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# Appeal Decision

Site visit made on 11 November 2024

**by A A Phillips BA(Hons), DipTP, MTP, MRTPI AssocIHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> December 2024**

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**Appeal Ref: APP/L2440/X/24/3337830**

**2 Ashton Close, WIGSTON, Leicestershire, LE18 2JQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Favour Health Ltd against the decision of Oadby and Wigston Borough Council.
  - The application ref 23/00346/CLP, dated 31 August 2023, was refused by notice dated 24 November 2023.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is Class C3(b) dwelling.
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## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

## Preliminary Matter

2. I have taken the description of the proposed use for which a LDC is sought from the Council's decision notice because this accurately describes the proposal before me. Furthermore, there is no concise clear description of the proposed use on the application form.

## Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. In this case that turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3.

## Reasons

4. The appeal property is a two storey semi-detached dwellinghouse situated within a predominantly residential part of Wigston. The accommodation comprises a living room, dining area, kitchen and conservatory at ground floor with three bedrooms and a bathroom on the first floor. Externally, there are front, side and rear garden areas with a detached garage and further on-site parking for one vehicle to the rear.
5. It is proposed to use the existing C3 dwellinghouse as a dwelling for a maximum of one young person with two carers at once. It is my understanding that one carer will live on-site permanently with an additional carer working a 24 hour shift on a rotational basis starting at 0730 each morning.

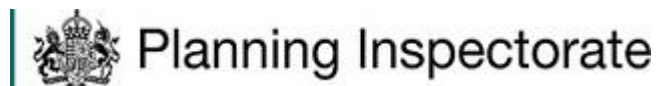
6. I have considered case law relating to cases such as this and it is clear to me that a similar scenario to this was considered in *North Devon District Council v FSS & Southern Childcare Ltd [2003] EWHC 157 (Admin); [2003] JPL 1191* which determined that children cannot form a household and that if their carers do not live permanently at the property, the use would fall within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). The same principle applies to others who need care. Class C2 is defined as use for the provision of residential accommodation and care, other than within a Class C3 use.
7. The case of *R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin)* also confirms that *North Devon* does not lay down a principle that those who may need care can never constitute a household. It is necessary to focus first on those in occupation and ask whether they form a single household as a matter of fact and degree. It would be counter to the language of Class C3 to conclude that where care is needed, C3 only applies to where the carer-givers are resident. However, in this case, it cannot be said that those described by the appellant as "a single household" form a single household because one of those has their main dwellinghouse elsewhere, would not be permanent occupants of the appeal property and would only be present on a 24 hour shift basis. Therefore, in my planning judgment the proposed use would fall within C2 (residential institutions) of the UCO.
8. However, a change of use to a different use class only requires planning permission if it is material in planning terms. In this case, the appellant considers that the proposed use would fall within Class C3(b) and that the nature of the use as detailed in the application would not be materially different than a typical household in Class C3. In order to establish whether or not there would be a material difference a comparison between the existing and proposed uses must be carefully considered.
9. The house could quite easily accommodate a family with two adults and two or more children and therefore the proposed use for one young person and a carer plus an additional carer on a shift basis would not be materially different from the authorised use as a single three bedroom family dwellinghouse. There would be some vehicle movements associated with carers coming to and going from the site on a daily basis in accordance with their shift patterns and there would be some journeys linked to taking the young person out to undertake normal day-to-day tasks or attend activities or appointments. The number of these movements is unlikely to be significantly more than the number that would be undertaken by a family and certainly not enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. There is insufficient evidence before me to show that the use would be likely to result in greater levels of noise and disturbance than the existing authorised residential use.
10. The appellant will be required to comply with a range of regulations and rules governing the operation of the accommodation for children and young people in care, including their supervision. Should these regulations be adhered to and the appellants meet the necessary staffing and management requirements, I do not find there to be any reason why the use proposed would have planning impacts that would result in it being considered to be a material change of use.

## **Conclusion**

11. For the reasons given above I conclude, on the evidence now available that the proposed use is not a material change of use from the lawful use as a single dwellinghouse falling within Class C3. Therefore, the Council's decision to refuse to grant a certificate of lawful use was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

*A A Phillips*

INSPECTOR



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# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 31 August 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), would not represent a material change from the authorised use of the site as a Class C3 dwellinghouse.

Signed

*A A Phillips*

INSPECTOR

Date: 4<sup>th</sup> December 2024

Reference: APP/L2440/X/24/3337830

## **First Schedule**

Class C3(b) dwelling

## **Second Schedule**

Land at 2 Ashton Close, WIGSTON, LE18 2JQ

IMPORTANT NOTES – SEE OVER

## NOTES

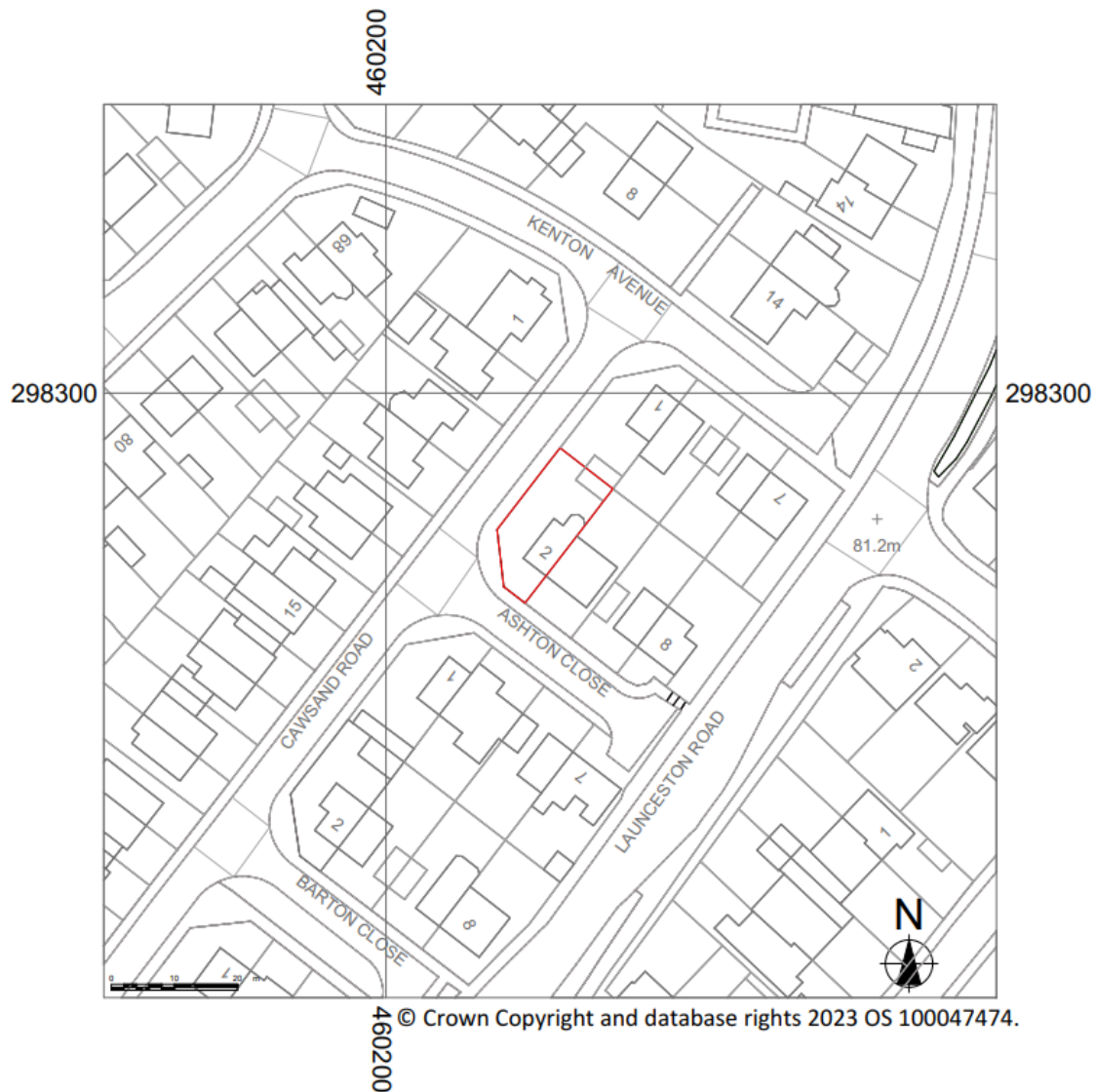
This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Scale: Not to Scale



## Location Plan 1:1250