



## Appeal Decision

Site visit made on 2 June 2025

**By D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 JUNE 2025

**Appeal Ref: APP/Z2315/X/24/3351706**

**1 Albion Terrace, Burnley, BB11 4QE**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mohammed Younis of BarraCare Ltd against the decision of Burnley Borough Council.
- The application ref CEA/2023/0707, dated 23 November 2023, was refused by notice dated 25 March 2024.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is a use class C2 children's home.

### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed use class C2 children's home are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

### Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the proposal would amount to a material change in the character of the existing use and hence would amount to a material change of use of the land thereby requiring planning permission.

### Reasons

4. There is no dispute between the parties that the property can lawfully be used as a dwellinghouse as defined by use class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). This proposal seeks legal confirmation that use of the property as a children's home, while falling within the undisputed use class C2 of the UCO (i.e., the proposed occupiers would not live together as a single household), would not constitute a material change of use and hence would not be development requiring planning permission.
5. The existing property comprises a five-bedroom end of terrace dwellinghouse. The evidence is that it is currently unoccupied. It has a basement, a ground floor with a kitchen, two reception rooms, a storeroom and a hallway, and then five bedrooms

spread over the first and second (i.e., loft) floors. There is a rear yard which can be used for outside amenity space purposes. It is proposed to use the property as a children's home which would accommodate up to four young people and two to three members of staff working on a rota basis (only two members of staff sleeping overnight). The proposal is to split one of the existing bedrooms into two bedrooms thereby creating six bedrooms in total.

6. It has been held in case law that a change of use can only be material by bringing about a definable change in the character of the main use of the land. It is not the case that just because a proposal falls within a different use class in the UCO, it automatically means that there would be a material change in the character of the main use of the land. In other words, it is necessary to examine whether a proposal would lead to some significant difference in the character of the activity from what has gone on previously as a matter of fact and degree. It is noteworthy that section 55(2)(f) of the Act only provides that a change within a use class is exempted from development.
7. As part of my site visit (10.00 hours), and noting that this was a snapshot in time, I was nonetheless able to experience that the character of Albion Street and Albion Terrace was one that was very peaceful. While there were some comings and goings from vehicles and pedestrians in the wider area (e.g., Piccadilly Road), it was noticeable that vehicular and pedestrian movements along Albion Street and Albion Terrace were almost non-existent at this time. Moreover, it was clear that there were bollards in place within Albion Street and just beyond the appeal building. In this context, it is reasonable that I take the view that this part of Albion Street would ordinarily have less traffic movement and activity than other surrounding streets such as Piccadilly Road.
8. The appellant contends that the proposal would not be dissimilar to use of the appeal building as a dwellinghouse by a family comprising two adults and several children. In my judgement, the proposal would be materially distinguishable from the use of the property as a use class C3 dwellinghouse. Indeed, it includes staff shift changeovers and involving three different members of staff/carers at any one time. The evidence indicates that there would be up to three members of staff and four children at the site in the day, and up to four children and two members of staff in the evening. As part of the appeal, the appellant has clarified that the shift patterns would be a changeover of two members of staff at 10.00 hours and another one member of staff would arrive at 10.00 hours and leave at 22.00 hours, and the 'Home Manager' would arrive at 08.00 hours and leave at 16.00 hours.
9. I find that the regularity of staff shift changeovers on a day-to-day basis in terms of vehicular and pedestrian activity would be noticeable in relative terms in what is otherwise a more peaceful residential area. The appellant comments that changeovers would occur '*after peak traffic hours*'. That may be the case, but it is reasonable that I take the view that such an arrangement would represent a material change to the way that the property would be used as a dwellinghouse. This is because I find that at these times the level of movement and activity in Albion Street/Albion Terrace from vehicular and pedestrian comings and goings to and from the property would likely be less. In reaching this conclusion, I have considered the very limited number of comings and goings in the locality at 10.00 hours as experienced on my site visit. I find that there would be a material change in the character of activity to and from the appeal site at this time.

10. There is the potential for about three cars to have to manoeuvre or be parked in the area during shift change and Home Manager attendance times in the morning. When this is considered alongside possible activity and parking associated with other visitors to the property, I find that the occupiers of nearby neighbouring properties would be acutely aware of a noticeable difference in the character of the activity associated with the use of the building as a children's home when compared to its use as a dwellinghouse. The appellant refers to the potential for some staff to arrive by public transport. That cannot be guaranteed and, of course, it may be possible that lawful occupation of the property as a dwellinghouse may involve some residents that do not have access to a car and who may use public transport.
11. In addition to the above, the Council states that it remains possible that there may be other visitors to the site such as social workers, educators and/or clinicians/therapists. The appellant acknowledges this, but states that it would '*mainly comprise social workers and other professionals in the area who are involved in the care planning of children*'. He states that '*these visits would be around once every 1-2 months and are therefore relatively infrequent*'. The use of the words '*mainly*' and '*around*' does not provide the level of precision or certainty needed in terms of considering this matter.
12. I acknowledge that '*around*' once every 1-2 months may not be a very frequent occurrence. However, it is nonetheless possible that such visits (including potentially multiple visits if more than one child residing at the property needs support) could coincide with shift change over and Home Manager attendance times. Therefore, such visits have the potential to exacerbate my finding about a material change in vehicular and pedestrian comings and goings, and hence a material change to what my site visit revealed is otherwise a more peaceful residential environment in relative terms.
13. I appreciate that anyone occupying the appeal building as a dwellinghouse could in theory also have such visitors. However, the same sort of on-site shift pattern arrangements would not likely take place in terms of use of the property as a dwellinghouse and it is this, in conjunction with the other identified visits and comings and goings, which has led me to conclude that the proposal would constitute a material change in the character of activity of the land when compared to use of the property as a dwellinghouse.
14. Overall, I find that those that live in the area would experience a proposal which had more of an institutional character and hence one that would be materially different in character to the existing lawful use of the property as a dwellinghouse. Indeed, given the proposed shift pattern arrangements, I find that the property would be experienced and perceived by nearby existing residents as having a more transient character in terms of day-to-day adult occupation when compared to use of the property as a dwellinghouse. This is in the context of a locality where it appears that most of the properties are dwellinghouses.
15. For the collective above reasons, and, as a matter of fact and degree, I conclude that the proposal would amount to a material change in the character of the use of the land. It would result in a significant difference in the character of the activity from what has gone on previously. Consequently, I find that the proposal amounts to a material change of use and hence amounts to development as defined in

section 55(1) of the Act. Therefore, planning permission is required for the proposal.

16. In reaching the above conclusion, I have considered the various decisions (including appeal decisions) submitted by the appellant to support his appeal. These decisions are distinguishable from the appeal proposal in so far that they relate to different locations, environmental conditions and considerations. In any event, I have determined this appeal on the evidence that is before me, on a fact and degree basis, and am not bound by decisions which have been made elsewhere. The submitted decisions do not alter or outweigh my conclusion on the main issue.

### **Overall Conclusion**

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a use class C2 children's home is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

*D Hartley,*

INSPECTOR