



Appeal Decision

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2026

Appeal Ref: APP/D5120/X/25/3359738

22 Springhead Road, Erith, Bexley DA8 2BE

- 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 Jenkin Support Services against the decision of the Council of the London Borough of Bexley.
 - The application ref 24/02352/LDCP, dated 7 September 2024, was refused by notice dated 29 October 2024.
 - 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:
“Use of a (C3(a)) dwelling as a children's home for up to two children, with a manager and two carers who will sleep 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 or development describing the proposed use which is found to be lawful.

Preliminary Matters

2. In the heading above, I have corrected a typographical error (“3a”) from the application form in the description.
3. As set out in the procedural guide¹, site visits are not usually necessary in LDC appeals. I consider that to be the case here, where the appeal turns on the facts of the proposal.

Main Issue

4. The main issue is whether the Council’s decision to refuse the application was well-founded.

Reasons

5. Under section 192(1) of the 1990 Act, if any person wishes to ascertain whether any proposed use of buildings or other land would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use in question.
6. Under section 192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the use described in the application would be lawful if instituted at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

¹ Certificate of lawful use or development appeals: procedural guide. Updated 20 May 2026

7. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
8. Section 57(1) of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Section 55(1) of the Act provides that “development” includes the making of any material change in the use of any buildings or other land.
9. The Town and Country Planning (Use Classes) Order 1987 (as amended) specifies use classes for the purposes of section 55(2)(f) of the 1990 Act. Section 55(2)(f) provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class.
10. In this case, the appellant describes the proposal as a change of use from Class C3 (dwellinghouse) to Class C2 (residential institution), ie a different use class. Whilst a change of use within the same class is not development, it does not follow that a C2 use would necessarily be materially different to a C3 use.
11. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to occur, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. As has been established in case law, the proposed use should be compared with the lawful existing use and not some “notionally permitted use”.
12. To determine whether the change of use would be material, I must identify and compare the probable nature and on-site and off-site effects of the proposed children’s home use as described in the evidence with the lawful use of the dwellinghouse as that was or might reasonably be carried out. Neither the proposed nor lawful use should here be considered in use class or other notional terms.
13. The appeal property is a terraced house that contains 3 bedrooms, a bathroom, kitchen, lounge/diner, an office and an area of hardstanding to the front that provides parking space for one car. According to the appellant, the most recent occupiers of the house were a family of two adults and two children. I have no reason to think this is not the case.
14. Regarding the staff rota pattern, paragraph 2.10 of the Planning Statement provided, states:

“Up to two children would live at the house, with two carers working on a rota basis sleeping overnight (or waking night) and a manager will also attend weekdays. Six carers would operate on a shift pattern of 48 hours on, 60 hours off. Except at changeover times, which last around fifteen to thirty minutes, there will be no more than three staff on the premises at any one time. The changeover of one of the overnight care staff is every 24 hours, usually 9.30am of a morning. A manager would also visit the site each weekday between 9am to 5pm...”
15. In terms of on-site and off-site effects, the most recent occupiers have provided an estimate of the average number of comings and goings. Also provided is the expected number of car movements from the proposed use, said to be based upon other similar homes. This information is presented by the appellant in data tables.

16. These tables indicate that the total movements to and from the dwelling by the previous occupants was 6 each day, except Wednesdays when it was 8. By comparison, the total movements expected to and from the property in its proposed use would be 8 each day, except Wednesdays when it would be 10. In terms of comings and goings, it is the appellant's case that there would be little difference. Having considered the data provided, I have no reason to disagree.
17. The Council's decision particularly identifies concern about the type of care that would be provided and the level of staffing.
18. Regarding the type of care, the Council states that there is uncertainty as to exactly what level of care is going to be provided and a lack of clarity over whether the establishment is to be Class C2 or C2A (secure residential institution). But the appellant is clear that these are not children with special or additional needs who would come under Use Class C2A.
19. Moreover, the description provided by the appellant is explicit in respect of the use being class C2 and a lawful development certificate applies only to the extent of the use described in it. Any use which is materially different from that described may result in a breach of planning control which is liable to enforcement action by the local planning authority. In any event, the Council states that C2 would be sufficient in terms of definition for children with special needs.
20. Regarding the level of staffing, the Council's submissions misquote the appellant's submissions, specifically paragraph 2.10 of the Planning Statement. The Council has repeatedly read "a further carer" into this paragraph. This seems to have led the Council to see inconsistency in the appellant's case and this has infected its assessment of comings and goings.
21. In this regard, the Council claims that the data table of movements for the proposed use does not match up with the written statement in the Planning Statement. I have not found this to be the case, for the following reasons. A manager would arrive each weekday morning and leave at the end of the working day (2 movements). A carer would arrive each day (1 movement) to relieve another carer who would leave after their changeover (1 movement). This is a total of 4 movements, as is reflected in the relevant data table.
22. Based on the appellant's submissions, the Council states it is unclear how many staff would be sleeping overnight and if one other member of staff is present, where they would be. However, the appellant's submissions explain that the manager will attend weekdays. I take this to mean that the manager would not sleep overnight.
23. The wording of the description does make it ambiguous who shall sleep overnight. Since an LDC cannot be subject to conditions and precision in the terms of any certificate is vital², I shall add a comma to the description so that it should not be read as the manager sleeping overnight. This way the LDC I shall grant shall reflect the appellant's submissions.
24. As a matter of my planning judgement, it makes no significant difference whether there is one or two carers at the property overnight or whether they are sleeping or awake, particularly as the previous occupants were two adults and two children.

² Lawful development certificates. Paragraph: 010 Reference ID: 17c-010-20140306

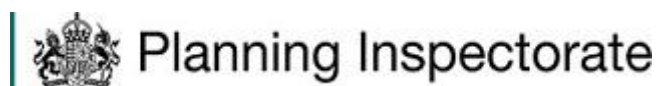
25. The Council has indicated that the appellant's submissions do not tell us how many staff would be on the premises at any one time. But the appellant has explained that, except at changeover times there will be no more than three staff on the premises at any one time and that the changeover of one of the overnight care staff is every 24 hours, usually 9.30am of a morning. Logically, this means there would be 4 members of staff on the property during changeover times. The appellant's submissions confirm this and I have no reason to think it would be otherwise.
26. The Council has also queried whether the two carers working on a rota basis are there at the same time or one at a time, stating that the sentence used allows for two different meanings. Be this as it may, whichever is the case, in my judgement, it would not result in any significant difference in the character of the activities on the land from what has gone on previously as a matter of fact and degree. I say this bearing in mind I am comparing the proposal with the lawful use that was or might reasonably be carried out. In this case, the previous occupants were two adults and two children and, as the Council has said, children's homes may function in some cases, in a very similar manner to a family home. That seems to be the case here.
27. My attention has been drawn to a typographical error ("a carers") in the Planning Statement. But this makes no difference to my overall conclusion as the LDC will be constrained by its description, which is clear about the number of carers.
28. Taking all of the above into account, as a matter of my planning judgement, on the balance of probability, I consider that there would not be a significant difference in the character of the activities on the land as a result of the change of use proposed in this case and so the change of use would therefore not be material and planning permission is not required.

Conclusion

29. 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(a)) dwelling as a children's home for up to two children, with a manager, and two carers who will sleep 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).

L Perkins

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 September 2024 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:

There would not be a significant difference in the character of the activities on the land as a result of the change of use proposed in this case and so the change of use would therefore not be material and planning permission is not required.

Signed

L Perkins

INSPECTOR

Date: 21 October 2026

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First Schedule

Use of a (C3(a)) dwelling as a children's home for up to two children, with a manager, and two carers who will sleep overnight, working on a rota basis (C2).

Second Schedule

Land at 22 Springhead Road, Erith, Bexley DA8 2BE

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: **21 October 2026**

by **L Perkins BSc (Hons) DipTP MRTPI**

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Scale: Not to Scale

