



Appeal Decision

Site visit made on 20 January 2026

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 29 April 2026

Appeal Ref: APP/B0230/W/25/3375523

94 Butely Road, Luton LU4 9EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Godwin Dhilwayo of Endear Care LTD against the decision of Luton Borough Council.
 - The application Ref is 25/00318/COU.
 - The development proposed is a change of use from dwelling house (Use Class C3) to residential children's home (Use Class C2) to accommodate a maximum of two children under the age of 18 years old and the inclusion of a bin store and a cycle shelter.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has referred to caselaw, described as the North Devon District Council [2003] decision. Although a copy of this judgement was not submitted for my consideration, I have independently located and reviewed the decision¹. Accordingly, I have had regard to the judgement insofar as it is material to the issues before me.

Main Issues

3. The main issues are:
 - the effect of the proposed development upon the supply of family housing in the borough and the needs of children in care; and
 - whether or not the proposed development would support the use of sustainable transport modes.

Reasons

Supply of family housing and identified need

4. The appeal site comprises a two-storey end-of-terrace dwellinghouse located within a predominantly terraced residential street that is generally characterised by properties suitable for family occupation. The lawful use of the property is as a three-bedroom family dwelling and benefits from a detached garage and a rear garden. The proposed development seeks to change the use of the property to a C2 residential children's home providing long-term accommodation for a maximum of two children aged between 8 and 18. Care would be provided by one member of

¹ North Devon DC v FSS & Southern Childcare Ltd [2003] JPL 1191

staff present on site at all times, with a second staff member present only during shift changeovers. Across a 24 period, a total of four carers would operate on a rotating shift pattern to ensure continuous supervision and support.

5. The proposal does not involve any alterations to the exterior appearance of the dwelling, with the exception of the provision of secure cycle and refuse storage to the rear of the property. Internal modifications would be limited in nature and would include the conversion of the smaller third bedroom to a staff office and sleep-in room. In addition, it is proposed that the shared party wall would be upgraded with enhanced acoustic insulation to minimise noise transmission and safeguard the amenity of neighbouring occupiers.
6. Policy LLP15 of the Luton Local Plan 2017 (LLP) states that provision will be made to help meet the housing needs of Luton, ensuring that the size, type and tenure provided reflects the identified housing needs requirements of the area in the Strategic Housing Market Assessment (SHMA). It states that any demolition and redevelopment of existing housing to other uses will be permitted, provided that replacement dwellings are provided or there is an overriding need for other uses which provides benefits to the community which outweighs the loss of housing. Accordingly, if development would result in the loss of housing, it is necessary to balance the need for that development against the effect of that loss.
7. The Council has confirmed that, following the Government's update to the standard method for calculating housing need, Luton's annual housing requirement is approximately 1,082 dwellings per annum. When assessed against this requirement, the Council's most recent evidence indicates that it is able to demonstrate around 4.32 years of deliverable housing land. The Council has also stated that there is a particular need within the Borough for family-sized homes, reflecting the composition of local housing need. It is not disputed between the parties that the Council cannot demonstrate a five-year supply of deliverable housing, nor that provision of family-sized accommodation remains a recognised priority. The size, location and configuration of the house means that it would be suitable for family accommodation. There is no evidence before me that the property could not be used for this purpose.
8. The appellant has referred to the North Devon DC decision, as set out in the preliminary matters. The outcome of this decision held that children cannot form a household without the presence of a caregiver, and so a children's care home cannot fall within class C3 unless a caregiver is resident. As such, for a group to constitute a single household living together, the carers must reside within the building on a permanent basis. With reference to this case, the carers would only be present in a shift pattern. On this basis, the appellant acknowledges that the proposed development would constitute a material change of use from a use falling within Class C3 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 (as amended), to a use within Class C2 of the same Order.
9. Notwithstanding this, the appellant also considers that the proposed development would operate as a domestic-style, managed home environment for vulnerable children. They emphasise that the property would largely retain its domestic layout and visual appearance, and that the levels of activity would be indistinguishable from that of a typical household. Whilst I accept that many aspects of the property's physical form and visual character would remain unchanged, the nature of the occupation would differ materially. In particular, carers would attend the property on

a frequent and continuous shift basis, operating across day, evening and night periods. I am therefore not persuaded that the resulting levels and patterns of activity would be sufficiently comparable to those associated with a conventional family dwelling to conclude that no material effects would arise. As such, having regard to the aforementioned caselaw, I am satisfied that the proposal would amount to a material change of use and that the proposed development would result in a net reduction in smaller family housing.

10. No evidence has been provided to demonstrate that a replacement dwelling of a comparable size and type would be delivered elsewhere to offset the loss of this form of smaller family housing, for which the Council has confirmed there is a significant need. In the absence of such mitigation, the proposal would result in a net reduction in family housing, contrary to the Council's housing policy objectives. As such, this consideration weighs against the scheme.
11. I recognise that the appellant has consulted with the Council's Children's Services Team, however, they were not able to provide a consultation response within the application timeframe. In any event, the appellant has referred to the Council's Joint Strategic Needs Assessment 2024 (JSNA) which states that there has been a 39 % increase in referrals for children from low-income households, and a steady upward trend in the number of children requiring specialist residential placements. The JSNA identifies a shortfall in locally available C2- class accommodation, noting that the current stock does not meet projected demand for children with complex needs beyond 2025.
12. The Council states that it is in the process of opening its own residential care homes and considers that there is no unmet local demand for additional residential care placements. However, the appellant has referred to the evidence set out in the Council's Accommodation / De-Accommodation Profile, which indicates that there are approximately 6 vacant C2 beds across all providers within the Borough, equating to a vacancy rate of around 12%. Notwithstanding this, it identifies that there is a persistent capacity shortfall of approximately 15 beds within Luton, indicating an ongoing structural gap between supply and demand. Furthermore, the Council's Children's Services Annual Statistics confirm that approximately 32% of children requiring care placements are currently accommodated outside the Borough. This reliance on out-of-borough placements suggests that local provision is insufficient to meet some proportion of identified need and that increasing local capacity could result in improved stability for children and cost savings on a per-child basis.
13. In any event, I am satisfied that the proposed development would contribute towards meeting an identified need for specialist residential accommodation which could provide benefits to the community. However, these benefits must be considered alongside the planning consequences of the development. The proposal would result in the loss of an existing three-bedroom dwelling, a form of smaller family housing for which there is a demonstrable and significant need within the borough, and for which no replacement provision is proposed. There is limited evidence before me to demonstrate that this specific site is the only, or most appropriate, location to meet the identified C2 accommodation need. It has not been adequately demonstrated that reasonable alternative options have been fully explored, where the development of specialist accommodation would not result in the loss of family housing.

14. In the absence of this analysis, I cannot be satisfied that the identified benefits outweigh the harm arising from the permanent loss of a family home. Consequently, while the need for specialist accommodation carries weight in the LLP15 Policy balance, it has not been demonstrated that the need for the proposed development clearly outweighs the loss of housing. This is of particular importance given that the Council is unable to demonstrate a five-year supply of deliverable housing, and that the provision of family-sized accommodation remains a recognised priority.
15. In conclusion, the proposed development would have a harmful effect upon the supply of family housing in the borough which would not be outweighed by the needs of children in care. No replacement dwellings would be provided, and it has not been demonstrated that there is an overriding need which outweighs the loss of housing, contrary to Policy LLP15 of the LLP. As such, it would fail to accord with local plan policies, contrary to LLP1 of the LLP.

Sustainability

16. Policy LLP31 of the LLP states that planning permission will be granted for proposed developments which meet the relevant criteria, which includes minimising the need to travel, providing sustainable transport choices, reducing road congestion and safety risks, providing cycle parking, and ensuring that the quality of the local environment is not compromised.
17. The appeal site is located within a well-established and well-connected residential area. It lies within close proximity to a range of day-to-day services and facilities, including schools, GP surgeries, pharmacies and local shopping areas. The site also benefits from good access to public transport, with nearby bus stops providing regular services to Luton town centre and the railway station. Secure, sheltered cycle storage would also be available to staff members. In addition, it is suggested that some staff members may be collected from their homes as part of their shift arrangements, which would further reduce reliance on private car use and help to mitigate any potential parking issues.
18. The Highway Authority has raised no objection to the proposal, with specific regard to the availability of parking. They have confirmed that the provision of one parking space, together with secure cycle storage, is acceptable in this location and for this scale of development.
19. While I recognise the Council's concerns that the proposed development could be used to accommodate children from neighbouring authorities, potentially resulting in additional travel for associated services and support staff, this concern must be considered in the context of the evidence before me. As discussed earlier, there is a recognised shortfall in the Council's provision of residential care placements, and a significant proportion of children are currently accommodated outside the Borough. In this regard, the proposed development is more likely to contribute towards meeting identified local need, rather than primarily serving children from outside the Borough. As such, the development would be consistent with the objective of reducing unnecessary travel and improving the sustainability of care provision.
20. In conclusion, the proposed development would support the use of sustainable transport modes, due to the accessible location, the encouragement of public transport use, and the provision of secure cycle parking. As such, it would comply

with the objectives of Policy LLP31 of the LLP and for this reason, would accord with local plan policies, in compliance with LLP1 of the LLP.

Other Matters

21. The appellant's fallback position is that the property could be used as a small house in multiple occupation or as a foster home accommodating up to three children without the need for planning permission. However, I am not persuaded that these are alternative uses that would result in the loss of a dwellinghouse from the housing stock. In any event, the use of the property in either of these scenarios would give rise to materially different physical and social effects when compared with the proposed development. As such, these potential fallback uses do not provide a direct or realistic comparison, nor do they, either individually or cumulatively, justify the proposed development.
22. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. The Act sets out the relevant protected characteristics, which for this appeal, includes age. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the Act. I acknowledge the negative impacts of dismissing the appeal insofar as it would not increase the availability of residential children's homes within Luton. Having due regard to this consideration and my findings of harm, my decision to dismiss the appeal is proportionate and necessary having regard to the well-established policy aims in the development plan to protect housing stock. Taken alongside the other considerations forwarded by the appellant, the PSED considerations would not outweigh the harm I have identified.
23. I have considered the proposal in the context of Article 8 of the Human Rights Act 1998, which protects the right to respect for private and family life. I recognise that the dismissal of the appeal may have implications for the Article 8 rights of children who could otherwise occupy the proposed residential children's home. However, Article 8 is a qualified right, and interference may be justified where it is in the public interest and proportionate. In this case, any interference arising from my decision is necessary and proportionate in the pursuit of the legitimate planning objectives reflected in the development plan and national policy. I am satisfied that these objectives could not be achieved by less intrusive means without undermining the public interest. Consequently, the dismissal of this appeal would not amount to a breach of Article 8.

Conclusion

24. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR