



Appeal Decision

Site visit made on 2 June 2026

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

an Inspector appointed by the Secretary of State

Decision date: 02nd June 2026

Appeal Ref: APP/E2340/X/26/3377732

16 Hillside View, Brierfield, Lancashire, BB9 5DU

- 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 Baytamor Limited against the decision of Pendle Borough Council.
 - The application ref 25/0440/CEA, dated 2 July 2025, was refused by notice dated 5 August 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 a dwelling (Use Class C3) to a Children's home (Use Class C2).
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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 existing use which is found to be lawful.

Applications for costs

2. An application for costs is made by the appellant against Pendle Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. 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.
4. The Council approved a lawful development certificate on 8 October 2025¹ (October 2025 LDC Approval) for essentially the same use of the appeal property (including the same staffing, rota and car parking arrangements), albeit that such a proposal related to the care of two rather than three resident children. The same operating model was considered. This decision is relevant in so far that it sets a 'baseline' by which the appeal proposal can be considered and whether it would amount to a material change in the character of activities relative to the lawful use of the land as a dwellinghouse, and as a matter of fact and degree.

Main Issue

5. 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

¹ LDC reference No. 25/0511/CEA

material change of use thereby constituting development requiring planning permission.

Reasons

6. The proposal is to use the existing mid-terraced dwellinghouse as a children's home with up to three resident children. There would be two members of staff in a caring role at any one time and operating on a 48-hour shift basis. Change over shift patterns every 48-hours would occur and at 10.00 hours. This would last about ten minutes and may also include a shift manager. The appellant has commented that this would therefore not coincide with peak daily commuting patterns within the predominantly residential environment.
7. Four car parking spaces would be available within the appeal site. The three children would attend local schools. When the children were at school, the two members of staff would undertake routine domestic tasks. There would be a local authority social worker in attendance once every six weeks for about an hour, statutory reviews with an Independent Reviewing Officer no more than twice per year, an Ofsted inspection on an *'annual or regulatory cycle'*, and *'occasional visits from other professionals where necessary, usually by appointment'*. There would be no *'institutional visiting hours'*. The appellant has submitted a TRICS based trip generation analysis of the proposal
8. There is no dispute between the main parties that the five-bedroom property can lawfully be used as a dwellinghouse as defined by use class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Moreover, there is no dispute between the main parties 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 activities from what has gone on previously and as a matter of fact and degree.
10. While the appellant's TRICS based trip analysis cannot fully account for every likely vehicular trip associated with the proposal, it does nonetheless lend support to my judgement that the number of vehicular trips would not be dissimilar to those which would relate to the use of the property as a dwellinghouse. Indeed, the property could be occupied by four people or more living together as a family and with similar work, leisure, education and other traffic movements.
11. Relative to the Council's conclusion reached in respect of the October 2025 LDC Approval, I do not find that the level of activity, including traffic movements, associated with the proposal would be materially different from use of the property as a family dwellinghouse. An additional child may give rise to some additional movements and activity, but I do not find that this would be on such a scale that it would materially change the character of activities on the site or off the site in

relative terms. I acknowledge that shift change over times would differ from peak times when surrounding residents are likely to leave for work. However, I visited the site at 10.00 hours mid-week and there was some pedestrian and vehicular movement in the area at this time. In this regard, I do not find that the scale of activities, comings and goings, and vehicular and pedestrian movements associated with the proposal would be such that it would materially change the residential character of the area.

12. In respect of car parking, it is noteworthy that four on-site car parking spaces would be available for use. Such car parking spaces would also be available if the property continued to be used as a dwellinghouse. This level of on-site car parking provision would be sufficient to accommodate staff members including at change over times. I recognise that there is an absence of a dropped kerb to the car parking area on Hillside View. However, the point is that there are on-site hardstanding areas in place to enable cars to be parked. The proposal would not obviate the need for the appellant to also ensure compliance with other legislation including the Highways Act 1980 (as amended), including the likely need to separately apply for and to provide a dropped kerb on Hillside View. There is no evidence before me to indicate that the Highway Authority would not authorise a dropped kerb in this location.
13. Overall, I do not find that the proposal would give rise to any material effects from an on-street car parking demand point of view. I recognise that from time to time there may be some visits from say Ofsted, the Independent Reviewing Officer, or other professionals. However, it is the case that there would be some visitors to the property if it was used as a class C3 dwellinghouse. I do not find that the proposal would generate materially greater car parking demand and vehicular activity when compared to use of the property as a C3 dwellinghouse.
14. The increase from two to three children relative to the October 2025 LDC Approval would constitute a change in the number of people occupying the property. In this regard, there would likely be a commensurate increase in visits to the property by professionals, as well as in terms of domestic trip arrangements on an individual child basis. Notwithstanding this position, and, as a matter of fact and degree, I do not consider that the increase in activity, or possible need for occasional on-street car parking spaces, would result in any material and relative off-site effects in terms of car parking demand, comings and goings, noise or disturbance (including use of the outside amenity space), or that it would significantly change the residential character of the area. In fact, and, as a matter of fact and degree, I find that there would not be a discernible difference between use of the property as a family dwellinghouse and its proposed use as a children's home.
15. In reaching the above finding, I have considered the fact that there is no objective evidence of any significant on-street car parking stress in the area. While my site visit was only a snapshot in time, I was able to see that car parking spaces were available on Hillside View and Pennine Way. In reaching this conclusion, I have also considered the fact that the shift changes would be at 10.00 hours thereby avoiding peak traffic/commuting times. The shift patterns would also be on a 48-hour basis thereby avoiding daily commuting which would be likely if the property was used as a class C3 dwellinghouse. Moreover, four on-site car parking spaces would be available for use by staff and visitors.

16. Even if the potential for a number of emergency call outs associated with the proposal was likely to be higher than in association with use of the property as a dwellinghouse, based on the fact that those being cared for were perhaps more vulnerable individuals, the evidence does not indicate to me that this would likely be on a scale that would change the residential character of the area. Indeed, the emergency services could be called out to individuals that currently occupy any property in the locality, including those that occupy dwellinghouses.
17. For the above reasons, I find that the change of use of the property from a class C3 dwellinghouse to a class C2 children's home (up to three children and with up to two carers on the site at any one time) would not amount to a material change of use. This is because there would not be a material change in the character of activities on the land from what has gone on previously. Consequently, I conclude that if the proposal was instigated or begun on the date of the LDC application, it would not, on the balance of probabilities, have been an act of development and would not therefore have required planning permission.
18. It is necessary that I define the scope of the approved LDC in its first schedule from the point of view of specifying the maximum number of children and carers that can reside in the property at any one time. It is necessary that I do this in the interests of precision and to establish the baseline by which any future proposals can be measured and assessed.

Other Matters

19. Representations have been made by members of the public which relate to the planning merits of the proposal. This includes comments about need and the loss of housing stock. As this is an LDC appeal, it is not possible for me to consider representations which relate to the planning merits of the proposal and, moreover, it is noteworthy that there is no local policy basis for claiming that the loss of a dwellinghouse would have a material planning consequence.
20. I have considered all other representations made in so far that they are relevant to the determination of the LDC appeal. Comments are made that the children may be noisy and that such noise may be heard between the adjoining walls with other properties. There is no evidence to suggest that the children would be any more noisy than other children who may occupy the property as a dwellinghouse.
21. I acknowledge the comment made about trialling whether two children would be acceptable first, but it is necessary that I determine this appeal based on the specific proposal. I also note comments about the proposal subsequently changing including the availability of car parking. If that were to happen then it could have implications in terms of the need for the appellant to submit another LDC application, or to apply for planning permission, if any such changes were to result in a material change of use of the land. In other words, my decision to issue an LDC is based on the details that are part of the LDC application proposal.
22. None of the representations made alter or outweigh my conclusion that the appeal should be allowed.

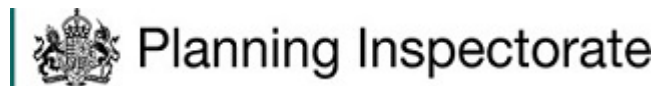
Conclusion

23. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use of development for the change

of use from a dwelling (Use Class C3) to a Children's home (Use Class C2) 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 2 July 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:

As a matter of fact and degree, and on the balance of probabilities, the proposed change of use of the property from a class C3 dwellinghouse to a class C2 children's home (up to three children and with up to two carers on the site at any one time) would not amount to a material change of use. This is because there would not be a material change in the character of on-site or off-site activities relative to the lawful use of the property as a class C3 dwellinghouse. Consequently, if the proposal was instigated or begun on the date of the LDC application, it would not have been an act of development and would not therefore have required planning permission.

Signed

D Hartley

Inspector

Date: 02nd June 2026

Reference: APP/E2340/X/26/3377732

First Schedule

Change of use from a dwelling (Use Class C3) to a Children's home (Use Class C2) with up to three resident children and up to two resident carers at any one time.

Second Schedule

Land at 16 Hillside View, Brierfield, Lancashire, BB9 5DU

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: 02nd June 2026

by D Hartley BA (Hons) MTP MBA MRTPI

Land at: 16 Hillside View, Brierfield, Lancashire, BB9 5DU

Reference: APP/E2340/X/26/3377732

Scale: Not to Scale

