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/91614/W

Site: 155, Newsome Road South, Newsome, Huddersfield, HD4 6JJ

Description: Certificate of lawfulness for proposed use of dwelling for children's residential home (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 30-Jul-2025

Applicant: M Iqbal

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1.0 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 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 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.

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 on 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 that 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 155 Newsome Road South, which is a two storey, mid-terraced property which is constructed from stone. Aerial imagery indicates that an off-street parking area has been created to the front of the property with outdoor amenity space to the rear of the property. The submitted floor plans indicate that the property is a 3-bedroom dwelling with a lounge, 2 no. stores and a dining kitchen at ground floor and bathroom at first floor.

5.2 The property is located within a predominantly residential area which is characterised by terraced rows to the western side of Newsome Road South with the properties on the eastern side being semi-detached and detached properties.

6.0 Planning history

6.1 None

7.0 Representations

7.1 No representations have been received.

8.0 Evidence submitted in support of the application

8.1 The applicant has submitted the following information:

- Application form
- Location plan
- Existing floor plans
- Supporting Statement
- Various decision notices relating to other CLD applications for use of dwelling for children's residential homes (C2)

9.0 Evidence submitted against the application

9.1 None

10.1 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 a 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 mid-terraced, two-storey dwelling and its curtilage which includes a driveway to the front and a garden area to the rear. Any change of use is considered with the planning unit indicated as being the land edged red on the submitted location plan (drawing number PP-14085977v1).

11.3 Materially, 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 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 judgement 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 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. The applicant is seeking confirmation that they can use the property as a children's home for one child. The submitted details within the application form and Supporting Statement states that there would be 2 no. support staff during the day with 2 no. support staff over night and sleeping on-site. It is confirmed that the 2 no. on-site support workers would be on a rotating shift pattern. It is also proposed that a manager would also be present at the property working office hours. Therefore, in summary and for clarity, there would be 1 no. child aged 6-18 years old with 2 no. support staff and 1 no. manager during the day and a maximum of 2 no. staff sleeping in the home caring for the child on a rota basis.

11.9 The use of 155 Newsome Road South for 1 no. child and 2 no. support staff and a day manger 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 dwelling as a home with the presence of one manager and two support workers who will be on rotating shifts and sleeping on site, caring for one child who will permanently reside in the home. It is also stated within the Supporting Statement that the presence of the employees would be similar to households with parents, guardians or live-in caregivers providing continuous support. It also states that that the '*setup does not introduce a business-like operational change and it maintains the essential character if a domestic residence.'*

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 this case would be a maximum of 1 no. child and the Supporting Statement confirms that this would form their permanent address for a long-term period of time.

11.16 There would be 2 no. support workers at the site who would be on a rotating shift pattern and a manager working office hours at the home during the day. This would be materially different to that which a typical dwellinghouse would operate. Dwellinghouses do not have a day/office manager attending for work hours. The Council considers that non-caring staff such as a day/office manager can make a material difference to the character of the property dependent upon the amount of time spent of site and the frequency of visits. The presence of a manager working office hours 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, presumably each weekday (the submitted details indicate office hours) 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 that 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 levels. The Supporting Statement addresses these issues and states the following key factors:

- *Children in care are not automatically disruptive, and professional caregivers ensure behaviour management.*
- *Concerns about crime or antisocial behaviour are unfounded – there is no automatic link between children in care and social disturbances.*
- *There is no enforcement record of residential children's homes leading to increased crime or antisocial behaviour.*

11.18 No specific details have been submitted in terms of security measures for the safety of the child or employees however, West Yorkshire Police have made no objection to the proposal. It is however advised that window restrictors should be installed or lockable hardware on non-accessible windows (above ground floor) installed in the interest of child safety.

11.19 In relation to traffic movements, it is proposed that there would be 2 no. support workers during the day with a manager working office hours with

2 no. support staff sleeping overnight on a rotational basis. This would indicate that dependent upon the shift change times, a maximum of 5 no. vehicles could be at the property during shift changes. This would be in addition to any other professionals attending the property, however infrequent these may be. The Supporting Statement confirms that there would be two off-road parking spaces to accommodate staff vehicles, eliminating the reliance on on-street parking and that additional nearby parking ensures that visitors do not create congestion. In addition, it goes on to say that there would be no significant increase in car movements beyond typical family usage which does not meet the threshold for a material change. Notwithstanding this, the presence of up to 5 regular vehicles present at the property which is located on a 'C' road where off-road parking is limited due to topography, particularly for the terraced properties on the western side of Newsome Road South, would be more than the level typical for a 3-bedroom dwellinghouse, further adding to a material change in the character of the property.

11.20 Therefore, the use of the premises would consist of two carers at any time on a rota basis and a manager present during office hours is considered to constitute a material change under Use Class C2 as it would operate differently to the use of the property under Use Class C3.

11.21 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 manager who would be in attendance at the property during office hours materially changes the character to that of a residential care home which would subsequently require planning permission.

12.0 Recommendation

12.1 Based upon the information above, it is concluded that 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 a manager working office hours, within the land edged red in the submitted location plan amounts to a material change of use a 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 therefore recommended to refuse to the Certificate.

Recommendation: Refuse Certificate

Decision Authorisation – Delegated Powers

Application number: 2025/91614

Officer Recommendation:

On the balance of probabilities, the proposed use of the dwelling as a residential institute for 1 no. child and 2 no. support workers at any one time on a rota basis and a manager working office hours 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:-

Plan Type	Reference	Version	Date Received
Application form	PP-14085977		12th June 2025
Location plan	PP-14085977v1		12th June 2025
Existing floor plans			12th June 2025
Supporting Statement			12th June 2025
5 x decision notices			12th June 2025

Report date: 8th July 2025