



**Supporting Planning
Statement**

**Certificate of Lawful Use for
Proposed Development:**

**34 Derby Road, Uxbridge
UB8 2ND**

Prepared By

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Children of the Mangrove

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1.0 Background

- 1.1 This Supporting Planning Statement should be read in conjunction with the plans submitted with the application for a Certificate of Lawful Use for a Proposed Development at the property known as 34 Derby Road, Uxbridge, UB8 2ND. The development seeks to confirm that the use of the property to accommodate a **maximum of four children** within the property is lawful under the existing C3 use. The proposed household will be formed of the children themselves with staff operating on a rota basis to provide care for the children.
- 1.2 The applicant has assessed similar developments and appeal decisions in a variety of local planning authorities which serve to set out the views of Planning Inspectors on the subject – indeed Planning Base have significant experience in this area of planning law.
- 1.3 Whilst it is acknowledged that each application should be judged upon its own merits in accordance with the Act, in the interests of consistent decision making it is considered that this application should be approved as it is a mirror image of those previously approved applications and appeals.
- 1.4 Reference is made to an appeal decision that was issued at The Cottage, Stonebridge Green Road, Ashford TN27 9AP (PINS Refers 3161037) which is appended to this Supporting Planning Statement. In that case, the proposal was for a maximum of three children to be residing in the property at any one time.
- 1.5 Before further assessment, it is considered important to include a Personal Statement from the Directors of Children of the Mangrove which is set out as follows:

The property will be used to provide care for a maximum of four vulnerable children aged between 11-18. The children may live at the property from admission until their 18th birthday. There will be at least two carers present in

the home at all times to ensure the children's basic needs are met; such access to education, health, social and physical activities, positive relationships, safety and wellbeing etc; in the same manner that children within a typical domestic family household have access to these basic needs via their parents or carers. The carers will not provide 'personal care' to the children e.g. bathing, dressing, toileting etc, as the children who will live at the property do not require this level of care due to their age and capacity. All carers hold a minimum qualification of Level 3 Diploma in Residential Childcare and have undergone an Enhanced DBS Check.

2.0 Site & Surroundings

- 2.1 34 Derby Road is located within the built-up area of Uxbridge and all of the services and facilities required for day-to-day living are within easy walking distance. The property is semi-detached and consists of three storeys of accommodation plus a cellar and annexe building.

- 2.2 The proposal will involve no external alterations. The ground floor 'Sitting Room' will be used as a staff room with the children all sleeping in the four designated bedrooms at first floor and second floor. The property has off-street parking and a good-sized private rear garden. Staff will work on a shift pattern and will stay awake at night and there will always be at least two staff

present at the property at all times. No individual staff member will be registered as living at the property.



Figure 1 – Street scene view of 34 Derby Road

3.0 Analysis

- 3.1 The key issue in the determination of this application is whether the proposed use as a children's home accommodating a maximum of four children falls within the existing C3 use and therefore is lawful and does not require a planning application for a change of use.
- 3.2 This application considers the proposals submitted for consideration by the Local Planning Authority against the General Permitted Development Order 2015 (as amended) in order to determine if the proposals as submitted would be considered 'permitted development', and therefore lawful without the need for planning permission. On the 1st of September 2020, The Secretary of State, in exercise of the powers conferred by sections 55(2)(f), and 333(2A) and (7) of the Town and Country Planning Act 1990(1),("the 1990 Act") enacted a

number of changes to The Town and Country Planning (Use Classes) Order 1987 (as amended).

- 3.3 Class C3 Dwellinghouses C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
- 3.4 C3(b) covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
- 3.5 C3(c) allows for groups of people (up to six) living together as a single household. It is submitted that the proposal falls within this part of the Use Class.
- 3.6 This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.
- 3.7 Annex 8, paragraph 8.14 of Circular 11/95 highlights that subsection (4) of section 191 provides that if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, they shall issue a Certificate to that effect. The Circular states that the burden of proof is on the appellant and the Courts have held that the relevant test of the evidence on such matters is 'the balance of probability'. However, the LPA should not refuse a Certificate because the applicant has failed to discharge the stricter,

criminal burden of proof, namely 'beyond reasonable doubt'. Moreover, the Courts have held (see *F W Gabbitas v SSE and Newham LBC {1985} JPL 630*) that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted.

- 3.8 If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, then there is no good reason to refuse the issuance of a Lawful Development Certificate.
- 3.9 The submitted drawings indicate existing and proposed plans. The applicant has outlined in the application form that this proposal would not include any carrying out of building work or other operations. The application form sets out that it is considered that use of the property by a maximum of four children does not constitute a material change of use from the extant lawful use. As the existing use of the site and the proposed use of the site would fall within the clauses outlined above under Class C3, it is considered that this change of use would not be regarded as development.
- 3.10 The house offers supported living accommodation for vulnerable children. These children do not receive education or specialist out-patient care within the dwelling. The aim of the living arrangement is to provide these young people with a degree of normality whilst providing care akin to that of a parent in a typical family household. No material change of use will occur, the number of children and carers within the property will never exceed 6 (4 children). To all extents and purposes the operation and use will remain consistent with that of a C3 dwelling.
- 3.11 Furthermore, if the LPA consider the house to fall within the C2 use class order, this does not necessarily amount to a material change of use; all that has changed is the legal definition of the property. No alterations have occurred within the property, there has been no increase in comings and goings over

and above that of a normal residential property. There has been no intensification in use thus no material change of use that could constitute development has occurred, and no planning permission is therefore required. Please see North Devon Judgement.

3.12 The Town and Country Planning (Use Classes) Order 1987 states the following in relation to changes of use. Use Classes 3.— (1) Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land. Since the existing use of the site and the proposed use of the site would fall within Use Class C3, the proposed change of use would not be regarded as development.

4.0 Summary

4.1 It is respectfully requested that the Certificate of Lawful Use for a Proposed Development be issued on the basis that the proposal falls squarely within a C3 use. If the LPA disagree, then even if a low level C2 use is identified there has been no material change of use and the Certificate should be issued.