

**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/90663/W

Site: 41, Greenhead Lane, Dalton, Huddersfield, HD5
8EE

Description: Certificate of lawfulness for proposed use of
dwelling as children's care home

Case Officer: Chris Cockroft

Decision Reference: PROPOSED USE GRANT

**I hereby authorise the approval 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: Mr K Baig, Eden Care Homes

Site: 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE

Description: Certificate of lawfulness for proposed change of use from dwelling (use class C3) to residential care home (use class C2)

Application number: 2025/90663

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 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE, a large two-storey detached dwelling. It has a parking area and both an integral garage and garage to the primary elevation. It also has an amenity space /garden, to the rear elevation.

5.2. Planning History

2008/91842 Erection of detached dwelling with integral garage and erection of garage and link to existing dwelling. - GRANTED

2024/92215 Certificate of lawfulness for proposed change of use from dwelling (use class C3) to residential care home (use class C2) – REFUSED

2024/90075 Certificate of lawfulness for proposed change of use from dwelling (use class C3) to residential care home (use class C2) - REFUSED

6.0 Evidence submitted in support of the application

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

- There will be a maximum of three children in the property at any time.
- Two residential care workers will be present on a rota basis. They will work 48 hours on (sleeping nights) and the remaining of the week off. After 5.00pm there will only be two Residential Care Workers present at the home until 9.00am. At which point they will be joined by the Deputy Manager during the week at 9.00am.
- A Deputy Manager will be present 2-3 times per week for a couple of hours (max. 6 hours per week, on weekdays)
- A Registered Manager will work remotely and only visit if their intervention is required for auditing purposes. The audit is conducted once a year in

preparation for Ofsted inspection. The manager has to ensure everything is in order for compliance purposes. This is a requirement once a year.

- The age of the young persons will range from 7 to 17 years of age.
- Average length of stay of young persons: It is likely to be medium term approximately 2 years plus.
- They will not be admitting children who display severe anti-social behaviour. In short, those who may be a concern to the residents and the wider community. They will ensure that each step is taken with extreme caution under the scrutiny of the regulatory body Ofsted, local authorities, and social services, to ensure the right child is placed in the right home.
- Social Worker likely will visit once every 4 to 8 weeks.
- Operations manager / Responsible individual once to twice a month.
- Maintenance once a month.
- Academic tutor dependent on the individual child. One visit per week up to two hours. Alternatively, tuition will be conducted online.
- All children will visit doctors, dentists, opticians, hospitals etc, appointment based and under the supervision of care staff.
- The time of visits will be mostly between the hours of 9am and 5pm.
- The comings and goings will be no different to a normal residential home.
- The house is a detached property and the evidence submitted allows parking for 6 cars on the driveway and garage.
- 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 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 (Planning Portal Reference: PP-12763465v1).

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, 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE, for the care of 3 young persons, with 2 carers on a 48-hour rota, working sleeping nights, and a Deputy Manager visiting the site 2 to 3 days for a total of 6 hours per week 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 3 young people with 2 carers on a 48-hour rota, working sleeping nights, a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week, would not appear to be significantly different to that which the building would operate if it was a residential dwelling. Whilst most dwellinghouses do not have a Deputy Manager attending for work office hours, it is not considered that in this case this would alter the character of the dwelling in terms of introducing a significant business element to the activities. The business activities will be carried out in business offices elsewhere and visits to the property by the Deputy Manager will be ad hoc and akin to a regular visitor to a residential property which is not uncommon where mobile care is provided to a resident.

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 three children would result in any increase in noise or behaviour. There is also 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

9.17 The information advises that four parking spaces are available on the driveway of the property plus two in the garage. 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. The daily parking requirements would be for 3 vehicles for the Deputy Manager (when they attend) and two care staff, which at shift changes, would potentially mean 5 vehicles generating 10 car movements in total, during the cross over of care staff every 48 hours. It is not considered that the movements in total, would increase car movements to more than would be expected at any residential premises on a typical day.

9.19 The use of the premises would consist of up to 2 carers on a 48-hour rota, working sleeping nights, a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week, with three 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 marginal.

9.20 On this basis the occupation of the dwelling by three children (aged 7-17 years old) with up to 2 carers on a 48-hour rota, working sleeping nights, a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week would not constitute a material change of use under C2, thus it would not operate differently to use as a dwelling within use class C3.

9.21 In terms of planning control, the use of the building would be retained as primary residential with care being given to three children; and it is considered reasonable to conclude that the dwellinghouse would not have materially changed in use from C3 to C2 and the development would not occur 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, 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE, for up to three children (aged 7-17 years old), with 2 carers working sleeping nights, on a 48 hour rota, a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week within the land edged red on the submitted details, do not amount to a material change of use as defined by Section 55 of the Act. The change of use is not considered to substantially change the character of the building, nor does it have "planning" effect upon the neighbourhood. It is therefore recommended to approve the certificate and confirm the lawful use.

Recommendation: Grant Certificate

Decision Authorisation - Delegated Powers

Application Number: 2025/90663

Officer Recommendation: Grant Certificate

On the balance of probabilities, the occupation of the building at 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE, by three children (aged 7-17 years old), with up to 2 non-residential carers working sleeping nights, on a 48 hour rota and a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week would not 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			11/03/2025
Location Plan			11/03/2025
Proposed Internal Layout			11/03/2025
Floor Plans			11/03/2025
Statement			11/03/2025
Parking			11/03/2025

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: 21/03/2025