Planning Inspectorate

Appeal Decision

No Site Visit Made

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2025

Appeal Ref: APP/A4710/X/24/3352795
The Old Vicarage, Church Lane, Pellon, Halifax, Calderdale HX2 0EF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") against a refusal to grant a certificate of lawful use or development ("LDC").
- The appeal is made by Chris Kershaw of Restorative Social Care Services against the decision of Calderdale Metropolitan Borough Council.
- The application ref 24/00770/192, dated 31 July 2024, was refused by notice dated 26 September 2024.
- The application was made under section 192(1)(a) of the 1990 Act.
- The use for which a LDC is sought is "use of a (3a) dwelling as a children's home for up to three children, with a manager and three carers, two of whom will sleep overnight, working on a rota basis (C2)".

Decision

1. The appeal is allowed, and attached to this decision is a LDC describing the proposed use which is found to be lawful.

Preliminary Matter

2. The planning merits of the proposed development are not relevant to this appeal. Therefore, a site visit was not necessary as it would not aid the decision-making process. I informed the parties of this before I determined the appeal.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC for the proposed development was well-founded.

Reasons

4. For a LDC to be granted under s192 of the 1990 Act, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the use or operations described would have been lawful on the date of the application.

5. The appeal site consists of a detached two-storey dwelling that falls within Class C3(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended) ("UCO"). It is proposed to change the use of the dwelling to a children's home. The children would be looked after 24-hours a day by carers who would work on a rota basis and a manager.

6. The main parties agree that the proposed use would fall within Class C2 of the UCO. I have been directed to Case Law[1] on this matter which states that carers who do not live but who provide, not necessarily through the same person,

[1] North Devon District Council v FSS & Southern Childcare Ltd [2003] EWHC 157 (Admin)

continuous 24-hour care cannot be regarded as "living together" for the purposes of Class C3(b) and therefore, such a use would fall within Class C2. I have no reason to disagree with this assertion.

7. The Town and Country Planning (General Permitted Development) (England) Order 2015 does not allow a permitted change of use from Class C3a to Class C2. However, "development" is defined in s55(1) of the 1990 Act as including *"the making of any material change in the use of any buildings or other land"* [my emphasis]. Consequently, a change of use to a different Use Class would only amount to development and require planning permission if it is "material".

8. There is no statutory definition of "material change of use". However, the Planning Practice Guidance[2] states that it is linked to the significance of a change and the resulting impact on the use of land and buildings. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously. Whether a material change of use has taken place is a matter of fact and degree and will be determined on the individual merits of a case.

9. The matter in dispute is therefore whether the proposed development would result in a material change of use.

10. Up to three children would live at the property. Two carers would work at the property on a rota basis sleeping overnight, while a third carer and a manager would be at the property most days between 9am and 5pm. There would be no more than four staff on the premises at any one time, except at 10am when the changeover of the overnight carers would occur (which would last approximately 15-30 minutes). Social services and OFSTED would visit the property, but this would be very infrequent. Depending on the individual children living at the property, there may be occasional visits by other social workers and visits by family members and friends. If the children attend school, there would be trips to and from their place of education, as well as trips for social events and shopping.

11. A family of two adults and two children previously occupied the dwelling. The appellant has provided information regarding the estimated weekly movements of this family and weekly movements for the proposed Class C2 use. From the information before me, I am satisfied that the weekly comings and goings of the proposed Class C2 use would not be materially different to the movements associated with the property's last use as a family dwelling. Furthermore, with five bedrooms, the dwelling could be occupied by a large family with significantly more comings and goings than the proposed Class C2 use.

12. The children's home seeks to replicate as closely as possible a family environment. The children would live at the property long-term. It would not be a half-way house or emergency housing for children and therefore, the children would likely live there for many years. The carers would be responsible for the day-to-day needs of the children and provide support with their daily routine. The children would engage in activities, would help with domestic chores, and would either attend school or be home-schooled via an online tutor. Shared meals would be prepared, or the children would be able to make their own food and drink. As such, I am satisfied from the information before me that the activities associated with the proposed Class C2 use would not be materially different to a family occupied dwelling.

[2] Paragraph: 011 Reference ID: 13-011-20140306 When is permission required? Planning Practice Guidance

13. The existing dwelling comprises three reception rooms, a kitchen, utility room and shower room to the ground floor, and five bedrooms and a bathroom to the first floor. Each child would have their own bedroom, with the remaining two bedrooms occupied by a carer. Except for the bedrooms, the children, carers and manager would have free and shared access of the remainder of the property, which would not be materially different to a family occupied dwelling.

14. There would be no internal or external structural alterations to the building, and the garden and off-road parking areas would be retained. As such, the external appearance of the existing dwelling would be unchanged. OFSTED requires the provision of locks on bedroom doors, internal fire doors and internal emergency lighting. However, these would be minor changes that would not alter the character of the building's occupation. Furthermore, the changes would not be discernible from the exterior, so perceptions regarding the use of the property would not change.

15. As a result, I am satisfied that, as a matter of fact and degree, the proposed development would not amount to a material change of use from Class C3a to Class C2 of the UCO. As such, planning permission would not be required for the proposed change of use as it would not amount to development by virtue of s55(1) of the 1990 Act. Consequently, on the balance of probabilities, the proposed development would have been lawful on the date of the application.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a LDC for the use of a (3a) dwelling as a children's home for up to three children, with a manager and three carers, two of whom would sleep overnight, working on a rota basis (C2) is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in s195(2) of the 1990 Act.

A Berry

INSPECTOR

Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 31 July 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed change of use from Class C3a to Class C2 as a children's home for a up to three children with a manager and three carers, two of whom will sleep overnight on a rotational basis would not constitute a material change of use. The proposed change of use, therefore, does not require planning permission as it does not amount to development by virtue of Section 55 of the Town and Country Planning Act 1990 (as amended).

Signed

A Berry

INSPECTOR

Date: **05 August 2025**
Reference: APP/A4710/X/24/3352795

First Schedule

Use of a (3a) dwelling as a children's home for up to three children, with a manager and three carers, two of whom will sleep overnight, working on a rota basis (C2)

Second Schedule

The Old Vicarage, Church Lane, Pellon, Halifax, Calderdale HX2 0EF

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").

It certifies that the use/operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was/were not liable to enforcement action, under Section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **05 August 2025**

by A Berry
Land at: The Old Vicarage, Church Lane, Pellon, Halifax, Calderdale HX2 0EF

Reference: APP/A4710/X/24/3352795

Scale: Not to Scale