



Appeal Decision

Site visit made on 27 April 2026

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 APRIL 2026

Appeal Ref: APP/M4510/X/25/3367491

136 Wingrove Road, Newcastle Upon Tyne, NE4 9BX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Viktoria De Giorgi against the decision of Newcastle Upon Tyne City Council.
 - The application ref 2025/0402/01/LDC, dated 16 March 2025, was refused by notice dated 7 May 2025.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is change of use from class C3 (dwellinghouse) to class C2 (residential institution).
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Application for Costs

2. An application for costs is made by Miss Viktoria De Giorgi against Newcastle Upon Tyne City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. For the avoidance of doubt, I make clear that the planning merits of the proposed change of use from dwellinghouse (Class C3) to residential institution (Class C2) are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded with particular regard to whether on the date of the LDC application the proposed change of use from class C3 (dwellinghouse) to class C2 (residential institution) would have been lawful if instigated or begun on that date.

Reasons

5. It is proposed to use an existing dwellinghouse as an Ofsted registered children supported housing facility falling within use class C2 (residential institution) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). The proposed use would comprise long term residential accommodation for two young persons supported by a dedicated team of four qualified staff members who would operate in rotating shifts to ensure round-the-clock care.

6. As outlined in the refusal notice, and the associated officer report, the Council concluded that the LDC application be refused because *'there are not any permitted development rights to go to use class C2 (residential institutions) from use class C3 (dwellinghouses)'*.
7. There is no dispute between the main parties that the proposal would fall within class C2 of the UCO, i.e., *'use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 Dwellinghouses, used as sole or main residences)'*. Moreover, there is no dispute between the parties that those children occupying the property would need 'care' as defined in Article 2 of the UCO. I have no reason to disagree with these common ground positions.
8. While it is correct that the evidence demonstrates that the proposal would fall within use Class C2 of the UCO, as distinct from the undisputed existing lawful use of the property as a class C3 dwellinghouse, it is not the case that this automatically means that planning permission is needed for such a proposal. In fact, the correct legal approach to assessing the proposal is in the context of section 55 of the Act which defines what is development. In particular, section 55(1) of the Act states that development includes *'the making of any material change in the use of any buildings or other land'* (my emphasis). Consequently, it is necessary for me to establish whether the proposal would amount to a material change in the use of the property/land.
9. In considering whether a material change of use would have occurred if the proposal was instigated or begun on the date of the LDC application, it is necessary for me to consider if there would be some significant difference in the character of the activities from what has lawfully gone on previously, as a matter of fact and degree.
10. The appeal property is a two-storey terraced property located within an established residential area. While there would likely be vehicular and pedestrian movements associated with the qualified staff arriving and leaving the appeal property on a rota basis, I do not find that such movements, or indeed any other activities associated with the proposal, would be materially more than those activities undertaken by a family occupying the property as a C3 dwellinghouse. In other words, I do not find that they would be on a scale that one could reasonably and objectively conclude, in this case, that it would give rise to material planning concerns or activities.
11. In my judgement, the property would essentially continue to function in a manner comparable to its lawful use as a C3 dwellinghouse. The nature of the proposed use in this case would not generate a level of noise, disturbance or comings and goings which would be incompatible with surrounding development. Moreover, there is no evidence to indicate that the proposal would have any material planning consequences from either an on-site car parking, or a development plan policy point of view.
12. Overall, and, on the evidence that is before me, I therefore conclude that use of the property by two young persons in need of care, and by up to four qualified staff working to a shift pattern, would not be materially different from the authorised use of the property as a C3 dwellinghouse. In other words, and, in relative terms, the proposal would not amount to a material change in the use of the building/land on the appeal site. It would not therefore amount to an act of development. Hence, the

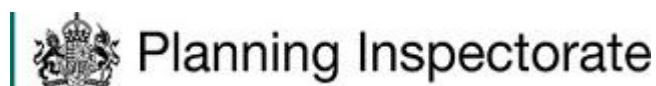
proposal would have been lawful if instigated or begun on the date of the LDC application.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for change of use from class C3 (dwellinghouse) to class C2 (residential institution) is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

D Hartley

INSPECTOR



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 16 March 2025 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 proposal would not amount to a material change of use of the property/land. It would not be an act of development as defined in section 55(1) of the Act. Therefore, it would have been lawful if instigated or begun on the date of the LDC application.

Signed

D Hartley

Inspector

Date: **28 APRIL 2026**

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First Schedule

Use of the property/land as class C2 residential institution by up to two young persons supported by a team of up to four qualified staff members operating in rotating shifts.

Second Schedule

Land at 136 Wingrove Road, Newcastle upon Tyne, NE4 9BX

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).

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, as amended, 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.

Plan

This is the plan referred to in this decision dated: **28 APRIL 2026**

by **D Hartley BA (Hons) MTP MBA MRTPI**

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Scale: Not to Scale

