

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/91294/E

Site: 35, South Street, Oakenshaw, BD12 7DJ

Description: Certificate of lawfulness for proposed change of use from dwelling (C3) to children's home (C2)

Case Officer: Laura Yeadon

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 07-Jul-2025

APPLICANT: Here and Now Children's Services

SITE: 35, South Street, Oakenshaw, BD12 7DJ

APPLICATION NUMBER: 2025/91294

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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 dwelling is a detached dwelling with accommodation over 2 floors fronting South Street to the north with the rear elevation facing Wyke Lane. The property has an integral garage at ground floor which is proposed to be converted to a office/bedroom 4. The property layout also includes a living room, kitchen and WC at ground floor with 3 no. bedrooms and a bathroom at first floor. Amenity space for the property is to the front and rear.

6.0 Planning History

- 6.2 None

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:

- Location plan
- Ground floor plan
- Garage and first floor plan
- Supporting statement detailing how the home would be operated
- Application form

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 as defined within the red line boundary of drawing number PP-14007601v1 received by the Local Planning Authority on 12th May 2025.
- 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, Here and Now Children’s Services are seeking

confirmation that they can use the property as a children's home for a maximum of 2 no. children aged between 8 and 18 with 2 no. employees on site at any one time working shift patterns with a waking night shift and a sleep in member of staff which will be one that has just finished the day shift. It is also proposed that a home manager would split their time between this property and another and will spend a maximum of two days a week at the home between the hours of 8am and 4pm.

- 11.9 The use of 35 South Street for 2 no. children and 2 no. staff members at any given time working on a shift pattern with the children not requiring additional dedicated support due to the children not having a physical disability or significant additional 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 It is noted that the supporting statement indicates the Here and Now Children's Services operate their homes by enduring that they "*match the young people's ages appropriately, for example we would not house an 8 year old with a 17 year old but would look to match them with someone around their age. Thus keeping in line with a family feel.....Each young person will be assessed and matched with the home prior to admission, to ensure that they fit in with the homes values and ethos, as well as being well suited to meet the needs of the other children in placement.*"
- 11.11 That being said, the care of children/young persons in the circumstances can more accurately be considered to fall within Class C2 (residential institute).
- 11.12 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.
- 11.13 In this instance, the intention to operate the house as a home for 2 no. carers and a waking night shift and 2 no. children with a manager on site 2 no. days a week is intended to emulate a family household as closely as possible.
- 11.14 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.
- 11.15 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.

- 11.16 One would expect a dwellinghouse to 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 this case would include a maximum of 2 no. occupants under the age of 18 and this would form their permanent address for an unspecified period of time.
- 11.17 There would also be two employees on site at all times on a shift basis with a manager 2 x days a week. The night shift would comprise of a waking night employee and a sleep-in staff member which would be one of the staff who have just finished shift. This level of employee to child ratio could be considered to be in keeping with the character of a typical dwellinghouse.
- 11.18 In terms of the character of the area and the perception that as a Children's Home, there may be potential for the children to commit anti-social acts or for an increase in crime level. The Supporting Statement specifically refers to the children leaving the property and states that*'We envisage that most people in our care will initially be supervised when leaving the property, however, as they are getting closer to independence we will be promoting them to have more autonomy outside of the care home. This would be no different to a local resident having teenage children coming and going from there home.'* In addition, the Statement confirms that there would be weekly timetables for the young people and staff to ensure that the young people will be registered in and out of the home. A curfew would also be in place which would be determined by the age of the young person. In terms of a breach in curfew, a behaviour management plan for each young person would be in place along with an Ofsted agreed missing procedure.
- 11.19 In relation to vehicle movements, this would not necessarily be over and above that expected at a residential premises particularly movements in connection with the day to day running of the household. The Supporting Statement, this states that *"We need to presume that each staff member would use their own transport to get to the home which would lead to two cars at the property for the general running of the home. We have assessed the availability of parking at the property and there is sufficient parking in front of the property for two cars, one on the drive and one on the grassed area. There is also an option of additional parking blocking our driveway enabling a third car to be parked. Having assessed the residential area, the majority of houses have three or more cars parked in front and on the street directly outside their house. Therefore we will be in keeping with the current residential area. There is also additional on street parking located throughout the cul-de-sac which any visitors to the home would be encouraged to use."* The application form confirms that there is sufficient parking for 3 no. vehicles within the red line boundary of the site.
- 11.20 It is also confirmed that family visits would be completed away from the property along with education and over the weekend there will be no

more than 2 no. vehicles at the property as there will be no visitors to the property or other professional involvement. Given that 2 no. employees would be at the premises at all times with 1 no. of these being a sleep in plus a waking night shift which would cross over at 7am and 10pm whereby it is anticipated that 3 no. cars would be at the property for a limited period of time, this is not considered to be significantly different from the running of a household. It is noted that there will be a day manager at the premises however this would be limited to 2 no. days a week similar to a cleaner or other working visitor occasionally visiting a dwellinghouse..

- 11.21 The details continue by stating that within one week of placement and no more than six weeks during the first year of placement. This is not considered to materially increase further traffic movements.
- 11.22 With regards to security provision, the doors to the home will be locked from 10.30pm to 7:30am which would be a similar arrangement to a standard residential home.
- 11.23 Overall and in terms of planning control, the use of the building as a residential institute involving the care of 2 no. young people aged 8-18 looked after by 2 no. staff at any one time including a waking night shift as well as the presence of a home manager during the day, 2 x week is not considered to be significantly different to the character of a typical dwellinghouse. While the presence of a manager does introduce a degree of commercial use, it is considered low intensity and not materially different to a person working from home and is not considered to introduce an intensification in the way in which a residential property would operate.

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 2 no. young people looked after by 2 no. employees as well as the presence of a home manager 2 no. days a week within the land edged red does not amount to a material change of use as defined by Section 55 of the Act. The change of use is considered not to substantially change the character of the building through intensification. It is recommended to grant the certificate and confirm the lawful use.

Recommendation: Approve Certificate

Decision Authorisation – Delegated Powers

Application number: 2025/91294

Officer Recommendation:

On the balance of probabilities, the occupation of the building at 35, South Street, Oakenshaw, BD12 7DJ for the use of the house as a residential home for two young people with up to two support workers on site at all times and a home manager visiting the property up to two days a week between 8am and 4pm within the land edged red on drawing number PP-14007601v1 does not amount to a material change of use as defined by Section 55 of the Act.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form	PP-14007601		12 th May 2025
Location plan	PP-14007601v1		12 th May 2025
Ground floor plan			20 th May 2025
First floor plan			20 th May 2025
Management Plan/Supporting Information			12 th May 2025

Report date: 16th June 2025