

The information, recommendations and advice contained in this report are correct as at the date of preparation, which is more than two weeks in advance of the Committee meeting. Because of these time constraints some reports may have been prepared in advance of the final date given for consultee responses or neighbour comment. Any changes or necessary updates to the report will be made orally at the Committee meeting.

Case Officer	David Stevens
Application No.	23/00668/FULPP
Date Valid	8th September 2023
Expiry date of consultations	2nd October 2023
Proposal	Change of use from dwellinghouse (Use Class C3) to flexible use either as dwellinghouse (Use Class C3) or as a childrens' residential home (Use Class C2) (amended description agreed with the applicant on 22 September 2023)
Address	<b>69 Marrowbrook Lane Farnborough</b>
Ward	Empress
Applicant	Beyond Vision Transitions
Recommendation	Permission be <b>Granted</b> .

### Preamble

This application was presented at the last meeting on 11 October 2023 when consideration was deferred in order for more information to be provided to Members, summarised as follows:-

- The applicability of Government Planning Practice Guidance concerning childrens' best interests;
- Whether the Council would have liability for the management and/or quality of the proposed childrens' home, including interior arrangements, in the event that planning permission were granted;
- Consideration of the impact upon the character and appearance of the area and fear of crime; and generally...
- Those issues/concerns that are **not** Planning matters for consideration in respect of the application.

In land use planning terms, the existing and proposed uses of the application property are both residential, practically identical, and readily interchangeable.

This case, as is explained in the following report, firstly demonstrates the real difficulties with which the planning legislation, which regulates the development and use of land, defines, imperfectly, the need for planning permission; and, in so doing, does not take account of the wide variety in the nature, intensity, and impacts of residential land use. The planning legislation can neither legislate for, nor regulate, the behaviour of people in and around residential property in all its infinite variety.

In particular, the planning system is ill-equipped to deal with proposals for small-scale residential care homes. There is substantial overlap in the definitions of the varieties of residential use identified in Planning legislation. In consequence, planning permission is only tenuously required for the proposed change of use in this case because it may, at times, amount to a material change of planning use : yet, at other times it would not.

Furthermore, it is conceivable that any of the potential impacts of the proposed use of concern in this case could and do equally arise with varieties of residential occupation that do not require planning permission. This context is important when considering whether or not a material change in planning use has or would take place; and whether or not material planning harm would arise as a result of the proposed childrens' residential home.

Secondly, reflecting the tenuous need for planning permission and the general need for more childrens' residential home provision, it is clear Government Planning Policy that the Planning System should not be a barrier to such Homes being provided. Indeed, Local Planning Authorities are encouraged to be supportive.

Thirdly, this case also exemplifies a situation where it is clear that it is NOT the role of the Planning System to consider or regulate the operating procedures, staffing and quality standards for childrens' residential homes. In this respect Members can be reassured that, in granting planning permission for a childrens' residential home, the Council would not then become liable for the management and quality of that Home. **OFSTED** (the Office for Standards in Education, Childrens' Services & Skills) are charged with this responsibility; and Local Authority Childrens' Services Teams placing children in Homes also carefully vet Home providers and the suitability of Homes being considered for residential care placements. The OFSTED regulatory regime for childrens' residential homes operates under entirely separate legislation outside of Planning. These are not matters for the Council to be involved in.

Accordingly, whilst objectors to this planning application have substantial concerns about various aspects of the day-to-day operation of the proposed Home and, indeed, the Applicants' ability to manage the Home, these matters are neither for consideration by the Council with the current planning application; nor, in any event, the responsibility of Local Planning Authorities in the determination of planning applications for such uses. These are matters that must be left for OFSTED and Local Authority Childrens' Services to deal with as they consider appropriate. Planning must restrict its consideration of the planning application solely to the relevant land use planning issues and must not duplicate or second-guess the requirements of other legislation within the jurisdiction of OFSTED and/or Local Authority Childrens' Services.

In these circumstances, the following report explains and advises why the Planning System is neither the 'first line of defence for residents' against the proposals; and nor is it considered that the Council are in a position where it would be appropriate, sustainable or reasonable to withhold planning permission.

## Description

No.69 Marrowbrook Lane is an extended detached two-storey 5-bedroom dwelling on the east side of the Lane opposite the closed end of Tower Hill. The property has a vehicular entrance from the Lane and, as existing, most of the land to the front of the house is hardstanding with sufficient space to accommodate 3 cars. To the rear there is a private garden area of approximately 160 sqm.

Internally, the ground floor comprises an integral single garage, a small porch leading into a lounge room, a passageway leading past the stairs to a study and a large kitchen/dining room

spanning the entire width of the house to the rear. There is also a utility room partially under the stairs and also a WC. At first floor there are five bedrooms, with the master bedroom to the rear complete with an ensuite bathroom. There are a further 4 bedrooms and a bathroom.

The neighbouring properties to either side are Nos.67a and 71 Marrowbrook Lane; No.6 Hinstock Close is to the rear. Nos.35 Tower Hill & 40 Marrowbrook Lane are directly opposite.

The proposal is for the change of the use of the existing dwellinghouse (Use Class C3) to a flexible use as either a dwellinghouse (Use Class C3) or as a childrens' residential home falling within Use Class C2 (residential institutions). This is an amended description agreed with the application to address a concern of the property owner that the use of the property can revert to Use Class C3 (dwellinghouse) use should the proposed childrens' residential home use cease. This amended description also more accurately describes the likely nature of the use as a childrens' home in this case because it is likely to fluctuate between C3 and C2 use over time depending upon the extent of occupancy that arises.

No physical alterations or extensions are proposed to the property. It is proposed that the application property be a home for up to a maximum of **four** resident children, aged between 12 and a maximum of 17 years old, together with 2 supervising non-resident carers on duty at any one time on a shift basis. Upon reaching the age of 18, occupiers would have to be moved on to other accommodation. Four of the bedrooms would be allocated to accommodate one child each and the bedroom doors are provided with Yale-type locks. The master bedroom suite would be used as a staff office and rest room. The remainder of the house would remain in conventional domestic use as existing, including the kitchen/diner, ground floor wc, study, lounge, utility room and the first-floor communal bathroom.

The proposed childrens' residential home would be subject to licencing and subsequent inspection by OFSTED. It is understood that the applicants have applied to OFSTED to this effect.

The current planning use of the property remains as a C3 dwellinghouse. For a few weeks around the end of September the property was being occupied with a single child resident, together with staff carers working in shifts. However, this nature and level of occupation did not trigger a material change of planning use to C2 use away from C3 use such that there was no breach of planning control. At the time of writing this Report it is understood that the property is currently unoccupied pending the determination of this planning application.

## **Relevant Planning History**

Planning permission was granted in February 1989 for the erection of two-storey side and rear extensions, RSH6101. These extensions were implemented and have substantially increased the accommodation provided by the house.

## **Consultee Responses**

Both Hampshire and Surrey County Council Childrens' Services have been consulted following the previous Committee meeting : no response has been received from either to date.

## **Neighbours notified**

In addition to posting a site notice near the application site and press advertisement, 5 individual letters of notification were sent to those properties in Marrowbrook Lane, Tower Hill

and Hinstock Close directly abutting or opposite the application site.

## Neighbour comments

At the time of writing this report a total of 46 representations have been received, comprising 32 objections, 12 supporting comments and 2 neutral representations.

**Objections** have been raised by the occupiers of Nos.19, 40, 42, 44, 50 (thrice, including a Late Representation), 61, 63, 65, 67, 67a, 71 (twice), 73 and 77 Marrowbrook Lane; 20a, 26, 33, 35, 37a & 37b Tower Hill; 2, 3, 10 & 11 Kiln Place; 26 Marshall Close; 161 Keith Lucas Road; 8 Parsons Close Church Cookham; 53 Clarence Road, Fleet; and an address in Hove, West Sussex. A further Late Representation has been received from a correspondent stated to represent “the residents of Marrowbrook Lane, Tower Hill and Hinstock Close”. Objection is raised on the following summary grounds:-

- (a) This is not a suitable location for a childrens’ residential home – this is a quiet residential area with a notable number of older and/or single people living in proximity to the application property. Local residents are extremely anxious about the additional noise, disturbance and activity that would occur. Existing residents feel unsafe, and even terrified, and the proposal is not at all welcomed;
- (b) Local residents are tight-knit and are united in objecting to the proposals;  
**[Officer Note: the consideration of planning applications is not a ballot where the number of objections or assertions of the strength of local opinion influences the outcome. Planning applications must be considered objectively on the basis of the relevant material planning issues and represent the interests of the wider community as a whole, not just those making representations. The Council must not be forced into taking an unreasonable and unsustainable position in considering any planning application as a result of any campaign for or against those development proposals]**
- (c) The objections raised outweigh any benefits of the proposed residential home : indeed, the proposed Home would provide no benefits to the community and, indeed, the children are thought to come from outside the area;  
**[Officer Note: The Applicants have confirmed that they currently receive referrals solely from Surrey County Council Childrens’ Services, but are understood to also be in dialogue with Hampshire County Council Childrens’ Services. Child care provision is, in any event, understood to be organised on a regional basis. In the context of Rushmoor it is not unusual for various provisions for local care and social infrastructure to be shared across the Hampshire:Surrey County boundary. However, the source of referrals to any care facility is an operational matter in which Rushmoor BC has no jurisdiction or role; and it is not, in any event, relevant to the consideration of the planning application solely on land use planning issues]**
- (d) The application property has been a family home for many years – the proposed change of use is thought unjustified;  
**[Officer Note: views on, or consideration of, the justification for the proposed use are not matters relevant to the consideration of this planning application]**
- (e) The proposed residential home should be provided elsewhere on a larger site;  
**[Officer Note: the Council must consider the proposals that have been submitted with the application. The Council cannot consider the possibility of alternative proposals or sites being pursued for the proposals instead in determining planning applications]**
- (f) Existing problems with anti-social or disruptive behaviour, broken glass, vandalism, and

crime (burglary) in the area – which would be exacerbated by the proposals;

- (g) Fear of danger to, and intimidation of, existing children in the area;
- (h) Children occupying the proposed home may be vulnerable, have mental health problems, behavioural issues, potential or actual criminality, and may have associates in life who are not good role-models;
- (i) Considerable concern that the proposed home has a high potential to become, at any time of the day or night, a focus for congregating youths outside the property, smoking, drug-taking, anti-social behaviours (such as undue noise, disruption, intimidation, graffiti, vandalism to surrounding property etc), criminality and, consequently, police visits – and this will have a detrimental impact on the lives of existing local residents. It would also put undue and unnecessary strain on already stretched public services;
- (j) The proposed use could attract paedophiles, thereby putting all children in the area, including at the application property, at risk;
- (k) It is considered that there are no facilities available in Farnborough for children/young people to use and, as such, this is not an appropriate location for a childrens' residential home;
- (l) Increased comings and goings and general unwanted additional activity associated with the property due to the staff shift system to be operated, social worker visits, attendance by emergency services, police etc;
- (m) The road outside the application property is subject to regular speeding traffic, the application site is on a dangerous blind corner in the road; and there is an electricity sub-station on the grass triangle at the end of Tower Hill opposite – this is an unsafe location for children to live and to cross the road;
- (n) Inadequate on-site parking – such that there would be increased on-street parking where no parking should take place; and it would exacerbate existing street parking problems and congestion;
- (o) Loss of privacy to occupiers of the adjoining properties – the application property is situated close to neighbours;
- (p) Inadequate security measures and no confidence that the applicants can manage the proposed residential home and maintain control of the children in their care. It is thought that the applicants are currently advertising for staff who will have the responsibility of running the home – yet would be young, inexperienced, and underpaid;  
**[Officer Note: the proposed Home will be regulated and subject to regular inspection and review by OFSTED, whom can also be contacted by anyone should they have any evidence and concerns about the adequacy of the operation and management of the Home and/or any child safeguarding matters]**
- (q) Granting planning permission in this case is a foregone conclusion since the application property is already being used as a childrens' home;  
**[Officer Note: the current use of the property has been investigated by the case-officer; however, as noted earlier in this report, there has been no material change in the planning use of the property to date; and, when they were using the property, the Applicants were not operating in breach of planning control]**
- (r) The recent occupation of the property with just one child has already given rise to significant noise, disturbance, and activity outside the application property due to police and ambulance attendance – this would surely be magnified by the occupation of the property at full capacity with 4 children as proposed. The recent occupation of the property with just one child in care and the problems this caused demonstrates the applicant's inability to manage a childrens' care home;
- (s) Having regard to the previous objection (r) above, it is thought that the home is intended to have 5 resident children when full;

**[Officer Note: this is incorrect, the application states a maximum of 4 resident children; and this maximum number can be specified by planning condition]**

- (t) Local residents should have been informed earlier;  
**[Officer Note: the applicants are/were not under any obligation to notify local residents of their intentions with regard to the application property and, in any event, they have submitted a planning application for their proposals that has been subject to the required statutory notification procedures. It is clear that local residents are well aware of the proposals and have had ample opportunity to make representations about them]**
- (u) The applicants are a privately-run company who appear to have insufficient financial resources to acquire the application property;  
**[Officer Note: It is understood that the applicants are renting the application property and, as such, do not own it. The identity of the applicants, the fact that they are a private commercial enterprise, and the alleged financial position of the applicants are not matters for consideration with planning applications. The suitability of the Applicants to operate a Childrens' Home in all respects is a matter for consideration by OFSTED]**
- (v) The proposals are the consequence of failed Government privatisation policy and cost-cutting and are simply a means for private companies to profit;  
**[Officer Note: This view has no relevance to the consideration of this application]**
- (w) The future intentions of the applicants concerning the property are unknown – what if they wish to extend the property in the future?  
**[Officer Note: opinions regarding an Applicants' likely future behaviour and intentions cannot affect consideration of planning applications on their merits : the Council must simply consider the proposals the subject of the application]**  
 and
- (x) Loss of property values.  
**[Officer Note: this is a matter specifically excluded from consideration with planning applications by long-standing Government guidance]**

Representations in **Support** have been received from persons at 13 Marrowbrook Lane; 10 Weir Close; 35 Frimley Road, Camberley; and addresses in Croydon; Dagenham, Essex; Cambridge; Reigate; Twickenham; Elephant & Castle, London; Bexley, London (SE2); Leytonstone, London (E10); and Camden, London (NW1). These correspondents all appear to be people working in the Care Sector and may be professional contacts of the applicants. The following comments are made in support of the proposals:-

- The application property is in an appropriate location;
- The applicants really care about the children they care for and have achieved some amazing outcomes for them;
- The proposed residential home will support a lot of young people in care who are in desperate need of housing in a stable home environment – there is a national crisis in care provision for children who may have experienced neglect, abuse, or unstable living conditions;
- Children in the looked-after care system are often less privileged, neglected and forgotten, yet the proposed use would provide positive benefits through the proper nurture, supervision, and support for up to 4 children, giving them a chance they would not otherwise get;
- Other positive benefits include peer support, educational opportunities, safety, stability, life skills, legal protection, mental and emotional support;
- Children thrive on stability and routine, which the proposed home can provide;
- Creating a space where children can feel loved, safe and protected is the essence of the community we want to build – and this must include all people, including the disregarded, ignored, needy and less fortunate;

- More childrens' homes are needed to stop children being moved around the Country disrupting their education and development;
- Negative and incorrect assumptions and stigma about children in care need to be challenged and proved wrong;
- Children in care are no more likely to be out of control or troublemakers than children living with their own family – and existing residents are just as likely to need to call an ambulance or the police in the middle of the night;
- Job creation in the area;
- People are meant to be working together to support everyone from every age, race, gender. These young children didn't choose the life they have been brought up in. Who are we to stop them from getting their stable background to help them achieve and grow?

The **Neutral** representations received are from an occupier of No.13 Marrowbrook Lane; and an address in Teignmouth, Devon - believed to be the owner of the application property. This latter correspondent comments that it is their understanding that rooms would be provided for 4 children in care who will be supervised 24/7. The proposals are not for a young offenders' unit. **[Officer Note: that would, in any event, be a different use for which a separate planning permission would be required.]** This correspondent also asks that the application be considered on the basis of the facts.

### **Policy and determining issues**

The property is in the defined built-up area of Farnborough. It is neither a Listed nor locally-listed building; and is not located near to any other building(s) with these designations. The application property is not situated within a Conservation Area. Policies SS1 (Presumption in Favour of Sustainable Development), IN2 (Transport), DE5 (Proposals Affecting Existing Residential (C3) Uses), and LN4 (Specialist & Supported Accommodation) of the adopted Rushmoor Local Plan (2014-2032) are relevant. Also relevant is the Council's adopted Supplementary Planning Document (SPD) "Parking Standards" adopted in 2017. Since this SPD was subject to extensive public consultation and consequent amendment before being adopted by the Council, some significant weight can be attached to the requirements of this document. The advice contained in the National Planning Policy Framework most recently updated in July 2021 (NPPF) and National Planning Practice Guidance (NPPG) is also relevant.

Ministerial Statements can also be a component of Government Planning Policy and Practice Guidance relevant to the consideration of planning applications. In this respect, on 23 May 2023, the Minister of State for Housing and Planning published a Written Ministerial Statement concerning "*Planning issues affecting the delivery of childrens' homes.*" This followed a report by the Competition and Markets Authority (CMA) on children's social care, which found that the planning process is a significant challenge for children's home providers seeking to create new supply in the placements market. The Statement reads as follows:-

***"I, with the support of my Rt Hon colleague the Secretary of State for Education, wish to set out the Government's commitment to support the development of accommodation for looked after children, and its delivery through the planning system.***

***The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children's communities. These need to be the right homes, in the right places with access to good schools and community***

**support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love.**

**Today we use this joint statement to remind Local Planning Authorities that, as set out in paragraph 62 of the National Planning Policy Framework, local planning authorities should assess the size, type and tenure of housing needed for different groups in the community and reflect this in planning policies and decisions. Local planning authorities should consider whether it is appropriate to include accommodation for children in need of social services care as part of that assessment.**

**Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country. It is important that prospective applicants talk to local planning authorities about whether their service is needed in that locality, using the location assessment (a regulatory requirement and part of the Ofsted registration process set out in paragraph 15.1 of the Guide to the Children's Homes Regulations) to demonstrate this.**

**To support effective delivery, unitary authorities should work with commissioners to assess local need and closely engage to support applications, where appropriate, for accommodation for looked after children as part of the authority's statutory duties for looked after children. In two tier authorities, we expect local planning authorities to support these vital developments where appropriate, to ensure that children in need of accommodation are provided for in their communities.**

#### **Children's homes developments**

**Planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate."**

This Statement clearly stresses the need for Local Planning Authorities to support the provision of childrens' residential homes and, indeed, not be a barrier to such provision being made. The Statement also reminds Local Planning Authorities to consider whether their Local Plans should incorporate specific policies to help secure provision where a need is identified. However, it is particularly noted that, despite providing guidance for the consideration of planning applications, the Statement then specifically mentions that, in many cases, it may be possible for a Lawful Development Certificate to be sought. This is a special application process used to seek the Council's formal confirmation that planning permission is not required. The specific suggestion that this approach can often be taken to obtain the necessary planning consent to enable childrens' residential homes to proceed demonstrates the marginal nature of the need for planning permission for childrens' residential homes as a result of the way that the planning legislation defines residential uses.

The Town and Country Planning Use Classes Order (1987, but subsequently variously amended since) identifies a range of uses of buildings and specifically permits changes of use from one use to another within individual Use Classes. Where activity results in a material

change of use of a property to a use falling within a different Use Class then planning permission will be required to authorise that change of use. A **material change** of use from Use Class C3 to C2 is development requiring planning permission.

Depending on the specific circumstances of the residential use involved, a children's residential home could fall into either the C2 or C3 use classification. **Use Class C2 (Residential Institutions)** is defined as follows:-

**Use for the provision of residential accommodation and care to people in need of care [other than a use within class C3 (dwellinghouses)].**

**Use as a hospital or nursing home.**

**Use as a residential school, college or training centre.**

The C2 Use Class does not include residential institutions of a custodial nature. These have a separate Use Class ( Use Class C2A) and, as such, the proposed use does not cover the use of the property to house people whilst serving a custodial sentence or order. A separate planning permission would be needed for C2A use. Unsurprisingly, there are much stricter licencing requirements for the provision of secure residential institutions and, as such, it is most unlikely that the application property could be considered suitable for such a use. **Use Class C3 (Dwellinghouses)** is defined as follows:-

**Use as a dwelling house (whether or not as a sole or main residence) by —**

**(a) a single person or by people to be regarded as forming a single household;**

**(b) not more than six residents living together as a single household where care is provided for residents; or**

**(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4 [a small House in Multiple Occupation]).**

Planning permission is not required for the change of use between any of the sub-categories (a), (b) or (c) within Use Class C3.

A childrens' residential home could fit into Use Class C3 sub-category (b). The legal distinction made between C2 and C3 use in the context of childrens' residential homes is clarified by case law. Firstly, they are considered to be a 'care' institution because it is unrealistic to expect children to look after themselves as a single household. Secondly, a further difference between C3(b) and C2 use is whether or not the residential property is occupied as a single household. The nature of a children's residential home use where there is no parent and care is provided by non-resident carers on a rota basis, as is proposed in the current application case, is considered to be a further characteristic indicating C2 use as opposed to C3(b) use.

However, it is important to understand that the legal distinction between the C2 and C3 residential uses is an imperfect technical construct. Accordingly, even when the way in which a residential property is occupied and used has characteristics indicative of C2 (residential institution) use, it is still necessary for the Council to consider whether or not, as a matter of fact and degree, the scale and nature of residential occupation of a property with those C2-type characteristics present is, overall, sufficient to trigger a material change in the planning use of the property in question away from C3 use. This is a matter of judgement for the Council on the circumstances of each individual case encountered. It is also conceivable that, should those circumstances change with time, it is entirely possible that the judgement of whether or not a residential property is in C3 or C2 use could also change with time. There is, therefore, the prospect of the use of a property fluctuating back and forth between C3 and C2 use over time without any physical changes being made to the property on the basis of how the property is run and the care provided.

The distinction made between Use Classes C3 and C2 in the context of a childrens' residential home also indicates circumstances when a home occupied by children in care would **not** amount to a material change of planning use. The concept of living together as a household identified in respect of C3 use means that a functioning household comprising children in care with live-in staff carers would fall within Class C3(b) and planning permission would not then be required. Similarly, if the property were to be occupied by 17+ year olds (whom would be considered capable of looking after themselves in a single household) with what the applicants describe on their website as being semi-independent 'floating support' only [a further type of residential home facility understood to be provided by the applicants elsewhere], this would not require planning permission since such a use would also still fall within Use Class C3(a) or (c). The significance of these observations is that it is conceivable that similar, if not greater, impacts upon neighbours, or even just the fear of such impacts, could arise even in situations where planning permission is not required.

When considering whether a material change of use away from C3 use has taken place, it is also pertinent to consider that a C3 residential use itself covers a wide range and variety of possible scales, intensities, and characters of residential occupation. This could range from a dwelling occupied by a single person living on their own all the way to a dwelling occupied by a much more active household, perhaps comprising a large family with grown-up children for example, that would be likely to generate considerably more activity and noise impacting their neighbours and the locality in general. Furthermore, in land use planning terms, no distinction is made within the residential Use Classes about the type of tenure of dwellings and the identity, age, lifestyle, character, health, abilities, and behaviour of residents. No planning permission is required when there is a change in the single household occupation of C3 residential properties, or just changes in the behaviour of occupiers of such properties, even though this can and does have profound adverse impacts upon neighbours. In considering the actual or potential harm that would or could arise from the proposed C2 use it is therefore necessary for the Council to assess this within the context of what could happen without the need for planning permission; indeed, to consider any impacts through the lens of the wide range of impacts that can and do arise from conventional C3 residential occupation of property.

It is usual for Officer reports assessing planning proposals to focus on what are considered to be the main determining planning issues. Nevertheless, at the request of Members at the last meeting, the following is a list of matters that are NOT relevant determining issues for the consideration of the current planning application on its land use planning merits:-

- The identity of the Applicants; their perceived behaviour and character; their finances, qualifications and/or ability to run a Childrens' care facility; and their likely future intentions;
- That the proposed Care Home is to be provided by a private commercial enterprise;
- Who would live at the application property;
- Where children to be homed at the application property originate from; and which agency(ies) would refer children to the Applicants for homing at the application property;
- The adequacy or otherwise of the internal accommodation, fixtures, facilities and fittings of the proposed Childrens' Home – such as bedroom sizes, number of bathrooms & WC's etc;

- Provision of school places and use of local infrastructure – occupation of the existing property would likely also place demands on these in any event;
- Loss of property values; and
- Any matters subject to regulation under other legislation - such as the regulation of childrens' homes by OFSTED.

In this overall context it is considered that the main determining issues are the principle of the proposals, impacts on neighbours; and highways considerations. Additionally, at the request of Members, the impact of the proposals on the character and appearance of the area, the living environment provided, and fear of crime are also considered.

## Commentary

### 1. Principle –

Paragraph 62 of the NPPF (2021) states that *“the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes).”* It is general Government policy that it is appropriate for residential care facilities to be located in residential areas and, indeed, that re-use of existing residential property is sustainable and to be encouraged. The May 2023 Ministerial Statement amplifies this Government Planning Policy in the specific context of childrens' residential homes by stating that *“The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children’s communities”*; and *“Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country.”*

At the previous meeting a Member of the Committee specifically asked for Officer advice and/or comment on the Government Planning Practice Guidance under the heading *“Determining Planning Applications”* relating to the account to be taken of childrens' best interests, which reads as follows:-

#### ***“Should children’s best interests be taken into account when determining planning applications?”***

*Local authorities need to consider whether children’s best interests are relevant to any planning issue under consideration. In doing so, they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community. This will include considering the scope to mitigate any potential harm through non-planning measures, for example through intervention or extra support for the family through social, health and education services.”*

*Planning Practice Guidance at Gov.uk : Paragraph: 028 Reference ID: 21b-028-20150901; Revision date: 01 09 2015*

This Guidance is not contradicted by the May 2023 Ministerial Statement since it does not provide justification for the refusal of proposals for Childrens' Homes, as has been suggested. Rather it confirms that the proposals must be considered objectively on their relevant planning merits on the facts of the case – as is the situation with all planning applications. The Guidance then says that it is open, within reason, for Council's to consider whether serving the best interests of children could be a material consideration advanced in favour of supporting such proposals. This is in the sense that the Council may wish to give weight to this in the Planning balance against other determining issues : for example, where the proposals would provide additional Childrens' Home places in an area with an acute lack of provision that the proposals the subject of the application are seeking to address. However, there is the usual caution in the Guidance that there should be an appropriate balance struck between the consideration of the best interests of children and those of the wider community as a result of other impacts of development. The Guidance does not say that a Local Planning Authority can refuse planning permission having regard to the best interests of children on the basis that a proposed childrens' home is, for whatever reason, unsuitable for occupation by children : those are judgements solely for OFSTED and Referring Authorities to make outside of the Planning process.

The proposals do not give rise to the loss of residential accommodation within the Borough and, as such, the proposals comply with the requirements of Local Plan Policy DE5.

The proposal is for the residential occupation of existing residential property. In land-use planning terms the proposed childrens' home is a form of residential use and, as such, it is considered most appropriately located in an established residential area. Childrens' residential care accommodation is in short supply nationally and it is evident that there is an on-going need for it and, as such, in accordance with the preceding Government Planning Practice Guidance, it would be open for the Council to consider whether additional weight should be given to this issue in favour of the proposals.

Local Plan Policy LN4 (Specialist & Supported Accommodation) states that the Council will permit housing specifically for *"others with a need for specialist housing, including specialist housing with care"* where *"sites are appropriately located **in terms of access to facilities, services and public transport**."* In these respects, the application property is located within the built-up area of Farnborough within walking distance of the Town Centre and, as such, is clearly in appropriate proximity to facilities, services, and transport – indeed, no less so that would be the case for the occupation of the application property in conventional C3 use. Accordingly, it is considered that it is appropriate for a childrens' residential home to be located at the application property within an existing residential area and the proposals are supported in principle by Government Planning Policy & Practice Guidance and Local Plan Policy LN4.

It is considered that the proposed childrens' home would operate day-to-day very much like a large family home. Even with non-resident carers it is considered that, in land use planning terms, a childrens' home would still operate for much of the time very much like, and outwardly indistinguishable from, the use and occupation of a C3 dwellinghouse, with those occupying or present in the home partaking in activities typical of conventional residential occupation – cooking, cleaning, eating, sleeping, washing, watching TV, enjoying the garden, socialising, reading, children going to school, doing homework etc.

It is a matter for OFSTED to judge whether or not the application property is appropriate in terms of its location and the facilities provided as part of the entirely separate regulatory regime for the licencing of childrens' care homes and care staff. The various issues raised by objectors in these respects are not matters for the Council in the consideration of the current planning

application since they fall within the jurisdiction of this separate Government agency. It is clear Government guidance to Local Planning Authorities that matters dealt with by other Authorities under other legislative powers should be left to those Authorities. Local Planning Authorities are not required to consider, manage and monitor childrens' residential homes and, in granting planning permission, Rushmoor BC would have no liability or responsibility for regulating the on-going operation and quality of the proposed childrens' residential home.

In the circumstances, in land use planning terms, it is considered that it can only be concluded that the proposed flexible C3 or C2 residential use is acceptable in principle.

## **2. Impacts on Neighbours –**

It is clear that the proposed C2 residential use gives local residents considerable cause for anxiety, amply demonstrated by the objections. However, the proposed childrens' residential home use only tenuously triggers the need for planning permission. There is also considerable overlap in the way that the application property could or would be used whether in C3 or C2 use. Whether or not an institutional residential use, many of the basic activities of residential occupation would be the same nonetheless. Furthermore, it is pertinent to consider that there are ways in which the application property could be occupied by children in care with staff carers that would not require planning permission, but would, nevertheless, be likely to give rise to similar or even greater impacts, or anticipation of such, amongst neighbours in the vicinity.

Since there are no proposals to undertake physical alterations to the application property there would be no change in the way that the existing house relates to its neighbours to either side; and the property is to remain in a form of residential use that would, on a day-to-day basis, use the property the same as if it were a conventional C3 dwellinghouse. Accordingly, there could be no material and harmful change to the privacy of occupiers of the immediately adjacent properties.

The supporting information submitted with this application has explained that the aim is to provide a family environment with 24/7 care. During the day the children would attend school/college, when it is considered that the use of the application property would then be little different to any other residential property. However, what could potentially make the proposed childrens' home different are the turnover of the children that would occupy the site and the potential level of disruption that might arise from the behaviour of some. It is to be expected that, with children coming from different backgrounds and potentially having complex needs, the level of noise and activity generated at the property would be unpredictable and variable. Indeed, the recent emergency service activity and general disturbance arising from the behaviours of a single child resident of the application property has demonstrated this.

However, these variable and unpredictable situations could also readily happen with conventional C3 residential occupation too – such as with a blended family for example. Additionally, the non-resident shift nature of the care and support to be provided would also contribute to the level of activity associated with the property. However, it is considered that the likelihood of noisy and disruptive neighbours, or the existence of neighbours with mental health and/or behavioural issues, is not restricted solely to a C2 residential use and could, equally, arise from a C3 residential use. Indeed, given the predominance of C3 residential property such issues are numerically more likely to arise from the activities of occupiers of conventional C3 accommodation overall. Furthermore, given the unrestricted level of noise, activity and disturbance that could arise with the application property with its existing C3 use if occupied by a large family, it is considered that any differences would be marginal and,

therefore, in planning terms, not give rise to material and undue additional harm to the residential amenities of neighbours over and above what is already possible and unavoidable.

It is considered that the extent of the impacts on neighbours, whether actual or feared, depend upon how well the property and the children in care are managed and handled by the operators of the home. Key to any impact is the effective management of the site, which would primarily be the day-to-day responsibility of the site operator, the Applicants. Furthermore, the management of the site would be thoroughly regulated by OFSTED : Childrens' Residential Homes are probably the most regulated form of care provision and are subject to annual inspections by OFSTED. Local Authority Childrens' Services would also thoroughly vet the suitability of the Home and operator before referring children for placement there. Furthermore, OFSTED also facilitates anyone having concerns about a Home to contact them directly at any time, which would prompt investigation and requirements for corrective action as they consider appropriate. As such, not only would potential adverse impacts be sufficiently controlled outwith the Planning system, it is, in any event, neither appropriate nor reasonable for the Council to require and enforce management controls over the proposed childrens' residential home. This would be an unnecessary duplication that would also have the potential to work at odds with controls imposed and enforced by OFSTED and the separate vetting processes of Referring Authorities. Fundamentally, it would not be appropriate for the Council to withhold planning permission on the basis of matters the subject of separate regulation by both OFSTED and others with direct control over the operation and occupancy of childrens' residential homes and, indeed, possessing the in-depth knowledge and expertise to make the necessary judgements in this respect.

Nevertheless, it is considered appropriate for the Council to impose conditions to restrict the nature of the C2 use approved to being solely as a childrens' home; and also to limit the occupancy of the property if in C2 use to no more than four children at any one time – since these are details that define the proposed planning use.

### **3. Highways Considerations –**

It is clear Government guidance that denying planning permissions on highways grounds is only justified and appropriate where any highways concerns are demonstrated to give rise to 'severe' harm to the safety and/or convenience of highway users. It is not sufficient to merely identify concern about a highway matter. Furthermore, clear evidence of wider harm(s) being caused to the highway network with severe impact(s) must be identified. As a consequence, justification for refusal on highway grounds must meet a high threshold. Additionally, planning permission cannot be withheld on the basis of actual or potential speeding problems on the adjacent road since it is unreasonable to consider actual or potential criminality by others over which the Applicants would have no control.

In this case the application property has an existing means of vehicular access to/from the public highway, and this would not be changed by the proposals. Notwithstanding the highway safety concerns raised in objections, there are no parking restrictions on the street outside the application property. Nor is there any requirement for residential properties to temporarily make available parking provision for deliveries, emergency service vehicles etc. Accordingly, it is not considered that the continued use of the existing vehicular access with the proposed residential use would make any material and harmful difference to the safety and convenience of highway users in the locality.

The existing area of the property to the front of the house has sufficient space to accommodate 3 cars parked on site. Whilst this would be in a blocking layout, this arrangement is entirely

conventional and typical of the on-site parking provided at many residential properties. Furthermore, it meets in full the on-site parking provision that would be expected for an extended house of this size and, indeed, is lawful for the current C3 residential use however intensively the property could potentially be used, including in respect of car ownership and use. Therefore, it is not considered that the proposed C2 use would give rise to a requirement for parking provision materially different from that which could occur with the current C3 use and, in any event, not give rise to a severe highway safety or convenience impact. Children occupiers of the house are unable to drive and, although 17-year olds would be theoretically able to drive, this is considered to be an unlikely eventuality with children in the looked-after care system. Accordingly, it is considered that the functional parking requirement for the proposed C2 use would relate primarily to that of the attending staff carers and, even at shift changes, the existing parking arrangements for the property are entirely adequate.

It is considered appropriate that a condition be imposed to require the retention of the parking area to the front of the house for parking purposes at all times in respect of the proposed C2 use since there is currently no requirement for the parking area to be retained for this purpose with the application property as existing.

It is considered that the proposals are acceptable in highways terms and, as such, comply with the requirements of Local Plan Policy IN2.

#### **Other issues :**

**(a) Impact upon the Character and Appearance of the Area** - The current application does not involve any external building alterations and, as such, the exterior of the property and the outward appearance of the building would remain as existing, that of a detached dwellinghouse. No internal re-configuration of the application property is needed, although this would not require planning permission in any event. Since no extensions or external alterations to the existing property are proposed, there can be no material impact on the visual character and appearance of the area as a result of the proposals. Furthermore, having regard to the residential character and appearance of the local area, the use of an existing dwelling as a residential care facility for 4 children (plus adults) is not considered to be out of keeping with the use of the dwelling as it exists now, or the residential area within which it is situated. There may be several cars present at the property at any one time, but those visual impacts would be no more than would be the case for any other busy residential household. The proposals are small-scale and the children would live in the property and effectively form a household supported and supervised by attending care staff, thereby not giving rise to a commercial appearance or one which would result in any significant change in character of the area. Indeed, the use of the building will remain residential, which is entirely in keeping with the existing residential character of the area. On this basis it is considered that the proposals accord with the requirements of Local Plan Policy DE1.

**(b) Living Environment** – Queries were raised at the previous meeting concerning the quality of the living environment that would be provided for children within the proposed Home, with a particular focus directed at the smallest bedroom (Bedroom No.5), which measures 8.7 sqm and has a rooflight window. However, this is an existing single bedroom provided within the application property. From a planning perspective Bedroom 5 would be considered acceptable if proposed as part of the design of a new house with a planning application. However, it is solely a matter for OFSTED and the Referring Authorities to decide whether or not this room can be used for child placements on the basis of any standards that they may have concerning the standard of accommodation to be provided for childrens' residential homes.

In this respect OFSTED guidance on the Gov.uk website refers to the publication *“Guide to the Childrens’ Homes Regulations including the quality standards”* (April 2015), which does not appear to specify any particular space standards for bedrooms or, indeed, any other room or space within a proposed childrens’ residential home. This document simply says that: *“Each child should have their own personal space which will usually be their bedroom”*. It would appear that the quality of childrens’ residential homes is considered holistically taking into account a range of physical, procedural, management, competence, safeguarding and welfare factors. It is understood that, if Bedroom No.5 were to be considered inadequate, OFSTED could decide to licence the proposed residential home restricting the number of children to just 3 only; or perhaps limiting the use of Bedroom 5 to use by younger children only. This would be a matter for OFSTED and/or Childrens’ Services to decide. Both Surrey and Hampshire Childrens’ Services have been consulted and specifically asked to advise on any specific standards they may have for bedroom sizes, although no such information has been received at the time of writing this report.

What is clear is that the quality of the living environment provided for children within the proposed Home is not a matter of relevance to the Council’s consideration of the proposed change of use to the flexible residential use sought with the current application.

**(c) Fear of Crime** – Objections from local residents have raised concern about the potential for increased public nuisance (anti-social behaviour) and crime. In assessing these matters, the potential for these concerns to arise as a result of an existing lawful residential use of the application property must be considered; and also whether, as some representations have noted, such issues already occur in the area without the proposed childrens’ residential home operating. Both the National Planning Policy Framework (NPPF) and Planning Practice Guidance (NPPG) set out guidance in creating safe and accessible communities. In this respect, fear of crime should only be considered a material planning consideration in cases where evidence exists that the proposed development would be likely to materially increase crime. However, no evidence has been provided in connection with this application demonstrating that crime would increase, or existing crime would be exacerbated, if the proposed residential use were permitted.

The proposed childrens’ residential home would be managed by care staff. It should not be assumed that children living in care would be any more likely to be antisocial or create levels of noise over and above what could be the case with children living in the application property as a 'traditional' family unit. If any antisocial behaviour occurs, it would be addressed through action by the appropriate stakeholders and authorities as necessary. It is therefore considered that, having regard to the relevant requirements of the NPPF and NPPG, it would be unreasonable and inappropriate for the Council to withhold planning permission on fear of crime grounds in this case.

## **Conclusions –**

The need for planning permission does not necessarily mean that material land use planning harms arise as a result of those proposals. In this case planning permission is needed to cover the times when a material change in the planning use may just be triggered, but there are considered to be no sustainable land use planning reasons that could justify the refusal of planning permission in such circumstances. The application proposes the use of an existing large residential property in an established residential area surrounded by residential properties for a form of residential use that would possess many of the same characteristics of residential use in land-use planning terms as a conventional residential dwelling occupied by a large single household. Given the similarity in land use planning terms between its existing

C3 use and the proposed C2 use, and the separate on-going regulation of the proposed C2 use by OFSTED, it is considered that the proposals are acceptable in principle and would have no material and harmful additional impacts on the amenities of occupiers of surrounding residential properties and the safety and convenience of highway users in the vicinity over and above those which could arise with conventional or otherwise residential use not requiring planning permission. The proposals are therefore considered acceptable in planning terms having regard to the requirements of Policies SS1, IN2, DE1, DE5 and LN4 of the adopted Rushmoor Local Plan (2014-2032).

### **Full Recommendation**

It is recommended that planning permission be **GRANTED** subject to the following conditions and informatives:-

- 1 The flexible use hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - As required by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The permission hereby granted shall be carried out in accordance with the following approved drawings and document: Existing Floorplans; Proposed Floorplans; Terraquest produced 07-EP-2023 Site Location Plan; and Applicants' Supporting Statement.

Reason - To ensure the development is implemented in accordance with the permission granted.

- 3 The existing parking area to the front of the house with vehicular access to Marrowbrook Lane shall be used only for the parking of private motor vehicles ancillary and incidental to the residential use of occupiers and/or visitors to No.69 Marrowbrook Lane. These spaces shall be kept available at all times for parking and shall not be used for the storage of caravans, boats or trailers.

Reason - To safeguard residential amenity and ensure the provision and availability of adequate off-street parking.

- 4 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order, 1987, (or any other Order revoking or re-enacting that Order) the land and/or building(s) shall be used flexibly for either Use Class C3 use or solely as a childrens' residential home within Use Class C2 (residential institutions) and for no other purpose, including any other purpose within Use Class C2 without the prior permission of the Local Planning Authority.

Reason - To protect the amenities of neighbouring residential properties and to prevent adverse impact on traffic and parking conditions in the vicinity.

- 5 The childrens' residential home (Use Class C2) hereby permitted shall not be occupied by more than 4 (four) children at any one time.

Reason - To reflect the nature of the proposals as submitted and in the interests of the amenities of occupiers of adjoining and nearby residential property.

## **Informatives**

**1**      **INFORMATIVE - The Council has granted permission because:-**

The application proposes the use of an existing large residential property in an established residential area surrounded by residential properties for a form of residential use that would possess many of the same characteristics of residential use in land-use planning terms as a conventional residential dwelling occupied by a large single household and, indeed, at some times, may not amount to a material change of the planning use of the property away from its current long-established C3 use. Given the extent of the overlap in land use planning terms between the potential impacts of the occupation of the application property in its existing C3 use and the proposed C2 use, and the separate on-going regulation of the proposed C2 use by OFSTED, it is considered that the proposals are acceptable in principle, and would have no material and harmful additional land use planning impacts on the amenities of occupiers of surrounding residential properties and the safety and convenience of highway users in the vicinity. The proposals are therefore acceptable in planning terms having regard to the requirements of Policies SS1, IN2, DE5 and LN4 of the adopted Rushmoor Local Plan (2014-2032).

It is therefore considered that subject to compliance with the attached conditions, and taking into account all other material planning considerations, including the provisions of the development plan, the proposal would be acceptable. This also includes a consideration of whether the decision to grant permission is compatible with the Human Rights Act 1998.

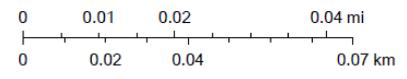
**2**      **INFORMATIVE – The Local Planning Authority’s commitment to working with the applicants in a positive and proactive way is demonstrated by its offer of pre-application discussion to all, and assistance in the validation and determination of applications through the provision of clear guidance regarding necessary supporting information or amendments both before and after submission, in line with the National Planning Policy Framework.**



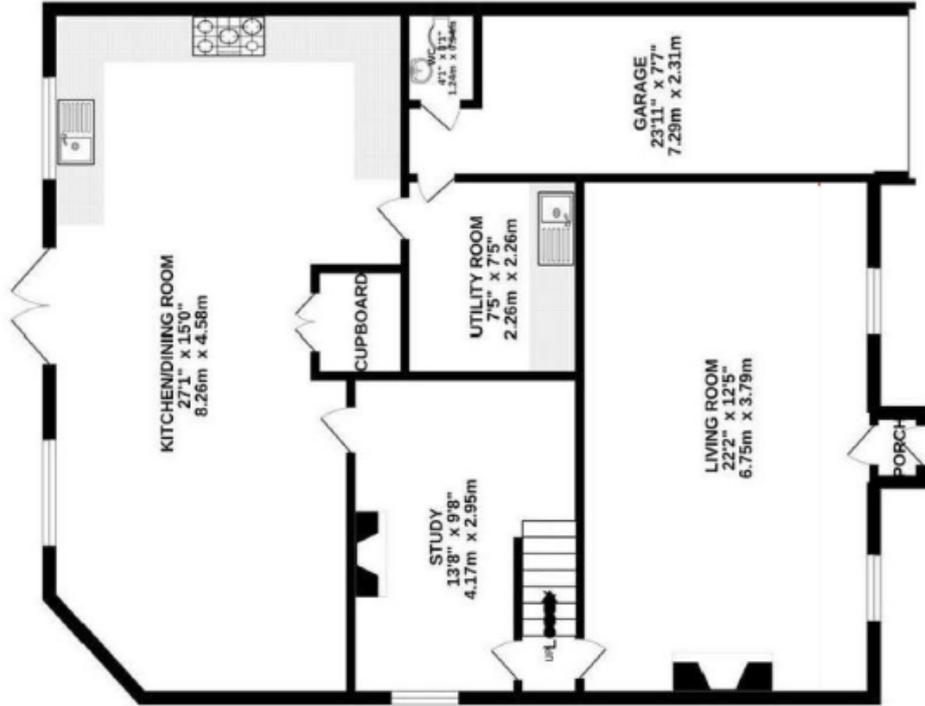
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Planning Application

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GROUND FLOOR



1ST FLOOR

