

<b>APPLICATION NO</b>	<b>PA/2016/1610</b>
<b>APPLICANT</b>	Mr Pete Buller, Esland Care
<b>DEVELOPMENT</b>	Certificate of Lawfulness for an existing use as a care home (Use Class C2)
<b>LOCATION</b>	31 Low Street, Haxey, DN9 2LE
<b>PARISH</b>	Haxey
<b>WARD</b>	Axholme South
<b>CASE OFFICER</b>	Scott Jackson
<b>SUMMARY RECOMMENDATION</b>	<b>Issue a certificate of lawfulness</b>
<b>REASONS FOR REFERENCE TO COMMITTEE</b>	Member 'call in' (Cllr David Rose – significant public interest)

## **POLICIES**

This is an application for a lawful development certificate for the existing use of a residential property as a C2 Residential Institution. Therefore there are no planning policies to consider in the determination of this application.

## **CONSULTATIONS**

**Legal and Democratic Services:** The application forms relate to the property known as 31 Low Street Haxey which Esland Care wish to use as a residential setting for children. The current designation of the property is Class C3 under the Town and Country Planning (Use Classes) Order 1987 (as amended). In particular the current status of the property is C3(a) – use as a dwelling house by a single person or by people to be regarded as forming a single household). Esland Care has resubmitted their application having taken on board the previous comments made by this authority. We have also had the outcome of The Old Barn at Epworth. This issue has been the subject of case law and in particular the case of North Devon District Council -v- Secretary of State for Transport, Local Government and The Regions 2003 and is the subject of the Planning Guidance Note 2012, Appendix 1, Planning Permission for Children's Homes C2 or C3.

They have supplied an advice note from Counsel, John Barrett. This relates to a different property but the facts are similar and in looking at his conclusion on page 34 that was his conclusion, albeit on that case. However, both Emery Planning and John Barrett agree that this question is one of fact and degree and is to be decided on a case by case basis taking into account the above legislative framework.

However, in order to decide whether it is a material change of use, it is a conclusion that can only be drawn after looking at the individual facts of the case. The way in which the residential unit is run is outlined in section 3 and section 5 of the planning statement.

Therefore, it will be a planning judgment as to whether this reflects a material change from the set up that we would find in a property which would identify as fitting under Class 3.

It is for the applicant to prove the case and in the absence of any evidence of our own, or evidence from others to contradict the applicant's evidence or make it less than probable, there is no good reason to refuse the application if the statutory test has been met. We have to be satisfied that the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'. On this occasion it is a matter for your planning judgement whether you are satisfied that the evidence provided in terms of whether it is a material change of use fulfils the test and whether the application can be granted.

Following receipt of additional information the advice remains the same.

## **PARISH COUNCIL**

Objects on the following grounds:

- the works have been undertaken to the dwelling despite the parish council objecting to previous applications at this site
- an important element is the needs of the clients
- North Lincolnshire Council Social Care should be consulted on this proposal
- the interim planning policy on care homes should be applied to this proposal
- the applicant has failed to provide sufficient evidence as to the potential impacts on neighbouring properties
- this is a material change of use
- an assessment should be carried out on the following:
  - the nature, frequency and timings of vehicle movements/other comings and goings
  - parking arrangements and their enforcement
  - types of vehicles provided to the premises for the use of residents and carers – multi-passenger vehicles, ambulances etc
  - ancillary staff – cleaners, gardeners etc
  - the number/nature/frequency of deliveries to the premises
  - arrangements for visitors for the residents and their vehicles
  - arrangements/patterns in respect of attendance at the property of external people
  - average length of residents stay
  - turnover of residents

- emergency arrangements
- Haxey has limited facilities and limited linkages to larger urban centres
- issues with the mixing of the children with local residents and the community
- antisocial behaviour issues
- this is a business venture
- this is not a family unit but a business not requiring staff to live on site as a household but to be present to perform the functions of their employment
- the site operates a shift-working system
- the carers do not reside permanently and therefore cannot be considered as a household
- the lawful certificate should be refused.

## **PUBLICITY**

This application has been advertised via the weekly list on the council's website. Eleven letters of objection have been received raising similar issues to those raised by Haxey Parish Council, together with the following issues:

- the number of cars visiting the site is excessive for a residential area
- insufficient parking
- impact on residential amenity through noise and general disturbance
- busy road
- not a secure location
- the development should be located in a different settlement
- inaccuracies within the supporting information
- the pub car park has been used as additional parking
- social and behavioural difficulties associated with the residents.

Following receipt of further information, five additional letters of objection have been received (all from individuals who have previously objected) which raise the following issues:

- the applicant has complete disregard for the planning system
- obstructions with parking
- it should remain in use as a private dwelling

- additional traffic generation
- supporting information is incorrect in respect of the number of children and carers
- additional noise and littering
- misleading supporting information
- use is creating additional on-street parking issues.

## **ASSESSMENT**

This planning application PA/2016/1610 from Esland Care, for a Certificate of Lawful Development to use an existing dwelling known as 31 Low Street, Haxey as a care home for two young people (C2 Use Class), was submitted on 11 October 2016. This is a further application for a Lawful Development Certificate at this address. The previous two applications sought to establish a small children's home (Use Class C3(b)); the previous two had the references of PA/2016/1255 and PA/2016/505 respectively and were refused planning permission. The previous applications were refused on the grounds that the applicant failed to demonstrate to the satisfaction of the local planning authority that the use proposed falls within Class C3(b). This application was deferred at the planning committee meeting on 8 February 2017 following receipt of additional information from the applicant.

The current authorised use of the property is C3(a) within Class C3 Dwelling Houses 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'). The property was designed and built as a six-bedroomed dwelling. This application made under Section 191 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of Existing Use or Development seeks confirmation that the use of 31 Low Street, Haxey, Lincolnshire as a care home for two young people (C2 Use Class) is not materially different to the property's lawful use as a Class C3 dwelling house and therefore does not require planning permission.

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, on 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. In addition there is no requirement to apply the interim planning policy on residential care homes.

However, the local community is aware of the application and 11 letters have been received objecting to the application. An additional five letters of objection have also been received. A number of these letters of objection raise issues relating to the use of the building as a children's home as constituting inappropriate development in a rural community, the impact on residential amenity, integration issues with the local community, the potential impact on local services and amenities, and highway issues. However, these matters are not material to the application to be considered. A number of these letters of

objection have questioned whether the use is lawful and whether it is to operate as a business within a residential area.

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 or further clarification is sought from the applicant. 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. It believes that this dwelling house operates as a business venture and constitutes a material change of use.

**The main issue in the determination of this application is whether the development is lawful.**

### **Lawful development**

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. In their supporting statement the applicant states that they agree with the council that the established use of the dwelling is C2 (Residential Institution); however, the applicant does not consider that there is a material difference in planning terms between a C3 and C2 use.

The supporting statement sets out the case on the part of the applicant. It originally stated that two children reside at the property and are cared for by two main carers. These carers stay at the home for four days and nights a week; these carers are supplemented by a small team of additional carers who work shifts to provide continuity of care. The previous staffing arrangement consisted of 8–12 members of staff who work in teams of three in a shift pattern of two days on and four days off, together with a manager who works various times over the week. The applicant confirms that the use of the dwelling would be very similar in character to a 'normal' dwelling of this size with similar activities and vehicular trips taking place. Semi-rural locations are chosen as they are considered to provide the most positive outcomes for the children who are cared for. This application therefore seeks confirmation under Section 191 of the Town and Country Planning Act 1990 that the existing use of 31 Low Street, Haxey as a care home for three children/young people (plus care staff) would not require planning permission.

The additional information received by email on 8 February 2017 states that since 23 December 2016 there have been three children residing at the home and from the outset it was registered with Ofsted for a maximum of three children. The number of staff has been reduced to 11 with two primary carers who work four days per week each, a manager working Monday to Friday 9am to 5pm, a deputy manager and two team leaders (one of whom is always on shift and who is at the home overnight), five care workers who work a two-day on four-day off rota pattern; giving a total of 11 staff in rotation, including the manager. (This is one fewer than set out in the application submission.) This staff rotation model requires three staff sleeping at the home overnight.

Attached to this supporting statement are three documents which include an appeal decision, case law (North Devon Case) and a barrister's opinion. In the case of North Devon it was concluded that despite there being a change of use between Classes C3 and C2 such a change was not material and planning permission was therefore not required.

The barrister's opinion concludes that they failed to see that the use of the dwelling as a residential care home for up to four young people would have material planning impacts. It is therefore based on the facts of the case, the information presented with the application and a matter of fact and degree in terms of whether a change of use is material.

The site is a six-bedroom dwelling with gardens to the front and rear within a predominantly residential area, located within the settlement boundary for Haxey. The applicant has registered with Ofsted, the relevant body for registration to look after three children. Ofsted registers different specific categories of children's home which provide differing levels of care. The plans show that there have been no structural adaptations or alterations required to the property to facilitate its C2 use. Details of the staffing arrangements have been included with the submission. The information submitted confirms that there will be two main carers who will reside at the home four days and nights a week and will be supported by 8 to 12 members of staff working in teams of three working two days on and four days off.

Class C2 uses are defined as:

- use for the provision of residential accommodation and care (other than use within Class C3 (Dwelling Houses)).

'Care' in Class C2 is defined as including the personal care of children.

It is considered that the current lawful use is as a dwelling house (C3) and that the proposed use falls within Class C2. No external or internal structural changes would be made. The key question is whether, on the evidence provided, the proposed use would be likely to constitute a 'material change of use' and therefore constitute development under Section 55 of the Town and Country Planning Act 1990. If the current lawful use is C3 then the question is whether the change from conventional dwelling house to the care provision proposed in the application gives rise to land use changes that would be regarded as 'material' thereby triggering the requirement to obtain planning permission.

It is considered that the information submitted with the application is sufficient and establishes that the proposal is a Class C2 use but that the proposed movement between the two use classes, and the proposed use, is not considered material in this case. This assessment has been made by comparing the existing use of the property, which is a C3 dwelling house with six bedrooms, with the characteristics and activities associated with its proposed use for the care of three children/young people. The element of care involved with the occupation of the dwelling by two children/young people would be consistent with the level and nature of a C3 use of this size of dwelling and a certificate for the C2 use should therefore be issued as it has been demonstrated that no material change of use has occurred. If it then transpires that the proposal is not operated in specific accordance with the certificate and is of a greater fact and degree then the council would need to re-assess at that juncture whether the use required permission.

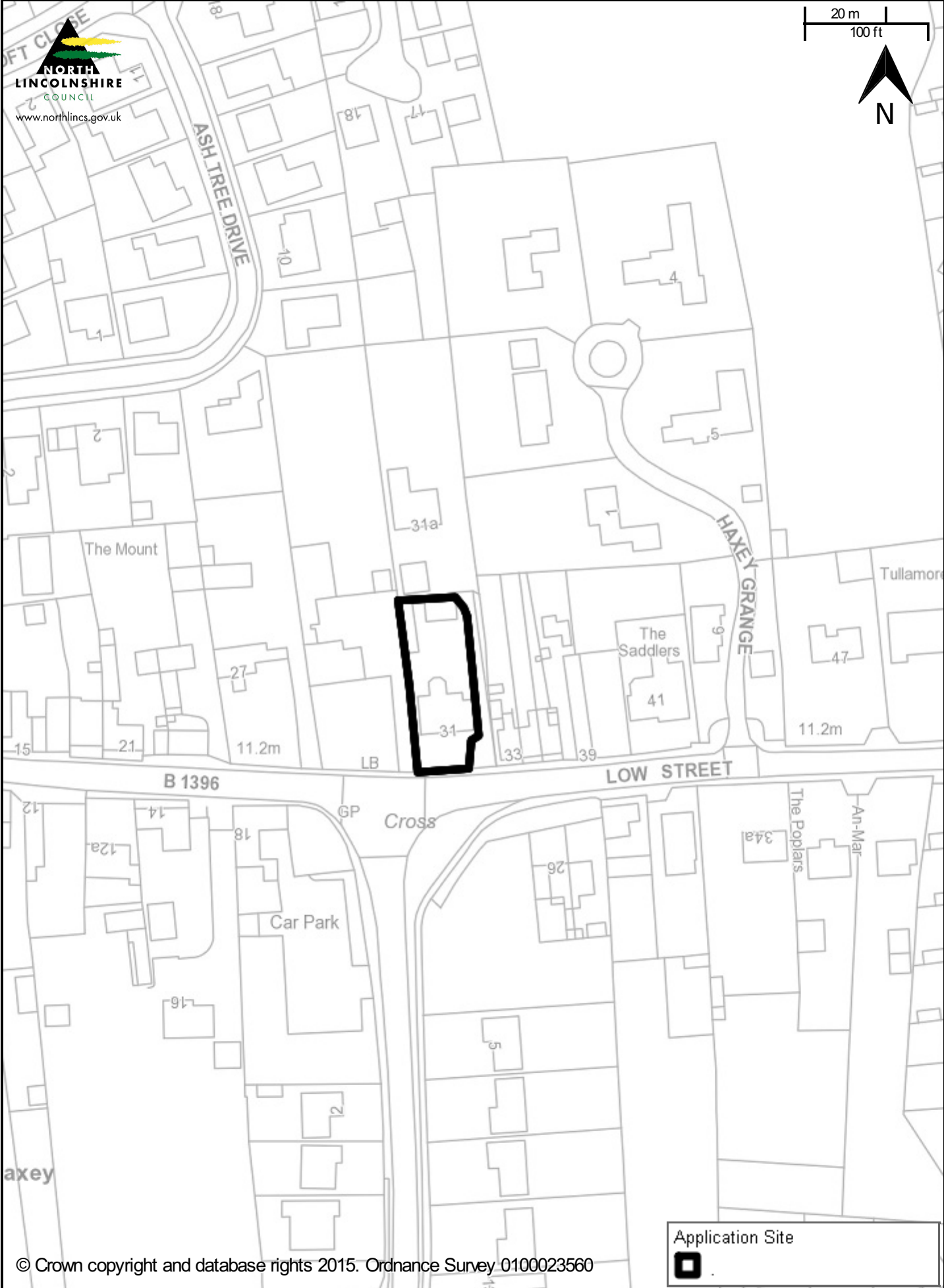
## **RECOMMENDATION**

### **Issue a lawful development certificate for the following reason:**

After considering the additional information, the applicant has demonstrated to the satisfaction of the local planning authority that the existing use of the property falls within Use Class C2 and no material change of use has taken place.

**Informative**

In determining this application, the council, as local planning authority, has taken account of the guidance in paragraphs 186 and 187 of the National Planning Policy Framework in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the area.



Application Site  


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PA/2016/1610

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Scale @A4 1:1250

DN9 2LE

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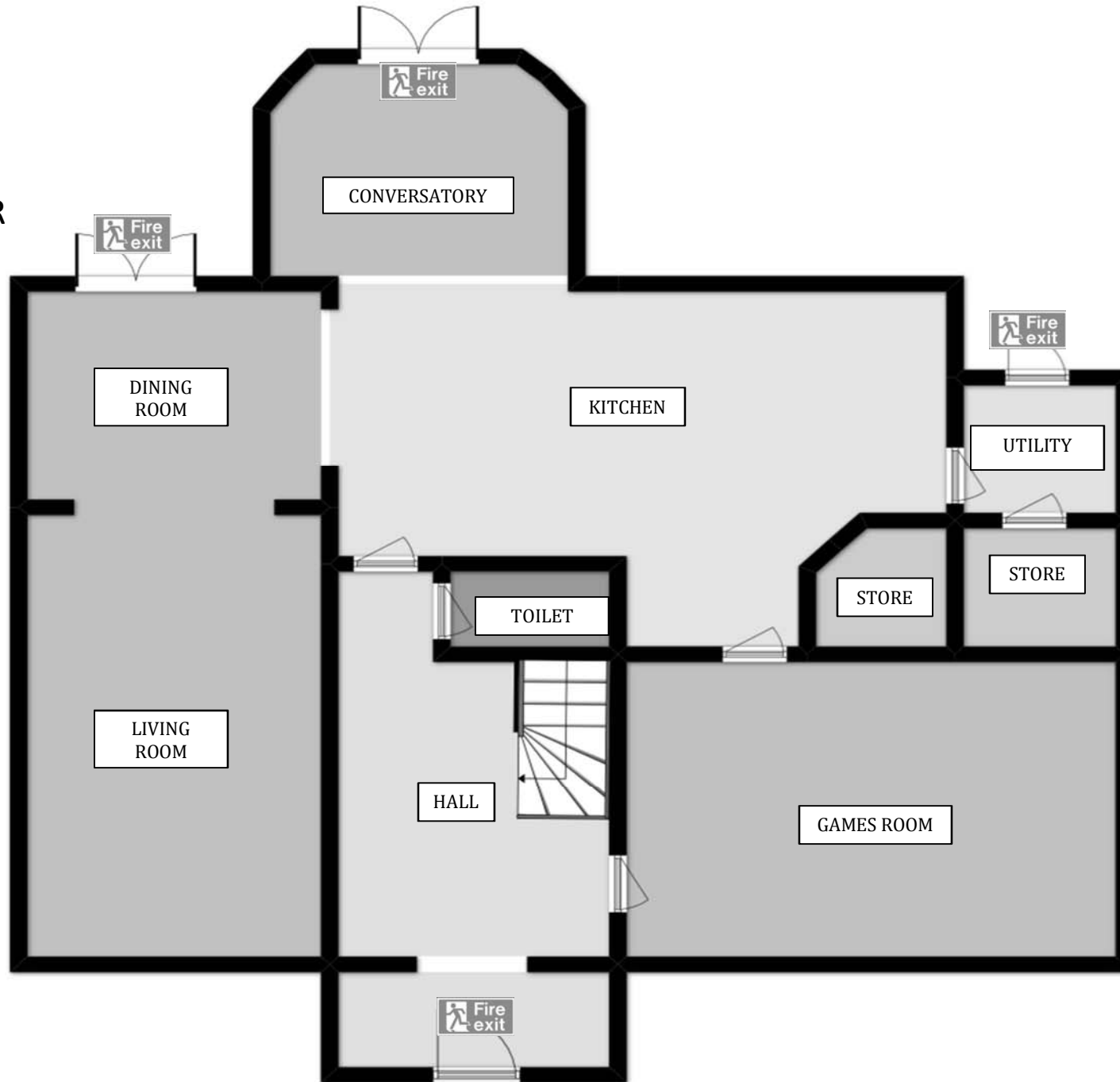


# PA/2016/1610 Floor Plans

NOT TO SCALE

## Mulberry Lodge- Floor Plan

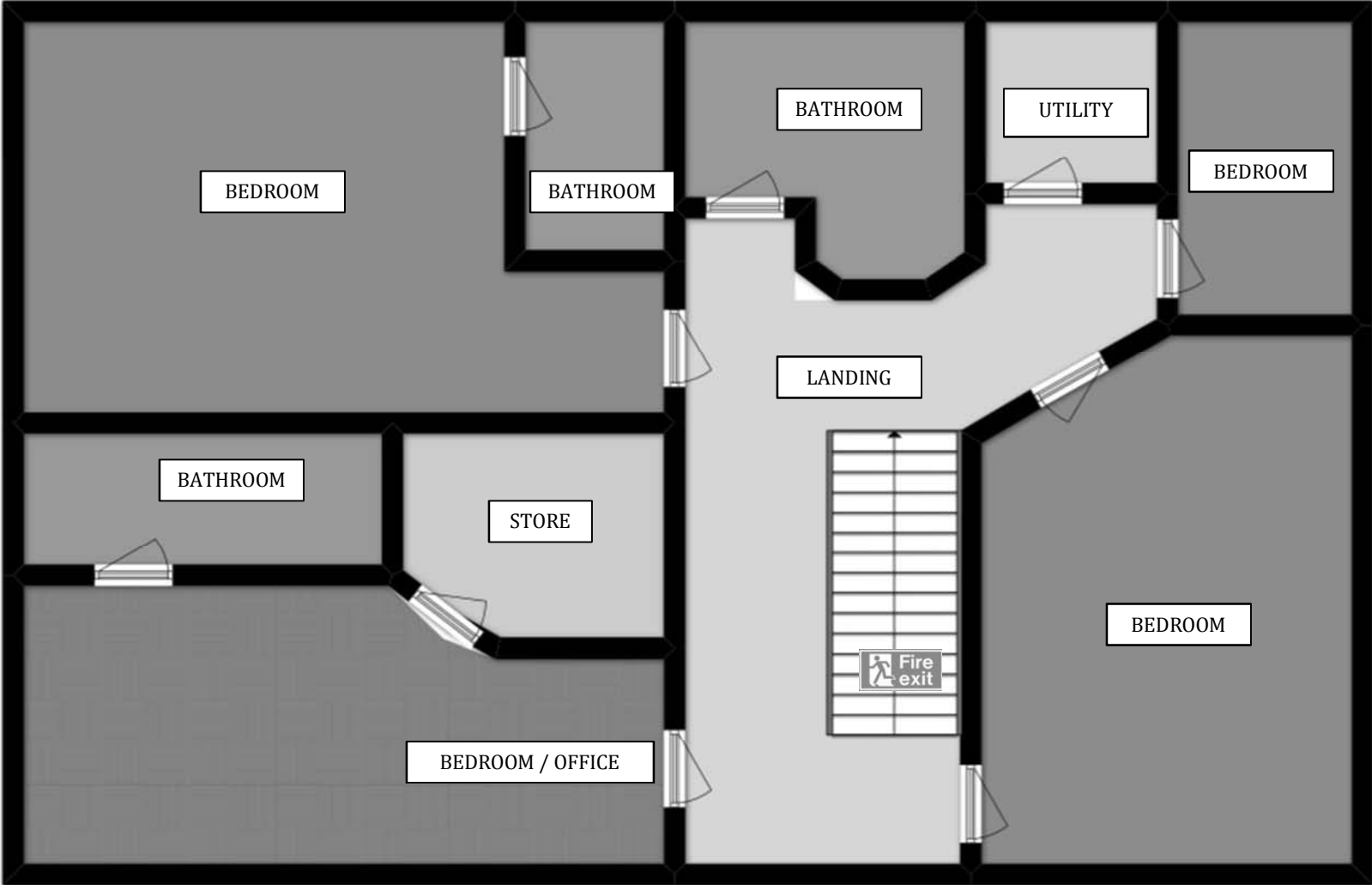
GROUND FLOOR



PA/2016/1610 Floor Plans

NOT TO SCALE

FIRST FLOOR



PA/2016/1610 Floor Plans

NOT TO SCALE

SECOND FLOOR

