
Appeal Decision

Site visit made on 14 May 2026

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

an Inspector appointed by the Secretary of State

Decision date: 14 May 2026

Appeal Ref: APP/Z2315/X/25/3368969
109 Basnett Street, Burnley, BB10 3ES

- 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 Care Services To You LTD against the decision of Burnley Borough Council.
 - The application ref CEA/2025/0123, dated 5 March 2025, was refused by notice dated 16 April 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 use as a younger persons care home (C3 use).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed use as a younger persons care home 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

3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the proposal would amount to a material change of use thereby constituting development requiring planning permission.

Reasons

4. There is no dispute between the parties that the mid-terraced two-bedroom property can lawfully be used as a dwellinghouse as defined by class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO).
5. The proposal is to use the property for the care of one child (between 8-17 years old) on a 24 hour 7 days a week basis. It is stated that it would be to care for a child who has experienced an adverse childhood event(s). The appellant's supporting statement indicates that two trained staff members would '*typically be on site*' although this would be higher (up to three) during shift handover periods which would generally last about 15 minutes. The manager would attend for several hours daily to provide oversight, support the care team, and handle administrative responsibilities. Overnight, the second bedroom would be used by staff for sleeping and/or rest purposes.

6. The supporting statement goes on to say that *'occasional visits by staff from other facilities may occur'* and that *'professional visits, including external support staff and case reviews, will be limited and staggered'*. Shift patterns would be 48 hours including sleeping on-site, followed by four days off. It is stated that family visits would typically occur in *'community settings'* and where they did take place at the property they would be *'infrequent – usually no more than once a week for a few hours'*. Staff and visitors would park on Basnett Street.
7. The appellant's assertion that the proposal would fall within use class C3(b) of the UCO is not well founded. Use Class C3(b) of the UCO relates to the use of a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household where care is provided for residents. For the purposes of Class C3(b) "single household" is to be construed in accordance with section 258 of the Housing Act 2004. Based on the facts of the case, the proposed occupants would not be members of the same family and there would be no relatives. In this instance, the carers would be working in shifts and would not live permanently at the property. The child would need to be looked after, including professional care and support. The proposed arrangement for caring for the child could not be regarded in the true sense of the word as that of a household, given the presence of carers.
8. In accordance with the judgement of *North Devon District Council v The First Secretary of State and Southern Childcare Ltd* (2003) JPL 1191, and, for the above reasons, I find that the proposal would fall within use 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), and not use Class C3(b) of the UCO.
9. Section 55(1) of the Act states that the definition of development includes the *'making of any material change in the use of any buildings or other land'*. It has been held in case law that a change of use can only be material by bringing about a definable change in the character of the main use of the land. It is not the case that just because a proposal falls within a different use class in the UCO, it automatically means that there would be a material change in the character of the main use of the land. In other words, it is necessary to examine whether a proposal would lead to some significant difference in the character of the activity from what has gone on previously as a matter of fact and degree. It is noteworthy that section 55(2)(f) of the Act only provides that a change within a use class is exempted from development.
10. The evidence is that a planning application was submitted to the Council on 5 December 2024 for the change of use of the property from a C3 dwellinghouse to a C2 residential institution to operate as a younger person's care home for one child aged between 8 and 17. This post-dates the LDC application and was refused by the Council. It was the subject of an appeal which was dismissed on 16 June 2025.¹ The evidence is that the planning application was made retrospectively and that it was similar (but not identical) to the development which is the subject of this appeal.
11. While a planning application is not the same as an LDC application, the Inspector nonetheless made a number of pertinent comments in the appeal decision about

¹ Appeal decision reference No. APP/Z2315/W/25/3362691.

the use of the property relative to its former use as a C3 dwellinghouse and, moreover, it is noteworthy that as part of this appeal a number of residents have made comments about the retrospective use of the property as a C2 use. I have considered such comments and representations only in so far as they are relevant to the consideration of whether the proposal would amount to a material change of use. However, I emphasise that I have also reached my own judgement based on the evidence that is before me and including my site visit observations.

12. In my judgement, there would likely be an increased number of pedestrian and vehicular comings and goings associated with the use of the terraced property for the proposed C2 use, particularly at peak times such as at shift handover periods. Moreover, the appellant's evidence about the likely frequency of other professional visits from other staff is a little uncertain but, in any event, there is the potential for a relative increase, overall, to the number and frequency of comings and goings of people and vehicles on a day to day basis from staff, visitors, manager attendance, case reviews, school trips, family visits, and visits by staff from other facilities.
13. I find that the proposal would therefore amount to a more intensive use of the appeal property relative to its lawful use as a C3 dwellinghouse. The off-site effects arising from the comings and goings associated with the proposal would be very apparent to those living nearby given the tight-knit and confined nature of the terraced dwellinghouses in this street. In this regard, I consider that the proposal would amount to a significant change in the character of the use of the property such that it would amount to a material change of use requiring planning permission.
14. Residents have made comments about the use of the property now (i.e., a similar use to that which is the subject of this appeal) and refer to shouting and screaming from the property and visits by emergency services and other disruption. As part of final comments, the appellant states *that 'while these accounts are noted, they are anecdotal, not substantiated by evidence, and have not been supported by Environmental Health, who raise no objection'*.
15. It is alleged by the occupier of No. 105 Basnett Street that *'in January 2025 a glass object was thrown out of the upstairs window'* and *'the police and ambulance service are regularly called to this property and about 3 weeks ago the fire service was called along with an ambulance and police vehicle with several officers in'*. I also note the photograph taken by the occupier of No. 111 Basnett Street showing police cars parked outside the property on 18 April and 26 April and the allegation that this related to screaming and shouting from the property. While I accept that the representations made by residents are not supported by police reports, based on the evidence I nonetheless find that it is more probable than not that such incidents did take place.
16. I acknowledge that members of the fire, ambulance or police service may need to be called to the appeal property if it were used and occupied as a C3 dwellinghouse. However, the evidence is that the proposal involves the care of children (on a single occupancy basis) who have complex care and support needs. It is therefore reasonable that I conclude that it is likely to be more probable than not that the emergency services would visit the property more often in association with the proposed C2 use when compared to use of the property as a C3 dwellinghouse. Comments made by residents indicate that some incidents have

occurred already in connection with the use of the property as a younger persons care home. The appellant does not specially say that they have not occurred, but instead simply says that they are anecdotal accounts.

17. Given the above, I find that the proposal would have the potential to change the character of the area from the point of view of a likely increase in attendance by emergency service vehicles and personnel. The nature of the proposal and the likely complexity of the needs of each child which occupies the property, means that there is a greater likelihood of this occurring more often than if it were used as a C3 dwellinghouse.
18. In addition to the above, I find that the proposal would include a more transient use of the appeal property, by both staff and any occupying child resident, when compared to its use as a C3 dwellinghouse. In this regard, I find that the proposed nature of occupation of the property would be materially different to the character of the use of the property as a C3 dwellinghouse. This also adds to my finding that the proposal would lead to a material change of use.
19. The appellant has referred me to other appeals and Council LDC decisions. I have determined this appeal based on the evidence that is before me and have exercised my own professional judgement. The other appeal and Council LDC decisions do not alter or outweigh my conclusion that when the evidence is considered as a whole, and, as a matter of fact and degree, the proposal would amount to a material change of use for which planning permission is required.

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of the appeal property as a younger persons care home 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).

D Hartley

INSPECTOR