Planning Inspectorate

Appeal Decision

Site visit made on 22 September 2026

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 9 November 2026

Appeal Ref: APP/M2372/X/25/3373869
2 Portland Street, Darwen BB3 2JJ

- 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 W Bux against the decision of Blackburn with Darwen Borough Council.
- The application ref 10/25/0762, dated 21 July 2025, was refused by notice dated 15 September 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 'Use of dwellinghouse (Use Class C3(a) to provide a residential care accommodation (Use Class C2) for 2 young persons.'

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have taken the description of the proposal from the Council's decision notice as it has not been provided in the application form, and I do not have the supporting planning statement before me.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990 (the 1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application.

4. For the avoidance of doubt, this means that the planning merits of the development, which include highway safety, and any consultation responses from the Council's Highways and Environmental Health departments, are not relevant to this appeal. My decision is based on the facts of the case and judicial authority.

5. Accordingly, the main issue is whether the Council's decision to refuse to grant a LDC is well founded. This turns on whether the proposed use would be materially different to the established lawful use of the property. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probabilities, the proposed use would be lawful.

Reasons

6. The appeal relates to a modest 3-bedroom end terrace house that is located within a predominantly residential area that is characterised by similar terrace rows that have no off-street parking. There is no dispute between the main parties that the lawful existing use of the appeal site falls within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO).

7. The appellant's statement sets out that the appeal property would be used to house up to 2 looked after children, aged between 5 and 18 years old, who would receive care from no more than 4 members of staff. The members of staff would provide round the clock care for the children on a typical rota of 2 days/nights on and 4 days off.

8. One of the 3 bedrooms would be used by staff members (with 2 single beds) and the other 2 bedrooms would be used by the looked after children. I am informed that up to 2 awake staff would be on hand to provide any support that is needed.

9. The appeal property would be the young persons' permanent place of residence, where the children and the staff would prepare and eat meals together, attend school, go on trips, and carry out general household activities. It has also been put to me that the home would operate as a family-style environment, with staff fulfilling a parental role, rather than as an institutional care facility.

10. The main parties agree that the proposed use would fall within Class C2 'Residential Institutions' of the UCO and I have no substantive reason to disagree with this. Although there is no statutory definition of 'material change of use', the Courts have established that it is a matter of fact and degree for the decision maker to conclude upon.

11. It is also an established principle that to determine whether what is proposed would constitute a material change of use, it is necessary to compare the proposed use with the existing, as it might reasonably be carried out, and not with some notional use or level of occupation that might be lawful. For a change of use to amount to a material change of use, there must be some significant difference between the character of the activities of what is proposed and what went on previously.

12. The appellant argues that activity at the site and the general scale and nature of the use, which includes the levels of occupation, traffic and noise, would not be materially different to the occupation of the property as a Class C3 dwellinghouse. This could include occupation by a family with a child or children with complex needs.

13. In making this comparison, an example of a family with 2 parents and 3 teenagers (or older) living as a single household has been given as a number of residents that could be using the property as a dwelling house. The appellant states that this could potentially mean 5 cars, and 5 people of working age coming and going from the property at different times depending on their school/work schedules. This could include shift patterns leading to one or more people leaving the property in the night. It is asserted that these residents would likely have visitors coming and going from the property, which would include boyfriends/girlfriends, school friends, delivery drivers, and professional services.

14. Nonetheless, there is nothing in the evidence to suggest that the appeal property is currently occupied, or has previously been occupied, in the manner described by the appellant. Nor is there anything before me to demonstrate that the appellant's hypothetical examples, including that of up to 6 adult residents living as a single household and in receipt of care, reflect how the lawful C3 use of the property might reasonably be carried out.

15. The appellant argues that the comings and goings reasonably expected at a residential dwelling would be no different to the proposed use. I am informed that no specialist medical, psychiatric or physical support would be provided. However, there is little information before me regarding the specific needs of the children who would reside at the property and, consequently, the extent of visits, activities and movements likely to be associated with their care.

16. Whilst the appellant's evidence states that the young persons would not receive regular visits from third-party professionals, it also suggests that visits may occur on an ad hoc basis from social workers, family members or other staff associated with the operation of the home. However, no information has been provided regarding the likely frequency of such visits. Although I am also informed that electronic record keeping has reduced the need for external visits and enabled efficient handovers, limited information has been provided regarding how staff changeovers would operate in practice. This includes the number of staff involved in these at any one time and the likely extent of the associated comings and goings.

17. Given the limited evidence regarding staffing arrangements, visitor activity, vehicle movements and wider operational patterns, I therefore cannot be satisfied, on the balance of probabilities, as to the extent of the activity likely to be generated by the proposed use or whether that activity would be comparable to that reasonably expected from the occupation of the property as a dwellinghouse.

18. Moreover, there would be a significant difference in the character of those comings and goings. Whilst a dwellinghouse may generate visits from friends, relatives, deliveries and occasional professional contacts, such activity typically arises from the occupation of the property by a single household. In a typical single household dwelling, there is generally a relatively consistent pattern of occupation and associated movements, often involving the same occupants and recurring visitors. This results in a degree of familiarity for both residents and neighbours.

19. In contrast, the proposed use would involve attendance by care staff on a shift basis, together with visits from persons involved in meeting the care, welfare and support needs of the young persons residing at the property. Whilst the precise frequency and extent of such activity is uncertain, the evidence before me indicates that the property would be occupied and managed in a manner distinct from that of a single household.

20. I appreciate that no external and only minor internal alterations would be undertaken and that the property would continue to appear as a dwellinghouse. However, the absence of physical changes does not alter my concerns regarding the nature, pattern and character of activity associated with the proposed use.

21. Accordingly, and having regard to the evidence before me, I am not satisfied that the number, pattern and character of the comings and goings associated with the proposed use would be comparable to those reasonably expected from occupation

of the property as a single household dwelling. In the absence of precise and unambiguous evidence, I am therefore unable to conclude, on the balance of probabilities, that a material change of use would not occur.

22. Case law, recent LDC approvals in Bolton and several appeal decisions have been cited in support of the appellant's case. I appreciate that there may be some consistency or similarity between those cases and the arguments put forward for the proposal. However, some of these appear, on the basis of the evidence before me, to relate to different circumstances, including different numbers of children and staffing arrangements from those proposed in this appeal.

23. Moreover, each case turns on its own particular facts and circumstances, including the nature of the proposed use and the evidence provided regarding its operation. I have determined this appeal on the evidence that is before me and on a fact and degree basis. I am not bound by decisions which have been made elsewhere.

24. The Ministerial Statement, '*Planning for Accommodation for Looked After Children'*, and the guidance within it is also noted. However, this does not change established legal principles relevant to the determination of this appeal. Accordingly, the submitted case law, decisions and Ministerial Statement do not alter my conclusion on the main issue.

Conclusion

25. For the reasons given above I conclude that the Council's refusal to grant a LDC for the use of a dwellinghouse (Use Class C3(a)) to provide a residential care accommodation (Use Class C2) for 2 young persons is well-founded.
The appeal should fail, and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Mark Caine

INSPECTOR