

DELEGATED DECISION REPORT

**HPK/2023/0146
VALID 14/04/2023**

**THE OLD SCHOOL HOUSE,
LONG HILL, FERNILEE,
DERBYSHIRE, SK23 7HD**

**LAWFUL DEVELOPMENT
CERTIFICATE FOR AN
EXISTING USE AS A
CHILDREN'S CARE HOME
WITHIN USE CLASS C2
(CERTIFICATE OF
LAWFULNESS –EXISTING)**

MAIN ISSUES

Whether the land identified within the application has been in use as a children's care home within Use Class C2 in excess of 10 years, and as such is lawful.

DESCRIPTION OF SITE

The application site relates to a detached two storey building, with associated outbuildings and curtilage. The site lies within an area of countryside as defined by the Local Plan Policies Map. The site is located within a small group of buildings which are predominantly residential in character, although the land to the north is in use as a garage. The wider surrounding area is predominantly agricultural. The site is accessed off Long Hill (A5004), and benefits from off street parking.

PROPOSAL

The application seeks a Lawful Development Certificate to establish that the existing use of the site is lawfully in use as a children's care home within the C2 Use Class.

PLANNING HISTORY

HPK/2010/0219 - TWO STOREY REAR EXTENSION AND LEAN TO – APPROVED – 30/06/10

HPK/0003/4979 - CHANGE OF USE FROM SINGLE DWELLINGHOUSE TO RESIDENTIAL INSTITUTION (C2) – APPROVED – 19/12/95

HPK/0002/7671 - CONV. OF SCHOOL TO DWELLING. CONV. AND ROOFING OVER OF TOILET BLOCK TO FORM DOUBLE GARAGE. SMALL EXTENSION TO SCHOOLHOUSE – APPROVED – 04/04/89

HPK/0002/6664 - CHANGE OF USE AND MINOR EXTENSION TO FORM DWELLING – APPROVED – 14/07/88

CONSULTATION RESPONSES

Environmental Health – No observations to make

Whaley Bridge Town Council – Support the application

OFFICER COMMENTS

Background and Relevant Legislation

This certificate has been submitted under s.191 of The Town and Country Planning Act to determine whether an existing use of land and buildings at The Old School House, as a children's home (C2), is lawful. S.191(2) states that uses and operations are lawful at any time if no enforcement action may be taken in respect of them. S.171B sets out the time limits for where no enforcement action may be taken and confirms, that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In this instance, therefore, it needs to be established whether the use has endured continuously for a period of more than 10 years from the date that the application was submitted to the LPA. The relevant date is therefore 14th April 2013, from which a continuous use must be demonstrated.

S.191(4) states that if the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use then they shall issue a certificate to that effect. Planning Practice Guidance also confirms that the applicant is responsible for providing sufficient information to support an application and, in the case of applications for existing use, of a LPA has no evidence itself, nor any from others, to contradict or make the applicants version of events less than probable there is no good reason to refuse the application, provided that the evidence alone is sufficiently precise and unambiguous to grant on the balance of probability.

Evidence Submitted

The application has been supported by a covering letter and a series of Ofsted Inspection reports dating back to 1st February 2012.

Analysis of Evidence

The documentation submitted with the application includes 17 Ofsted Inspector Reports, which are either full reports, interim reports or monitoring. The evidence provides reports for each year within the relevant period with the exception of 2020. An Inspection during that year could not be undertaken due to the COVID-19 pandemic, and this is confirmed in the Inspection report dated 9th September 2021. Each report confirms that the site has been in use as a children's home of between 2 and 4 children in residence. There is no evidence to suggest that the use had not continued throughout 2020 and the lack of any Inspectors report clearly justified.

It is clearly satisfied that the use of the premises has, beyond reasonable doubt, been in use as a children's home for in excess of 10 years.

A small children's home could fall within a Class C3(b) dwellinghouse use, which relates to *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*. It is noted that young children are unable to live independently. Furthermore, the submitted Inspectors reports would indicate that the staffing and activity levels would be above and beyond what could reasonably be considered to be a dwellinghouse. As such it is considered that the use on the site has been within the C2 use class.

It is noted that planning permission was granted for the use of the premises for C2 in 1995. However, it is not clear whether this was ever implemented. Little reliance can be placed on this. Notwithstanding this, there is no information to dispute the version of events which have been submitted by the applicants.

CONCLUSIONS

There is sufficient evidence, on the balance of probabilities, to demonstrate that the land, has been in continuous use as a children's home within use Class C2 in excess of 10 years and is lawful.

OFFICER RECOMMENDATION: Approve Certificate

Case Officer: Declan Cleary

Recommendation Date: 06/06/2023

X 

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council