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/91209/W

Site: 91, Long Lane, Dalton, Huddersfield, HD5 9LH

Description: Certificate of lawfulness for change of use from dwelling (C3) to children's home (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 Asam Hussain, Serene Haven LTD

Site: 91, Long Lane, Dalton, Huddersfield, HD5 9LH

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

Application number: 2025/91209

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 91, Long Lane, Dalton, Huddersfield, HD5 9LH, a two-storey terrace dwelling. It has a small garden to the front of the dwellinghouse and an amenity space /garden, to the rear 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 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 16 years of age.
- Average length of stay of young persons is likely to be medium term approximately 6 -12 months, but there is no set time limit.
- The expected support needs of young persons are likely to include support for those at risk of Child Criminal Exploitation (CCE) and Child Sexual Exploitation (CSE) with emotional and behavioural difficulties. The staff within the home will be trained in trauma informed parenting and utilise the PACE model of parenting. Staff will work with a therapist to support them to provide therapeutic care.
- A Social Worker likely will visit once or twice per month.
- The child would be supported to engage in medical appointments and a LAC health assessment would be conducted once a year. All other appointments would generally be away from the home. Therapists and tutors would offer their services and at a different venue. We would work with 'Chrysalis' and should the child engage this would take place away from the house. The child in care review is twice a year but does not

necessarily have to take place in the home. A number of these now utilise teams and zoom.

- Four residential care workers (two at any one time) will be present on a rota basis. Shifts will be 10am-10.30pm with the sleep being from 10.30pm-10am. The applicant states that they will stagger the shifts so each morning one staff member will arrive and one will leave so, each shift will have someone who was on the previous day to provide continuity, at which point they will be joined by the Office Manager during the week at 9.00am.
- The Office Manager will work 9-5/ 10-6 Monday-Friday and will work from the home for a minimum of three days but up to 5 depending on their tasks and the needs of the business.
- The Officer manager is on site as this will be a new home for which she would need to have an overview of all that is going on within the home, to ensure the home remains compliant with Ofsted regulations and be a point of call for outside partner agencies. The manager is also responsible for training and supporting the staff. It is not possible for a manager to be able to do their job if they are not present in the home as they are required to capture the child's voice and staff input into care plans risk assessments. If they are unable to see what takes place in the home it may possibly hinder the progress of the care of the child.
- The Officer Manager is not a material change of use as the manager will not be secluded to a specific room nor would any room within the home be changed or adapted. There would be no difference to the property or home with the manager working there compared to a household with the two parents and a third working from home. The manager in this case would not be solely an office manager as they would interact with the child within the home. Breakfast, lunch and dinner would be eaten together and they would be integrated into the family unit we hope to build. The Officer Manager may also provide support/care if required
- The frequency and number of family visitors would be dependent on the child's care or risk plan but friends who visit would not have a vehicle and family would generally come in one car and it would be the parents. Sibling contact in most cases would take place in leisure venues or parks or other areas depending on the child's request.
- The house is a terrace property and the evidence submitted allows no parking for vehicles on site. The applicant states that there are a number of residential streets around the home with on street parking and aside from the social worker there would not be many visitors to the home and that would be a monthly visit in most cases. Visits to the property with painters and decorators on numerous occasions has never found parking to be an issue as a number of the neighbours seem to be students. The limited number of staff will also be required to park where they are not blocking or impeding anyone else. Shifts will change at 10 thus avoiding the morning rush hour and there is numerous on-street parking close to the home. Some on-road parking may be available on Long Road. They state that they aim to employ local staff, provide public transport tickets and use the

cycle to work scheme and to car share. The manager would utilise their own car.
- 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 requested that the applicant be advised to install window restrictors or lockable window hardware on the first floor for child safety, please.

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 terrace property and its curtilage. Any material change of use is considered with the planning unit indicated on the submitted location plan (PP-13986781v1).

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, 91, Long Lane, Dalton, Huddersfield, HD5 9LH, for the care of 1 young person, with 2 carers at any one time on a 10am-10.30pm / 10.30pm-10am rota basis and an Office Manager present 9am-5pm/ 10am-6pm Monday-Friday, who will work from the home for a minimum of three days but up to 5 depending on their tasks and the needs of the business, would not generally fall within Class C3 as the carers would not live permanently, but the application proposes to have between 2-5 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 10am-10.30pm / 10.30pm-10am rota basis, an Office Manager present 9am-5pm/ 10am-6pm Monday-Friday, who will work from the home for a minimum of three days but up to 5 depending on their tasks and the needs of the business, would appear to be materially different to that which a typical dwellinghouse would operate. Dwellinghouses do not have an 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. 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 there are no onsite parking spaces available at the property. 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 potentially be for 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, at 10pm – 1030 pm and 9.30am – 10am. This would be in addition to a social worker once or twice a month, other visitors such as friends or family. Overall, the number of vehicles present at the site for shift changes and other visitors and no off-street parking for 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 rota basis, an Office Manager, present from 9am to 5pm / 10am -6pm for a minimum of three and up to five days, on weekdays, with one child living together and accommodating rooms which are presently used as a dwelling. Due to the 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 7-16 years old) with up to 2 carers at a time on a 10am-10.30pm / 10.30pm-10am rota basis , an Office Manager, present from 9am to 5pm / 10am -6pm for a minimum of three and up to five days, on weekdays, 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 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, 91, Long Lane, Dalton, Huddersfield, HD5 9LH, for one child (aged 7-16 years old), with 2 carers at any one time, on a 10am-10.30pm / 10.30pm-10am rota basis, an Office Manager present from 9am to 5pm / 10am -6pm for a minimum of three and up to five days, on weekdays, 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: 2025/91209

Officer Recommendation: Refuse Certificate

On the balance of probabilities, the occupation of the building at 91, Long Lane, Dalton, Huddersfield, HD5 9LH, by one child (aged 7-16 years old), with up to 2 non-residential carers at any one time, on a 10am-10.30pm / 10.30pm-10am rota basis, an Office Manager, present from 9am to 5pm / 10am -6pm for a minimum of three and up to five days, on weekdays, 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			01/05/2025
Location Plan			01/05/2025
Additional Information	Supplementary Information		19/06/2025
Proposed Internal Layout			01/05/2025

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: 23/06/2025