

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. To update the planning committee members in respect of additional information received in relation to this matter following deferral of the application at the meeting held on 17 December 2014.

2. BACKGROUND INFORMATION

- 2.1 Application PA/2014/1094 from Absolute Children's Services Ltd, for a Certificate of Lawful Development to use an existing dwelling known as The Old Barn, Ferry Road, Low Burnham as a small children's home, was submitted on 29 September 2014. The application was deferred at the Planning Committee meeting on 17 December to enable the applicant to prepare additional supporting information to expand their case that the development is lawful.
- 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 additional information received via email on 23 March 2015 states that one of the applicants has resided at the property since September 2014 and resides there four days a week. In addition the supporting evidence considers that the proposed arrangement is similar to that in a foster home where the main carer is allowed respite care and other staff provide this in conjunction with the main carer and in their absence from the home. The applicant maintains the opinion that the home is being run as a single household and falls within the C3(b) category, and is therefore lawful development as a change of use has not taken place.

- 2.5 Further emails dated 4 and 14 July 2015 have been received from the applicant. These emails confirm the details of the earlier correspondence of 23 March, together with confirmation that there is currently one child residing at the property and that two staff (including one of the applicant's) reside at the property at any one time.
- 2.6 The applicant is also of the opinion that a material change of use is not considered to have taken place.
- 2.7 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.
- 2.8 In this particular case, after considering the additional supporting information, it is concluded that the applicant has demonstrated that the proposed use falls within Class C3(b) of the Use Classes Order. This is because the evidence demonstrates there is one main carer residing at the site and the property is their main residence. The fact that the carer resides at the property for the majority of a weekly period results in some continuity of care. The property is the main or sole residence of the child and the main carer. Therefore it is considered that the adult carer, under the current arrangement, forms part of the household in planning terms, and the use can be classed as being within class C3(b). It is considered that the occupation of the property as set out in the application doesn't result in a material change of use requiring planning permission. Therefore, on the balance of probability, it is considered that a Lawful Development Certificate can be issued in this instance.

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 the previous report to the planning committee set out the number and nature of these objections. Since the deferral of this item from the planning committee meeting on 17 December 2014 two additional letters of objection have been received. These letters of objection raise issues in relation to the fact that the applicant had been advertising locally for recruiting new members of staff, that people have been observed leaving the property and care workers have been observed accompanying children at the site. No comments have been received which concern the main issue to be addressed, which is whether the use as proposed is lawful.
- 5.3 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 David Rose has made a request for the application to be referred to the planning committee.

6. RECOMMENDATIONS

- 6.1 The applicant has demonstrated 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 allowed.

HEAD OF DEVELOPMENT MANAGEMENT

The Civic Centre
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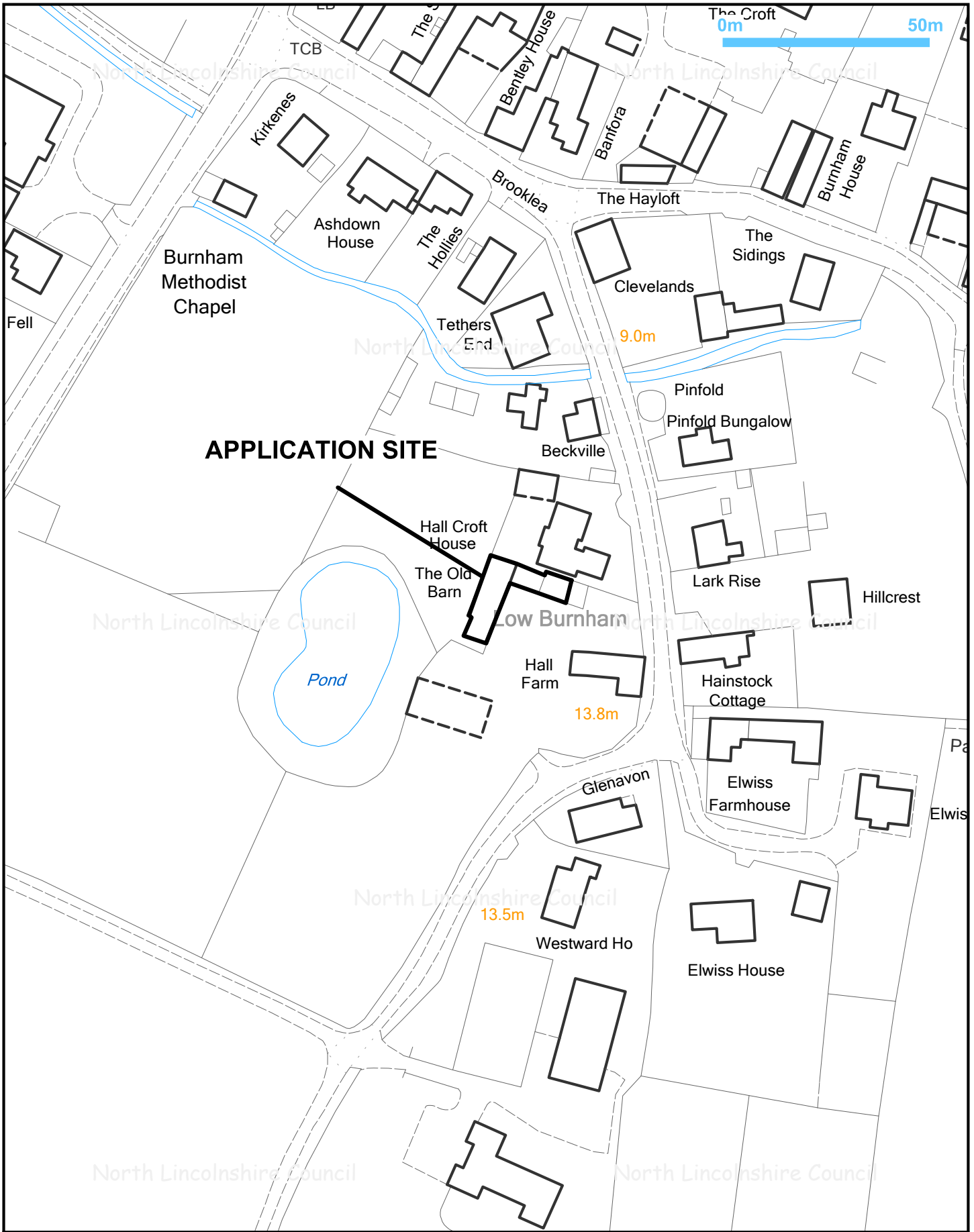
Author: Scott Jackson
Date: 14 July 2015

Background papers used in the preparation of this report

The Town and Country Planning (Use Classes) Order 2015 (As Amended)

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

PA/2014/1094



Title: PA/2014/1094			
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