



Appeal Decision

Site visit made on 17 August 2026

by **Peter Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 October 2026

Appeal Ref: APP/L5240/X/25/3369966

635 Mitcham Road, Croydon CR0 3AF

- 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 Ansar Mahmood Khan against the decision of the Council of the London Borough of Croydon.
 - The application ref 25/01770/LP, dated 26 May 2025, was refused by notice dated 21 July 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 described as: 'a residential care home C3(b) for up to 4 young persons with learning disabilities or mental health problems in need of care, but living as one household. They would be cared for by 1 full time carer who would be resident at the premises 24 hours - having staffroom/office and accommodation provided as shown on the submitted plans. The 4 young people needing care will be between 11 - 17 years old and will be living at the property as their principal residence'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded. This turns on whether the proposed use would fall within the same use class as the established lawful use of the property or, if it does not, whether the proposed use would be materially different.

Reasons

Background and general approach to LDCs

3. The Government's *Planning Practice Guidance* provides advice relating to LDCs. It advises that an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.
4. In LDC cases, the burden of proof falls on the appellant. To succeed in this instance, the appellant must demonstrate, on the balance of probability, that there would not be a material change of use. The appellant's case relies on the view that the existing lawful use and the proposed use both fall within the same C3 use class.

The Use Class

5. The point of dispute is whether the proposed use falls within Use Class C2 or C3, as set out in *The Town and Country Planning (Use Classes) Order 1987* (as amended). Class C2 includes 'Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))'. As to Class C3, the appellant relies on C3(b), which is 'Use as a dwellinghouse (whether or not as a sole or main residence) by (b) not more than six residents living together as a single household where care is provided for residents'.
6. The description of the appeal proposal indicates that it would fall within use Class C3. If it did, there would not be a material change of use, since it is common ground that the existing lawful use of the property is a C3 dwellinghouse. Section 55(2)(f) of the Act establishes that changes within the same use class do not involve development.
7. The Council argues that the use would, in fact, fall within Use Class C2. In support of that I am referred to the decision of the High Court in *North Devon DC v FSS & Southern Childcare Ltd [2003] EWCA157 (Admin), JPL 1191*. In that case, the court rejected the view that use as a dwellinghouse providing a home for two children with care provided by up to two non-resident staff was a C3 use.
8. The facts of this case are not quite the same as *North Devon*. In particular, the application indicates that the residents in this case may have certain disabilities. Nevertheless, the judgement is relevant because it highlights that Class C3(b) can only apply where there is a household. Accordingly, I must consider whether there would be a household in this case. I have also had regard to the later decision in *R (oao Crawley BC) v FSS & the Evesleigh Group [2004] EWHC 160 (Admin)*, although that case was concerned with adults rather than children.
9. The residents of the building would be children, who, I am told, would have emotional and behavioural difficulties, learning disabilities and mental health problems. I have no real detail of the severity of these difficulties but, since the residents would be children, it is clear that they would need to be cared for in any event. As *North Devon* makes clear, this means that they would not be capable of forming a household on their own. There is nothing in the information submitted about the residents or the management of the home that would lead me to any different conclusion.
10. Of course, there would be a carer at the property at all times. However, the position regarding this is not completely clear. While the application form refers to '1 full time carer who would be resident at the premises 24 hours', the appeal statement advises that 'one employee will be working in the day and one in the night as a resident employee at the property'. From this it appears that there would actually be at least 2 people, working in shifts. This seems much the more likely arrangement; there is only one bedroom available for staff use and there is nothing to explain how issues such as staff leave or sickness would be managed if that room were occupied by a single carer as their home, given the need for a carer to be available day and night.
11. Thus, it does not appear that a carer would genuinely *reside* at the property in the true sense of that word; rather, it would be their place of work. Since they would not reside at the property, they could not form part of a household there. As I have

said, the children on their own would not form a household. Consequently, I find that there would not be a household living together at the property. This means that the use cannot fall within the ambit of C3(b). Rather, it falls naturally within Class C2.

12. For these reasons I conclude that the proposed use falls within Class C2 and not Class C3. It follows from this that the proposed use is not lawful on the basis that it falls within the same use class as the lawful C3 dwellinghouse use.

The materiality of the change of use

13. I have considered whether, notwithstanding my finding above, it could be said that the proposed use would be lawful on the basis that it would not be materially different to the existing lawful use. This requires a comparison between the character of the proposed use and that of the established lawful use of the property.
14. The existing lawful use of the property is described by the appellant as a 'single-family dwelling house Class C3(a)', which indicates use as a dwellinghouse by a single person or by people to be regarded as forming a single household. The floorplans provided show living accommodation over 3 floors, with kitchens on the ground and first floor. More than one kitchen is an unusual feature for a single family dwellinghouse of this size, but not necessarily incompatible with such use, and I have assumed the stated use to be correct. I do not have further details such as the number of occupiers of the property.
15. The proposed use includes the following characteristics:
- The property would provide a home for young people (aged between 11 and 17) with emotional and behavioural difficulties, learning disabilities and mental health problems.
 - It would provide a home for up to 4 young people. There is also reference to 3 young people in the appellant's statement, but I have taken the references to 4, which reflects the figure in the description in the application form, to be correct.
 - There would be 1 full-time staff member at the property at any one time. However, it appears that this would involve 2 or more members of staff working in shifts, rather than the single person implied by the description in the application form.
 - Meals and various household tasks would be shared, in an attempt to create a family type feel and to help promote independent living.
 - The property would be reconfigured internally so as to provide an extra bedroom, making 5 in total compared to the existing 4. Areas such as the kitchen, living room and garden would be shared.
16. From the above, it is clear that the use would involve people living at the property and, to that extent, it has something in common with a C3 dwellinghouse use. However, that does not show that the character of the use would not be materially different to that of the existing use.
17. There is little information to show whether caring for young people with emotional and behavioural difficulties could have any impacts on the character of the use or

the extent to which such impacts could be managed. It appears to me that there would need to be visits from various professionals from time to time, given the specialist nature of the care the residents would be receiving. This clearly has the potential to affect vehicle movement and parking at the property throughout the week, but the extent of this is not established.

18. Moreover, it appears that the staff would work on a shift pattern, which means that there would need to be regular staff changeovers. This is likely to generate vehicle movements and manoeuvring at the property. I cannot be sure that staff would drive to the site, but it has not been shown that such matters would be managed in any way. I do not have details either of the timing of the shifts or any other aspect of their management.
19. There is nothing before me to suggest that the established use of the property results in levels of activity and traffic movement that would be similar to the proposed use. The only real evidence about the intensity of the existing use is the submitted floorplans, which show 1 bedroom fewer than the proposed use.
20. Overall, given their need for specialist care, up to 4 residents at the property could result in a level of activity significantly different to that associated with its current use. It may be that the proposed use could be managed to address the above issues, but that is for the appellant to show. From the limited information provided regarding the existing and proposed uses it appears likely that the character of the proposed use would be materially different when compared to the existing one.
21. The appellant refers to the decision in *R (oao Hossack) v Kettering BC [2002] EWCA Civ 886*, in which the Court of Appeal observed that the restriction within Class C3 to not more than six residents was an important consideration. In *Barnes v Sheffield CC [1995] 27 HLR 719*, the Court of Appeal held that a group of 5 students formed a single household. However, the number of residents is only one consideration, and it cannot be inferred from either judgement that any residential use with 6 or fewer occupants necessarily falls within Class C3. The appellant refers to 9 relevant factors identified in *Barnes*, but there is no assessment of the proposal against those factors.
22. For these reasons I find that it has not been demonstrated, on the balance of probability, that the proposal outlined in the appellant's application would not amount to a material change of use for which planning permission is required.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development 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) and dismiss the appeal.

Peter Willows

INSPECTOR