

DELEGATED REPORT

Report by Claire Booth	Date of report: 12/11/2025	Ref: 72395/LDCP
Registration: 19/09/2025	LDFC:	Expiry Date: 14/11/2025
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area: N/A	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Lawful development certificate for proposed use of a (C3a) dwelling as a children's home for a single child, with a manager and two carers who would stay overnight, working on a rota basis (C2)

Location: 74 Bury Road, Radcliffe, Manchester, M26 2UU

Description

This application seeks a Certificate of Lawful Development (LDC) for a proposed use made under Section 192 of the Town and Country Planning Act 1990 (as amended) to use a Class C3a dwelling as a children's home for a single child, with a manager and two carers who would stay overnight, working on a rota basis (Use Class C2).

The Certificate relates to a semi-detached hipped roof, bay fronted, 3 bedroom property located at 74 Bury Road, Radcliffe.

Relevant Planning History

N/A

Publicity

N/A

Statutory/Non-Statutory Consultations

Children's Commissioning Team - No comments or observations received.

Pre-start Conditions - Not relevant

Development Plan and Policies

Issues and Analysis

The following report includes analysis of the merits of the application against the relevant policies of both the National Planning Policy Framework (NPPF), the adopted Places for Everyone Joint Development Plan Document (PfE) and the saved policies within the adopted Bury Unitary Development Plan (UDP), together with other relevant material planning considerations.

The policies of the UDP that have been used to assess this application are considered to be in accordance with the NPPF and as such are material planning considerations. For simplicity, just the UDP and PfE Policies will be referred to in the report, unless there is a particular matter to highlight arising from the NPPF where it would otherwise be specifically mentioned.

Equality Act 2010: All planning applications are considered in light of the Equality Act

2010 and associated Public Sector Equality Duty, where the Council is required to have due regard for:

The elimination of discrimination, harassment and victimisation;

The advancement of equality of opportunity between persons who share a relevant protected characteristic and person who do not share it;

The fostering of good relations between persons who share a relevant protected characteristic and person who do not share it; which applies to people from the protected equality groups.

Human Rights: All planning applications are considered against the provisions of the Human Rights Act 1998.

Under Article 6 the applicants (and those third parties who have made representations) have the right to a fair hearing and to this end full consideration will be given to their comments.

Article 8 and Protocol 1 of the First Article confer a right to respect private and family life and a right to the protection of property, ie peaceful enjoyment of one's possessions which could include a person's home, and other land and business assets.

In taking account of the Council policy as set out in the Bury Unitary Development Plan 1997 and all material planning considerations, it is concluded on balance that the rights conferred upon the applicant/ objectors/ residents/ other interested party by Article 8 and Article 1 of the First Protocol may be interfered with, since such interference is in accordance with the law and is justified in the public interest. Any restriction of these rights posed by refusal/ approval of the application is legitimate since it is proportionate to the wider benefits of such a decision, is based upon the merits of the proposal, and falls within the margin of discretion afforded to the Council under the Town & Country Planning Acts.

The Crime and Disorder Act 1998 imposes (without prejudice to any other obligation imposed on it) a duty upon the Council to exercise its functions and have due regard to the likely effect of the exercise of its functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. In so doing and on making planning decisions under the Town and Country Planning Acts, the material Planning considerations shall have due regard to the provisions of the Crime and Disorder Act 1998 and its implications in the exercise of its functions.

Applications for lawful development must be determined by planning law, fact and any other relevant judicial authority. In this case the planning law is the Town and Country Planning Act 1990 and the Use Classes Order 1987, as amended.

Use class confirmation

The first consideration of this application is whether a change of use would take place and what the proposed use class would be.

In a case which was subject to an appeal, (North Devon) S Ltd used a house to provide residential care for two children. The house comprised a small downstairs office, individual bedrooms, and the usual kitchen and bathroom facilities. Two non-resident staff were on duty at all times and the house was under the supervision of a team of six or seven adult carers, who attended on a rota basis. A question arose over whether the use required planning permission.

S Ltd applied, under section 191 of the Town and Country Planning Act 1990, for a certificate of lawful use. This was refused by the local council. On appeal, the inspector concluded that S Ltd was entitled to a certificate of lawful use because no material change of use had occurred. The council appealed that decision. The issue was the meaning of Classes C2 and C3 of the Use Classes Order 1987.

In North Devon it was ruled that for up to 6 persons living as a single household where care is provided, the caring staff must be permanently resident. It says:

"The concept of living together as a household presupposes a proper functioning household. In the context of a case such as this, that requires the children and a carer to reside in the premises, otherwise the use clearly falls within Class C2. It is apparent that the size of the institution is irrelevant for the purposes of C2, but if it falls within that definition, it is not to be regarded as a dwellinghouse. The inspector had been wrong to regard the use in this case as falling within C3(b) rather than C2. Class Cc does require at least one carer, together with those being cared for, to reside at the premises. The inspector had correctly decided that no material change of use had taken place. The use for a maximum of two children, with care provided by up to two non-resident staff at these premises, and only at these premises, was, in the circumstances, a lawful use".

In this proposed application for lawful development, the proposal where carers would be non-resident, in accordance with regard to the judicial authority, places the proposed use within Use Class C2 - Care Homes.

Material Change of Use

The second consideration of this application is whether or not the change of use constitutes a material change of use within the meaning of Section 55 of The Town and Country Planning Act 1990.

The applicant seeks consent for a Lawful Development Certificate (LDC) to use the dwelling as a proposed residential home. It is for the LPA to consider the nature of the proposed use (up to four adult carers and two children) and whether this is 'materially' different to the use of the property as a typical Use Class C3 (a) dwellinghouse.

It is important to consider whether a 'material' change of use will occur in accordance with the principles established in the North Devon judgment.

Supporting this approach, an inspector issued an LDC for the use of a house in Leicestershire as a children's home (appeal reference APP/K2420/X/11/2155849), finding that although the proposal would involve a change from C3 to C2 use, no material change of use was involved. The parties agreed that the lawful use was as a dwelling house in Use Class C3 of the Use Classes Order. It was proposed to operate it as a care home for children and young people between the ages of 9 and 17 with learning disabilities. The home would provide care for up to three children, administered by non-resident care staff working in shifts.

The Inspector noted that the North Devon judgment provided the authority with the view that use as a care home for children, where carers were non-resident, fell within Use Class C2. He then considered whether the change of use was material. In refusing an LDC staff numbers were cited by the Council as the sole cause for concern in this judgment. However, having looked at the numbers involved; the Inspector concluded that they were not materially different from what might be expected of a large family house. On this basis he concluded that the proposed use would not, as a use within Use Class C2, amount to a material change of use from Use Class C3 as a dwelling house. Accordingly it was concluded that the change of use would not require planning permission and the Council's decision to refuse to grant an LDC was not well-founded.

In light of the case law detailed above, each application should be determined on its own merits to decide whether there is a material change of use from that of a dwelling house (Use Class C3) to that of a residential institution Use Class C2. If it is decided that a change of use had taken place, it is important to establish if this is material.

The judgement reiterated that case law had established that whether or not a material change of use had taken place was a question of fact and degree.

The residing of up to 2 children with up to 3 carers on a rota basis (2 adult carers at any one time apart from a short handover and one manager) and no more than 5 people in total, is considered not to constitute a material change of use after taking into account the following factors:

- The size of the household of 2 children and 2 adults (3 adults maximum) would not go beyond what would be expected of a standard family unit in a two storey 3 bedroom dwellinghouse.
- Each child will have their own bedroom whilst the carers would have 1 bedroom which would also be used as an office
- The children and staff will share all other domestic facilities within the property such as the kitchen, lounge and garden. The first floor bathroom would also be used by all residents.
- The comings and goings would not be unlike that of a residential household.
- There is driveway parking and some on-street parking available nearby.

Therefore whilst the proposal would result in a change of use from Use Class C3 to Use Class C2, it is considered that there would be no material change of use in this case for the reasons detailed above and as such planning permission is not required and thus using the house for the proposed accommodation of two children in care with two carers and a manager is considered to be lawful. It is therefore recommended that this LDC be granted.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The proposal, described in the First Schedule, is not deemed not to be constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 as the proposed change of use of 74 Bury Road, Radcliffe, M26 2UU to a residential children's home for up to two children with up to 3 carers working on a rota basis (Class C2) and operating in full accordance with the details set out in the following documents and plans:
 - Drawing no. A201: Location & Site Plan;
 - Drawing no. A101: Existing Elevations;
 - Drawing no. A200 Rev. A: Proposed Plans; and,
 - Document: Rose Consulting Planning and Regeneration, Planning Statement, dated 17/09/2025,would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
CB	12/11/2025	DM -	12/11/2025