



# Officer Report

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| <b>Application Number:</b> | <b>HGY/2026/0181</b>                                                                                                                                                                                                       |
| <b>Application Type:</b>   | <b>Lawful development: Proposed use</b>                                                                                                                                                                                    |
| <b>Address:</b>            | Ground Floor Flat, 22 Willoughby Road, Hornsey, London, N8 0JE                                                                                                                                                             |
| <b>Proposal:</b>           | Certificate of Lawfulness: Proposed use - The proposed C3(b) use would remain within Use Class C3 and would not constitute development within the meaning of Section 55 of the Town and Country Planning Act 1990. AMENDED |
| <b>Case Officer:</b>       | Mercy Oruwari                                                                                                                                                                                                              |
| <b>Valid Date:</b>         | 21/01/2026                                                                                                                                                                                                                 |
| <b>Applicant:</b>          | Mr Telis                                                                                                                                                                                                                   |
| <b>Agent:</b>              | Mr Joel Stern                                                                                                                                                                                                              |

## **RECOMMENDATION**

### **Refuse**

#### **1. DESCRIPTION OF APPLICATION**

This is an application for a certificate of lawfulness to confirm that the change of the ground floor flat from C3(a) to C3(b) does not require planning permission, as remains within the same use class and group of C3 by virtue of s.55(2)(f) TCPA 1990 does not amount to development.

#### **2. RELEVANT LEGISLATION**

The application has been made under section 192 of the Town and Country Planning Act 1990 and relevant amendments. This not a planning application but instead the applicant seeks confirmation that the proposed development is lawful.

The Town and Country Planning (Use Classes) (Amendment) Order 2005 (amended further in 2010) distinguishes a range of uses of buildings and specifically permits changes of use from one use to another within individual classes.

#### **3. CONSIDERATIONS RELEVANT TO THE USE OF A PROPERTY AS C3(B)**

Use Class C3 Dwellinghouses, is formed of three parts - C3(b) reading as: Use as a dwelling house (whether or not as a sole or main residence) by — (b) not more than six residents living together as a single household where care is provided for residents.

Several interpretations of Use Class C3(b) have been heard at appeal since the division of the C3 Use Class however, it is generally held that whether a change of use is material or not, is a matter of fact and degree for the assessing planning authority to determine, having considered the individual facts of a case.

On this basis, the assertion of the Council is that in order to be considered as falling within the definition of Use Class C3(b), any such proposal should meet the following criteria:

- i. The carrying out of operations in order to facilitate C3(b) use, must not amount to a material change of use;
- ii. The operation of the premises should offer and afford to occupiers, the functionality of the council's definition of a 'single household';
- iii. The proposed use would include care provision (for not more than six residents), within this criterion.

Furthermore, with regard to applications involving children to form a household, as is understood from caselaw and decisions by the Planning Inspectorate, there is the requirement for an adult carer to reside within the property.

While this does not preclude care being provided by shift workers, there is required to be a residing adult on the property to make up the household. Otherwise, the use class would fall into C2 use.

This was concluded in the North Devon District Council v First Secretary of State [2003] case. The court emphasized that a proper functioning household requires resident carers to be living together with those being cared for. The court held that non-resident carers providing shifts do not satisfy the "living together as a single household" requirement of C3(b).

A recent dismissed appeal referred to the North Devon District Council v First Secretary of State [2003] case within the report. Although the issues verify from this case, the reference to the 2003 case law validates that is still a requirement that a residing adult is required to make up the household even with the presence of shift workers (Appeal Reference dismissed APP/V4630/X/21/3279430 - 26 Banks Street, WILLENHALL, WV13 1SP).

Use Class C2 includes:

- Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3. Dwellinghouses, used as sole or main residence).
- Use as a hospital or nursing home.
- Use as a residential school, college or training centre.

#### Proposed Operations / Proposed Use:

The agent has submitted a Planning Statement which discusses the proposal, the history and background of the site, the general legislation and case law supporting the proposal. A Management Plan has also been submitted which outlines the operational framework, safeguarding measures, and the day to day management of the property.

The proposal is to establish whether the use as described in this submission fits the criteria held for use as C3(b) as described within the Order and whether the individual facts of the case meet the LPA assertion of this use class.

The use is described within the supporting statement as follows:

Certificate of Lawfulness for change of use of the ground floor flat from Use Class C3a (single family dwelling) to C3b, single household to accommodate no more than 2 children from ages 13-17 where care is provided by one permanent staff covering day shift hours and one permanent staff covering night shift hours.

The proposed home will provide care of 2 children with emotional and behavioural difficulties who would require a different living and caring environment where counselling and mentorship would be provided. The purpose is to provide a safe and nurturing environment for the resident children, which seeks to encourage education, hobbies and leisure activities. It also aims to encourage the children to focus on their strengths and build positive support networks to achieve their aspirations in education and other life transforming activities whilst forming positive relationships with other people.

The children will be supported to attend local schools during term time, and the carer would organise activities for the children and look to support them with any homework.

The children would be living together as a single household under the 24 hour supervision of 2 experienced adult carers working on day and night shift hours. There would be a full-time day-time carer living in the property to provide care and support for the children from 9.30 to 18:00 hours, and another full-time night-time carer living in the property to provide care and support for the children from 18:00 to 9:30 hours.

Including the 2 Children aged between 13 and 17, and the on-duty carer, there would be no more than 3 people residing in the building at any one time. The property would be occupied and run as a normal family home with a single kitchen where all food would be cooked and eaten in a family environment. The children would share the communal living room area, patio, kitchen, toilet, shower and the rear garden amenity space.

Within the flat there are 2x bedrooms shown. However, it is not indicated on the plans that there is any dedicated bedspace for a resident adult.

### Background

In the Statement the Agent has provided references to Case Law. The *Gravesham Borough Council v Secretary of State for the Environment* (1982) P&CR 142, *McCulloch J* in the High Court was required to consider the definition of a dwelling house. He held that a distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.

The second case presented is the *North Devon District Council v The First Secretary of State* [2003] EWHC 157 Admin ("North Devon"). *North Devon and Stockport LDC* ("Stockport") appeal decision 1, confirms that it is unrealistic to expect children to look after themselves in a single household. The concept of living together as a household means that a properly functioning household must exist. This means the children and carers must be familiar, with carers either residing or staying at the property on a temporary basis.

The recent 2021 case (reference APP/V4630/X/21/3279430 - 26 Banks Street, WILLENHALL, WV13 1SP) also referenced the *North Devon* case, as cited by the agent within the submitted Planning Statement. Upon review of the report, in paragraph 10, the Inspector also confirmed that the judge in the 2003 case 'found that the children could not be regarded as constituting a household by themselves'. However, the Inspector went on to say that within the 2003 case 'The question also arose as to whether carers who do not live on the premises but who, between them, provide 24 hour care can be regarded as living together as part of the household. The court held that the concept of living together as a household means that a proper functioning household must exist and thus, for the use to fall within Class C3(b), the children and carers must reside in the premises. Otherwise, the use falls within Class C2'.

As presented within the Planning Statement, care would be provided by support staff operating on a shift basis. There is no permanently resident adult. Therefore, the use would not meet the definition of a single household and cannot reasonably be regarded as falling within Class C3(b).

The Management Plan also outlines occupancy and staffing, relevant UK legislation, the layout, safeguarding, risk management, community impact etc. The document also states that Management and Oversight of the home will be carried out by a Registered Manager and a General Manager, namely Black Katz Management. The Registered Manager will take care of the running of the household whilst Black Katz Management, a property company, will manage the running and maintenance of the building.

This has not provided details of any organisation who would be managing the operations of the house. Black Katz would be managing the maintenance of the building and would therefore have no input of the household.

As the application is not for a Change of Use, but is instead for a certificate for lawful development the assessment would consider the points below:

Whether use as C3(b) dwelling would constitute or amount to a material change of use:

The change of use of land or buildings will require planning permission where it is considered the change would constitute a material change of use. There is no statutory definition of a 'material change of use' however, considerations are given to the significance of proposed changes and the resulting impact on the use of the building. Such considerations as to whether a material change of use is proposed, is determined on the individual merits of a case.

Consideration is given as to whether in order to be used as C3(b) works associated with such use are required which would externally alter the appearance of the building and whether the operation of the premises would differ to that of a dwelling, by means of increased coming and goings and disturbance not typically associated with a residential dwelling, as well as meeting the criteria for care provision for not more than 6 residents.

No external changes are proposed to the existing building. There would only ever be a maximum of 3 people (2 children and 1 carer) at any time.

Whether the operation of the premises as C3(b) offers the functionality of a 'single household':

Communities and Local Government Circular 08/2010 (Department for Communities and Local Government) provides guidance as to the general scope of C3(b) stating these include 'provision for supported housing schemes, such as those for people with disabilities or mental health problems' – also recognising that in 'small residential care homes', staff and residents will 'probably not live as a single household'.

However, as outlined above with respect to case law and Inspector Decisions, a care home for children must have a resident adult in order to be considered within a C3(b) use, otherwise it will fall within Use Class 2. It is noted in the above case law that staff/carers on a scheduled shift basis would not fall within the class C3(b).

Whether care is provided, within the C3b criterion:

Care is proposed to be provided to the children/ young persons, as outlined within the submitted documentation.

#### **4. SUMMARY AND CONCLUSION**

The nature of the application is for the Local Authority to confirm that the evidence and information submitted support the claim of the proposed use and that the evidence submitted is sufficient to do this. The Management Plan is very basic with the submitted information being suggestive, rather than providing evidence to demonstrate the proposed use would meet the criteria for a C3(b) use for children as set out in case law.

For the reasons described above, and the evidence submitted and reviewed, the Council is not persuaded that the use proposed in the application falls within Class C3(b): The operation of the premises should offer and afford to occupiers, the functionality of the council's definition of a 'single household applications involving children to form a household, as is understood from caselaw and decisions by the Planning Inspectorate, there is the requirement for an adult carer to reside within the property. There is no permanently resident adult. Therefore, the use would not meet the definition of a single household in regards to the care of children and cannot be regarded as falling within Class C3(b).

## **5. RECOMMENDATION - REFUSE CERTIFICATE**

The Council is not persuaded by the submitted evidence that the use proposed in the application would fall within Class C3(b) of The Town and Country Planning (Use Classes) Order 1987 (as amended).

### **Refusal Reasons:**

The Council is not persuaded by the submitted evidence that the use proposed in the application would fall within Class C3(b) of The Town and Country Planning (Use Classes) Order 1987 (as amended).