KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF LAWFUL DEVELOPMENT

Reference no.: 2025/CL/90111/W

Site: 15, Orchard Street West, Longwood, Huddersfield, HD3 4TE

Description: Certificate of lawfulness for proposed change of use from dwelling to children's home

Case Officer**:** Chris Cockroft

Decision Reference: PROPOSED USE REFUSED

I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kevin Walton

AUTHORISED OFFICER

Date 09-Apr-2025

APPLICATION OF CERTIFICATE OF LAWFULNESS – PROPOSED

Applicant: Ms Laura Caunce - Mini Mansions Children's Homes Ltd

Site: 15, Orchard Street West, Longwood, Huddersfield, HD3 4TE

Description: Certificate of lawfulness for proposed change of use from dwelling (C3) to children's home (C2)

Application number: 2025/90111

1.0 Application

1.1 The applicant seeks a certificate of lawful development from the Local Planning Authority to confirm that altering the use of the building from dwellinghouse (C3) to care home (C2) does not constitute a material change of use and would therefore result in a lawful use.

2.0 Lawful Use Certificates

2.1 Section 192(1) of the Town and Country Planning Act 1990 ("The Act) permits any person who wishes to ascertain whether any operations or existing use of buildings or other land would be lawful to make an application to the Local Planning Authority.

2.2 Section 191(2) of the Act provides that uses are lawful in any person wishes to ascertain whether –
(a) Any proposed use of buildings or other land is lawful
(a) Any operations which have been carried out in, on, over or under land are lawful; or
(b) Any other matters constituting a failure to comply with any condition or limitation subject to which planning permission has been granted lawful he may make an application for the purpose to the local planning authority specifying that the land and describing the use, operations and other matter.

For the purposes of the Act, a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force.

3.0 The Relevant Test

The burden of proof lies firmly with the applicant and the relevant test for whether the operations can be deemed lawful is in the 'balance of probability'.

The Applicant's evidence does not need to be corroborated by 'independent' evidence. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse the application, provided the

applicant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

4.0 Limitations

The Lawful Development Certificate can contain precise details of what use or operations are found to be lawful, why and when. The details will not be legally equivalent to a planning condition or limitation. They will be a point of reference specifying what was lawful at a particular date, against at which any subsequent change may be assessed. If the use subsequently intensifies or changes in some way to the point where a 'material' change of use takes place, the Local Planning Authority may then consider further development has taken place.

5.0 Relevant Information

5.1 The application site is 15, Orchard Street West, Longwood, Huddersfield, HD3 4TE, a three-storey semi-detached dwelling. There are communal parking spaces to the rear of the property for the block of dwellinghouses, in which it is sited. It also has a very small amenity space /garden, to the front & rear elevations.

5.2. Planning History
2005/62/95147/W1 ERECTION OF 10 NO. THREE AND FOUR BEDROOM TOWN HOUSES WITH ASSOCIATED GARAGES AND PARKING

6.0 Evidence submitted in support of the application

6.1 Evidence to verify the application was submitted Planning Statement was submitted. Based upon the information submitted by the Applicant, it is proposed that:

- There will be a maximum of two children in the property at any time.
- There will be a maximum of two support staff supporting the children at any time. Four staff in total during a 24 hour period.
- There will be a Registered Manager which is required under the Children's Homes Regulations (2015). The Manager will be on site Mon – Fri 9 til 5. They will at times be the 2nd person and at times the 3rd person. Their role includes daily oversight of care provided and safeguarding practice, so they can't do this role remotely.
- The support staff will be on a shift patterns: 10am to 1030am (Staff will work 24.5 hour shifts which includes an 8 hour sleep-in).
- The age of the young persons will range from 10 to 17 years of age.
- The home is a medium to long-term home; it's difficult to give a timeframe as this depends on care planning for the child, but on average between 6 months and 3 years.

- Providing care to children who have experienced trauma and who need care to overcome that. Some children will have learning difficulties and other additional needs. As the property has an attached neighbour, I won't be providing care to young people who will persistently cause noise and damage and upset the neighbours. The home will be registered to provide care to children with emotional and behavioural difficulties and learning disabilities, but I will carefully consider the impact on the neighbours when making decisions about which children will live there. The care provided will help children recover from trauma and feel safe in a stable placement. There will be behavioural challenges to manage, but I will mitigate this through a well-trained and well supported staff team
- Frequency of visits by social workers per day/week/month etc: These visits will depend on the needs of the children living in the home. If the child is not in education, a tutor may visit to provide education, but more commonly now tutoring is completed via Teams. Therapists and or medical professionals may visit; again this will depend on the child – on average 1-2 visits per month. Child in Care reviews will not be happening in the home. Social Worker visits will depend on the child's care plan – on average 1-2 visits per month
- The house is a semi-detached property and the evidence submitted does not specify the parking spaces available to the rear of the property.
- There will be no building works undertaken. There are no internal modifications needed.

6.3 A location plan has been provided by the Applicant.

6.4 A floor plan was not submitted by the Applicant.

7.0 Evidence submitted against the application

7.1 None

8.0 Site Visit

8.1 A site visit by the case officer was considered to be unnecessary in this instance.

9.0 Assessment of evidence

9.1 Section 55 of the Act establishes that the making of a material change of use of a building represents development. The consideration is whether such a proposed change of use is material for the purposes of Section 55.

9.2 The recognised starting point in considering whether a material change of use has occurred would be to initially consider the planning unit (Burdle v SoS

[1972]). The existing planning unit is a semi-detached property and its curtilage. Any material change of use is considered with the planning unit indicated on the submitted location plan.

9.3 Materially, in the context of the meaning of development is dependant upon whether there is a material change in the character of the property (Guildford Rural DC v Penny (1959)). A change of use from C3 dwellinghouse to residential care home C2 is not always considered to change the use, if that change is not material in planning terms, as the carers and children may emulate a residential use as closely as possible, whilst remaining residential in terms of style and use.

9.4 Consequently, it cannot be concluded that the proposed use is introducing a substantially different use within the building currently in use as a residential dwellinghouse. However, a residential use for care purposes may fall within C3(b), C2 (Residential Institutions) or C2A (Secure Residential Institution).

9.5 With regards to the proposed use, North Devon District Council vs Secretary of State [2003] states that: *"children need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home…..children are regarded as needing full time care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should."*

9.6 On 23rd May 2023, the Housing Minister issued a written ministerial statement on planning for accommodation for looked after children. The Statement sets out that the planning system should not be a barrier to providing homes for the most vulnerable in society. The Statement also sets out that planning permission will not be required in all cases of development of children's homes, including for changes of use from dwellinghouses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2.

9.7 The North Devon judgment confirms that it is unrealistic to expect children to look after themselves in a single household C3(b). Moreover, even if 24-hour care was being provided based on a shift pattern, it held that the carers must have also been living full time on the premises for it to be capable of being considered a household for the purpose of use class C3.

9.8 The use of the application site, 15, Orchard Street West, Longwood, Huddersfield, HD3 4TE, for the care of 2 young persons, with up to 2 carers during the day, a manager who will be present from 9am to 5pm every weekday, and 2 night care staff, would not generally fall within Class C3 as the carers would not live permanently, but the application proposes to have between 2-3 staff members during the day and night shifts (inclusive) and therefore cannot be considered as a single household and must be regarded as C2.

9.9 Based upon the submitted information, the care of children in these circumstances can more accurately be considered to fall within Class C2 of the Use Class Order 1987.

9.10 That being said, consideration needs to be given as to whether a C2 use, operated in this manner proposed within the submitted information would constitute a material change of use, given the Section 55 of the Act establishes that the making of a material change of use of a building represents development.

9.11 The materiality of a change of use being judged in the broad context of the likely consequences of that change upon the character of the property, comparing the different activities (if any) that will take place at the location itself before and after the change takes place is the starting point for such an analysis.

9.12 However, the question of what constitutes material is a matter of fact and degree for the Local Planning Authority to determine in the first instance and the Secretary of State in the event of an appeal.

9.13 The key test of materiality in a change of use are whether there would be a change in the character of the use of the premises and only in borderline cases the effects of this change of use of the premises upon residential uses, may be able to assist in the analysis. This entails giving particular consideration to the proposed use, having regard to the activities proposed to be undertaken and whether those activities would exceed what might reasonably be undertaken at a dwellinghouse.

9.14 In this case, the change of use from an existing C3 use to a C2 use for 2 young people with up to 2 carers during the day, a manager, present from 9am to 5pm every week day and 2 night care staff, would appear to be materially different to that which a typical dwelliinghouse would operate. Dwellinghouses do not have a manager attending for work office hours. The Council consider that non-caring staff, such as a manager, can make a material difference to the character of the property dependent upon the amount of time they spend on site and the frequency of visits. In this case, there will be a manager on site every week day 9am to 5pm. It is considered that this would alter the character of the dwelling in terms of introducing a significant business element to the activities and the number of people in the property and the number of car movements, which would not be typical of the day-to-day comings and goings of a residential dwelling.

9.15 The submitted information does not indicate that any internal works are proposed.

9.16 There is no evidence presented to show that the use of the premises as a small-scale care facility for two children would result in any increase in noise or behaviour. Equally there is no evidence to show the use of the premises would result in an increase in crime or disorder or that the welfare of the children would be put at risk. It is for the applicant to demonstrate this would

not be the case or provide information to demonstrate the behaviour of the residents would not amount to a material change.

9.17 The information advises that an unspecified number of parking spaces are available to the rear of the property in a communal car park. The information submitted by the applicant states that visitors to the property would be infrequent. This could also be expected in a residential setting, where adults or children may have health needs leading to visits from care professionals. However, at shift changes along with daily parking requirements for the manager would potentially mean 3 vehicles would be present each day with up to 5 vehicles during the cross over of staff every 24.5 hours. The communal parking to the rear appears to accommodate 18 vehicles serving at least 10 dwellings meaning less than 2 spaces per dwelling. Overall, the number of vehicles present at this property, which is relatively modest with no obvious dedicated parking despite some potential communal off street parking, would lead to on regular street parking, particularly on daily shift changes, beyond what could reasonably be expected at the dwellinghouses in the immediate vicinity, thus adding further to a material change in the character of the property.

9.18 Moreover and in terms of vehicle movements, it is considered that up to 2 carers during the day, a manager present from 9am to 5pm every week day, and 2 night care staffs, generating up to 10 car movements for shift changes, would increase car movements to more than would be expected at this residential property on a typical day. This would be in addition of other vehicle movements for school runs, shopping and other general comings and goings.

9.19 The use of the premises would consist of up to 2 carers during the day, a manager, present from 9am to 5pm every week day and 2 night care staff, with two children living together and accommodating rooms which are presently used as a dwelling. The degree of change in the character of the building would appear to be material.

9.20 On this basis the occupation of the dwelling by two children (aged 10-17 years old) with up to 2 carers during the day, a manager, present from 9am to 5pm every week day and night care staff, would constitute a material change of use under C2, thus it would operate differently to use as a dwelling within use class C3.

9.21 In terms of planning control, the use of the building would not be retained as a residential household with care being given to two children, because the manager on site along with a significant number of vehicle parking and movement materially changes the character to that of a residential care home and it is considered reasonable to conclude that the dwellinghouse would have materially changed in use from C3 to C2 and that development would have occurred which would subsequently have required planning permission.

10.0 Recommendation

10.1 Based on the above, it is considered, on the balance of probabilities that the proposed use of the dwellinghouse as a residential home at, 15, Orchard Street West, Longwood, Huddersfield, HD3 4TE, for up to two children (aged 10-17 years old), with up to 2 carers during the day, a manager, present from 9am to 5pm every week day, and 2 night care staff, within the land edged red on the submitted details, amounts to a material change of use as defined by Section 55 of the Act. The change of use is considered to substantially change the character of the building. It is therefore recommended to refuse the certificate.

Recommendation: Refuse Certificate

Decision Authorisation - Delegated Powers

Application Number: 2025/90111

Officer Recommendation: Refuse Certificate

On the balance of probabilities, the occupation of the building at 15, Orchard Street West, Longwood, Huddersfield, HD3 4TE, by two children (aged 10-17 years old), with up to 2 non-residential carers during the day, a manager, present from 9am to 5pm every week day and 2 non-residential night care staff, would amount to a material change of use from a Dwellinghouse (Class C3) to a Residential Institution (Class C2) as defined by the Use Classes Order 1987 (as amended).

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application Form			16/01/2025
Location Plan			16/01/2025
Additional Information	2025_90111 Children's Home Supplementary Questions		16/01/2025

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning

Policy Framework, the Local Authority have, where possible, made a preapplication advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application.

Report Date: 11/03/2025