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## Appeal Decision

Site visit made on 28 April 2026

**by Mark Caine BSc (Hons) MTPL MRTPI LSRA**

an Inspector appointed by the Secretary of State

Decision date: 2 June 2026

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### **Appeal Ref: APP/M2372/X/25/3370590**

### **40 Hillcrest Road, Blackburn BB2 5LF**

- 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 Welfare First Ltd against the decision of Blackburn with Darwen Borough Council.
  - The application ref 10/25/0481, dated 2 May 2025, was refused by notice dated 25 June 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 the change of use from C3 to C2.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary Matter**

2. The postcode of the site address provided in the original application form and decision notice are different to that listed in the appeal form. In the absence of any conclusive information, I have adopted the consensus and used the postcode that was provided in the application form and decision notice in the banner heading above.

### **Main Issue**

3. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application.
4. For the avoidance of doubt, this means that the Public Sector Equality Duty and the planning merits of the proposed development, including need and compliance with development plan and national policies, and planning advisory notes, are not relevant to this appeal. My decision is based on the facts of the case and judicial authority.
5. As such, the main issue is whether the Council's decision to refuse to grant a LDC is well founded. This turns on whether the proposed use would be materially different to the established lawful use of the property. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probabilities, the proposed use would be lawful.

## Reasons

6. The appeal relates to a 5 bedroomed semi-detached dwelling that is located within a predominantly residential area. The property features a small front garden and driveway with space to accommodate 3 off street parking spaces. There is no dispute between the main parties that the lawful existing use of the appeal site therefore falls within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO).
7. The Management & Supporting Statement (MSS) sets out that the appeal property will be used to house up to four looked-after Lancashire children, aged between 6 and 17, who will receive care from three live-in adult carers at any one time, with two to three carers remaining overnight. It is stated that there will always be a manager or deputy manager on site (included in the above number of carers). The appellant considers this to mean that they will be living as a single-family unit, but that the adults will be unrelated providing care for the children rotating on a shift basis as employees of "Welfare First Ltd".
8. As a typical rota, the MSS indicates that it is likely that staff will work 12-hour shifts or will stay at the property overnight. During the hours of 23:00 to 07:00, I am informed that there will be one member of staff that will sleep and the other will be working a waking night shift. However, this will be dependent on each child's or young person's individual needs and in line with Care planning.
9. The main parties agree that the proposed use would fall within Class C2 'Residential Institutions' of the UCO. I have no substantive reason to disagree with this. Although there is no statutory definition of 'material change of use' the Courts have established that it is a matter of fact and degree for the decision maker to conclude upon.
10. It is also an established principle that to determine whether what is proposed would constitute a material change of use, it is necessary to compare the proposed use with the existing, as it might reasonably be carried out, and not with some notional use that might be lawful. For a change of use to amount to a material change of use, there must be some significant difference between the character of the activities of what is proposed and what went on previously.
11. The appellant argues that the residential function of the property would be preserved and that the scale, intensity and pattern of use would not differ materially from a standard household. In making this comparison, the MSS gives an example of an extended family of up to eleven residents using the property as a dwelling house. Nonetheless, there is nothing in the evidence to suggest that this is or was previously the case. The fact that the property is capable of accommodating a large family at present is not sufficient. Details of its actual use or last known use are what is needed to compare with what is proposed. However, this information has not been provided. I will therefore consider the proposed change in relation to how the use of the property might reasonably have been carried out.
12. I appreciate that movements such as children being driven from home to school, carers arriving at and leaving the property and other day to day comings and goings generated by the use might not appear to be materially different, on its face, to a single household dwelling. However, there is little before me in respect of the specific needs of the children that would be residing at the property.

13. On the limited evidence before me, it seems to me that additional comings and goings likely generated from visitors attending to the needs of up to four children in care would occur more frequently and on a more unfamiliar pattern than with a 5 bedroom single household dwelling.
14. There would also be a significant difference in the character of those comings and goings. In a typical single household dwelling, it is the same people coming and going from the property on a daily basis, who are more likely to share car journeys. Accordingly, there is a consistency to their character and a familiarity for both residents and neighbours.
15. In contrast, the proposed use would result in little consistency in the people who are coming and going from the property. Caring staff are unlikely to be the same people for extended periods. Shift patterns change, and people move to work in other locations or other companies. The appellant does not state that the carers would be the same people on any basis. In addition, the MSS indicates that it is possible that there may be other visitors to the site such as social workers and Ofsted.
16. I am informed that family visits would not take place on site, and that staff would share a medium sized family car and be encouraged to use public transport. However, none of these can be guaranteed or controlled. As such, it seems to me that the comings and goings associated with the proposed use would likely be generated by a higher turnover of different people and vehicles.
17. In addition, there is nothing to say that the children living at the property would do so on any consistent basis. There is little before me to suggest that children would not stay for short periods amounting to several days or even weeks at a time. Children could be rehomed elsewhere for any number of reasons. Furthermore, it appears that there would be no consistency in the numbers of children staying at the property. At times it could be one child, at others four children. There is thus the potential for a greater turnover of residents, again in contrast to the character of a typical single household dwelling. This would also have subsequent impacts on the number of comings and goings.
18. I appreciate that there would be no external alterations to the property and that it would appear as a single household dwelling. Nonetheless, on the basis of the evidence before me, there is likely to be an increased level of activity that would occur on a daily basis associated with the proposed use. This would be more intensive and constant than that which might reasonably be expected to be generated by a 5 bedroom dwellinghouse.
19. Accordingly, the number, pattern and character of the comings and goings would be significantly different to the character of a single household dwelling. In the absence of precise and unambiguous evidence, I am therefore unable to find, on the balance of probabilities, that the proposed use would not amount to a material change of use.
20. Several appeal decisions and developments have been cited in support of the appellant's case. I appreciate that there may be some similarities in these cases with the arguments put forward for the proposal. However, some of these appeals relate to compliance with development plan policies and planning merits which are not relevant in this appeal. Others involve fewer children than the amount

proposed to receive care in this case and are therefore not directly comparable to the circumstances in this appeal.

21. In any case, I have determined this appeal on the evidence that is before me, and on a fact and degree basis. I am not bound by decisions which have been made elsewhere. The submitted decisions do therefore not alter or outweigh my conclusion on the main issue.

### **Conclusion**

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

*Mark Caine*

INSPECTOR