

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

**Application for a lawful development certificate
for a proposed use to use the dwelling as C3(b) use
at The Old Barn, Owston Ferry Road, Low Burnham**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform planning committee members about the details of the submitted application for a Lawful Development Certificate for the use of an existing dwelling house as a small children's home and to advise members of the outcome of the assessment of the evidence submitted in support of the application.

2. BACKGROUND INFORMATION

- 2.1 Application PA/2014/1094, for a Certificate of Lawful Development to use an existing dwelling known as The Old Barn, Owston Ferry Road, Low Burnham as a small children's home, was submitted on 29 September 2014.
- 2.2 The current authorised use of the property is C3(a) within Class C3 Dwellinghouses of the Town and Country Planning (Use Classes) Order 1987 (As Amended) which is a dwelling. This is defined as those living together as a single household by the Housing Act 2004 (basically a 'family').
- 2.3 Within this use class there are variations of the living arrangements of the occupants which are still considered to be within this classification. This includes C3(b), those living together as a single household and receiving care, with a maximum limit of six people living together in that single household.
- 2.4 The applicant considers that the proposed arrangement of four children and two adult carers living together as a single household falls within the C3(b) category, and is therefore lawful development, as a change of use has not taken place.
- 2.5 When considering an application for a Lawful Development Certificate the onus of proof is firmly on the applicant who must demonstrate, on the balance of probability, that the use is lawful.
- 2.6 In this particular case it is not considered that the applicant has demonstrated that the proposed use falls within Class C3(b) of the Use Classes Order. This is because the adult carers work shift patterns and, although there is some continuity of care, it is not the same carers every day. The property is the main or sole residence of the children but not the adult carers. Therefore it is considered that the adult carers, under the current arrangement, do not form

part of the household in planning terms, and the use cannot be classed as being within class C3(b). On the balance of probability it is considered that a Lawful Development Certificate cannot be issued in this instance.

2.7 It is considered that the use as proposed by the applicant falls within Use Class C2 Residential Institutions, which is considered to be a material change of use requiring a separate planning permission.

3. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

3.1 Financial

3.1.1 None

3.2 Staffing

3.2.1 None

3.3 Property

3.3.1 None

3.4 IT

3.4.1 None

4. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 – CRIME AND DISORDER, RISK AND OTHER)

4.1 Statutory

4.1.1 None

4.2 Environmental

4.2.1 None

4.3 Diversity

4.3.1 None

4.4 Section 17 – Crime and Disorder

4.4.1 None

4.5 Risk

4.5.1 None

4.6 Other

4.6.1 None

5. OUTCOMES OF CONSULTATION

- 5.1 Being an application for a Lawful Development Certificate, and not a planning application, there is no statutory requirement to notify interested parties, for example neighbouring properties or the parish council, of receipt of such an application. The issues to be considered in the determination of such an application are a matter of fact and degree, and are evidence based. The onus is on the applicant to demonstrate, on the balance of probability, via the application form and submitted evidence, that the use referred to is lawful in planning terms. The planning merits of the case in relation to such matters as residential amenity and impact of the use on the character of the area are not relevant in the determination of an application for a Lawful Development Certificate.
- 5.2 However, the local community is aware of the application and 14 letters from 14 different households have been received objecting to the application. A number of these letters of objection raise issues relating to the use of the building as a children's home being inappropriate in a rural community. However, these matters are not material to the application to be considered. Five of these letters of objection have questioned whether the use (C3(b)) is lawful and consider the lawful use to be C2 (Residential Institutions).
- 5.3 In addition, Haxey Parish Council has objected to the application on the grounds that carers will not reside at the property and will provide care through a shift working pattern. It believes that the use falls within a C2 use and the Certificate should not be granted until clear evidence is provided. Reference is made by the parish council to Planning Case Law and a case in North Devon from 2003. This case concluded that it is unrealistic to expect children to look after themselves in a single household. The concept of a household means that a proper functioning household must exist and children and carers must reside at the property.
- 5.4 Andrew Percy MP has submitted a letter on behalf of his constituents and requests that their views are fully considered, taking into account whether the location is appropriate for the use, whether the correct planning procedures have been followed and the lack of community engagement. Councillor William Eckhardt has made a request for the application to be referred to the planning committee on grounds of significant public interest.

6. RECOMMENDATIONS

- 6.1 The applicant has failed to demonstrate to the satisfaction of the local planning authority that the use proposed falls within Class C3(b), and consequently the lawful development certificate should be refused.

HEAD OF DEVELOPMENT MANAGEMENT

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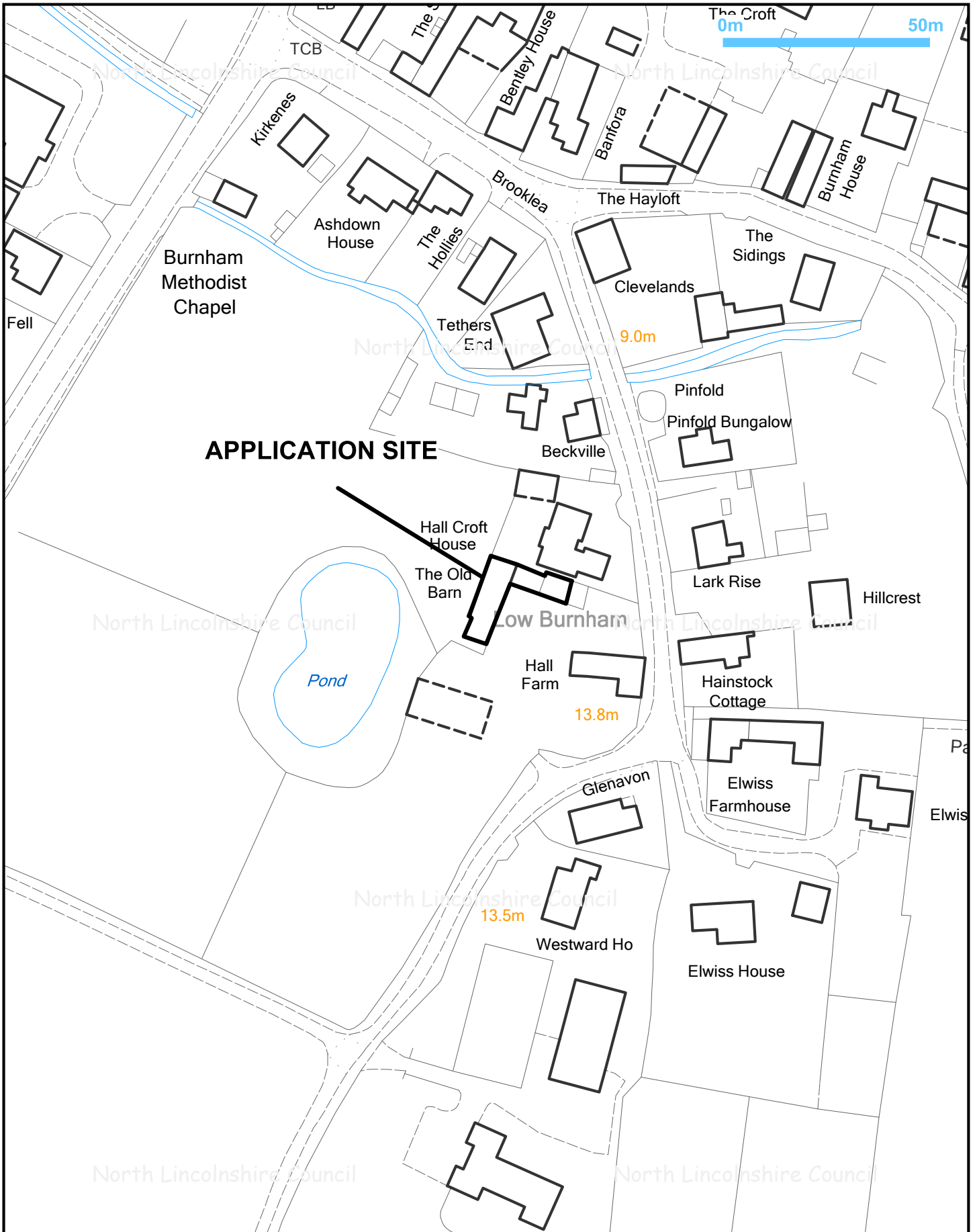
Author: Scott Jackson
Date: 2 December 2014

Background papers used in the preparation of this report

The Town and Country Planning (Use Classes) Order 1987 (As Amended)

Department For Communities and Local Govt Circular 08/2010 – Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation

The planning file: PA/2014/1094



Title: PA/2014/1094			
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