



Appeal Decision

No site visit made

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2026

Appeal Ref: APP/V4250/X/25/3360927

12 Eleanor Street, Wigan WN3 5AQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by SAFESPACE4U LTD against the decision of Wigan Metropolitan Borough Council.
- The application ref A/24/98116/LUCP, dated 31 October 2024, was refused by notice dated 23 December 2024.
- The application was made under section 192(1)(a) of the 1990 Act (as amended).
- The use for which a certificate of lawful use or development is sought is described as a children's care home for 1 child C2 Use.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application under section 192(1)(a) of the 1990 Act (as amended) seeks to establish whether the proposed use would be lawful if instigated or begun at the time of the application. For the purposes of this LDC application, I will consider the development as described in the application form and thus whether the proposed change of use from Class C3(a) to C2 of The Town and Country Planning (Use Classes) Order 1987 (UCO) as amended, would be considered material in planning terms.
3. An LDC decision will rest on the specific facts of the case and the application of relevant and established case law. Planning merits do not form part of the consideration of an LDC appeal and thus are not relevant here. Consequently, as the determination of an LDC case is based on the evidence submitted, in this particular case it was not deemed necessary to carry out a site visit in these circumstances. Neither party has been prejudiced by this approach.

Main Issue

4. The main issue is whether Wigan Metropolitan Borough Council's refusal to grant an LDC was well founded. This turns on whether the proposal is a material change of use from the lawful use as a single dwellinghouse falling within Class C3(a) to Class C2 of the UCO. In considering these matters, the onus of proof falls on the appellant and the standard of proof is the balance of probability¹.

Reasons

5. From the evidence before me, the appeal site consists of a terrace property located on the eastern side of Eleanor Street in Wigan close to the junction with

¹ *Thrasyvoulou v SSE & Hackney LBC (No 1)* [1984] JPL 732

Wallgate (A577). The submitted plans indicate that the property consists of a sitting room at the front and a kitchen/diner to the rear at the ground floor level. At first floor there is a communal bathroom along with three bedrooms. Neither party disputes the current use is as a Class C3(a) dwellinghouse, however there is little evidence before me regarding the precise occupation of the property, i.e. the current number of occupants or whether the property is vacant.

6. The appellant indicates the property is to be used as a children's home in Use Class C2 (albeit it would be limited to one child aged 7 - 17 years old given the space) with adult supervision provided by carers on a 2:1 ratio, drawn from a pool of six carers for consistency. The carers do not permanently live at the property, with these members of staff working on a rota basis of two days on and four days off which includes providing nighttime supervision and sharing facilities. A registered manager is also on-site on an ad hoc basis Monday-Friday from 0900 to 1730 hours.
7. Both parties draw my attention to case law² where an LDC was sought for use as a dwellinghouse providing care for up to two children living together as a single household with care provided by up to two non-resident staff. In the *North Devon* case, it was held that, while both Classes C2 and C3(b) referred to care, the definition of care in Article 2 of the UCO restricted the personal care of children to Class C2.
8. The question is therefore whether there would be a material change of use. Section 55(1) of the 1990 Act sets out the definition of development. This includes the making of any material change in the use of any buildings or other land. A material change of use is not defined in any statute or statutory instrument and is a question of fact and degree³ to the circumstances of the individual case. 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.
9. The Council considered that the proposed change of use would be material, specifically the change to a Class C2 use would result in a change of character due to an increased day-to-day activity; the operation of the premises; and the physical alterations to the property. Although, it is unclear from the Council's reasoning why physical alterations to the property would be considered material, as none are proposed. The Council also contend there would be impacts from the proposal on the loss of family dwellings; local public service delivery; and the Council's ability to meet its own housing needs for children's homes.
10. As stated, there is a lack of evidence regarding the existing occupation of the appeal site. The Courts⁴ have found unless old and new uses fell within the same use class, section 192 required a comparison between the proposed use and the actual previous use, not a hypothetical range of activities which might have been included within a use of that type. As such, the comparison cannot be made in the present case, because there was no evidence about the precise nature of the previous use as a single family dwelling.
11. The appellant contends that the proposed use would be no different to the activities associated with a typical residential household. However, it is unclear

² *North Devon District Council v First Secretary of State and Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191

³ *Moore v SSCLG* [2012] EWCA Civ 1202

⁴ *Waltham Forest LBC v SSETR & Tully* [2002] EWCA Civ 330; [2002] JPL 1093

from the information before me, whether the levels of comings and goings and vehicular movements associated with the proposed use in respect to general daily trips would be akin to that of a C3(a) use. No Trip Rate Information Computer System (TRICS) data, or similar, has been submitted in which to contrast the existing use with the proposed use, in order to establish a baseline, from where a judgement on a material change of use could be made. Whilst assumptions have been made on theoretical journeys, these are based on an inflated occupancy at the property which has not been established.

12. Levels of activities between the existing and proposed uses could be very different depending on various factors, including but not limited to, the level of care required by the child. For example, was the child to be homeschooled this would provide significantly less trips than a twice daily school run. Conversely, children with higher and more specialised care requirements, such as those subject to Deprivation of Liberty Order (DoL) would require higher staffing levels, thus more frequent comings and goings including additional vehicle movements and parking at the site. Whilst the appellant has stated that this appeal site will not accommodate children who are subject to a DoL, this cannot be controlled through an LDC.
13. An LDC must be worded with precision, and it is not a vehicle to pose a general enquiry as to what might be lawful. It must relate to a specific proposed use. The appellant further contends that the LDC could be issued by amending the wording of the description, as follows: *"A Certificate of Lawful Development for a proposed use is sought, to establish the lawfulness of the use of the property as a children's home for a maximum of one child, with two carers sleeping overnight, working on a rota basis (Planning Use Class C2)."* Whilst this may provide a degree of precision required by an LDC, this does not form the description of development on the application form that is before me and is not what has been applied for. Were I to vary the wording of the LDC this would prejudice and cause injustice to the Council.
14. The proposal would also lose a family dwelling which may have a planning consequence in terms of the reduction in the number of dwellings available as housing stock. I have been presented with limited evidence as to the significant planning consequence of such loss. Nevertheless, this loss could also represent a material change of use. Furthermore, the Council indicate that the proposal has the potential to place further pressure on local public service delivery, with specific regard to its ability to meet housing needs for children's homes, particularly of those within the authority itself. The appellant has provided insufficient evidence in respect to these points raised.
15. Given the overall lack of adequate detail supplied by the appellant in respect to this specific site, it does not provide me with sufficient clarity and precision to enable me to understand exactly what is involved in the proposed change of use, thus contrary to the requirements of the National Planning Practice Guidance⁵ (PPG). As such, I must adopt a precautionary approach.
16. On the evidence that is before me, and, for the reasons outlined above, I am unable to conclude that the proposed use from Use Class C3(a) to Use Class C2 would not amount to a material change of use. At this stage, the appellant has

⁵ Lawful development certificates - Paragraph: 006 Reference ID: 17c-006-20140306

therefore not demonstrated, on the balance of probability, that the character of the proposed use would not be materially different to that of the existing lawful use of the property. Accordingly, it is not evident that the proposed use would have been lawful on the date the application was made.

Other Matters

17. Both parties have drawn my attention to several appeal decisions which the parties consider to be relevant to this current appeal. Whilst I would acknowledge there may be some similarities in the LDC decisions, I have not been presented with the full details of these cases. Also, some of these decisions are of some age, where the local and national policy framework may have changed since they were determined.
18. Nevertheless, a grant of a LDC is dependent on the appellant demonstrating, on the balance of probability, that the proposed use or development would be lawful. Therefore, the proposal before me is considered on the individual facts of the case and its compliance or otherwise with the provisions of the Act and UCO.

Conclusion

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the change of use from Use Class C3(a) to Use Class C2 is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Robert Naylor

INSPECTOR