

**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/91098/W

Site: 92, Balmoral Avenue, Crosland Moor,  
Huddersfield, HD4 5LJ

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

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 01-Jul-2025**

## **APPLICATION OF CERTIFICATE OF LAWFULNESS – PROPOSED**

**Applicant: Mr Mohammed Luqman Ali**

**Site: 92, Balmoral Avenue, Crosland Moor, Huddersfield, HD4 5LJ**

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

**Application number: 2025/91098**

### **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 92, Balmoral Avenue, Crosland Moor, Huddersfield, HD4 5LJ, a two-storey semi-detached dwelling. It has a small garden to the front of the dwellinghouse and an amenity space /garden, to the rear elevation. It has a drive/parking to the side elevation.

5.2. Planning History  
None

#### **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. The information submitted by the Applicant proposes that:

- There will be a maximum of one child in the property at any time.
- The age of the young persons will range from 7 to 17 years of age.
- The length of stay will be determined by the outcomes of the care provided, which may result in the child returning to foster care, their family, or transitioning into adulthood. Consequently, it is difficult to estimate the average length of stay for a child residing at the home.
- Children will typically have social, emotional, and behavioural difficulties. The home will help them understand and overcome the impact of trauma and disrupted childhoods.
- 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. Shifts begin at 10:00 am and end at 10:00 am two days later. The Evening shift ends at 11:00 pm, followed by sleeping in dedicated rooms. Morning shifts resume at 7:00 am with handover at 10:00 am.
- The Registered Manager will be on-site from 9:00 am to 5:00 pm, Monday to Friday, but may occasionally work remotely. In their absence, a deputy

or senior staff member will be present. The Manager/Deputy Manager will ensure that the home operates in full compliance with relevant regulations (e.g., Children's Homes Regulations, Ofsted) and maintains high standards of care, overseeing daily operations and providing leadership, supervision and performance management of the staff.

- A social worker likely will visit once to twice per month.
- OFSTED Inspector once per year
- Counsellors or therapist occasional visits as required.
- Education will take place at local school.
- There will be occasional family visits to the site, which will likely be no more than one a month
- The building will operate in a manner very similar to a typical family home
- The site accommodates 2–3 cars, which meets normal operational needs. Staff are encouraged to use public transport due to strong links to the town centre. When necessary, staff will be reminded to park respectfully, avoiding inconvenience to neighbours. The area has ample on-street parking capacity, comparable to a regular household.
- 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 Kirklees DOCO were consulted and have no objection to the process.

7.2 Other objections submitted referred to:

- Insufficient parking
- Noise from staff at shift changes
- Proposed business use of house not fitting in residential area

## **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-13336455v1).

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 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, 92, Balmoral Avenue, Crosland Moor, Huddersfield, HD4 5LJ, for the care of 1 young person, with 2 carers at any one time on a 48-hour rota (starting 10:00 am and ending at 10:00 am two days later), 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 1 young person with 2 carers at any one time on a 48-hour rota (starting 10:00 am and ending at 10:00 am two days later), an Office Manager or Deputy Officer Manager present from 9am to 5pm every day, would appear to be materially different to that which a typical dwellinghouse would operate. Dwellinghouses do not have an Office Manager/Deputy Office Manager attending for work office hours. The Council consider that non-caring staff such as an Office 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 an Office Manager/Deputy Office 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 goes beyond what may be expected to be seen at a typical dwellinghouse. The Council consider that non-caring staff such as an Office 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. The presence of a manager with the two rotated staff, whether as a carer or not introduces a ratio of three adults looking after one child which is not typical of a dwellinghouse. A manager commuting to the property each weekday along with staff changes appears more institutional and business like. Therefore, it is considered that this would alter the character of the dwelling in terms of introducing a significant business element to the activities and goes beyond what may be expected to be seen at a typical dwellinghouse.

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 one child would result in any increase in noise or behaviour. No evidence has been presented 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 2-3 parking spaces are available on the driveway of the property. The daily parking requirements would be for 2-3 vehicles for the Officer Manager and two care staff, which at shift changes, would potentially mean 4 vehicles would be present during the cross over of day and night staff, every 48 hours. 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. Overall, the number of vehicles present at the site for shift changes, despite off street parking for three vehicles, would not ordinarily be expected at a typical dwellinghouse, thus adding further to a material change in the character of the property.

9.19 The use of the premises would consist of up to 2 carers at any one time on a 48-hour rota (starting 10:00 am and ending at 10:00 am two days later), an Office Manager or Deputy Office Manager, present from 9am to 5pm every day, with one child living together and accommodating rooms which are presently used as a dwelling. Due to the Office Manager and Deputy Office Manager working on site, 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 one child (aged 7-17 years old) with up to 2 carers at a time on a 48 hour rota (starting 10:00 am and ending at 10:00 am two days later), an Office Manager or Deputy Office Manager, present from 9am to 5pm every day, 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 one child, because the Office Manager and deputy Office Manager on site 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, 92, Balmoral Avenue, Crosland Moor, Huddersfield, HD4 5LJ, for one child (aged 7-17

years old), with 2 carers at any one time, on a 48 hour rota, an Office Manager or Deputy Office Manager, present from 9am to 5pm every day, 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: 2025/91098**

**Officer Recommendation: Refuse Certificate**

On the balance of probabilities, the occupation of the building at 92, Balmoral Avenue, Crosland Moor, Huddersfield, HD4 5LJ, by one child (aged 7-17 years old), with up to 2 non-residential carers at any one time, working on a 48 hour rota, an Office Manager or Deputy Office Manager, present from 9am to 5pm every day, 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
<b>Application Form</b>	Application Form		22/04/2025
<b>Location Plan</b>	Location Plan		22/04/2025
<b>Proposed Internal Layout</b>	92 Balmoral Avenue		22/04/2025
<b>Additional Information</b>	Supporting evidence 16 Rhodesia Avenue		22/04/2025
<b>Additional Information</b>	Supplementary Information - Applicant		01/07/2025

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: 01/07/2025