
Appeal Decision

Site visit made on 22 September 2026

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

Decision date: 8 October 2026

Appeal Ref: APP/Q3060/X/25/3376609
46 Highbury Avenue, Nottingham NG6 9DB

- The appeal is made by Saif Rehman under section 195 of the Town and Country Planning Act 1990 against a refusal by Nottingham City Council to grant a lawful development certificate.
- The application Ref: 25/00965/PCLO, dated 24 May 2025, was refused by notice dated 5 September 2025.
- The application was made under section 192(1)(a).
- The proposed development for which the certificate is sought is described on the application form as "Change of use of the existing C3 dwelling house at 46 Highbury Avenue, Nottingham, NG6 9DB to Class C2, a provision of residential accommodation and care to people in need of care. The proposal is for 3no children and 2no staff. Working hours to be 0700-2230."

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the proposed use, 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 reasons given by the Council for refusing the application are set out in a narrative decision which arrives at the following conclusions: -

"Whilst it is noted that no changes to the external appearance of the Property are proposed, the provision of two offices and multiple spaces for staff appears to be more akin to a business use than that of a residential dwelling."

"Whilst there are policies in place to try to address potential anti-social behaviour and other nuisance which may arise and many aspects of normal family life would exist, the proposed use does appear materially different in terms of parking, vehicular movements and comings and goings from other

uses of a property of this size in this location which would be lawful within Use Class C3.”

4. The authorised use of 46 Highbury Avenue is as a dwellinghouse within Class C3, which is as follows: -

“Use as a dwellinghouse (whether or not as a sole or main residence) by—

(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 proposed use would not fall within Class C3, because the children would not live together as a household and because, as a result of the definition in Article 2 of the Order, the term “care” when used in Class C3 does not include the care of children. The proposed use falls within Class C2 as a “Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))”.
6. However, the 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 Class C3 use of the house and its proposed use as a Class C2 children’s care home for 3 children and 2 staff. 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.
7. 46 Highbury Avenue is a substantial five-bedroom detached house with a rear garden, an outbuilding and parking spaces on the forecourt and at the side for up to four cars. The parking spaces are next to the parking spaces belonging to No.44. The house is accessed directly from Highbury Avenue at a short distance from its junction with a main road, the B682 Highbury Road, which is a bus route. There are no parking restrictions on Highbury Avenue, except in the vicinity of the road junction. As a Class C3 dwelling No.46 could be expected to be occupied by a fairly large household who would be likely to have their own vehicles and to undertake the usual range of domestic activities, with regular comings and goings by members of the household and their visitors and by delivery drivers.
8. It is proposed that the house will be used to accommodate 3 children/young people between the ages of 7 and 18, who may stay between 1 month and 11 years depending on their local authority care plan. In-house 24-hour care will be provided by 2 staff working shifts, supervised by a manager. They will be encouraged to use public transport to travel to work. There will also be occasional visits by support workers. It is intended, where practicable, that the children/young people will be educated in local schools. There will be no

- structural changes to the house. Rooms in the house will be used by the staff and the manager as office space and for other purposes related to their duties.
9. As a Class C2 children's care home for 3 children/young people between the ages of 7 and 18 together with 2 support staff and a manager, the number of occupiers of the house at any time is likely to be the same or fewer than if the house continued in Class C3 use. The number of vehicles likely to be kept continuously at the house at any time could be less, because the children/young people would not be drivers. There would be the regular comings and goings of the staff and the manager and their vehicles but it is unlikely that this could have a significantly more discernable impact on residential amenities or parking conditions compared to the movements that could occur if the house continued in Class C3 use. Domestic activities taking place in and around the Class C2 use are unlikely to be significantly different to what could occur in Class C3 use. The use of the property would moreover be supervised by the staff and their manager and would also be subject to regulatory inspection.
 10. It is normally acceptable within Class C2 for a children's home to contain office and other facilities for the use of the care staff; the proposed use will be no different. Planning permission is also not normally required to work from a Class C3 house, provided that the use remains incidental to its use as a house; working from home is now common practice.
 11. I have taken into account the court decisions and the 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