

DELEGATED REPORT

Report by Claire Booth	Date of report: 07/01/2026	Ref: 72469/LDCP
Registration: 13/11/2025	LDFC: 05/12/2025	Expiry Date: 08/01/2026
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 as a children's home for up to two children under the age of 18 (Class C2) in addition to its current use as a residential dwelling (Class C3)

Location: 32 Polefield Road, Prestwich, Manchester, M25 2GN

Description

This application seeks a Lawful Development Certificate (LDC) for the proposed change of use from residential (Class C3) to a children's residential care home for up to two children with no more than 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 2 adults and up to 2 young people.

This LDC application relates to the northern end of a pair of semi-detached dwellings on the eastern side of Polefield Road. It has a front garden area, enclosed by a dwarf wall, and driveway with a garden area and garage at the rear. The front boundary of the property is enclosed by a dwarf wall. The property has 3 bedrooms and a bathroom at first floor and a Lounge, Dining Room and Kitchen at ground floor.

Relevant Planning History

None.

Publicity

None - 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.

Statutory/Non-Statutory Consultations

Children's Commissioning Team - Email sent to notify them of the possible new care home location.

Pre-start Conditions - None/ Not applicable.

Development Plan and Policies

Not applicable.

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.

Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it 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. In any other case they shall refuse the application. The

onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

In this case this turns on whether the proposed use would remain within Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO), and would be excluded from the definition of development by virtue of section 55(2)(f) of the 1990 Act.

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 of the use would be.

In the Planning Law case that was subject of the appeal, *North Devon District Council v First Secretary of State & Southern Childcare* (2003), a house was used 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 or not

The second question in this application is whether or not the identified 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 a Lawful Development Certificate for the proposed residential home, it is for the LPA to consider the nature of the proposed use (two adult carers and two children living and working within the property) and whether this is 'materially' different to the use of the property as a typical Use Class C3 (a) dwellinghouse.

To establish whether there is a material difference, a comparison between the existing lawful use and the use of the property and as proposed must be considered. Although there is no statutory definition of 'material change of use', it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use would occur is a matter of fact and degree and this is determined on the merits of a case.

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, a Planning Inspector issued a Lawful Development Certificate (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 the house 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 the 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.

Following the North Devon Judgement, case law had established that whether or not a material change of use had taken place was a question of fact and degree.

In assessment of this LDC, the proposed residing of up to 2 children with up to 2 carers on a rota basis, no more than 6 people in total within the property, is considered not to constitute a material change of use taking account of the following factors:

- The size of the household of 2 children and 2 adults would not go beyond what would be expected of a standard family unit in a 3 bedroom dwellinghouse.
- Each child will have their own bedroom whilst the carers would have 1 bedroom/staff office.
- The children and staff will share all other domestic facilities within the property such as the kitchen, lounge, dining room and garden.
- The property has a driveway, there is a garage at the rear of the property, there is also on-street parking available nearby.
- The applicant has confirmed that the frequency of visits in total is not any more than one could expect from a family home.

Therefore, whilst the proposal would not 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 the proposed use of the dwelling in the manner proposed is lawful and would not require planning permission. It is therefore recommended that the Certificate be granted.

Recommendation: LAWFUL

Conditions and Reasons:

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- 1 The use of the premises as a children's home for up to two children with up to two staff working on a rota basis (Class C2) and as set out in the First Schedule below on land outlined in red on plans received on 16 October 2025 (Planning Portal Reference: PP-14402567v1) as set out in the Second Schedule below is considered to be a lawful use and consistent with the provisions of the Town and Country Planning Act 1990: Section 192, as amended.

FIRST SCHEDULE

Use of the premises as a residential children's home for up to two children with up to two staff working on a rota basis (Class C2).

SECOND SCHEDULE

32 Polefield Road
Prestwich
Manchester
M25 2GN

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
CB	07/01/2026	DM	08/01/26