

**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/90962/W

Site: 17, Far View Crescent, Almondbury, Huddersfield,
HD5 8ER

Description: Certificate of lawfulness for proposed change of
use of dwelling to childrens home

Case Officer: Charlotte Hancock

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 05-Jun-2025

Application

1.0 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 191(1) of the Town and Country Planning Act 1990 ("The Act") permits any person who wishes to ascertain whether any proposed use of buildings or other land is lawful to make an application to the Local Planning Authority.

2.2 Section 191(2) of the Act provides that uses are lawful if the Local Planning authority is provided with information satisfying them that the use of operations described in the application would be lawful if instituted or begun at the time of the application.

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 (LDC) must contain 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 at 17 Far View Crescent, is a spacious two-storey detached house constructed of a mixture of brick and grey cladding. The dwelling is located on a residential street and the houses that make up the street scene differ in size, architectural style and material pallets. The property benefits from an off-road parking area for approximately 3 cars. The property has a small amenity area to the front and large enclosed garden to the rear.

6.0 Planning History

2024/93381- Certificate of lawfulness for proposed use as residential childrens home- withdrawn

2025/90229- Certificate of lawfulness for proposed change of use from dwelling (use class C3) to residential care home (use class C2)- Certificate of lawful use refused

7.0 Consultations

7.1 The Designing Out Crime Officer (DOCO) was consulted as part of this application process. They raised some concerns mostly surrounding the suitability of the property for this type of application as well as the lack of detail within the initial application submission. In this instance, the concerns raised are not material considerations to be taken into account during this assessment.

8.0 Representations

8.1 A summary of comments received on the application are set out below:

- Concerns surrounding the suitability of the property for the intended use.
- Consequences and impact of additional traffic flows and potential of on-street and pavement parking.
- The potential for noise, antisocial behavior and safety issues.
- Concerns about how the Crescent does not have in place the required support structure to meet the needs of all children.
- Concerns about the privacy of the children due to the design of the property incorporating a large amount of glass.
- Concerns around the suitability of the property due to the apparent presence of asbestos in the front of the property, as well as the safety of the balcony to the rear.

- Concerns about the potential impact on the value of surrounding properties.
- Limited outdoor space at the property for children to play.
- Limited educational facilities within walking distance of the property as well as other facilities such as shops or doctor surgeries.
- Potential for disturbance to residents during staff changeovers as they are proposed at unsociable hours.
- Concerns about the lack of nearby recreational facilities for children to play.
- Concerns around the location of the dwelling due to the narrow estate roads.
- Limited public transport facilities for local residents.

9.0 Evidence submitted in support of the application

9.1 The Applicant has provided the following information:

- The home will be for a maximum of 3 children.
- The age of the young persons will be between an age range of 5 to 17 years old.
- The applicant has stated that they will only admit children with long term placement needs which will range around a 1-year stay to a 12-year stay. This will be until the child reaches 18 years old.
- There will be a 1:1 staffing ratio. There will be a maximum of 3 children in the home, and there will be a total of 3 staff working plus an Ofsted Registered Manager working office hours.
- The shift pattern for supporting staff is 7:30am until 11pm for 2 consecutive days, followed by 4 days off. 2 of the 3 staff working that day will be sleeping in the home each night; therefore, 2 out of 3 staff members will be working a 24-hour shift. There will be a half-hour hand over period between 7:30am and 8am each day.
- The home will be overseen by an office manager who will be present in the home Monday- Friday 09:00- 17:00. The office manager will not work on weekends, unless required.
- Only minor works will take place to the interior of the property including fitting fire safety doors.

- Support will be provided to children already placed in local authority care and support will be provided to children with Emotional and Behaviour Disorders. However, the applicant has stated that they will be taking care when looking at child admission to ensure the staff can meet the needs of all children within the home, alongside each other.
- Staff will be experienced and trained to work with the children with emotional and behavioral disorders and will be led by an experienced senior management team and home managers. Restorative therapeutic work will be undertaken following any events of challenging behavior. All children will have Local Authority care plans as well as the care facilities care plans to ensure the children receive the best level of care.
- Social workers are expected to visit every 6 weeks unless other meetings are required.
- A therapist will attend the home once a week to support all young people. However, other meetings will be held off-site and medical appointments will be attended at the service where required.
- The young persons will be attending mainstream schools or specialist provisions. There may be a single other professional visiting at other times.
- Off-road parking is available for 3 vehicles on the driveway however there is a garage at the site which may be able to accommodate further parking at the site.
- Any visits would have to be planned in advance and it is likely that these will be undertaken away from the home.

6.3 A location plan has been provided by the Applicant.

6.4 A floor plan was not submitted by the Applicant.

10.0 Other Evidence

10.1 Fine & Country Brochure for 17 Far View Crescent.

11.0 Evidence submitted against the application

11.1 None.

12.0 Site Visit

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

13.0 Assessment of evidence

13.1 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.

13.2 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 land edged in red on the submitted location plan (drawing number 1084285).

13.3 Materially, in the context of the meaning of development is dependent 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 type of 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.

13.4 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).

13.5 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.”*

13.6 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.

13.7 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.

13.8 The use of the application site, 17 Far View Crescent, Almondbury for the care of a maximum of 3 young persons aged between 5-17, with a maximum of 3 day carers and 2 night carers and an office manager, would not generally fall within Class C3 as the carers would not live there permanently. The application proposes to have a maximum of 3 staff members during the day and 2 staff members during the night shifts and therefore cannot be considered as a single household and must be regarded as C2.

13.9 The Use Class Order defines care to be where there is a dependency on carers providing care for disabilities and in the case of C2 use, care for children. In this case, the information submitted by the applicant cites that the proposal is for 3 children (aged 5-17 years old). The information submitted confirmed that there will be a maximum of 3 carers during the day, with 2 of these carers sleeping overnight. The shift patterns for day carers will be 07:30-23:00, working 2 days on with 4 days off. 2 of the 3 day staff working will be staying overnight and there will be a half an hour shift handover period between 07:30 and 08:00 am each day. An office manager will be overseeing the operation of the home, working Monday-Friday 09:00-17:00. The requirement to have an office manager at the site requires further consideration.

13.10 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.

13.11 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 of a building which represents development.

13.12 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.

13.13 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.

13.14 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.

13.15 In this case, the change of use from an existing C3 use to a C2 use for 3 children with 3 day carers and 2 night carers plus a daytime office manager raises concerns to the LPA. The presence on average of 7 people in the house daily can be considered to go beyond the daily functioning of normal dwellinghouse on a day-to-day basis. This is further exacerbated by the presence of an office manager, which can materially impact the function of the property, as the property will essentially be operating as a sole workplace for one member of staff for 5 days and potentially 7 if required as they may be required on weekends. The presence of a member of staff who effectively will be commuting to their place of work on regular daily basis would introduce an activity not typically experienced at a dwellinghouse and a change in the character of the use from a dwellinghouse to that more akin to a place of business with staff coming and going at regular intervals.

13.16 Furthermore, the shift patterns of the carers indicated that there will be an overlap between the end of the night shift and the start of the day shift, therefore meaning the maximum number of staff at the property would be 5, totaling 8 people including the young persons- though this may be for a limited period. The information provided by the applicant following an email confirmed that there is off-road parking for 3 vehicles on the drive, with a potential of up to 5 with the presence of a double garage. Issues were raised within the representations made about the suitability of the garage to accommodate a further 2 car parking spaces. From reviewing the Kirklees Highway Design Guide, this specifies that for a garage to be treated as a parking space, the minimum internal dimensions should be for a double garage 6.0m long x 5.0m wide. Evidence obtained includes a Fine & Country brochure for 17 Far View Crescent which includes an internal floor plan. This floor plan demonstrates that the garage is 5.25m by 5.35m and therefore falls short of the minimum internal dimensions specified above. It may be improbable that the garage would be utilized for car parking in any event which may lead to an increase in on street parking. Furthermore, due to the 'horseshoe' shape of the driveway, 1 car would essentially be rendered inaccessible without moving an additional car. There may be potential further disruption at the site when staff changeovers take place at the site with the addition of a further 3 cars when the staff are undertaking handovers. This may require a further 3 cars to enter and/or park on the public highway during that time. This would result in a maximum of 6 cars being at the property at one time which is a result of the business activity at the property, this adding further materiality to the change in use to a residential institute.

13.17 With regard to other professionals, the presence of these visiting the property will vary. The applicant has stated that social workers will visit every 6 weeks. They have also stated that their aim is to create a family home environment for young people and therefore professional meetings where there will be several people attending will be held away from the home. They have stated that all medical appointments will be attended at the service where required, however there will be a therapist that will attend the home once a week to support all young people. Therefore, there may be

an increase in vehicle movements to and from the property in some instances. It is accepted, however, that it is not uncommon for other professionals to visit residential properties where care is provided and any increase in vehicle movements may be typical of the comings and goings from a home where care is provided. In this instance and given the number of staff members who visit the property throughout the day, particularly during shift changes would result in between 6 and 11 vehicle movements resulting from staff changes. This would be in addition to further vehicle movements to and from school, shops and other visits as well as other visiting professionals all related to a residential institute use.

13.18 The potential number of vehicle movements the use is likely to create, particularly the intensity during shift changes, daily presence of a manager and at least weekly visits from a therapist would create a change in the character of the dwellinghouse, as the vehicle movements go beyond what can be expected of incidental movements of a dwellinghouse and thus the use is materially different.

13.19 Overall and in terms of planning control, the use of the building as a residential institute involving the care of 3 children aged 5-17 looked after by 3 staff in the day and 2 at night as well as the presence of an office manager during the day in addition to the traffic movements relating to that residential institute use, is considered to be a material change of use from the current lawful use as a single dwellinghouse. The change of use therefore amounts 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). Given the onus is on the applicant to provide the Local Planning Authority with clear and unambiguous information, in this case, the applicant has not clearly demonstrated or provided evidence to indicate the change of use of the existing dwellinghouse to a residential institute is not a material change of use.

10.0 Recommendation

10.1 Based on information above, it is concluded, on the balance of probabilities, that the proposed use of the dwelling as a residential institute for 3 children with 3 carers during the day as well as 2 carers working the night shift, with an office manager working office hours within the land edged red on the submitted plan amounts to a material change of use as defined by Section 55 of the Act. The change of use is considered to change the character of the property. It is therefore recommended to refuse the certificate and a planning application for full consideration of all "planning" matters fully assessed.

Recommendation: Refuse Certificate

Decision Authorisation - Delegated Powers

Application Number: 2025/90962

Officer Recommendation: Refuse Certificate

On the balance of probabilities, the occupation of the building at 17, Far View Crescent, Almondbury, Huddersfield, HD5 8ER by 3 children aged 5-17 with care provided by staff, with 3 carers during the day and 2 carers during the night as well as manager working office hours, including visits from therapists/care professionals within the land edged red on the submitted plan amounts 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	1084284	-	07/04/2025
Location Plan	1084285	-	07/04/2025
Block Plan	1084285	-	07/04/2025
Supplementary Information	-	-	02/06/2025

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: 04/06/2025