

DELEGATED REPORT

Report by Sam Summers	Date of report: 18/06/2025	Ref: 71761/LDCP
Registration: 25/03/2025	LDFC:	Expiry Date: 20/05/2025
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections: 6	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 change of use from residential (Class C3) to childrens residential care for two children aged 7-17 with up to two staff working on a rota basis and one manager working business hours (Mon-Fri) (Class C2).

Location: 25 Downham Crescent, Prestwich, Manchester, M25 0EH

Description

Lawful development certificate for change of use from residential (Class C3) to childrens residential care for up to two children with up to two staff working on a rota basis (Class C2). The care staff would work on a rota basis and would not be permanently resident. Effectively, therefore, the property will be occupied as a single household with up to 3 adults and up to 2 young people.

The proposal relates to a three bedroom two storey semi-detached dwelling in a residential area. It has a large driveway at the front and a garden area at rear.

Relevant Planning History

None

Publicity

No Letters were sent as no publicity is required on lawful development certificates as they are a process to confirm whether planning permission would be required for a proposal and are determined on planning law.

Six objections were received, they are summarised below:

- Struggle with parking on the street
- Frequent comings and goings of staff, visitors and service vehicles,
- Strain on local amenities and services,
- Impact on house prices,
- Council should preserve the residential nature and community spirit of the neighbourhood,
- Neighbours were not notified,
- Complaint that too many of the houses on the street are rental properties,
- Another nearby property is being rented and has caused a nuisance on the street,
- This will bring noise and disregard for the area and parking issues,
- This street is not suitable due to current environmental issues and criminal behaviours in the area
- A property 200m from the site has criminal activity
- Impact on safety of neighbourhood,
- This area is quiet and family friendly and this proposal would change that,
- Would set a bad precedent,
- Landlords are destroying Prestwich, not fair in a residential street.

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Development Plan and Policies

Issues and Analysis

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. The relevant judicial authority in this case is the judgement in North Devon District Council v. First Secretary of State [2003] EWHC 157 (Admin).

Use class confirmation

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

In the case that was subject of the 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, and 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. In 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 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 C3 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 application for lawful development the proposal for carers to 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 question in 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 as a proposed residential home, it is for the LPA to consider the nature of the proposed use (three adult carers and three 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. 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 2 carers on a rota basis and 1 office manager, 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 3 adults would not go beyond what would be expected of a standard family unit in a standard two storey semi-detached dwellinghouse. The manager will only be at the property during work hours from Monday to Friday. Each child will have their own bedroom whilst the carers would have 1 bedroom along with a staff office which can double as a second bedroom. The children and staff will share all other domestic facilities within the property such as the kitchen, lounge, bathroom and garden. There is on-street parking available nearby. The applicant has confirmed that there would be some occasional visits from family members or other health care professionals to the property, thus would not be unusual in a standard family home. The proposed children would not have any physical disabilities or personal care and so as such would not be expected to require regular visits from external staff. The frequency of visits in total is not any more than one could expect from a family home.

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.

Response to neighbours:

- Given the proposed comings and goings at the property there would not be a significant impact on any parking issues nearby when compared to the traffic and parking issues which could be generated if this remained in use as a standard family home
- The applicant has demonstrated that the comings and goings of staff would not be dissimilar to a standard family home, they have also stated that any outside visitors would be minimal,
- There is no evidence that this proposal would create any additional strain on local services than if a family moved into it.
- Impact on house prices are not a material planning consideration so cannot be considered as part of this application.

DELEGATED REPORT

- The proposed use is still a residential use so would not change the residential character of the area
- Residents were not notified of the proposals as the application is a lawful development certificate and so is determined by planning law, fact and any other relevant judicial authority.
- The number of houses which are rented on the street is not a material planning consideration so cannot be considered as part of this application.
- Each application must be taken on its own merits, a nearby property causing issues is not relevant to the lawfulness of this proposal.
- Existing environmental or crime issues in the area do not affect the lawfulness of this proposal.
- A nearby property having issues with crime is not relevant to the lawfulness of this proposal.
- The proposed use cannot be assumed to cause any more crime or anti social behaviour than any other family that could move into the property and a fear of crime would not cause the proposal to constitute a material change of use.
- Given the numbers of comings and goings and visits to the home, there is no evidence that the use would be likely to result in significantly greater levels of noise than the existing residential use.
- All application are assessed on their own merits so this application would not set a precedent for other applications.
- Whether the property is owned by a landlord is not a planning consideration so cannot be considered as part of this application.
- The proposed use would be a residential use so would be appropriate on a residential street

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) as the proposed change of use of 25 Downham Crescent, Prestwich, Manchester, M25 0EH to childrens residential care for two children aged 7-17 with up to two staff working on a rota basis and one manager working business hours (Mon-Fri) (Class C2) and operating in full accordance with the details set out within the supporting statement submitted 25th March 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>
SS	18/06/2025		