



Appeal Decision

Site visit made on 11 September 2025

by **John Whalley**

an Inspector appointed by the Secretary of State

Decision date: 14th October 2025

APP/Z4310/X/25/3358286

57 Lorne Street, Kensington, Liverpool L7 0JP

- The appeal is made by Ms Shavae Willoughby o/b Homes2empower under section 195 of the Town and Country Planning Act 1990 as amended against a refusal by Liverpool City Council to grant a certificate of lawful use or development.
- The application, reference 24LP/3051, was dated 11 November 2024 and refused by notice dated 10 December 2024. It was made under section 192(1)(a) of the Town and Country Planning Act 1990 to ascertain that a proposed use would be lawful.
- The use for which a certificate of lawful use is sought is: Use of Dwellinghouse (Class C3) as a single child children's care home with non-resident carers (Class C2).

Summary of decision: The appeal is allowed, and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Costs application

1. The Appellant has applied for an award of costs against Liverpool City Council. That application is considered in a separate decision.

The Appeal Property and the Proposed Use

2. The appeal property, No. 57 Lorne Street, is a 2 storey dwelling at the end of a short terrace of 3 small houses in a long established residential road in the Kensington area of Liverpool.
3. Where a lawful development certificate (LDC) is sought under s192 of the Town and Country Planning Act 1990 (the 1990 Act), it is for the appellant to propose the use or operation that they wish to ascertain the lawfulness of. The description of the proposed use given on the application form was not only accurate but also sufficiently detailed for me to determine this appeal. I have had regard to the case of Barton Park Estates v SSHCLG¹ but do not need to contemplate the Council's amended description of the proposed use.
4. As noted above, the Appellant seeks an LDC for: "Use of Dwellinghouse (Class C3) as a single child children's care home with non-resident carers (Class C2)". The terms C2 and C3 refer to "use classes" set out in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (the UCO) as discussed further below.
5. The submitted plans show that No. 57 is currently laid out with a front lounge and a kitchen/dining/family room on the ground floor, plus three bedrooms and a bathroom on the first floor. The layout would remain much the same for the

¹ [2022] EWCA Civ 833

proposed use, with one bedroom being for the single child resident in this care home, another being available for staff to sleep in and the third being put to use as an incidental office.

Main Issue

6. Where an LDC is sought for a proposed use of land, the question is whether that use would have been lawful if it had been instituted or begun on the date of the LDC application. The onus is on the appellant to make that case on the balance of probabilities.
7. Under s191(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act), uses are lawful at any time if no enforcement action may be taken in respect of them, perhaps because they did not involve development or require planning permission. Under s57 and 55 of the 1990 Act, planning permission is required for the making of a material change of use.
8. The main issue for this appeal is whether the change of use of No. 57 from C3 to use as a single child children's care home with non-resident carers (Class C2), if that had taken place on 11 November 2024, would have amounted to a material change of use which required planning permission.

Reasons

9. Use class C3 is “use as a dwellinghouse (whether or not as a sole or main residence)...” Dwellings are usually occupied by single people, couples or families, but C3 can also encompass use by “not more than six residents living together as a single household where care is provided for residents...” and the caregivers are resident. Use class C2 is “use for the provision of residential accommodation and care to people in need of care (other than within class C3...)” but here the care givers do not reside in the building.
10. S55(2)(f) provides, in effect, that a change of use within a use class does not involve “development”. However, the reverse does not necessarily apply; a change from a use that falls within one use class (C3) to a use that falls within a different use class (C2) will only require planning permission if the change is “material”, meaning that must be some significant difference in the character of the activities taking place as a matter of fact and degree.
11. On 23 May 2023, the then Housing Minister issued a Written Ministerial Statement on planning for accommodation for looked after children. The statement set out that planning permission will not be required in all cases of development of children’s homes, including for changes of use from C3 dwelling houses where there is no material change of use to Class C2. Any LDC application should be decided on the facts of the specific use in question.
12. Notwithstanding references to “children” in the appellant’s statement, which I take as probably being “cut and paste” errors, it is clear that the proposed C2 home would accommodate just one child aged between 8 and 17 years whose care would normally require the presence of two adults. Such staff would not reside at No. 57 but work in pairs on 12 hour shifts, with changeovers taking place in the morning and evening. A bedroom would be available for night

shift staff to sleep. During normal working hours Monday to Friday, a manager might also be present and able to work from the office in the box bedroom.

13. The C2 use would generate external activity in the form of comings and goings from the appeal building: staff would commute as outlined above, the child would go or be taken to school and on other trips, the staff would take trips to the shops, and the child would be visited at home not least by professionals (such as social workers) about twice a month. The Council does not dispute the details of the use as put forward by the appellant.
14. That being the case, it is not clear why the Council considers that the change from C3 to C2 would be material. Any child living in a family dwellinghouse may be cared for daily by adults (such as grandparents) in addition to their parents. Any person may require support from professionals visiting them at home, and any householder may utilise a home office. I find that the change from C3 to use as a single child children's care home with non-resident carers (C2) would probably not result in a significant difference in the character or the intensity of the activities taking place at No. 57 as a matter of fact and degree.
15. That finding is consistent with those made by Inspectors in other LDC appeal decisions submitted by the Appellant. One of those decisions related to a proposed C2 home for two children rather than one, but the Inspector still found that the number and pattern of movements generated would not result in a material change to the definable character of the use of the building².
16. In another case where up to **three** children would be cared for, the Inspector found that the C2 use would give rise to "some additional comings and goings" but not a greater level of disturbance than could be expected from the lawful C3 use. They also found that the number of people typically present and the associated waste generated by the C2 use would not be significantly higher than what could be expected from the lawful use as a dwellinghouse³.
17. However, it was concluded in other appeal decisions cited by the Council that a change from a C3 to a C2 children's home use **would** be material because of the activity which would arise specifically from the care needs of the child or children in the home⁴. The Council has not provided copies of those decisions, but I do not dispute the accuracy of their summaries.
18. In the "Sefton" case on which the Council particularly relies, the Inspector was concerned that the resident children might need frequent visits from multi-agency professionals who, alongside the staff, would be liable to change. Thus, the Council says, the Inspector found that the proposed C2 use would have a more commercial character than the lawful C3 use because, even if the number of comings and goings would remain comparable, the people undertaking those movements would be less familiar to neighbours.
19. I agree that whether a change of use is material is liable to depend upon qualitative as well as quantitative assessments of activity. However, there is

² Appeal ref: APP/M3420/X/22/3300633

³ Appeal ref: APP/C5690/X/22/3299351

⁴ Appeal refs: APP/M4320/X/22/3301638 (the "Sefton appeal") and APP/J2373/C/23/3325930

no evidence that the fears of the Sefton Inspector would probably be realised at Lorne Street, and I would observe that people do not always know their neighbours, let alone their neighbours' visitors, in any residential setting. The Council's statement describes the proposed use as "short-term" but the occupiers of any C3 dwelling may be transient, while the same child could live at No. 57 for up to nine years and be cared for by the same staff throughout.

20. The Council's submissions are not sufficient to contradict the Appellant's evidence or render her version of events less than probable. Even if the proposed single child children's home is at some point occupied by consecutive children with intensive support needs, I find that there would probably not be a significant difference in the character of the use compared to C3 as a matter of fact and degree. The proposed use would not give rise to a material change in the nature, level and frequency of activities taking place.
21. I conclude that, if the use of the dwellinghouse (Class C3) as a single child children's care home with non-resident carers (Class C2) at No. 57 Lorne Street, Kensington, Liverpool L7 0JP had been instituted or begun on the date of the LDC application, it would not have amounted to a material change of use which required planning permission on the balance of probabilities. The Council's decision to refuse to grant an LDC was not well-founded. The appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

FORMAL DECISION

22. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

John Whalley

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 November 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason:

The change of use of the property, from use as a dwellinghouse falling within use class C3 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987, to the proposed use, which would fall within use class C2, would not be a material change of use that requires planning permission. The proposed use and a C3 use would not give rise to a material change in the nature, level and frequency of activities taking place, and so there would be no significant difference in the character of the use taking place as a matter of fact and degree.

Signed

John Whalley

INSPECTOR

Date: 14th October 2025

Reference: APP/Z4310/X/25/3358286

First Schedule

Use of Dwellinghouse (Class C3) as a single child children's care home with non-resident carers (Class C2)

Second Schedule

Land at No. 57 Lorne Street, LIVERPOOL L7 0JP

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 14th October 2025

by John Whalley

Land at: No. 57 Lorne Street, LIVERPOOL L7 0JP

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Scale: Not to Scale

