

**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/91250/W

Site: 33, Ivy Street, Crosland Moor, Huddersfield, HD4  
5RB

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

Case Officer: Laura Yeadon

**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 02-Jul-2025**

**APPLICANT:** M. Hussain

**SITE:** 33, Ivy Street, Crosland Moor, Huddersfield, HD4 5RB

**APPLICATION NUMBER:** 2025/91250

[Weblink](#)

## **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 proposed use of buildings or other land is lawful to make an application to the Local Planning Authority.

2.2 Section 192(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.

2.3 For the purposes of the Act, a use is lawful at any time if no enforcement action may 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**

3.1 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'.

3.2 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**

4.1 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 is at 33 Ivy Street, is a two storey, semi-detached dwelling constructed from stone. Google Imagery indicates that the property has been extended to the rear at ground floor level which is also indicated on the submitted floor plans. The plans also indicate that the property accommodates 3 no. bedrooms and also has an attic room, alongside ground floor accommodation which includes a kitchen, dining room and living room with 1 no. bathroom at first floor level.

5.2 The property is located within a predominantly residential area which is characterised by terraced properties. The property benefits from amenity space to the front and rear with a driveway running along the side of the dwelling which could accommodate approximately 2 no. vehicles.

## **6.0 Planning History**

6.1 1993/04623 Erection of ground floor extension – *Conditional Full Permission*

## **7.0 Representations**

7.1 No representations have been received.

## **8.1 Evidence submitted in support of the application**

8.1 The applicant has provided the following information:

- Application form
- Location plan
- Floor plans
- Management Plan

## **9.0 Evidence submitted against the application**

9.1 None

## **10.0 Site visit**

10.1 A site visit by the Case Officer was not considered necessary in this instance.

## 11.0 Assessment of evidence

11.1 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.

11.2 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, two storey dwelling and its curtilage which includes a driveway to the side and amenity spaces to the front and rear. Any material change of use is considered with the planning unit indicated on the land edged red on the submitted location plan (drawing number PP-13996901v1).

11.3 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.

11.4 However, a residential use for care purposes may fall within C3(b), C2 (Residential Institutions) or C2A (Secure Residential Institution).

11.5 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.”*

11.6 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.

11.7 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.

11.8 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 applicant is seeking confirmation that they can use the property as a children's home for one child. The submitted Management Plan states that there would be 2 no. staff on shift 24/7 and a manager who would be at the property from 9am to 5pm Monday to Friday. It is proposed that shift changes would take place at 10:30am

11.9 The use of 33 Ivy Street for 1 no. child and 2 no. staff and a day manager with the child not requiring additional dedicated support with no specific focus on complex needs would not fall within Class C3 as the carers would not live permanently within the premises and as such, cannot be considered to be living as a single household.

11.10 The care of a child in these circumstances can more accurately be considered to fall within Class C2 (residential institution).

11.11 Therefore, 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.

11.12 A change of use from a dwelling to a care/children's home would not always be considered to change the type of use. In this instance, the applicant submits that the intention is to operate the house as a home for 2 no. carers and 1 no. child with a day manager is intended to emulate a family household as closely as possible.

11.13 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.

11.14 The key test of materiality in a change of use is 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.

11.15 It is expected that a dwellinghouse would have occupants on a permanent basis and it would not be unusual for children to make up part of a family home. The use proposed in his case would include a maximum of 1 no. child and it is likely that this would form their permanent address for an unspecified period of time.

11.16 There would be two employees at the site at all times on a shift pattern whereby the shift change would occur at 10:30am and a day manager during the office hours, Monday to Friday. This would appear to be materially different to that which a typical dwellinghouse would operate. Dwellinghouses do not have Day/Office Manager attending for office work hours. The Council consider that non-caring staff such as an Office/Day Manager can make a material difference to the character of the property dependent upon the amount of time

spent on site and the frequency of visits. The presence of a Manager working 9am to 5pm Monday to Friday with two rotated staff, whether as a carer or not introduces a ratio of three adults looking after one child 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.

11.17 In terms of the character of the area and the perception that as a Children's Home, there may be potential for the child to commit anti-social acts or for an increase in crime level. The supporting Management Plan specifically refers to the child leaving the property and states that the child would be able to leave should leave the property should this be agreed in their care plan and with social workers and independent officers. If this is not possible, the child would be accompanied. A curfew would also be in place.

11.18 In relation to vehicular movements, it is proposed that the shift changes would take place at 10:30am and that handovers would take place for a 20-minute period between 10:30am to 10:50am. Therefore, there would be the possibility of 4 no. vehicles at the property plus a vehicle for the Day/Office Manager totalling the possibility of 5 no. vehicles at any one time. This would be in addition to social workers and any other professionals attending the property along with visiting family/friends. Overall, whilst a level of off-street parking is available, this is considered over and above what would be expected at a typical dwellinghouse, therefore further adding to a material change in the character of the property.

11.19 Therefore, the use of the premises would consist of two carers at any time on a rota basis, an Office/Day Manager present from 9am to 5pm, Monday to Friday is considered to constitute a change of use under Use Class C2 as it would operate differently to the use of the property under Use Class C3.

11.20 In terms of planning control, the use of the building would not be retained as a residential household with car being given to one child, because the Office/Day Manager on site materially changes the character to that of a residential care home and is considered reasonable to conclude that development would have occurred which would subsequently required planning permission.

## **12.0 Recommendation**

12.1 Based on information above, it is concluded, on the balance of probabilities, that the proposed use of the dwelling as a residential institute for 1 no. child and 2 no. employees at any one time on a rota basis and an Office/Day manager working Monday to Friday, 9am to 5pm, within the land edged red on the submitted location plan 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 through intensification. It is recommended to refuse the Certificate.

**Recommendation:** Refuse Certificate

**Decision Authorisation – Delegated Powers**

**Application number:** 2025/91250

**Officer Recommendation: Refuse Certificate**

On the balance of probabilities, that the proposed use of the dwelling as a residential institute for 1 no. child and 2 no. employees at any one time on a rota basis and an Office/Day manager working Monday to Friday, 9am to 5pm, within the land edged red on the submitted location 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:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location plan	PP-13996901v1		7 <sup>th</sup> May 2025
Floor plans			15 <sup>th</sup> May 2025
Management Plan	Email attachment		4 <sup>th</sup> June 2025

**Report date:** 2<sup>nd</sup> July 2025