Whether the change of use would be material

- 6.6 Although it may sound somewhat illogical, it is well established by the courts that, notwithstanding whether the use falls within Class C2, rather than Class C3, planning permission will not be required, if the change of use would not be a 'material change' of use. The local planning authority must still consider therefore, whether that change of use would be 'material'. It is a matter of fact and degree, in the circumstances of an individual case, as to whether a change of use will be material.
- 6.7 The decision before Members therefore, is whether the differing use as set out and proposed by the applicant would be 'materially' different to that of a dwellinghouse and result in development requiring planning permission. "The Act" does not define 'material change of use' and in general therefore, it is necessary to exercise some considered judgement in individual cases, and this is regarded by the courts as being primarily a matter of fact and degree for the Local Planning Authority. By way of a guide, differences which might be considered 'material' are those which are measurable or quantifiable as resulting in a significant or substantial change or step up in the character or impact of a use.
- 6.8 As a starting point, the previous and lawful uses of the property, against which the materiality of the applicant's proposed change must be measured, provide the base line for comparison. The property was last used as that of a 5-bedroom home and, indeed, it was built (and extended) for that purpose.

There is no limit on the size of 'family' that can occupy a dwellinghouse and it is likely that due to the size of the house with five bedrooms and the presence of a significant parking area and rear garden, the property could be occupied by a relatively large family. Included, within the same C3 use class, the property might also be used and occupied by up to 6 people, who are not related as a family, but live together as a single household, and this could include an arrangement where the residents are provided with care.

6.9 The task then is to compare against that 'baseline' the character of the land use proposed by the applicant. In so many respects the use would operate in a way that is very similar to a normal family home. The property would provide the young people with their sole and main residence, with free and shared access to living, dining, and kitchen facilities able to take shared meals prepared for them or make their own food or drink. The residents will be taken to and brought home from school each day and while their carers would not be resident, while in attendance, they would interact with the property and the residence in a way that is very similar to an adult resident, parent or guardian. The residents would eat together and get ready on a daily basis to attend school. The home seeks to foster lifestyles which would be the same as if the residents were normal children living in a family home.

6.10 It is acknowledged that the home would be provided by a commercial organisation/company and that the carers would be employees attending the home as their place of work. However, these are perhaps more co-incidental factors which actually have little effect on the character and way in which the property would be used on a day to day basis. The conduct, activity and interaction between residents and staff would in all likelihood be very similar to that of a family unit. If for example, the care staff use an desk provided within the property, this is not obviously different in character and impact to the resident of a dwellinghouse normally using a home office or study. The applicant's evidence is that the proposed use is to provide a stable home environment for the occupants as their main and sole residence and that the length of stay is generally more than temporary or passing. It would not be a 'half way' house or provide overnight emergency lodgings for example. However, in any event, the courts have provided some assistance in determining the significance of there being a commercial factor to a residential use or an arrangement where the occupants have generally only a limited period of stay. Cases such as *Blackpool BC v Secretary of State for the Environment* [1980] and *Moore v Secretary of State for the Environment* [1998] where houses were used for holiday lettings on limited basis, established that a change to holiday lettings is not necessarily material, since the character of the use need not have changed. Following *Gravesham BC v Secretary of State for the Environment* [1982], the court accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons, or if it was under commercial management for holiday or other temporary lettings.

- 6.11 It might also be noted that interior preparations might include the installation of a desk or office space, fire alarms and other health and safety measures. However, these are not facilities that are uncommon within any other dwellinghouse and are not in themselves obvious indicators that the proposed use would be materially different.
- 6.12 The home would provide care for young people who, through no fault of their own, have suffered a difficult and sometimes traumatic upbringing, they may have complex emotional and behavioural difficulties or mild to moderate learning difficulties. It is possible that from time to time some of these residents might display rather extreme behaviours (shouting, screaming etc.). However, such outbursts of aggression or distress from children could potentially be witnessed at any family property from time to time and there is no indication that the proposed use would lead to any significant additional impacts in relation to the current established use as a family dwelling that could amount to a material change in use based on the impacts on the local area.
- 6.13 With regard to other impacts which might define a “material change in use”, the house would have just three residents who are highly unlikely to drive or own a car. This would be in contrast to most family households, where it is likely that at least two adult members, often more where the children/offspring are 17 or over, own and use a car; and, in the case of a house share, it is possible that all six members of the household could all use their own car, with all of the comings and goings associated with a household. Whilst the residents themselves would be highly unlikely to drive, there will of course be some vehicle movements associated with the proposed use. On the applicant’s evidence submitted with the application, there would be three shifts and two carers arriving and leaving at the beginning and end of three shifts. However, this is not considered to lead to excessively more vehicle movements than say, adults at a family dwelling or house-share leaving for work and then going to an evening activity for example. There may be some vehicle trips to take the children to school or appointments although given the central location of the site in a large village, it is also likely that some of those trips would be made via walking. In any case, ventures out of the house to take children to school or appointments are unlikely to be materially different with the proposed care home use than in comparison with a family dwelling.
- 6.14 Overall, it is considered that the cumulative level of activity, traffic movement and requirement for parking, is unlikely to be any greater than any of those ‘dwellinghouse’ uses, where many or all of the residents make journeys to and from work, school, shops and services and can take any number of deliveries and visits from friends, family, cleaners, maintenance tradespeople etc. Perhaps the proposed use might be most comparable to a household of six where care is provided, with that type of use the residents may not drive themselves but would be attended to by a care team and other services. In any event, the property in this case is well served by its own access, with good visibility of a straight section of road and with a parking area which accommodates at least 4 off-road parking spaces (there would be a maximum of four staff at any one time during the half hour shift switchover).

Within that context fluctuations in the number and regularity of vehicle movements in comparison to previous and lawful uses, will not be felt as a material impact on its surroundings and cannot be obviously identified as an indication of 'material change'.

### Conclusion

- 6.15 The lawful use of a dwellinghouse, included at Class C3 of "the UCO 1987", is broad in scope and could in association bring with it considerable activity, associated and ancillary use, or vehicle movement. The prevailing character of the proposed use would be that of a small group of children living together and using the property in a way similar to that of a family home where they would be supervised and cared for by adult guardians. While there might be identifiable differences, between proposed and existing uses, these would not be 'material' or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwellinghouse.

### **RECOMMENDATION**

**That a 'Certificate of Lawfulness' is APPROVED for the proposed use.**

