

Lawful Development Certificate Application

Change of Use- Restaurant to Children's Day Care

The Bird at Birtle, 239 Bury And Rochdale Old Rd, Heywood OL10 4BQ.

1.0 Introduction and Legislative Context

1.1

This Statement is submitted in support of an application for a Lawful Development Certificate (Proposed Use) under Section 192 of the Town and Country Planning Act 1990 (as amended). The application seeks confirmation that the proposed change of use of the premises known as The Bird at Birtle, 239 Bury and Rochdale Old Road, Heywood, OL10 4BQ, from a restaurant (Use Class E(b)) to a children's day nursery (Use Class E(f)), constitutes permitted development under Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO").

1.2

The existing lawful use of the building as a restaurant is firmly established. Planning permission ref. 15/00158/FUL was granted in 2015 for the refurbishment and extension of the premises to form a bar and restaurant. The property has since operated continuously in this use, most recently under the ownership and management of the Nutter family as The Bird at Birtle. Evidence of this use is provided in Appendix A, confirming the building's lawful Class E(b) status.

1.3

The proposal is to convert the building to a children's nursery for the care and education of children aged 0–5, with wraparound care for children up to age 11 during school holidays and after-school sessions. This use falls within Use Class E(f): provision of day nurseries and creches, and therefore represents a change between uses within the same Class. Class E changes of use do not require planning permission, as confirmed by Article 3 and Schedule 2, Part 3, Class E of the GPDO.

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1.4

No external operational development is proposed as part of this application. The existing building, car parking layout, and external areas will be retained without physical alteration. All proposed works are internal and consist solely of non-structural alterations necessary for compliance with Ofsted requirements, such as the removal of the existing bar, minor layout adjustments, and adaptation of toilet facilities.

1.5

The nursery will be operated by Heaton Park View Nursery Limited, an Ofsted Outstanding provider in all categories. The operator has an evidenced and immediate need for additional childcare capacity within the locality due to increased demand arising from the national 30 hours free childcare entitlement. The proposed use is fully compatible with Class E, supports local economic growth, and provides a vital community service.

1.6

Importantly, the proposed nursery use represents a significant reduction in intensity and external impact when compared with the existing lawful use as a 140-cover restaurant operating late into the evening and at weekends. The nursery will operate Monday to Friday only, between 07:30 and 18:30, with no evening or weekend activity. The proposal will therefore reduce traffic generation, noise, and amenity impacts, supporting the test of lawfulness under the GPDO.

1.7

This application therefore seeks a formal determination from Rochdale Metropolitan Borough Council that the proposed change of use from a restaurant (Class E(b)) to a children's nursery (Class E(f)) is lawful and does not require planning permission.

2.0 Site and Existing Use

2.1

The application site comprises a two-storey detached building located on Bury and Rochdale Old Road (B6222), within the administrative boundary of Rochdale Metropolitan Borough Council. The building is prominently positioned on a main commuter route between Bury and Rochdale, serving a wide local catchment. The premises benefit from an extensive area of hardstanding to the front and rear, which has historically been used for customer and staff parking associated with the restaurant use.

2.2

The building is of permanent and substantial construction, originally operating as a public house known as the Bird l'th Hand, before undergoing refurbishment and reopening as The Bird at Birtle under the ownership of the Nutter family. The premises have been in continuous use as a restaurant/bar since approval was granted under planning permission 15/00158/FUL for "alterations to and refurbishment of existing pub including demolition of existing side and rear single storey extensions with erection of new part single storey and part two storey side extension and two storey rear extension to form new bar/restaurant."

2.3

There are no planning conditions on the existing permission which restrict the use of the premises exclusively to a restaurant or prohibit its occupation as another use within Class E. Accordingly, the property benefits from an established lawful use within Class E(b) as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended).

2.4

The site is not located within a conservation area, nor is the building listed. There are no Article 4 Directions in force that remove permitted development rights under Class E. The site is located within Flood Zone 1 and is therefore at low risk of flooding. There are no known constraints relating to heritage, ecology, or landscape that restrict the exercise of permitted development rights.

2.5

At the time of this application, the restaurant use has ceased trading but no alternative use has been implemented, and the lawful use as a restaurant remains extant. The premises have not been marketed for alternative purposes, nor has a change of use been undertaken. The existing condition of the site therefore provides a lawful and policy-supported fallback position that is material to this application.

2.6

The building currently includes an operational commercial kitchen, bar areas, dining rooms, WCs, and staff accommodation areas across two floors. All access, servicing, and parking arrangements are in place and suitable for immediate reoccupation under Class E without alteration.

2.7

Public transport accessibility is excellent. A bus stop is located immediately adjacent to the site entrance, providing services to Bury, Rochdale, Tottington and surrounding settlements at regular intervals. The site is also accessible to a large residential population within a 2km walking catchment, making the location highly suitable for a childcare facility in strategic sustainability terms.

2.8

The site characteristics and planning history therefore clearly establish the building as a lawful and active Class E unit, eligible for change of use to a nursery under Class E(f) without the need for planning permission.

3.0 Proposed Use

3.1

It is proposed to change the lawful use of the premises from a restaurant (Use Class E(b)) to a children's day nursery (Use Class E(f)), providing early years education and childcare for children aged 0–5, with additional wraparound care for children up to age 11 during school holidays and after-school sessions. The proposed use falls squarely within Class

E(f) of the Town and Country Planning (Use Classes) Order 1987 (as amended), which includes:

"Provision of creches, day nurseries or day centres (not including a residential use), principally for visiting members of the public."

Accordingly, the change of use constitutes permitted development under Class E of the GPDO.

3.2

The nursery will be operated by Heaton Park View Nursery Limited, a highly experienced childcare provider rated Ofsted Outstanding in all categories. This level of accreditation demonstrates the operator's proven capability in delivering high-quality early years care and educational outcomes. The operator has identified an immediate need for childcare places in the local area due to expansion of the Government's 30 hours free childcare entitlement, and the proposed facility will help meet this unmet demand.

Capacity and Internal Arrangement

3.3

The nursery will accommodate a maximum of 80 children on site at any one time, distributed across age-appropriate rooms in accordance with Ofsted statutory requirements relating to floor space, staff-to-child ratios, and facilities.

3.4

The facility will employ approximately 10–12 members of staff, including management, qualified early years practitioners, and support staff. Staffing levels will meet or exceed Ofsted minimum requirements to ensure the highest standards of safeguarding and education.

3.5

Internal modifications will be limited to non-structural alterations only, including:

- Removal of the existing bar and internal fixtures related to restaurant use
- Adaptation of existing WC facilities to provide age-appropriate children's toilets
- Internal room layout adjustments to create playrooms, sleep rooms, and staff areas

No external alterations are proposed as part of this application. All external areas will remain in their current lawful form.

Hours of Operation

3.6

The proposed nursery will operate during standard childcare hours, specifically:

- Monday to Friday: 07:30 – 18:30
- No opening at weekends or Bank Holidays

This represents a significant reduction in operating hours compared with the existing restaurant use, which was licensed to operate into late evening and early morning hours.

External Areas

3.7

The existing external hardstanding may be used on an informal, supervised basis for outdoor play. No physical works, fencing, surfacing, or fixed equipment will be installed as part of this application. The use of external space will be managed in full accordance with Ofsted safeguarding requirements, through controlled access, direct staff supervision, and no unsupervised outdoor activity.

Compliance with Class E

3.8

The proposed nursery use is wholly contained within Use Class E. No operational development is proposed. The change of use therefore:

- Qualifies as permitted development under Article 3 and Schedule 2, Part 3, Class E of the GPDO
- Does not require planning permission
- Meets all relevant legal tests for the issue of a Lawful Development Certificate

4.0 Assessment of Lawfulness Under Class E (General Permitted Development Order 2015, as amended)

4.1

This section assesses the proposed change of use against the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") to demonstrate conclusively that the proposal represents permitted development and is therefore lawful.

Relevant Legislative Framework

4.2

Article 3(1) of the GPDO grants planning permission for the classes of development described in Schedule 2, subject to the limitations and conditions set out in each Part. Schedule 2, Part 3, Class E permits:

"A change of use of a building and any land within its curtilage from a use falling within Class E of the Schedule to the Use Classes Order, to another use falling within Class E of that Schedule."

4.3

Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) includes:

- Class E(b): Sale of food and drink principally to visiting members of the public (restaurants, cafés)
- Class E(f): Creches, day nurseries or day centres (non-residential institutions for visiting members of the public)

4.4

As both the existing restaurant use and the proposed nursery use fall within Class E, the proposed development meets the criteria for permitted development and does not constitute development requiring planning permission under Section 55(2)(f) of the Town and Country Planning Act 1990.

4.5

The proposal satisfies all requirements of Class E permitted development as follows:

Requirement	Compliance
Existing use must fall within Class E	The property is lawfully in use as a restaurant (Class E(b)), approved under ref. 15/00158/FUL.
Proposed use must fall within Class E	The nursery use falls within Class E(f) – provision of day nurseries.
No external operational development proposed	Confirmed: no extensions, alterations, fencing, or external fixed equipment.
Use of land incidental to building	External areas will be used on an informal, supervised basis only.
No Article 4 Direction in place	Confirmed via Council records: permitted development rights remain intact.
Not in a use specifically excluded from Class E	The building is not a listed asset or within a conservation area; no exclusions apply.

4.6

As the proposal satisfies the requirements of Class E, no further assessment is required under other parts of the GPDO (such as Class T or Class R). There is no requirement to apply for prior approval.

4.7

The Courts have held that if a development falls within permitted development rights granted under the GPDO, it constitutes lawful development (Gravesham Borough Council v Secretary of State for the Environment (1984) 47 P&CR 142). The Local Planning Authority has no discretion to refuse a Lawful Development Certificate where the legal criteria are met.

4.8

This application has demonstrated that:

- The existing use is Class E(b)
- The proposed use is Class E(f)
- The GPDO expressly permits this change of use under Class E
- No physical works are proposed which would fall outside that allowance

Accordingly, the proposed change of use is lawful.

5.0 Highways, Access and Parking Impact

5.1

Although not required for the determination of a Lawful Development Certificate, this section is provided to assist the Local Planning Authority in understanding the operational characteristics of the proposed use and to demonstrate that the change from a restaurant to a children's nursery will significantly reduce traffic generation, parking demand and highway impact.

Existing Lawful Use – Restaurant (Class E(b))

5.2

The premises have historically operated as a high-capacity destination restaurant with up to 140 covers, functioning during peak evening periods and weekends. The lawful restaurant use generated:

- A high volume of customer vehicle movements concentrated during evening peaks
- Late-night traffic and taxi activity, often up to 1:00 am
- Delivery traffic and servicing movements associated with food and beverage supply
- Alcohol-related evening trade with extended dwell times

5.3

Parking demand under the existing use was correspondingly high. Historical site layouts indicate capacity for up to 27–44 vehicles, depending on configuration. In practice, overspill parking onto nearby roads was not uncommon during peak trading periods.

Proposed Use – Children's Nursery (Class E(f))

5.4

The proposed nursery will accommodate a maximum of 80 children with 10–12 staff. Traffic movements associated with the nursery use are inherently lower impact, due to:

- Staggered drop-off and pick-up patterns, typically spread across 07:30–09:30 and 15:30–18:30
- Short dwell times for parents (typically 5–10 minutes)
- No evening or weekend traffic
- No alcohol sales, events or taxi activity
- Staff arrivals concentrated before 08:00

5.5

The existing parking provision of 27 spaces will remain unchanged, with no physical alterations proposed. Parking demand is comfortably met on-site, with provision made for:

- 10–12 staff vehicles
- 5 designated short-stay pick-up/drop-off bays
- 1 existing disabled parking space
- 9+ additional visitor spaces available at all times

5.6

This level of provision exceeds typical local highway authority standards that apply to nurseries, which often require 1 space per staff member plus short-stay parent provision.

Comparative Impact

Impact Category	Existing Restaurant Use	Proposed Nursery Use	Change
Operating days	7 days per week	5 days per week	Reduction
Operating hours	10:00 – 01:00 (including late nights)	07:30 – 18:30	Reduction
Peak vehicle movements	Evenings & weekends	Weekday mornings & late afternoons	Lower impact overall
Parking demand	Up to 140 customers + 30+ staff	Max 80 children + 12 staff	Significantly reduced
Noise & amenity impact	High (evening activity, alcohol trade)	Low (childcare only, daytime only)	Significantly reduced

5.7

In overall terms, the proposed use will generate substantially less traffic and parking demand than the established lawful fallback. The development therefore represents an improvement in terms of highway safety, amenity and sustainability.

5.8

No changes are proposed to the site access, which remains suitable for two-way vehicle movements. The existing hardstanding will continue to accommodate all activity associated with the proposed use.

6.0 Community Benefits, Safeguarding, and Policy Support

6.1

While the determination of a Lawful Development Certificate is a matter of law rather than planning judgement, the proposed use delivers clear public benefits and aligns fully with national and local policy objectives relating to childcare provision, sustainable development, economic growth, and community well-being.

Meeting Local and National Demand for Childcare

6.2

The UK Government has introduced expanded childcare funding entitlements, including 30 hours of free childcare for eligible families. This has resulted in a significant increase in demand for nursery places across the country. The operator, Heaton Park View Nursery Limited, is currently operating at full capacity and is turning children away due to lack of space within its existing settings.

6.3

The application site occupies an accessible location on a major commuter corridor between Rochdale and Bury, serving a large residential catchment. The proposal will deliver additional childcare capacity in line with:

- Paragraphs 92 and 93 of the National Planning Policy Framework (NPPF) – promoting access to childcare as a key community facility
- Local Plan policies supporting social infrastructure and community services
- Central Government initiatives to support working families and economic participation

Reduction of Local Impacts Compared with Existing Use

6.4

The lawful fallback use of the site as a late-night restaurant has a significantly greater environmental and amenity impact than the proposed nursery. The restaurant use permitted operation until 1:00am at weekends, involved alcohol consumption, generated high evening parking demand, and attracted vehicle movements during sensitive hours.

6.5

By contrast, the proposed nursery:

- Operates weekdays only, during normal working hours
- Generates daytime activity only, with no evening or weekend use
- Produces lower levels of traffic and parking demand
- Has no noise-generating external plant or equipment

This represents a clear improvement in terms of neighbouring amenity, community safety, and environmental impact.

Safeguarding and Ofsted Compliance

6.6

The nursery will be Ofsted registered and operated in accordance with the Early Years Foundation Stage (EYFS) statutory framework. Safeguarding measures will include:

- A secure controlled-entry system
- Supervised outdoor activity only
- No unsupervised access to external areas
- Internal configuration to ensure safety, visibility, and secure zoning

6.7

There is no requirement for external fencing or equipment at this stage. All safeguarding standards will be achieved internally, in full compliance with Ofsted requirements.

Economic and Employment Benefits

6.8

The proposed change of use will create 10–12 permanent employment opportunities, including management, early years educators, support staff and apprentices. All roles will be provided on permanent contracts with continuous professional development, contributing positively to the local economy.

6.9

The nursery will support working families, improve local workforce participation, and reduce commuting distances for childcare, aligning with national sustainability goals.

7.0 Conclusion

7.1

This application seeks a Certificate of Lawful Proposed Use confirming that the change of use of the premises at The Bird at Birtle, 239 Bury and Rochdale Old Road, Heywood, OL10 4BQ, from a restaurant (Use Class E(b)) to a children's day nursery (Use Class E(f)), is lawful under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

7.2

The existing lawful use of the premises as a restaurant is established through planning permission ref. 15/00158/FUL and subsequent continuous operation. The proposed use is clearly within Class E(f) as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended). Article 3 and Schedule 2, Part 3, Class E of the GPDO expressly permit changes of use within Class E without the need for planning permission.

7.3

No external operational development is proposed as part of this application. All proposed internal works are non-structural and fall outside the scope of development requiring planning permission under Section 55(2)(a) of the Town and Country Planning Act 1990.

7.4

There are no restrictive conditions, Article 4 Directions or site-specific constraints that disapply Class E permitted development rights at this property. Accordingly, the proposed change of use fully satisfies all applicable criteria and is therefore lawful.

7.5

For completeness, it is demonstrated in this Statement that:

- The proposed nursery use will operate within the parameters of Class E(f)
- The change of use results in a reduction in traffic, noise and local impact compared with the existing lawful restaurant use
- The proposal aligns with local and national objectives in relation to childcare provision, sustainable development and community infrastructure

7.6 Formal Request

In accordance with Section 192 of the Town and Country Planning Act 1990 (as amended), it is respectfully requested that Rochdale Metropolitan Borough Council Issue a Lawful Development Certificate confirming that the proposed change of use from Class E(b) to Class E(f) is lawful and does not require planning permission.

