

# Agenda

MUNICIPAL YEAR 2024-2025

## Planning Committee



**HYNDBURN**

The place to be  
an excellent council

**Tuesday, 9 July 2024 at 4.00 pm,**  
Council Chamber, Town Hall, Accrington

### Membership

Chair: Councillor Dave Parkins

Vice-Chair: Councillor Bernard Dawson MBE

Councillors Judith Addison, Danny Cassidy, Peter Edwards, Scott Brerton, Steve Button, Heather Anderson, Jodi Clements, Loraine Cox, Joyce Plummer, Clare Pritchard and Ethan Rawcliffe

## AGENDA

**1. Apologies for Absence, Substitutions, Declarations of Interest and Dispensations**

**2. Minutes of the Last Meeting** *(Pages 3 - 6)*

The Minutes of the last Planning Meeting held on the 12<sup>th</sup> June 2024 were submitted for approval as a correct record.

**Resolved – That the minutes be received and approved as a correct record.**

**3. Town and Country Planning Act 1990- Planning Applications for Determination**

The Chief Planning and Transportation Officer submitted a series of reports setting out recommended action on the Planning applications below.

- a ITEM WITHDRAWN - 11/24/0217 - 22 Abbott Clough Avenue, Oswaldtwistle, BB1 3LP *(Pages 7 - 14)*



Telephone Enquiries: Rachael Calvert, Democratic Services, (01254) 380136

Email: [rachael.calvert@hyndburnbc.gov.uk](mailto:rachael.calvert@hyndburnbc.gov.uk)

Published on Tuesday, 2 July 2024

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Certificate of Lawful Use, Proposed: Use as a Supported Living home which includes two young people living at the property and a member of staff on a rota.

- b 11/24/0236 - 2a Allsprings Drive, Great Harwood, BB6 7RN (*Pages 15 - 22*)  
Certificate of Lawful Use; Proposed: Change of Use from Dwelling to Children's Home providing accommodation for two children with care provided by staff attending on a rota.
  
- c 11/24/0225 - 6 Grasmere Close, Rishton, BB1 4EL (*Pages 23 - 32*)  
Full: Change of Use of a C3a Dwelling to a Children's Home for a Maximum of One Child, with up to Three Carers, Two of whom will sleep overnight, working on a rota basis (C2).
  
- d Tree Preservation Order - No 1 Water Street, Great Harwood (*Pages 33 - 44*)  
To recommended the protection of an Oak tree through the use of a Tree Preservation Order (TPO).

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## PLANNING COMMITTEE

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**Wednesday, 12th June, 2024**

**Present:** Councillor Dave Parkins (in the Chair), Councillors Bernard Dawson MBE (Vice Chair), Judith Addison, Peter Edwards, Scott Brerton, Steve Button, Heather Anderson, Clare Pritchard, Loraine Cox, Kath Pratt and Stewart Eaves

**Apologies:** Councillors Danny Cassidy, Jodi Clements, Ethan Rawcliffe and Joyce Plummer

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### **20 Apologies for Absence, Substitutions, Declarations of Interest and Dispensations**

Apologies recorded for Councillor's Danny Cassidy, Jodi Clements, Joyce Plummer, and Ethan Rawcliffe.

Councillor Stewart Eaves substituted for Jodi Clements.

Councillor Kath Pratt substituted for Danny Cassidy.

The Chair thanked Councillor Judith Addison for all her hard work last year as the Chair.

### **21 Minutes of the Last Meeting**

The Minutes of the last Planning Committee held on the 17<sup>th</sup> April 2024 were submitted for approval as a correct record.

**Resolved – That the minutes be received and approved as a correct record.**

### **22 Town and Country Planning Act 1990- Planning Applications for Determination**

The Chair requested introductions around the table at the start of the meeting.

An update sheet was presented at the start of the meeting for all applications.

#### **3A – 11/24/0200 – 46 Bluebell Way, Huncoat, Accrington, BB5 6TD**

Mr Simon Prideaux, Chief Planning and Transportation Officer presented the report to the Committee.

The application was brought to the Committee on a request from Councillor Parkins.

The application was for a lawful development certificate. The proposal is for a use of a (3a) dwelling as a children's home for up to two children, with up to three carers, two sleeping overnight working on a rota basis (c2).

The proposed use would be materially different from that of likely use by a single household and therefore fails to satisfy that the new use in the application would be lawful.

**Resolved – That the application be refused.**

**3B – 11/24/0177 – 463 Whalley Road, Clayton Le Moors, BB5 5RP**

The item was withdrawn.

**3C – 11/23/0180 – Land Parcel, Coach Road, Meadow Coach Road, Church, Lancashire, BB5 0EH**

Mr Adam Birkett, Planning Manager presented the report to the Committee.

The application was a Major Full application for a community owned solar generating facility with a capacity of up to 2MW including solar panels, security fencing, CCTV, underground cabling, string inverters, connections to substations, environmental enhancement and ancillary development at land known as Coach Road Meadow, Coach Road, Church.

The application site is owned by The Prospects Foundation, a registered charity.

Mr Birkett discussed the proposed site, the railway line close by and residents on Hill Street and the work that has been done to ensure all parties are happy. The Glint and Glare study suggested a 10 degree rotate to the west, this has been accepted and changed.

Councillor Steven Button declared an interest in this item as the Councillor who sits on the Outside Body for Prospects.

Councillor Kath Pratt declared an interest as a member who is part of Prospects.

**Resolved – That the application be approved subject to conditions within the report.**

- N.B – 1. Councillor Zak Khan spoke in favour of the application.  
2. Mr Phil Vincent, applicant spoke in favour of the application.

**3D. – 11/23/0200 – Parsonage House, 142 Blackburn Road, Accrington, Lancashire, BB5 0AD**

Mr Adam Birkett, Planning Manager presented the report to the Committee.

The application was for a Major Full conversion of existing 2 storey and basement of nursery and development of new 4 storey extension to form 18no apartments, including parking, landscaping and bin storage areas.

The building had been used as a nursery since 1996 but the number of children attending the nursery had fallen and the business is now considered to be no longer viable by the applicant.

A under croft parking area for 8 vehicles was proposed and Members raised concerns that there was not enough spaces.

Due to the closeness of the town centre and the cycle storage spaces LCC Highways were happy with the provision supplied.

Financial contributions were sought as part of a S106 agreement detailed within the report.

**Resolved – That the application was approved subject to a S106 being agreed and the conditions set out in the report.**

**3E – 11/23/0486 – Former Gas, Storage Facility, Heys Lane, Great Harwood**

Mr Adam Birkett, Planning Manager presented the report to the Committee.

The application sought a full planning permission for the erection of a new retail store with garden centre, servicing and car parking areas and associated works.

The application proposed the erection of a Class E (a) retail store with the operator identified as Home Bargains. The store would provide 2,323sqm of floor space incorporating sales/display areas, storage facilities and staff areas. Externally an open garden centre area of 932sqm.

The current access into the site from Heys Lane would be relocated further west.

The Committee were informed the site falls within an employment site in the Local Plan but at a larger scale than it is proposed. The site will look to create between 70-80 jobs however, there was also a benefit to developing the site as it is proposed instead of leaving it vacant as it has been for the past 6 years.

The update sheet informed the Committee the reduction down to £40K as a financial contribution towards loss of biodiversity at the site.

Councillor Judith Addison asked for the trading hours of the business, Mr Adam Birkett responded that these would be added into the conditions.

**Resolved – That the application be approved subject to the plans and conditions outlined in the report.**

- N.B – 1. Mr Miles Parkinson spoke in favour of the application.
- 2. Mr Alastair Skelton, Planning agent, spoke in favour of the application.

Signed:.....

Date: .....

Chair of the meeting  
At which the minutes were confirmed

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## Hyndburn Borough Council – Committee Report

Councillor Khan has requested that the application be brought for the attention of the Committee because of concerns about the proposal.

**Application Ref:** 11/24/0217

**Application Address:** 22 Abbott Clough Avenue, Oswaldtwistle, BB1 3LP

**Description of Proposal:** Certificate of Lawful Use, Proposed: Use as a Supported Living home which includes two young people living at the property and a member of staff on a rota.

[Note – The description of the proposal has been modified on the basis of information submitted by the applicant – the reason is given below]

## **HUMAN RIGHTS**

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in preparation of this report, particularly the implications arising from the following rights:-

### **Article 8**

The right to respect for private and family life, home and correspondence.

### **Article 1 of Protocol 1**

The right to peaceful enjoyment of possessions and protection of property.

## **Description of site**

The application site is shown on the location plan and image of the property as follows.



The application relates to a semi-detached 3-bedroomed dwellinghouse in a residential area. The dwelling has a rear garden and a forecourt formed as a paved hardstanding for two cars.

## **Planning history (as relevant)**

The planning history shows that the land was developed for dwellinghouses under various planning permissions including 11/91/04997 granted 22<sup>nd</sup> September 1992

## **Procedural**

The application is for a certified determination whether or not planning permission is needed for the proposed change of use. The decision has to be on the basis of planning law and the

facts of the case. High Court decisions on the planning law and the facts point to the development needing planning permission.

The planning law relevant to the application includes The Town and Country Planning Act 1990 ['TCPA 1990'] and The Town and Country Planning (Use Classes) Order 1987 (as amended in 2010 and otherwise) ['UCO'].

In the light of concerns raised by local residents and the complexity of the issues raised when considering an application of this type, the Council has sought legal advice on the application of the relevant planning law and the matters that should rightly be taken into consideration. That advice is considered to be privileged information.

It follows from the legal opinion (in which the *North Devon* case referred to below is relevant) that whether or not the persons accommodated are under the age of 18 years is relevant to the consideration. This is addressed below.

Relevant Government advice on the application of the UCO is contained in ODPM Circular 03/2005.

Section 192 (2) of TCPA1990 provides that if, on an application under that section, the Council is provided with information satisfying it that the new use described in the application would be lawful they should issue a certificate to that effect. In any other case the application should be refused. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

The decision is to be based strictly on factual evidence, the planning status/history of the site and the relevant law or judicial authority applicable to the circumstances of the case. The planning merits of the proposed use applied for do not fall to be considered.

#### Note about consultations and representations

There is not a legal requirement to carry out consultations for this application type. Account is only taken of representations regarding legal and factual matters relating to land use planning.

A petition bearing 48 signatures and 8 letters making representations have been received from residents of the area. These refer to the planning merits of the proposed use of the building and should not be taken into account in determining this application.

#### The application

The application includes:

- an application form and Location plan;
- a copy of the applicant's Statement of Purpose.

Section 192(1)<sup>1</sup> requires that the application describes *the use in question*. Article 39(13)<sup>2</sup> requires that:

*Including a case in which the authority modify the description of the use, operations or other matter in the application or substitute an alternative description for that*

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<sup>1</sup> Town and Country Planning Act 1990, Section 192(1)

<sup>2</sup> Town and Country Planning (Development Management Procedure) Order 2015. Article 39(13).



*description the notice of decision must state clearly and precisely the authority's full reasons for the decision.*

The application form states the proposed use as: C3 – *Dwellinghouses* and stated the Grounds of the application as:

*We are a Supported Living company who do not provide care. Auxilium Living should not require C2 planning as this would fall into care. As it states the distinguished features of C2 accommodation is occupants being in 'need of care' as opposed to simply having care available if needed. This explains the clear differences between supported living and the care industry. Auxilium Living have one property named 22 Abbott Clough Avenue, which is a three bedroom semi-detached. Who intend to house 16-18 year olds with a tenancy agreement held by the local authority. This is conducted by all Supported Living companies. Supported Living is now registered with Ofsted, it is important to note that Supported Living has never required any form of planning prior or after becoming registered.*

The application form stated the reason why the Certificate be granted as:

*A Lawful Development Certification should be granted as Auxilium Living do not cross over into C2 planning as the industry does not require this to be obtained. Supported Living is distinguished from children care homes, as they do not provide care as defined via Ofsted. Auxilium Living will only provide support. Young people aged 16-18 can hold a tenancy agreement via a trustee/ third-party, who will hold the lease on trust for the young person. This would be the local authority.*

#### Description of the proposal

The application was registered with the following description:

*“Proposed: use as a Supported Living home which includes two young people living at the property and a member of staff on a rota”.*

There was discussion in which it was indicated to the applicant that the ‘head-line’ description of the proposal should be:

*“Use as a Supported Living Home for two young people of age 16 and 17 years supported by a member of staff on a rota”.*

The applicant responded that the description should be:

*“Use as a Supported Living Home for a maximum of two young people of age 16 and 18 years supported by a member of staff on a rota”.*

The applicant was then requested to provide copy of a statement describing the nature of the proposed use of the property. The applicant submitted the *Statement of Purpose* [‘the SP’]. The SP states that:

*Auxilium Living [the applicant's Company] is a leaving care service, as a company we intend to provide supported accommodation placements and support for vulnerable young people between the ages of 16 and 18 [...] their first supported accommodation provision to ensure the young people we will support are ready for*

*adulthood [...] At our provisions we will offer placements for young people of mixed gender ages 16 to 18. The young people who we will accommodate will be ready to make the next step to independent living.*

It is clear from the SP that the purpose of the use is as a supported living home for the accommodation of young people leaving care when they attain 16 years and that they leave on attaining 18 years. It is understandable that there may be some flexibility at the end of that age band – that the young person may not leave exactly on the 18<sup>th</sup> birthday – but the clear focus of the use is to provide supported accommodation for those aged 16 and 17. This is the very purpose of the applicant's business as a *leaving care service*. This should be recognised in the 'head-line' description which should be: *Use as a Supported Living Home for two young people mainly of age 16 and 17 years supported by a member of staff on a rota.*

It is, therefore, necessary to consider whether or not the identified planning use would remain within use class as the present use.

### **Assessment of the Proposed Development**

#### **Whether the proposed use is in the same use class as the existing use**

1. UCO provides under article 3 that *where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or other land for any other purpose of the same class shall not be taken to involve development of the land.*
2. The Schedule to the UCO in Part C identifies:

#### **Class C2. Residential Institutions**

*Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)). [see paragraph 11 below for definition of "care"]*

*Use as a hospital or nursing home.*

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

#### **Class C3. Dwellinghouses**

*Use as a dwellinghouse (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, or*
  - b) *not more than six residents living together as a single household where care [see paragraph 11 below for definition of "care"] is provided for residents;*
  - c) *not more than six residents living together as a single household where no care is provided for residents (other than a use within Class C4).*
3. Article 2 of the UCO defines "care" as meaning:

*Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.*

## Existing use

4. The applicant states that the present lawful use of the premises is as a dwellinghouse Class C (a). The planning history shows that the building was built as a dwellinghouse when the wider area of land was developed for dwellinghouses under various planning permissions including 11/91/0497 granted 22<sup>nd</sup> September 1992.
5. External inspection of the premises supports, by its external appearance and characteristics, and its setting within a residential area, the conclusion that it is a dwellinghouse within Class C3 sufficient for the balance of probability test applicable to Certificates of Lawful Use. On that basis the Council is satisfied that the house is currently a dwellinghouse that falls within Use Class C3.

## Proposed use

6. The applicant proposes to use the existing dwellinghouse to provide permanent residential accommodation for two young people identified from the information submitted as mainly of age 16 and 17 years. They would be supported by an adult attending on a rota basis but not permanently resident at the property.
7. When the current 1987 UCO was brought into force it was accompanied by an Explanatory Note (not part of the Order) setting out the thinking on which the then new Class C3 was created:

*Class C3 (dwellinghouses) is a new class which comprises use as a dwellinghouse by an individual, by people living together as a family or by not more than six residents living together as a single household. In the case of people living together as a household rather than as a family, the use will continue to be within the class notwithstanding that an element of care (as defined in article 2) is provided.*

8. The *ODPM Circular 03/2005* outlines the grouping criteria of Class C3, in particular the concept of the single household. The relevant paragraphs are copied as follows [bold emphasis added]:

### Class C3: Dwelling Houses

- “66. *This class groups together use as a dwelling house, whether or not the sole or main residence, by single person, any number of persons living together as a family, or by no more than 6 persons living together as a single household. **The key element in the use of a dwelling house for non-family purposes is the concept of a single household.** The single household concept will provide more certainty over the planning position of small group homes which play a major role in the Government’s community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community.*
67. *In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions, regardless of the size of the*

home. Local planning authorities should **include any resident care staff in their calculation of the number of people accommodated.**

68. This class not only includes families, or people **living together** under arrangements for provision of care, but also other groups of people, not necessarily related to each other, who chose to live on a communal basis as a single household.”

9. In *North Devon District Council v First Secretary of State* [2004] [‘Devon’] Justice Collins speaking on the relevance of the single household criteria said:

“Children cannot run a house. They cannot be expected to deal with all the matters that go to running a home. [...] children are regarded as needing full time care from an adult, someone to run their lives for them and someone to make sure the household operates as it should. [...] hence the need for the carer, hence the need for that addition to make it a household within the meaning of the relevant class.

*It seems to me that the concept of living together as a household means that, as I have put it, a proper functioning household must exist and, in the context of a case such as this, that the children and a carer must reside in the premises.*

*The question then arises whether the carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care can be regarded as living together. In my view, the answer to that is no. Consistent with the approach indicated by the Circular [Circular 13/87] what is required is indeed residential care with a carer living full-time and looking after those in the premises who otherwise would not be able to live as a household.*

*C3 does require at least one residential carer, together with of course those who are being cared for.”*

10. From the relevant law laid down, a lone child (or children – in this instance, *young people*) cannot form a household; and a carer would need to be living full-time to form a household with the young people and be identified as *resident living together*. The submitted information is that the support workers would attend on the basis of a ‘rota’, not, as such, being residents.
11. The proposal would, therefore, make a change of use to an arrangement that would not meet the test *residents living together as a single household*’ identified in the relevant law and the proposed use would not fall within Class C3, including the part C3(b) indicated by the applicant.
12. The applicant has not submitted that the proposed change of use would not be a material change of use of the property.
13. However, for completeness, it is necessary to consider if the new use would involve a material change of the property.

**Whether or not the proposed change of use would be “material”.**

14. To establish whether there would be a material change of use, a comparison between the existing lawful use and the use proposed has to be considered. Government advice is that *“there is no statutory definition of ‘material change of use’; however it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case”*.
15. It was early established in *Easts Barnet UDC v British Transport Commission (1962)* that *‘material’* means *‘material for planning purposes’*. In particular, it should be noted that the applicant is not seeking planning permission for the proposed use, but a determination from the Council whether the proposed use can be lawfully carried out. The application is therefore a legal determination, it is not based on whether it acceptably meets / satisfies the policies of the development plan.
16. Circular ODPM 03/2005 advises that the Courts have held that the first thing to consider in determining whether a material change of use has occurred (or will occur) is the existing primary use of the land. Each case will always be a matter for individual determination by fact and degree. The corollary is that the proposed primary use should also be ascertained, which in this case is the provision of residential accommodation for a looked-after child.
17. The applicant describes the use as follows:
- “Each young person will have their own private bedroom and will be provided with a key to their room. Each bedroom will have a bed, wardrobe space, drawers with one being lockable, along with a study desk, whiteboard and a smart TV which will have internet connection.*
- Our staff will complete 24hour shifts, which will start at 10am and finish at 10am the following morning, the shift will consist of a sleep which is between the hours of 22:00 and 8:00. There are always staff at the home, however there will be targeted support time arranged with the young person.”*
18. The purpose of this report is not to examine the worthiness of the applicant’s endeavours, but to consider whether or not a material change of use would be made at the property. The primary purpose of the use would be to provide care [within the identified meaning of *care* referred to in paragraph 20 above] for the young people.
19. The character of occupation would have a focus on the provision of residential accommodation and the provision of support. The property would be a place of work in addition to its residential purpose. It would be materially different in character and use from the use of the dwelling house used by a single household.
20. The proposed use would be materially different from that of likely use by a single household and for the above reasons the application is recommended for refusal

## **Conclusion**

The information submitted by the applicant shows that the proposed use would not fall within the same use class as a dwellinghouse (C3) including part C3 (b)) of the Use Classes Order 1987 (as amended); and, considered on the facts and degree of the matter the proposed new use would be materially different from a dwelling house use within class C3 and a Certificate of Lawful Use cannot be issued.

### **Recommendation**

That a Certificate of Lawful Use be refused for the following reasons:

1. The information provided by the applicant fails to satisfy, on the balance of probabilities, that the new use described in the application would be lawful, in particular, the new use would not fall within use class C3 (including part C3(b)); and, it would make a material change of use of the application site, thereby comprising development requiring the planning permission of the Council.

### **Background Papers:**

<https://planning.hyndburnbc.gov.uk/Northgate/ES/Presentation/Planning/OnlinePlanning/OnlinePlanningOverview?applicationNumber=11%2F24%2F0217>

**Hyndburn Borough Council – Committee Report**  
**Application for lawful Development Certificate - S192 Proposal**

Councillor Brerton has requested that the application be brought for the attention of the Committee because of concerns about the proposal.

**Application Ref:** 11/24/0236

**Application Address:** 2a Allsprings Drive, Great Harwood, BB6 7RN

**Description of Proposal:** Certificate of Lawful Use; Proposed: Change of Use from Dwelling to Children’s Home providing accommodation for two children with care provided by staff attending on a rota.

[Note – The description of the proposal has been modified on the basis of information submitted by the applicant – the reason is given below]

## **HUMAN RIGHTS**

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in preparation of this report, particularly the implications arising from the following rights:-

### **Article 8**

The right to respect for private and family life, home and correspondence.

### **Article 1 of Protocol 1**

The right to peaceful enjoyment of possessions and protection of property.

## **Description of site**

The application site is shown on the location plan and image as follows.

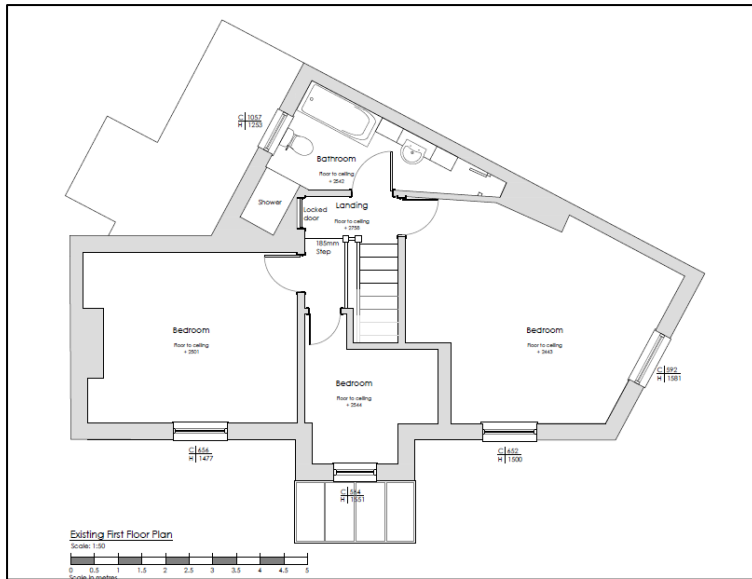


***Location Plan: Application site***



***image of the property***

The application relates to a semi-detached 3 bedroomed dwellinghouse in a residential area. The dwelling has a garden with a driveway and hardstanding space for one car. The submitted floor plans are copied as follows for ease of description.



### **Planning history (as relevant)**

No relevant planning history.

### **Procedural**

The application is for a certified determination whether or not planning permission is needed for the proposed change of use. The decision has to be on the basis of planning law and the facts of the case. High Court decisions on the planning law and the facts point to the development needing planning permission.

The planning law relevant to the application includes The Town and Country Planning Act 1990 ['TCPA 1990'] and The Town and Country Planning (Use Classes) Order 1987 (as amended in 2010 and otherwise) ['UCO'].

In the light of concerns raised by local residents and the complexity of the issues raised when considering an application of this type, the Council has sought legal advice on the application of the relevant planning law and the matters that should rightly be taken into consideration. That advice is considered to be privileged information

Relevant Government advice on the application of the UCO is contained in ODPM Circular 03/2005.

Section 192 (2) of TCPA1990 provides that if, on an application under that section, the Council is provided with information satisfying it that the new use described in the application would be lawful they should issue a certificate to that effect. In any other case the application should be refused. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

The decision is to be based strictly on factual evidence, the planning status/history of the site and the relevant law or judicial authority applicable to the circumstances of the case. The planning merits of the proposed use applied for do not fall to be considered.

### **Note about consultations and representations**



There is not a legal requirement to carry out consultations for this application type. Account is only taken of representations regarding legal and factual matters relating to land use planning.

### The application

The application includes:

- an application form and Location plan;
- Floor Plans;

Section 192(1)<sup>1</sup> requires that the application describes *the use in question*. Article 39(13)<sup>2</sup> requires that:

*Including a case in which the authority modify the description of the use, operations or other matter in the application or substitute an alternative description for that description the notice of decision must state clearly and precisely the authority's full reasons for the decision.*

The application provides little information. The application form gives the following description of the proposal:

*"There will be no structural works carried out to the building. We are requesting a certificate of lawfulness to allow us to operate the premises as a children's home looking after children under the care of the local authority".*

In discussion the applicant stated that accommodation would be provided for two children with care being provided by a team of 6 staff working on a rota with 2 staff being at the premises at all times. It follows that a proper description of the proposal would be:

*"Change of Use from Dwelling to Children's Home providing accommodation for two children with care provided by staff attending on a rota".*

This is used for the purpose of the application.

The application for states that the proposed use would be within Class C2 and gives the grounds of the application as:

*We believe the certificate should be granted in order to support young people achieve optimum outcomes and give them a start in life that every child deserves. Our team has a wealth of experience in looking after children & young people and ensuring their needs are met. The young people will be afforded quality care allowing them to flourish into young adults. We will also be providing local people with employment opportunities and continued professional development.*

### **Assessment of the Proposed Development**

1. Whilst the application accepts that the use would not remain within use class C3, for completeness it is necessary to consider that matter. In considering this application, it is therefore necessary to consider two things:

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<sup>1</sup> Town and Country Planning Act 1990, Section 192(1)

<sup>2</sup> Town and Country Planning (Development Management Procedure) Order 2015. Article 39(13).

- a. Whether the proposed use is in the same use class as the existing use, and, if not;
- b. Whether or not the proposed change of use would be “material”.

**Whether the proposed use is in the same use class as the existing use**

2. UCO provides under article 3 that ‘*where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or other land for any other purpose of the same class shall not be taken to involve development of the land*’.
3. The Schedule to the UCO in Part C identifies:

Class C2. Residential Institutions

*Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwelling houses)). [see paragraph 11 below for definition of “care”]*

*Use as a hospital or nursing home.*

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

Class C3. Dwellinghouses

*Use as a dwellinghouse (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, or*
  - b) *not more than six residents living together as a single household where care [see paragraph 11 below for definition of “care”] is provided for residents;*
  - c) *not more than six residents living together as a single household where no care is provided for residents (other than a use within Class C4).*
4. Article 2 of the UCO defines “care” as meaning:

*Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.*

**Existing use**

5. The applicant states that the present lawful use of the premises is as a dwellinghouse Class C (a). There is no helpful planning, however, external inspection of the premises supports, by its external appearance and characteristics, and its setting within a residential area, the conclusion that it is a dwellinghouse within Class C3 sufficient for the balance of probability test applicable to Certificates of Lawful Use. On that basis the Council is satisfied that the house is currently a dwellinghouse that falls within Use Class C3.

**Proposed use**

6. The applicant proposes to use the existing dwellinghouse to provide permanent residential accommodation for two children and up to two adult carers working on a rota basis.
7. When the current 1987 UCO was brought into force it was accompanied by an Explanatory Note (not part of the Order) setting out the thinking on which the then new Class C3 was created:

*Class C3 (dwellinghouses) is a new class which comprises use as a dwellinghouse by an individual, by people living together as a family or by not more than six residents living together as a single household. In the case of people living together as a household rather than as a family, the use will continue to be within the class notwithstanding that an element of care (as defined in article 2) is provided.*

8. The *ODPM Circular 03/2005* outlines the grouping criteria of Class C3, in particular the concept of the single household. The relevant paragraphs are copied as follows [bold emphasis added]:

Class C3: Dwelling Houses

- “66. *This class groups together use as a dwelling house, whether or not the sole or main residence, by single person, any number of persons living together as a family, or by no more than 6 persons living together as a single household. **The key element in the use of a dwelling house for non-family purposes is the concept of a single household.** The single household concept will provide more certainty over the planning position of small group homes which play a major role in the Government’s community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community.*
  67. *In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions, regardless of the size of the home. Local planning authorities should **include any resident care staff in their calculation of the number of people accommodated.***
  68. *This class not only includes families, or people **living together** under arrangements for provision of care, but also other groups of people, not necessarily related to each other, who chose to live on a communal basis as a single household.”*
9. In *North Devon District Council v First Secretary of State* [2004] [‘Devon’] Justice Collins speaking on the relevance of the single household criteria said:

*“Children cannot run a house. They cannot be expected to deal with all the matters that go to running a home. [...] children are regarded as needing full time care from an adult, someone to run their lives for them and someone to make sure the household operates as it should. [...] hence the need for the carer, hence the need for that addition to make it a household within the meaning of the relevant class.*

*It seems to me that the concept of living together as a household means that, as I have put it, a proper functioning household must exist and, in the context of a case such as this, that the children and a carer must reside in the premises.*

*The question then arises whether the carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care can be regarded as living together. In my view, the answer to that is no. Consistent with the approach indicated by the Circular [Circular 13/87] what is required is indeed residential care with a carer living full-time and looking after those in the premises who otherwise would not be able to live as a household.*

*C3 does require at least one residential carer, together with of course those who are being cared for.”*

10. From the relevant law laid down, a lone child (or children) cannot form a household; and a carer would need to be living full-time to form a household with the children and be identified as *resident living together*. The submitted information is that the carers would attend on the basis of a ‘rota’, not, as such, being residents.
11. The proposal would, therefore, make a change of use to an arrangement that would not meet the test *resident living together as a single household* identified in the relevant law and the proposed use would not fall within Class C3, including the part C3(b) indicated by the applicant.
12. It is therefore, necessary to consider if the new use would involve a material change.

**Whether or not the proposed change of use would be “material”.**

13. To establish whether there would be a material change of use, a comparison between the existing lawful use and the use proposed has to be considered. Government advice is that “*there is no statutory definition of ‘material change of use’; however it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case*”.
14. It was early established in *East's Barnet UDC v British Transport Commission (1962)* that ‘*material*’ means ‘*material for planning purposes*’. In particular, it should be noted that the applicant is not seeking planning permission for the proposed use, but a determination from the Council whether the proposed use can be lawfully carried out. The application is therefore a legal determination, it is not based on whether it acceptably meets / satisfies the policies of the development plan.
15. Circular ODPM 03/2005 advises that the Courts have held that the first thing to consider in determining whether a material change of use has occurred (or will occur) is the existing primary use of the land. Each case will always be a matter for individual determination by fact and degree. The corollary is that the proposed primary use should also be ascertained, which in this case is the provision of residential accommodation for a looked-after child.

16. As set out above, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful. The applicant has not provided evidence in this respect. The Grounds of the Application identify the worthy intentions as regards child care; information is given that there would be no structural works; otherwise, no information is given.

17. There is the probability that a children's home would be materially different in the character and impacts of its use compared with a dwellinghouse occupied by a single household. The application fails to demonstrate, on the balance of probabilities, that the proposed use would be lawful.

### **Conclusion**

The information submitted by the applicant, whilst indicating good intent as regards care of children, does not demonstrate that the proposed use would be Lawful and a Certificate of Lawful Use cannot be issued.

### **Recommendation**

That a Certificate of Lawful Use be refused for the following reasons:

1. The information provided by the applicant fails to satisfy, on the balance of probabilities that the new use described in the application would be lawful, whether by falling within the same Use Class or by not making a material change of use of the property or otherwise.

### **Background Papers:**

<https://planning.hyndburnbc.gov.uk/Northgate/ES/Presentation/Planning/OnlinePlanning/OnlinePlanningOverview?applicationNumber=11%2F24%2F0236>

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## REPORT FOR PLANNING COMMITTEE

**APPLICATION REF:** 11/24/0225

-

**APPLICATION ADDRESS:** 6 Grasmere Close, Rishton, BB1 4EL

**DEVELOPMENT DESCRIPTION:** Full: Change of Use of a C3a Dwelling to a Children's Home for a Maximum of One Child, with up to Three Carers, Two of Whom will Sleep Overnight, Working on a Rota Basis (C2)

**DATE FOR DECISION:** 17/07/2024

### **DESCRIPTION OF SITE AND PROPOSED DEVELOPMENT**

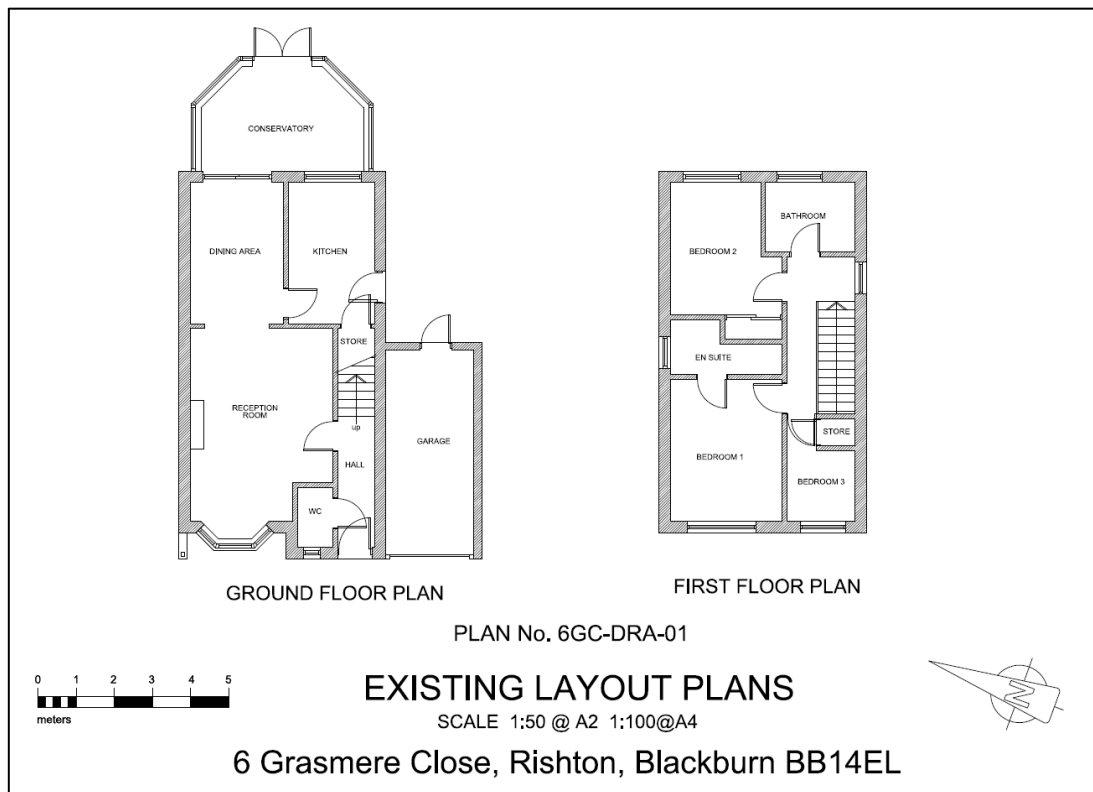
Full planning permission is sought for a Change of Use of a C3a Dwelling to a Children's Home for a Maximum of One Child, with up to Three Carers, Two of Whom will Sleep Overnight, Working on a Rota Basis (C2).

The application relates to a detached dwellinghouse fronting Bluebell Way as shown on the location plan and image as follows.



The detached dwellinghouse is of two storeys. It features 3 bedrooms (one with ensuite facilities) and a bathroom on the upper floor; a kitchen, dining room, reception room and a conservatory, hallway and a wc, at ground floor level; and, rear and front gardens. There is a driveway which can currently provide 1 car parking space.

The present proposal is to change the use of the building to a children's home providing accommodation for a child up until they are 18 years old. This property would be the main residence for the child living at this property – the carers would attend on a rota/shift basis.



There would be no external changes to the building. Within the Design and Access Statement it is mentioned that 2 off street parking spaces can be provided. However it is considered that the garage is sub-standard in its dimensions - this will be addressed later on in this report.

## **CONSULTATION RESPONSES/REPRESENTATIONS**

### **LCC HIGHWAYS:**

No objections subject to conditions requiring the existing driveway to be widened to ensure 2 parking spaces can be provided off street, in addition to requiring the installation of an electric vehicle charging point.

### **HBC ENVIRONMENTAL HEALTH:**

No objections

### **ADDITIONAL REPRESENTATIONS:**

Neighbours notified by letter. Letters of representation have been received from 2 individual households/addresses objecting to the application on the following grounds:

- There is an existing children's care home located on Grasmere Close



- The property is unable to provide adequate parking provision to support the proposal is located on a bend, as such cars parking would increase the risk of a traffic accident
- The proposals would generate noise disturbances e.g. car engines
- The residential area being unsuitable for this type of development

## **RELEVANT POLICIES**

### Hyndburn Core Strategy (CS)

Policy Env6: High Quality Design

Policy Env7: Environmental Amenity

Policy T1: Improving Connectivity

### Development Management Development Plan Document (DMDPD)

Policy DM26: Design Quality and Materials.

Policy DM29: Environmental Amenity

Policy DM32: Sustainable Transport, Traffic Management and Highway Safety (including GN8: Car parking standards)

### Material considerations

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

## **RELEVANT PLANNING HISTORY**

No relevant planning history

## **OBSERVATIONS AND ASSESSMENT OF PROPOSED DEVELOPMENT**

### **1. Principle of Development**

- 1.1. The application proposes the change of use of a detached dwelling house to a Care Home for children. The applicant states that only one child will be accommodated. The property is set in a large established residential estate composed of similar dwellinghouses.
- 1.2. The principle of housing cared-for-children in the midst of well-founded residential areas is not under question. It is existing government policy, regulated and administered under specific legislation. As such, that principle is not a planning consideration. That said, it is helpful, for completeness, to outline the current practice.
- 1.3. Briefly, a Social Services department would normally place children in need of such care in a Local Authority or privately operated care home. Such residential provision is overseen under the Ofsted/Care Commission regime. Private care homes may be business ventures, however, the operation of business of any description is manifestly not a planning matter. No account should be taken of any representations in that respect. It is reasonable to regard the loss of the dwellinghouse to the housing stock of the Borough as being balanced by the provision of a children's care home which are generally in short supply.

- 1.4. The proposal is for a change of use from a dwellinghouse (Class C3) to a care home for children in need of care (Class C2). Both uses are identified as residential classes. The distinction between the uses, for planning purposes, is that a property has to be occupied as a household to remain within with the C3 dwellinghouse use class. There are many instances where foster children are looked after by existing families and such arrangements would not amount to a change of use of a dwellinghouse. Therefore, the question for the present purpose is to consider how a small children's care home differs from a dwellinghouse in terms of planning impacts, noting, in particular, that it would be a staffed workplace with routine comings and goings of staff, with additional professional visitors, in addition to being a home.
- 1.5. The main consideration for this application are the impacts on neighbours and the residential area generally arising from the character and operation of the proposed use; highway safety; and consideration of representations and any other matters arising from consultations or otherwise.

## 2. **Design/Visual Amenity/External Appearance**

- 2.1. In terms of design and visual amenity, there are no changes proposed to the external appearance of the building. As such it is not considered that the proposed development would result in any undue harm to the visual amenity of the area and the proposal would accord with the requirements of Core Strategy Policy Env6 and DMDDP Policy DM26.

## 3. **Impact upon Residential Amenity**

- 3.1. In operation, the main likely impacts would arise from the vehicle movement of staff and others connected with the care home. Policy Env7 requires that new development will be permitted only if it is demonstrated that the material impacts arising by reason of traffic, visual impact, noise, (...) and other nuisances, will not give rise to unacceptable adverse impacts or loss of local amenity.
- 3.2. The applicant has submitted that the movement would not be dissimilar to that generated by a family occupied dwellinghouse. Within the Design and Access Statement it has been mentioned that a single child would live at the house, with two carers working on a rota basis sleeping/being awake overnight. Six carers would operate on a shift pattern of 48 hours on, 60 hours off. In addition, a manager would also usually visit most weekdays between 9am and 5pm. Apart from changeover times, there would be no than three staff on the premises at any one time. There would be one changeover of the overnight care staff per day, usually 9:30am each morning, which would last for around ten minutes. The table below sets out the proposed comings and goings throughout the week based on experience from other care homes.

**Schedule of Proposed Use ( based upon experience of other similar homes)**

<b>Activity</b>	<b>Sunday</b>	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>	<b>Friday</b>	<b>Saturday</b>
Home Manager		2	2	2	2	2	
Care workers starting and finishing shift	2	2	2	2	2	2	2
School run		4	4	4	4	4	
Shopping/ Social/recreational outings	4			2			4
Other visitors	2						2
<b>Total Movements ( in and out)</b>	<b>8</b>	<b>8</b>	<b>6</b>	<b>10</b>	<b>8</b>	<b>8</b>	<b>6</b>

3.3. These measures would make reasonable provision for the transport needs generated so that, in operation, the proposed use would not be likely to cause significant harm, in that respect, to the amenities on neighbouring dwellings or the residential area generally. Conditions are recommended to require adherence to the movement arrangements. On that basis the proposed development would be in accordance with Policy Env7 of the Core Strategy.

**4. Traffic and Highway Safety**

4.1. Policy DM32 of the DMDPD expects all development proposals to encourage sustainable travel and meet with local car parking standards.

4.2. The adopted car parking standards contained at GN8 of the DMDPD identifies that the requirement for a C2 use is 1 space per 5 beds, plus 1 space per 10 beds for visitors/staff.

4.3. Assessment of the proposal against adopted car parking standards indicates the need for 2 car parking spaces, which is what has been proposed.

4.4. Although 2no spaces have been proposed, LCC Highways have mentioned that the garage's internal dimensions are sub-standard to provide a car parking space. A planning condition recommended by LCC Highways has been included, involving widening of the existing driveway and paving part of the front garden to provide 2 off street parking spaces.

4.5. A new electric vehicle charging point is proposed to be installed at the front of the property which must be fitted in line with the Department for Transport's guidance regarding Electric Vehicle Charging in Residential and Non-residential Buildings. A recommended condition has been added in order to ensure this.

4.6. The Highway Authority, having reviewed the documents submitted together with site observations, have not raised an objection regarding the proposed development and concluded that there are no highway grounds to support an objection as set out by NPPF. It is the Highway Authority's opinion that the sites operation is unlikely to generate significant traffic movements over and above those of a normal household.

4.7. On that basis the proposal would be in accordance with DMDPD Policy DM32.

## 5. **Other Considerations**

5.1. The proposed use is within Use Class C2 identified in the Town and Country Planning (Use Classes) Order 1987 (as amended). The C2 class includes a wide range of residential institution uses (such as hospitals, nursing homes, residential school, training centre) for which the property would not be suited. A condition is, therefore, recommended to restrict the use to that proposed.

5.2. The following responses are provided to the issues raised in public objections;

- The property is unable to provide adequate parking provision to support the proposal and is located on a bend

Comment – A recommended condition would enable the property to meet with the adopted Car Parking Standards. The Highway Authority raises no objection to the proposal stating it would not have a significant impact on traffic and highway safety.

- The proposal would generate noise disturbances e.g. car engines

Comment – It is considered that the care home would be able to operate without generating unacceptable noise disturbances. As indicated in the Design and Access Statement, a changeover would occur at 9:30am and other comings and goings are considered to be similar to those of a normal household. As such, it would not cause a level of noise deemed to harm the residential amenities of the area.

- The residential area being unsuitable for this type of development

Comment – In operation the children's home would operate similarly to a normal family home environment. As such this type of proposal is suited to being located within a residential area.

- There is an existing children's care home located on Grasmere Close

Comment – This highlighted concern is not a planning consideration in this case.

## **Conclusion**

The proposed change of use of the dwellinghouse to a Children's Care Home would be unlikely to have any adverse impact on the amenity of neighbouring dwellinghouses or the residential area generally. The Highway Authority is content with the proposal as regards

matters of highway safety. Conditions are recommended in order to secure implementation of measures proposed in the application. The proposal would be in accordance with the development plan

### **Recommendation**

That the application be granted subject to the following conditions:

- 1) The development hereby approved shall be commenced before the expiration of three years from the date of this permission.

Reason: To ensure that the Local Planning Authority retains the right to review unimplemented permissions and to comply with Section 91 (as amended) of the Town & Country Planning Act 1990.

- 2) The development shall be carried out in accordance with the following documents unless otherwise required by the conditions below:

- (a) The planning application form and Location Plan received by Hyndburn Borough Council on 22<sup>nd</sup> May 2024

- (b) Plans by received by Hyndburn Borough Council on 22<sup>nd</sup> and 28<sup>th</sup> May 2024

6GC-DRA-01 EXISTING LAYOUT PLANS  
6GC-DRA-02 PROPOSED LAYOUT PLANS  
6GC-DRA-02 BLOCK PLAN  
DESIGN AND ACCESS STATEMENT

Reason: For the avoidance of doubt and to enable Hyndburn Borough Council to adequately control the development and to minimise its impact on the local amenity and the character of conservation area and to conform with Policies Env6 and Env7 of the Hyndburn Core Strategy, Policies DM10, DM22 and DM26 of Development Management DPD, the National Planning Policy Framework and the Householder Design Guide.

- 3) The building shall only be used as a Children's Care Home for a maximum of one child (as described in the application) only and for no other purpose including any purpose within Use Classes C2, C2A, and C4 of the Schedule to the Town & Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: Notwithstanding that the proposed use (as described and defined in the application) would be an acceptable use of the building, the application does not demonstrate (taking account of its characteristics, including its location, its amount of internal accommodation and layout) that the building would be suitable for other uses within those Use Classes in accordance with the Development Plan, including policies Env6, Env7 and T1 of the Hyndburn Core Strategy and DM14, DM26, DM29 and DM32 of the Hyndburn Development Management Development Plan Document.

- 4) Prior to first occupation of the approved development the existing driveway/hardstanding shall be extended internally to a minimum width of 5.8m and surfaced in bound porous materials. The parking area shall thereafter always remain available for the parking of domestic vehicles associated with the dwelling.

Reason: In order to ensure satisfactory levels of off-street parking are achieved within the site to prevent parking on the highway to the detriment of highway safety.

- 5) Prior to first use of the approved development an electric vehicle charging point shall be installed in accordance with the approved plans. Charge points must have a minimum power rating output of 7kW and be fitted with a universal socket that can charge all types of electric vehicle currently available.

Reason: To ensure that the development supports sustainable forms of transport.

- 6) In respect of staff travel and parking, the Children's Care Home hereby permitted shall be operated at all times in accordance with the submitted Design and Access Statement (Dated 20<sup>th</sup> May 2024), in particular the expectation of car sharing by staff described in part 3.0, and the retention of 2 car parking spaces, unless otherwise approved in writing by the Local Planning Authority.

Reason: In order to regulate staff travel by vehicle to that reasonably commensurate with that of a family dwelling house (as described by the applicant) in the interests of the amenities of neighbouring dwelling houses and the residential area generally in accordance with Policies Env7 of the Hyndburn Core Strategy and DM29 and DM32 of the Development Management DPD of Hyndburn Borough Council.

## **Informatives**

### **1. Reasons for approval of the application**

Subject to conditional control the proposal would not cause demonstrable harm to visual / residential amenity or highway safety or to any other matter of acknowledged importance and accordingly would suitably accord with local and national planning policies and in particular Policies Env6 and Env7 of the Hyndburn Core Strategy and the Hyndburn car parking and access standards.

### **2. Strict accordance with approved plans**

This planning permission is granted in strict accordance with the approved plans. It should be noted however that:

- (a) Any variation from the approved plans following commencement of the development, irrespective of the degree of variation, will constitute unauthorised development and may be liable to enforcement action.
- (b) You or your agent or any other person responsible for implementing this permission should inform Development Control immediately of any proposed variation from the approved plans and ask to be advised as to the best method to resolve the matter. Most proposals for variation to the approved plans will require the submission of a new planning application.

### **3. Conditions**

This consent is granted subject to conditions and it is the owner and the person responsible for the implementation of the development who will be fully responsible for their compliance throughout the development and beyond.

**4. Building Regulations may be required**

The enclosed approval is issued under the Town & Country Planning Act 1990. You may also require Building Regulation approval which is dealt with by this Department's Building Control Section (Tel: 01254 380194). You must ensure that all necessary permissions are obtained BEFORE starting work, otherwise abortive expense may be incurred.

**5. Coal Authority**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848. Further information is also available on The Coal Authority website at [www.coal.decc.gov.uk](http://www.coal.decc.gov.uk) Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)

**BACKGROUND PAPERS**

<https://planning.hyndburnbc.gov.uk/Northgate/ES/Presentation/Planning/OnlinePlanning/OnlinePlanningOverview?applicationNumber=11%2F24%2F0225>

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<b>REPORT TO:</b>		Planning Committee	
<b>DATE:</b>		01 July 2024	
<b>PORTFOLIO:</b>		<b>Leader of The Council</b>	
<b>REPORT AUTHOR:</b>		Katy Morley, Arboricultural and Conservation Officer	
<b>TITLE OF REPORT:</b>		<b>New Tree Preservation Order – 2024 No1 Water Street, Gt Harwood</b>	
<b>KEY DECISION:</b>	<b>No</b>	If yes, date of notice:	2024

**1. Purpose of Report**

- 1.1 To recommend the protection of an Oak tree at Water Street, Gt Harwood, BB6 7QR through the use of a Tree Preservation Order.



Fig. 1- Oak tree on left of the picture (view from the west from Water Street).



Fig.2 – Photograph of the Oak taken from the south.

## **2. Background**

- 2.1 In August 2019 a resident of Windsor Road rang to ask for a TPO on the Oak tree on the land at Water Street. The resident had previously emailed the council concerned that trees were being felled and that specifically the Oak tree should be retained as workmen had removed some branches. The Council's Arboricultural Officer, with the Council's Ecology Officer, visited the site on 20<sup>th</sup> August 2019 and found that the tree had been poorly pruned but not to a degree in which it was permanently damaged and that it would recover. A temporary TPO was put on the Oak tree but this has now expired
- 2.2 In July 2023 another resident rang to ask why the tree had not been protected and wanted a TPO to be put on the tree as they felt it was worthy of retention and any building works to be carried out on the land would put the tree at risk.
- 2.3 The Council's Arboricultural Officer, visited the site on 15<sup>th</sup> August 2023 and believed that on the basis of the contribution the tree made to the character, appearance and amenity of the area, that the tree would benefit from being protected.
- 2.4 When making Tree Preservation Orders it is necessary to assess the amenity value of the tree(s). As well as considering the condition and species of the tree(s) to be protected it is also necessary to consider factors such as the lifespan of the tree, relative public visibility, historic or habitat value, the form of the tree and whether it is rare or unusual. The assessment also considers whether the extent to which the tree is at risk of being felled or damaged. A scoring system is used to determine whether the tree merits protection.

2.5.1 An assessment of this tree has been undertaken and is included at Appendix 2. The scores indicate that the tree merits protection. Given the nature of the work that had been undertaken to the tree that resulted in the complaint, it is considered that there is a “foreseeable” threat to the tree.

### **3 Objections / representations**

3.1 The land owners, nearby residents and councillors were notified by letter and email on 10<sup>th</sup> April 2024. No objections have been received.

### **4 Officers Observations**

4.1 Comments on the tree are set out below.

*Tree 1 Oak – One mature Oak tree in a good condition, opposite 110 Windsor Road Gt Harwood Very visible from a distance due to its size.*

*This tree has had poor pruning in the past probably due to the removal of branches low over the road but has now recovered enough to make a well balanced tree, it is visible to the public and it is important that when pruned again it is not pruned in the same way as before.*

*Therefore getting it protected will allow any further work to be carried out in a more harmonious way.*

*This tree is in a good condition at the time of inspection a good shape and form.*

*This tree is adjacent Windsor Road and present a high impact on the local environment and a high degree of public benefit in the future.*

*This tree makes a significant contribution to the character and appearance of the area.*

### **5.0 Recommendation**

To confirm the TPO and make it permanent on the grounds that:

- 1) The tree is in a good condition at this time, but if not protected it could be open to indiscriminate pruning or felling.
- 2) The tree has a notable presence in the townscape and can be seen from many roads and nearby footpaths. It adds value to the character of the area and has high amenity value.
- 3) The tree has significant wildlife potential.

- 4) The Council would have no objections to light selective pruning being carried out should this be necessary, but pruning must be controlled.

## **5 Conclusion**

- 5.1 That the tree be protected by a permanent Tree Preservation Order as recommended above.

# TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO):

## SURVEY DATA SHEET & DECISION GUIDE

Date: 20th March 2024

Surveyor: **Katy Morley**

### Tree details

TPO Ref: 2024 No1 Water Street, Gt Harwood

Tree/Group No: T1

Species: Oak

Owner: The Proprietor, 9CW04 Limited, Hammond Field, Hammond Drive, Read, Burnley, BB12 7RE

Location: Water Street, Gt Harwood

### REFER TO GUIDENCE NOTES FOR ALL DEFINITIONS

#### Part 1: Amenity assessment

##### a) Condition & suitability for TPO

- |                              |                         |
|------------------------------|-------------------------|
| 5) Good                      | Highly suitable         |
| 3) Fair/satisfactory         | Suitable                |
| 1) Poor                      | Unlikely to be suitable |
| 0) Dead / dying / dangerous* | Unsuitable              |

**Score & Notes 5**  
A large mature Oak

\* Relates to existing context and is intended to apply to severe irremediable defects only

##### b) Retention span ( in years ) & suitability for TPO

- |           |                 |
|-----------|-----------------|
| 5) 100+   | Highly suitable |
| 4) 40-100 | Very suitable   |
| 2) 20-40  | Suitable        |
| 1) 10-20  | Just suitable   |
| 0) <10*   | Unsuitable      |

**Score & Notes 4**  
A large Oak, high impact in the area

\*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality.

##### c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- |  |                     |
|--|---------------------|
| 5) Very large trees with some visibility, or prominent large trees   | Highly suitable     |
| 4) Large trees, or medium trees clearly visible to the public        | Suitable            |
| 3) Medium trees, or larger trees with limited view only              | Suitable            |
| 2) Young, Small or medium / large trees visible only with difficulty | Barely suitable     |
| 1) Trees not visible to the public, regardless of size               | Probably unsuitable |

**Score & Notes 5**

##### d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above additional redeeming features (inc. those of indifferent form)
- 1) Trees with poor form or which are generally unsuitable for their location

**Score & Notes 3**  
A large tree with habitat importance.

#### Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

**Score & Notes 3**

#### Part 3: Decision guide

- |       |                       |
|-------|-----------------------|
| Any 0 | Do not apply TPO      |
| 1-6   | TPO indefensible      |
| 7-11  | Does not merit TPO    |
| 12-15 | TPO defensible        |
| 16+   | Definitely merits TPO |

**Add scores for Total:**  
20

**Decision: Definitely Merits TPO**

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**Hyndburn Borough Council**

**IMPORTANT  
THIS COMMUNICATION MAY AFFECT YOUR PROPERTY**

TOWN AND COUNTRY PLANNING ACT 1990  
TOWN AND COUNTRY PLANNING (Tree Preservation) (England) REGULATIONS  
2012

**Hyndburn Borough Council**  
**Tree Preservation Order: Water Street 2024 NO.1, Water Street, Gt Harwood,**  
**BB6 7QR**

THIS IS A FORMAL NOTICE to let you know that on 28<sup>th</sup> March 2024 we made the above tree preservation order.

A copy of the order is enclosed. In simple terms, no one is allowed to cut down, top or lop without our permission any of the trees described in the First Schedule of the order and shown on the map.

Some information about tree preservation orders is in the enclosed leaflet, *Protected Trees: A Guide to Tree Preservation Procedures*, produced by the Department of the Environment, Transport and the Regions.

We have made the order due to someone wishing to build on the land and that the tree may be at risk, this tree is considered to be in a good condition, of high value to the amenity of the local area and make a positive contribution to the street scene.

The order has taken immediate effect and will remain in force for a period of 6 months unless it is either made permanent or revoked.

People affected by the order have a right to object or make comments on any of the trees or woodlands covered before we decide whether the order should be confirmed.

If you would like to make any objections or comments, please make sure we receive them in writing before 5pm on 15<sup>th</sup> May 2024 Your comments must meet Regulation 6 a copy of which is attached to this letter. Please send your comments to the Arboricultural & Conservation Officer. We will carefully consider all objections and comments before deciding whether or not to confirm the order.

We will write to you again when we have made our decision. In the meantime, if you would like any more information or have any questions about this letter, please contact the Trees and Woodlands Officer by telephone 01254 388 111 or by email [katie.morley@hyndburnbc.gov.uk](mailto:katie.morley@hyndburnbc.gov.uk)

Signed:

Dated: 10<sup>th</sup> April 2024

Katy Morley  
Arboricultural & Conservation Officer  
Hyndburn Borough Council, Planning Dept,  
Scaitcliffe House, Ormerod Street,  
ACCRINGTON, BB5 0PF

## **COPY OF REGULATION 4**

### Objections and representations

4.—

(1) Subject to paragraph (2), objections and representations—

(a) shall be made in writing and— .

- (i) delivered to the authority not later than the date specified by them under regulation 5(2)(c); or .
- (ii) sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to them not later than that date; .

(b) shall specify the particular trees, groups of trees or woodlands (as the case may be) in respect of which such objections and representations are made; and .

(c) in the case of an objection, shall state the reasons for the objection.

(2) The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected.

Objections and representations



**Tree Preservation Order**

Town and Country Planning Act 1990

**Tree Preservation Order, 2024 NO. 1 Water Street, Gt Harwood, BB6 7QR**

The Hyndburn Borough Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

**Citation**

This Order may be cited as Tree Preservation Order 2024 NO.1 Water Street, Gt Harwood,

**1.Interpretation**

2.— (1) In this Order “the authority” means the Hyndburn Borough Council.

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

**Effect**

3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this **28th** day of **March 2024**.

Signed on behalf of the Hyndburn Borough Council

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Mr. Simon Prideaux, Chief Planning and Transportation Officer  
Authorised by the Council to sign in that behalf

# SCHEDULE

## Specification of trees

### Trees specified individually

(marked on the attached plan)

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<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Oak	Situated on land opposite 110/112 Windsor Road, Gt Harwood

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### Trees specified by reference to an area

-NONE-

### Groups of trees

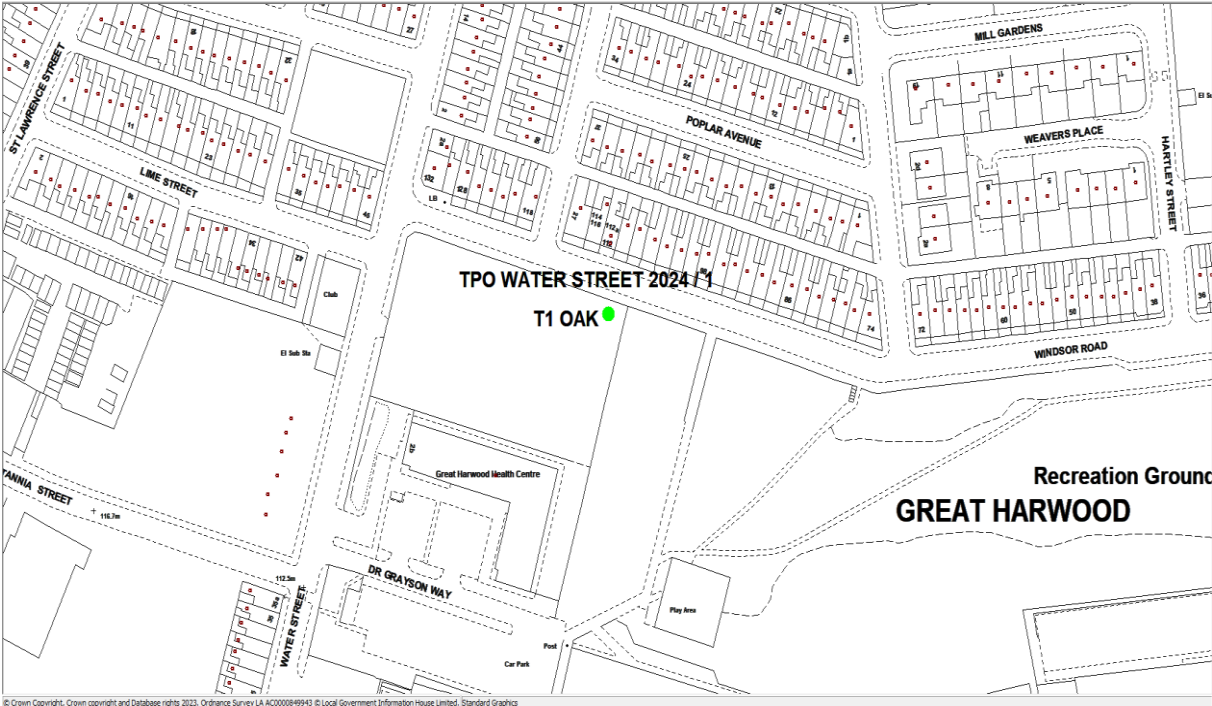
-NONE-

### Woodlands

NONE

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Order - Map ref  
TPO 2024 NO.1 Water Street, Gt Harwood, BB6 7QR - T1



Signed: .....

Mr. Simon Prideaux, Chief Planning and Transportation Officer  
Authorised by the Council to sign in that behalf  
28<sup>th</sup> March 2024

**CONFIRMATION OF ORDER**

This Order was confirmed by Hyndburn Borough Council without modification on the .....  
day of ..... **2024**

Signed on behalf of the Hyndburn Borough Council

.....

Mr. Simon Prideaux, Chief Planning and Transportation Officer.  
Authorised by the Council to sign in that behalf