

Appeal Decision

Site visit made on 12 August 2026

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 8th September 2026

Appeal Ref: APP/P4605/X/25/3366658
7 Longfellow Road, Birmingham B30 1BN

- The appeal is made by Gibson Fugede of Vineyard Homes Ltd under section 195 of the Town and Country Planning Act 1990 against a refusal by Birmingham City Council to grant a lawful development certificate.
 - The application Ref: 2025/01966/PA, dated 31 March 2025, was refused by notice dated 22 May 2025.
 - The application was made under section 192(1)(a).
 - The development for which the certificate is sought is described on the application form as "The property is intended to be used as a children's care home C3b, providing care for up to two children/ young people between the ages of 10 and 18 with a live in matron as the primary care giver."
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the use described in the certificate, which I consider would be lawful if instituted at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the proposed use at the time of the application. The planning merits of the proposed use are not relevant to the appeal and there is no planning application before me.
 3. The Council refused the application for the following reason: -
"The proposed use of the application property as a children's home for a maximum of two children would not fall within Use Class C3b of The Town and Country Planning (Use Classes) Order 1987 (as amended) as the occupants would include shift workers who would not reside permanently at the property. The residents would therefore not live together as a single household."
 4. Class C3 of the Order is as follows:
"Class C3. Dwellinghouses
Use as a dwellinghouse (whether or not as a sole or main residence) by—
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- (a) a single person or by people to be regarded as forming a single household;
 - (b) not more than six residents living together as a single household where care is provided for residents; or
 - (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)."
5. The current authorised use of the house is as a family dwellinghouse within Class C3(a). The proposed use of the house as a children's care home for two children/ young persons with a live-in matron as the primary care giver would not fall within Class C3(b), because the term "care" in C3(b) is defined by Article 2 of the Order as follows:
- " "care" means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder".
6. The Article 2 definition of "care" continues "and in class C2 also includes the personal care of children". The proposed use would be within Class C2 as a "Use for the provision of residential accommodation and care to people in need of care", namely in this instance the personal care of looked-after children/ young people.
7. I have therefore dealt with the application and the appeal as a proposal to change the use of the house from C3(a) to C2, for the stated purpose of its use as a children's care home, providing care for up to two children/ young people between the ages of 10 and 18 with a live-in matron as the primary care giver. Such a change would constitute development that is not authorised by the Order or by the Town and Country Planning (General Permitted Development) (England) Order 2015.
8. However, the Use Classes Order is not interpreted so as to mean that a change between one use class and another is necessarily development requiring planning permission. The key issue is whether the change would amount to a 'material change of use'. This term is not defined in planning law; it is a question to be determined in each case as a matter of fact and degree, and in this appeal requires a comparison to be made between the authorised C3(a) use of the house and the proposed use of the house as a C2 children's care home providing care for up to two children/ young people between the ages of 10 and 18 with a live-in matron as the primary care giver. For a material change of use to occur, there must be a significant difference between the character of the authorised activities and the proposed activities that would result in a discernable land use impact in planning terms.
9. The application plans show that the house has five bedrooms and has off-street parking spaces. As a C3(a) dwelling it could be expected to be occupied by a fairly large family who would have their own vehicles and undertake the usual range of domestic activities, with frequent comings and goings and deliveries. The house is accessed directly from Longfellow Road at a short distance from its junction with a main road. The parking spaces are not next to other living accommodation.

10. As a C2 children's care home for two children/ young people with a live-in matron, it is likely that the number of occupiers would be fewer. The number of vehicles likely to be kept continuously at the property at any time would be fewer. There would be regular comings and goings of support staff and their vehicles but it is unlikely that this would have a significantly more noticeable impact compared to the movements that could occur if the house continued in C3(a) use. Domestic activities taking place in and around the proposed use are unlikely to be significantly different to the C3(a) use. The use of the property would be supervised by the live-in matron and by an external manager, and it would also be subject to regulatory inspection.
11. I have taken into account the other appeal decisions to which my attention has been drawn. Decisions of this kind are made on the particular circumstances arising in each instance. In the current circumstances, I do not consider that as a matter of fact and degree a material change of use would take place.
12. The Council's decision to refuse the application for a certificate of lawful use is therefore not well founded, because development requiring planning permission would not occur. Accordingly, the appeal has been allowed and an appropriate certificate has been granted.

D.A.Hainsworth

INSPECTOR



Certificate of Lawful Use

APPEAL REFERENCE APP/P4605/X/25/3366658
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39 & SCHEDULE 8

IT IS CERTIFIED that on 31 March 2025 the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown edged and hatched in black on the plan attached to this certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990, for the following reason:

No enforcement action could then have been taken in respect of the proposed use since it would not have involved development within the meaning of section 55(1) of the Town and Country Planning Act 1990.

D.A.Hainsworth

INSPECTOR

Dated: 8th September 2026

First Schedule

Use as a children's care home providing care for up to two children/ young people between the ages of 10 and 18 with a live-in matron as the primary care giver.

Second Schedule

7 Longfellow Road, Birmingham B30 1BN

Notes

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the specified date and, therefore, would not have been liable to enforcement action under Part VII of the 1990 Act on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use that is materially different from that described or which relates to any other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is qualified by section 192(4) of the Act, which states that the lawfulness of the use is only conclusively presumed where there has been no material change, before the use is instituted, in any of the matters relevant to determining such lawfulness.



Plan attached to Certificate of Lawful Use

7 Longfellow Road, Birmingham B30 1BN

Appeal reference: APP/P4605/X/25/3366658

This is the plan attached to the Certificate of Lawful Use
dated: 8th September 2026

D.A.Hainsworth
INSPECTOR

