



Appeal Decision

Site visit made on 21 July 2026

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2026

Appeal Ref: APP/A4710/X/25/3365545

Flat 1, Mytholme Ridge, Halifax Old Road, Hipperholme, Brighouse HX3 8PJ

- 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 Mr Waqas Ali of Nexus Group Housing Ltd against the decision of Calderdale Metropolitan Borough Council.
 - The application ref 25/00129/192 dated 7 February 2025, was refused by notice dated 1 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 of a C3 residential dwelling house for a children's home for a maximum of two children, with a manager based off site who will visit as and when needed. A maximum of two carers during the day, two carers sleeping overnight, working on a rota basis (C2).
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Decision

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

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use was well-founded. In this case that turns on whether the proposed use is a material change of use from the lawful use as a single dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) to a use falling within Class C2, which is the provision of residential accommodation and care to people in need of care.

Reasons

3. The appeal site is a single storey ground floor flat in a primarily residential part of Hipperholme. The appellant has stated that the proposal is to use the property as a safe, nurturing and supportive residential environment for up to two children aged between 7 and 17 years. The accommodation comprises of a living room, kitchen, utility, shower/bathroom and 3 bedrooms. The property is situated in a large plot with outdoor space available for the appeal property and the adjoining Flat 2. It has three dedicated car parking spaces and a vehicle turning area.
4. The children would live together as a single household, supported by trained adult carers providing supervision, guidance and support on a one-to-one shift basis. Shifts would be on a 24 hour pattern from 1000 to 1000. A maximum of 2 carers would be on-site at any one time. The property would not be the main residence of carers. The flat would operate in a family-style setting, with shared living spaces and children participating in normal household activities.

5. I have considered case law relating to cases such as this and a similar scenario was considered in the case of *North Devon District Council v FSS & Southern Childcare Ltd* [2003] EWHC 157 (Admin); [2003] JPL 1191 which determined that children cannot form a household and that if their carers do not live permanently at the property, the use would fall within Class C2 of the UCO. This is use for the provision of residential accommodation and care, other than within Class C3 use.
6. Case law¹ also confirms that *North Devon* does not lay down a principle that those who may need care can never constitute a household. It is necessary to focus first on those in occupation and ask whether they form a single household as a matter of fact and degree. It would be counter to the language of Class C3 to conclude that where care is needed, C3 only applies to where the carer-givers are resident. In this case, since the children cannot themselves be said to form a household, as established by *North Devon*, the proposed use would fall within C2 (residential institutions) of the UCO.
7. There is no permitted change from C3 to C2 under the terms of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) and the proposed use cannot therefore be permitted development. However, a change of use to a different use class only requires planning permission if it is material in planning terms. To establish whether there would be a material difference a comparison between the existing and proposed uses must be considered.
8. The existing flat could accommodate a family and therefore the proposed use for up to two children and their carers would not be materially different from the authorised use as a single dwellinghouse. Carers would work on a shift basis alternating between 2 other shift workers and therefore no more than four people would occupy the property at the same time. As with a family dwelling, a single kitchen would be used as a place to prepare and consume meals and the living room would be a communal space where residents would relax and interact. All other facilities would be shared by residents who would be cared for by trained carers.
9. There would be no material alterations to the property, and its physical appearance would not change in any way. There would be some vehicle movements associated with carers coming to and going from the site on a daily basis in accordance with their shift patterns and there would be additional journeys linked to taking children and young people to school or college and to other activities or appointments. There may also be occasional visits from the off-site manager and other professionals. The number of these movements is unlikely to be significantly more than the number that would be undertaken by a family and certainly not enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. There is insufficient evidence before me to show that the use would be likely to result in greater levels of noise and disturbance than the existing authorised residential use.
10. It is my understanding that the appellant will be required to comply with a range of regulations and rules governing the operation of the accommodation for children and young people in care, including their supervision. Should these regulations be adhered to and the appellants meet the necessary staffing and management

¹ R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin)

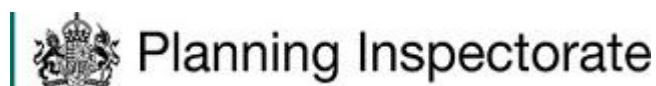
requirements, I do not find there to be any reason why the use proposed would have planning impacts that would result in it being a material change of use.

Conclusion

11. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for use of a C3 residential dwelling house for a children's home for a maximum of two children, with a manager based off site who will visit as and when needed. A maximum of two carers during the day, two carers sleeping overnight, working on a rota basis (C2) was 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).

A A Phillips

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 7 February 2025 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and shaded 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 use, whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), would not represent a material change from the authorised use of the site as a Class C3 dwellinghouse.

Signed

A A Phillips

INSPECTOR

Date: 27 July 2026

Reference: APP/A4710/X/25/3365545

First Schedule

Use of a C3 residential dwelling house for a children's home for a maximum of two children, with a manager based off site who will visit as and when needed. A maximum of two carers during the day, two carers sleeping overnight, working on a rota basis (C2).

Second Schedule

Flat 1, Mytholme Ridge, Halifax Old Road, Hipperholme, Brighouse HX3 8PJ

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 the Lawful Development Certificate dated: 27 July 2026

by **A A Phillips**

Land at Flat 1, Mytholme Ridge, Halifax Old Road, Hipperholme, Brighouse HX3 8PJ

Reference: APP/A4710/X/25/3365545

Scale: Not to Scale

