

**DELEGATED REPORT**

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| <b>Report by</b> Charlotte Orrell | <b>Date of report:</b> 19/03/2026 | <b>Ref:</b> 72930/LDCP         |
| <b>Registration:</b> 06/03/2026   | <b>LDFC:</b>                      | <b>Expiry Date:</b> 01/05/2026 |
| <b>Site Visit:</b>                | <b>Site Notice:</b> N/A           | <b>Press Date:</b> N/A         |
| <b>Objections:</b>                | <b>Con Area:</b> N/A              | <b>Adv Type:</b> N/A           |
| <b>Reason for Delay:</b><br>N/A   |                                   | <b>EIA:</b> NA                 |
|                                   |                                   | <b>Dec Level:</b> DEL          |
|                                   |                                   | <b>Stat Class:</b> NREQ        |

**Proposal:** Lawful development certificate for proposed use of dwellinghouse (Use Class C3) to provide residential care accommodation (Use Class C2) for 2 young people (aged 8-18 years)

**Location:** 109 Windsor Road, Prestwich, Manchester, M25 0DF

**Description**

Lawful development certificate for proposed use of dwellinghouse (Use Class C3) to provide residential care accommodation (Use Class C2) for 2 young people (aged 8-18 years)

**Relevant Planning History**

None

**Publicity**

None

**Statutory/Non-Statutory Consultations**

Children's Commissioning Team

**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.

Section 192 of the Town and Country Planning Act 1990 (as amended) allows an applicant to apply for a determination in law by the Local Planning Authority, that the matter applied for is not development requiring planning permission. In all such cases, the onus of proof is on the applicant and the factual information submitted in support of the application by the applicant forms the basis of the decision, in law, taken by the Local Planning Authority.

109 Windsor Road is a semi-detached dwelling on a residential street which has no relevant planning history and so the likely use of the property has constantly been residential C3 uses.

Depending on the circumstances of each case, a children's home will fall into either a C2 or C3 use classification. A material change of use from class C3 to C2 amounts to development requiring planning permission. There is therefore a potential requirement for planning permission to use a dwelling house as a children's home.

The starting point is to first establish whether a material change of use would occur and this centres around whether or not the children are in themselves capable of living together as a single household.

Class C3 (b) of the Town and Country Planning (Use Classes) Order as amended refers to "use as a dwelling house by not more than six residents living together as a single

household, (including a household where care is provided for residents).” If a children's home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there would be no requirement for planning permission. However, the matter is less clear when the care is based on shift patterns.

In the North Devon District Council [2003] case Justice Collins made the point that children “need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing full time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should.”

The North Devon judgement confirms that it is unrealistic to expect children to look after themselves in a single household. It also clarified that carers who provided 24 hour care but were not resident could not be regarded as living together in a household. The concept of living together as a household means that a proper functioning household must exist and children and carer must reside in the premises. In such circumstances, the use cannot therefore be considered to fall within Class C3 (b).

A children's home run on shift patterns could not be considered to fall within Class C3 (a), because clearly, this is not occupation of a dwelling house by a single person or people living together as a family.

Equally, C3(c) distinguishes groups of people living together as a single household, which could for example include people with lodgers, or student accommodation for up to six individuals. Children's homes based on shift patterns would not be considered to fall into these criteria either.

Following an assessment of case law and an Inspectors decision of 2010 at Stockport, use of premises as a children's home will generally be held to fall within Class C2 of the Order (Residential institutions).

Despite this however, the change of use from C3 to C2 may not amount to a material change of use and so may still not amount to development which requires planning permission so it is possible to conclude that no material change of use has occurred if there is no material difference in activity to that which may be anticipated in the case of a conventional residential use.

In this instance, the existing dwelling has 3 bedrooms although 2 of these bedrooms would only be suitable for one occupant as fall under the space standard required for double occupancy of 10.5sqm. The largest bedroom is approximately 11sqm which is above this standard and so is suitable for double occupancy. It is therefore considered that the property currently could be inhabited comfortably by up to 4 residents.

Alongside this application, the supporting information indicates that a maximum of 2 children would be cared for at the home. Staff would operate on a shift pattern with 2 members of staff generally being at the property during most of the day and night. During changeover periods, it was confirmed by the applicant that one member of staff would leave before another member of staff arrives to conduct handover. This means that during this period of time, there would not be more than 2 members of staff or 2 children present at the property.

It is noted that occasionally the children housed at the home may be visited by family members. It is however not uncommon for visitors to come occasionally to a residential C3 dwelling.

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Given the above, it is considered that activity at the property would be akin to that of the existing dwelling and therefore a material change of use would not occur.

A Certificate of Lawfulness should therefore be granted in the terms specified as the proposed does not constitute development.

**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 propsoed change of use of 109 Windsor Road, Prestwich M25 0DF to a residential children's home for up to two children with up to two carers working on a rota basis (Class C2) and operating in full accordance with the details set out in the applicants supporting statement submitted 06/03/2026 and further details submitted 19/03/2026 would not represent a material change of use from the existing Class C3 dwellinghouse use, and would therefore be Lawful Development.

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| <u>Case Officer</u><br>CO 19/03/2026 | <u>Date</u> | <u>Sign off Officer</u> | <u>Date</u> |
|--------------------------------------|-------------|-------------------------|-------------|