



Appeal Decision

Site visit made on 7 January 2026

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2026

Appeal Ref: APP/C1055/W/25/3374973

34 St Cuthberts Road, Derby DE22 3JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Larshy Cummings against the decision of Derby City Council.
- The application Ref 25/00914/FUL was approved on 12 September 2025 and planning permission was granted subject to conditions.
- The development permitted is change of use from a dwelling house (Use Class C3) to a residential children's home for a maximum of two children (Use Class C2).
- The conditions in dispute are numbers 1, 3, 4 and 5. These conditions state the following:
- **Condition 1:** *The development hereby permitted shall begin before the expiration of three years from the date of this permission. Once implemented the use is permitted for a maximum of 12 months from the date of implementation.*
- The reason given for the condition is: *As required by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and the temporary 12 month period is granted to enable the Local Planning Authority to assess the operation of the use and its impact on the immediate locality and the residential amenity of neighbouring residents.*
- **Condition 3:** *Within 2 months of the implementation of this use, a management plan shall be submitted to and approved in writing by the Local Planning Authority which deals with the operation include measures such as staggering staff changeovers and implementing appointment systems to ensure that staff or professionals do not attend simultaneously, thus preventing undue disturbance or parking issues. The management plan shall also include details of the manager(s) at the care home to ensure that local residents can contact those individuals to address any concerns they may have with the operation of the use. The management plan shall be implemented, updated when required and retained for the life of the development.*
- The reason given for the condition is: *To enable the local planning authority to maintain control over the proposed use, to safeguard the amenities of the surrounding area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.*
- **Condition 4:** *The car and cycle parking arrangements for the site as shown on the approved Parking Management Plan 29/05/2025 shall be available on first use and retained as such for the lifetime of the development. The cycle parking shall also include parking specifically for the young people living at the property.*
- The reason given for the condition is: *In the interests of the site's operation, amenity, and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.*
- **Condition 5:** *Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 2015 (as amended) the property shall be used solely for the purposes of a children's home, as defined by Class C2 of that legislation, and for no other purposes whatsoever. Proposals to use the property for any other purpose within that class shall not take place unless a separate formal planning application has first been submitted to and approved in writing by the Local Planning Authority. The use hereby approved shall accommodate a maximum of 2 children and 2 carers within the site at any one time (subject to staff change over and other cross over times) and this arrangement shall be retained as such for the life of the development.*
- The reason given for the condition is: *To enable the local planning authority to maintain control over the proposed use, to safeguard the amenities of the surrounding area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.*

Decision

1. The appeal is allowed in part and the planning permission 25/00914/FUL at 34 St Cuthberts Road, Derby DE22 3JW granted on 12 September 2025 by Derby City Council is varied by the removal of Condition 1 only and substituting it with the following condition:
 - 1) *The development hereby permitted shall begin before the expiration of three years from the date of this permission.*
2. The appeal is dismissed in part in relation to Conditions 3, 4 and 5.

Preliminary Matters

3. I have utilised the description of development as given in the decision notice. This has been done in the interests of conciseness, as the description provided in the application form contained a significant amount of superfluous information.
4. Planning permission has already been granted for the change of use from a dwellinghouse (Use Class C3) to a residential children's home for up to two children (Use Class C2). This appeal arises solely in relation to several of the conditions attached to that permission. As the change of use itself has been approved by the Council, the purpose of this appeal is not to reconsider the merits of the development or any concerns raised for that specific change of use, but to address the contended conditions imposed.

Main Issue

5. The main issue is whether conditions 1, 3, 4 and 5 meet the tests set out in the National Planning Policy Framework (the Framework) for imposing conditions, having regard to the living conditions of neighbouring occupants, highway safety, and bicycle parking requirements.

Reasons

Condition 1

6. Paragraph 57 of the Framework notes that planning conditions should be kept to a minimum and only imposed where they meet six tests. The Planning Practice Guidance allows that temporary permissions may be appropriate in some circumstances, including where a trial run is needed to assess the effect of the development on the area.
7. Condition 1 requires the permitted development to commence within three years of the date of the permission. However, the principal concern in the appeal against this condition relates to the Council's decision to impose a 12-month temporary permission. The Council contends that a temporary period would allow the use to commence and provide an opportunity for the operator to demonstrate that the development can be managed in a manner that avoids any adverse impact on the living conditions of neighbouring occupiers.
8. The proposed development would accommodate a maximum of two children, supported by two members of staff which would be present both during the day and overnight, with occasional visits from an additional staff member. This level of activity and overall occupancy is, in my view, comparable to that which could

reasonably be expected from a typical family occupying the property in its original residential use.

9. In terms of vehicle movements to and from the appeal site, the property would operate in a manner broadly comparable to a Class C3 residential dwelling. A typical family home may generate several vehicle trips associated with members of the same household. In this case, the principal difference would be the routine transition of staff at the beginning and end of their shifts. However, this pattern is analogous to family members leaving for and returning from work each day.
10. If the property were still occupied as a family dwelling with a similar number of residents, it is reasonable to expect a comparable level of vehicle activity and associated noise from both adults and children. From a community-safety perspective, there is no certainty that occupation by a family unit would eliminate the potential for crime or anti-social behaviour. There is no substantive evidence before me to demonstrate that a children's home of this modest scale would generate impacts materially different from those arising from the property's former use as a family dwelling.
11. I am therefore of the view that the stipulation of the 12-month temporary permission of Condition 1 is unnecessary and unreasonable. Accordingly, the 12-month temporary permission element of the condition is not necessary to protect the living conditions of neighbouring occupants. As such, the development would not be in conflict with Policies GD5, H13 and E24 of the City of Derby Local Plan Review (saved policies).

Condition 3

12. Condition 3 requires the submission of a management plan, which focuses on measures to deal with the staggering of staff changeovers, the implementation of appointment systems to ensure that staff do not attend simultaneously and the contact details of an appropriate staff member. In my assessment of the wording of this condition, this would ensure that staff transitions at the end or start of their shifts would avoid the potential for disturbance, congestion or impact upon highway safety.
13. The appellant argues that the condition is unnecessary and unreasonable, noting that the highway authority raised no objection to the proposal and did not recommend any conditions. However, decision makers are entitled to reach a different conclusion from their consultees where this is necessary to prevent unacceptable harm. The appellant also contends that the operational management of the approved children's home falls outside the scope of planning control and is instead governed by other regulatory regimes, such as Ofsted.
14. Nevertheless, the requirement for a management plan would provide the Council with confirmation that the authorised use can operate without causing undue disturbance, congestion, or adverse effects on highway safety. These considerations are relevant to planning. The appellant further alleges that neighbouring properties on St Cuthberts Road rent out parking spaces in relation to this condition and Condition 4. Individuals are entitled to rent out their parking spaces where they have additional driveway area beyond their needs. The identity of a vehicle's owner has no bearing on the planning considerations at hand. Consequently, this contention attracts little weight in the context of this appeal,

particularly where it is clear from the evidence before me that several vehicles would be required at the appeal site due to the staffing arrangement permitted.

15. The appellant also questions the enforceability of Condition 3, suggesting that the Council would face difficulties in monitoring compliance with any approved management plan. However, the details submitted under this condition would require the Council's agreement. Consequently, the Council would be able to assess whether the operational practices set out in the management plan were being followed. In this context, I am satisfied that the condition is capable of effective monitoring and enforcement.
16. The appellant argues that the Council has provided no clear guidance on what would constitute an acceptable management plan and, as a result, considers the condition to be unreasonable. However, the condition explicitly identifies the matters to be addressed, including measures for staggering staff changeovers, the use of appointment systems, and the provision of contact details for an appropriate staff member. In my view, these requirements are sufficiently clear, and the condition is therefore reasonable.
17. Overall, I therefore conclude that Condition 3 is reasonable and necessary and would meet the six tests as outlined in the National Planning Policy Framework (the Framework) in the interests of protecting the living conditions of neighbouring occupants and highway safety.

Condition 4

18. Condition 4 relates to vehicle and bicycle parking. It requires that the arrangements set out within the Parking Management Plan are in place from the first use of the approved development and retained for its lifetime. The decision notice identifies the Parking Management Plan within the list of approved plans under Condition 2. Although this results in a degree of repetition, the inclusion of Condition 4 provides clarity and ensures that this important aspect of the scheme is implemented and maintained.
19. The appellant questions the relevance of this condition, noting that on-street parking in the area is restricted to a maximum stay of two hours. Although St Cuthberts Road was not particularly busy at the time of my site visit, I am mindful of the site's close proximity to the Royal Derby Hospital. It is reasonable to assume that the surrounding streets are used by visitors to the hospital, many of whom are likely to remain for no longer than the permitted two-hour period. By contrast, staff at the appeal site would be present for significantly longer periods during their shifts, of which the application form notes that these would be for 12-hour shifts. Accordingly, the provision of on-site parking is both relevant and necessary to ensure the effective and uninterrupted operation of the approved use.
20. The appellant contends that Condition 4 is unreasonable because it applies solely to this property, despite the wider area experiencing significant parking pressures and no other dwellings being subject to such a requirement. However, while the appeal property would operate in some respects similarly to a family home, its use would generate regular and predictable vehicle movements associated with staff arriving and departing in accordance with shift patterns, alongside visits from other individuals on a less frequent basis. This pattern of activity differs materially from that of the majority of properties on St Cuthberts Road, which function as

conventional family dwellings and have not sought permission for a change of use. In this context, the imposition of Condition 4 is justified.

21. To conclude, Condition 4 is reasonable and necessary and would meet the six tests as outlined in the Framework in the interests of protecting the living conditions of neighbouring occupants and ensuring that appropriate bicycle parking and highway safety is achieved.

Condition 5

22. Condition 5 restricts the use of the appeal site to a children's home accommodating a maximum of two children and two carers, falling within Use Class C2 of the Town and Country Planning (Use Classes) Order 2015 (as amended). The condition also makes clear that any proposal to use the property for another purpose within the same use class would require the submission of a separate planning application and the written approval of the Local Planning Authority before such a change could occur.
23. The C2 Use Class encompasses a wide range of uses beyond that of a small residential children's home accommodating a maximum of two children. Without the imposition of Condition 5, permission for this use would inadvertently allow other forms of institutional accommodation that may have a more pronounced impact on matters such as highway safety, operational efficiency, and the living conditions of neighbouring occupiers. In an area where parking provision is already limited and the surroundings are predominantly residential, any intensification or alternative C2 use could give rise to unacceptable effects in relation to these considerations.
24. The appellant also argues that the number of children accommodated within the property is governed by Ofsted regulations and that limiting occupancy to two children under Condition 5 may constrain any future flexibility that Ofsted might allow. However, my attention is drawn to the application form and the description of development, which clearly state that the proposal is for the care of two children. The accompanying details, including the specified bedroom arrangements, further reinforce that the scheme was expressly presented on the basis of accommodating two children. In this context, the restriction imposed by Condition 5 reflects precisely what was applied for.
25. The appellant argues that Condition 5 is not relevant to the development permitted and refers to an appeal decision at 17 Kimbolton Way¹ in support of this position. While that case also concerned an appeal against a condition imposed following the grant of planning permission, the circumstances between these two appeals differ. The condition under dispute in that decision was Condition 2, which related to a two-year temporary permission. It did not address, nor did the Inspector consider, any other conditions. This distinction is significant, and the cited decision offers limited assistance in relation to the matter before me. I have assessed this appeal on its own merits.
26. To conclude on Condition 5, this condition is reasonable and necessary and would meet the six tests as outlined in the Framework in the interests of protecting the living conditions of neighbouring occupants and ensuring that appropriate bicycle parking and highway safety is achieved.

¹ Appeal Ref: APP/F1040/W/25/3362275

Other Matters

27. The appellant notes overall that the collective effect of the conditions imposed constitutes a significant barrier to providing a home to the most vulnerable children in society. Planning permission has been granted. These children have been provided with a home on the basis that certain conditions are complied with to protect the living conditions of neighbouring occupants and highway safety, amongst other things. In my assessment of each contended condition, Conditions 3, 4 and 5 are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Conclusion

28. I find that the specific 12-month temporary time frame attached to Condition 1 fails to meet the tests as set out in Paragraph 57 of the Framework. The removal of this element of this specific condition and its effect upon the living conditions of neighbouring occupants would result in a development which would accord with the development plan. For the reasons set out above, the appeal against this specific condition raised in this appeal should succeed.
29. Conversely however, I find that Conditions 3, 4 and 5 do meet the tests as set out in Paragraph 57 of the Framework. For the reasons set out above, these conditions are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects in protecting the living conditions of neighbouring occupants and ensuring highway safety and its operational efficiency. These conditions therefore remain imposed.
30. This decision modifies the existing planning permission through the removal and substitution of Condition 1, so needs to be read together with the remaining conditions as set out in that decision.

J Smith

INSPECTOR