

**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/92165/W

Site: Oak House, 89, Fitzwilliam Street, Huddersfield,  
HD1 5LG

Description: Certificate of lawfulness for proposed use of  
building as childcare centre (within a Conservation Area)

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 08-Oct-2025**

**Reference:** 2025/92165

**Applicant:** Tuition Time Hub

**Location:** Oak House, 89, Fitzwilliam Street, Huddersfield, HD1 5LG

**Proposal:** Certificate of lawfulness for proposed use of building as childcare centre (within a Conservation Area)

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### Site Description

The application relates to an existing commercial building which is a terraced property on the corner of New North Road and Fitzwilliam Street. The building is constructed from stone and is double fronted with a parking area to the front of the building and single storey extensions and a garage to the rear.

The building is within the Greenhead Park/New North Road Conservation Area but is not a listed building.

Surrounding development is a mix of commercial and residential properties.

### Application Proposal

The application seeks the granting of a Certificate of Lawful Development for the proposed change of use from office E(g)(i) – Offices to E(f) creche, day nursery or day centre.

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.

The applicant has confirmed within the application form that a Lawful Development Certificate (LDC) should be granted for this proposal because the existing use of the property at Oak House, 89 Fitzwilliam Street, Huddersfield, HD1 5LG, as an office, is lawful due to its continuous and uninterrupted operation for a period exceeding ten years. It also states that This application therefore seeks a Lawful Development Certificate confirming that the proposed use of Oak House as a childcare centre is lawful.

### Planning History

2016/91040 Erection of two externally illuminated signs and additional external illumination to existing sign (within a Conservation Area)  
*Advertisement Consent Granted*

### Consultations

None required

### Lawful Development Certificates

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.

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.

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.

*Section 192(2) of the Act states that....if on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*

The Lawful Development Certificate process provides the possibility of obtaining a statutory document confirming that the use, operation or activity named in it is lawful for planning purposes. Should a Lawful Development Certificate be granted, the Certificate remains valid for the use or development described in it, on the land it describes, provided that there is no subsequent material change in the circumstances.

The grant of a certificate applies only to the lawfulness of development carried out, or proposed, in accordance with Planning legislation.

Therefore, if the Local Planning Authority is satisfied on balance, and having regard to the above sections, read together, that no enforcement action could be taken because the proposed change of use would not constitute "development" involving a material change of use, a certificate should be issued on the grounds that the change does not constitute development. Otherwise, the application should be refused.

### **Assessment:**

The current submission seeks clarity that the proposed use of the building as a childcare centre does not require planning permission as both previous and proposed uses fall within Class E of the Use Classes Order 1987 (as amended).

This would be on the basis that development as defined by Section 55 of the Town and Country Planning Act 1990 provides a number of exemptions to development including any material change of use from a use as defined in the Use Classes Order 1987 (as amended) to another use falling within the same Class. If it is demonstrated that the existing lawful use operating within the "planning unit" is Class E as defined by the Use Class Order 1987 and the replacement use does not trigger a material change of use which would not be outside Use Class E then a certificate can be issued. Consequently, it is necessary to consider how the uses operating within the planning unit have evolved to establish the extent of the planning unit and the current lawful use operating therein.

To operate the building under Class E, the proposed uses would need to fall within the following:

- **E(a)** Display or retail sale of goods, other than hot food
- **E(b)** Sale of food and drink for consumption (mostly) on the premises
- **E(c)** Provision of:
  - **E(c)(i)** Financial services,
  - **E(c)(ii)** Professional services (other than health or medical services), or
  - **E(c)(iii)** Other appropriate services in a commercial, business or service locality
- **E(d)** Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink,)
- **E(e)** Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)
- **E(f)** Creche, day nursery or day centre (not including a residential use)
- **E(g)** Uses which can be carried out in a residential area without detriment to its amenity:
  - **E(g)(i)** Offices to carry out any operational or administrative functions,
  - **E(g)(ii)** Research and development of products or processes
  - **E(g)(iii)** Industrial processes

The submitted application sets out that the proposed use of the building within the red line boundary would be used as a childcare centre.

The supporting information submitted within the application is summarised as follows:

1. The setting would accommodate 20-30 children at any one time with the children typically attending for after school and holiday care sessions

1. Staffing levels would be generally 2-4 staff on site dependant upon the number of children
2. Dedicated car park to the front of the building with an additional 2-3 parking spaces in the designated garage area
3. Premises will operate in line with standard requirements for childcare facilities with lockable office doors and a working fire alarm system. A secure main door buzzer system will also be in place to control access
4. Not many professional visitors to the site. On occasion there may be visits from Ofsted a part of their regulatory role. Other attendees would be own staff, tutors, educators and childcare workers who are employed as part of the service.

In terms of the existing use of the building, the application form states that:

- *The building has been in continuous and uninterrupted use as an office by Walker Singleton from at least 2009 until their departure in 2025. This constitutes a period of over 16 years of continuous use as an office*
- *Under Section 171B(3) of the Town and Country Planning Act 1990, where there has been a material change of use of any building or land to use as a single dwellinghouse, or to any other use, without planning permission, no enforcement action may be taken after a period of ten years beginning with the date on which the breach occurred. As the existing office use has been continuous for well over this 10-year statutory period, it is now immune from enforcement action and is therefore lawful.*
- *The established use of the building as offices falls clearly within Class E(g) (offices) of the Town and Country Planning (Use Classes) Order 1987 (as amended), which further supports its lawful status within the current planning framework.*
- *To the best of our knowledge, no planning enforcement action has ever been taken against this property in relation to its office use, nor has the use been abandoned at any point during this period. The recent vacation by Walker Singleton represents a change of tenancy, not an abandonment of the established lawful use class.*
- *Therefore, based on the clear evidence of continuous office use for a period exceeding the statutory 10-year limit for enforcement immunity, a Lawful Development Certificate should be granted to formally confirm the lawfulness of the existing office use at the property.*

Along with the information above, images from Google Street View have been submitted demonstrating that from the period of 2009 and July 2024 the building had signage present that indicates the use of the building as offices for Walker Singleton Chartered Surveyors since 2009, Walker Singleton Chartered

Surveyors and estate agent in 2014 and Walker Singleton Chartered Surveyors, Hanson Chartered Surveyors and Charnock Bates Estate Agents since 2019.

Information and images accessible to the Officers indicates that whilst it is not definitive that the building was in operation as office accommodation in 2009, it is clear that the signage had been erected in 2012. In addition, the Council's gazetteer mapping system indicates that the use of the building is as office use. As such, the use of the premises since 2009 – 2020 is considered to have fallen within Class B1 office use and Class A2 (professional services to visiting members of the public). In 2020 the Use Classes Order 1987 placed both Class B1 and A2 into the same use class (Class E). Based on Google Streetview imagery it appears the introduction of the estate agency was confined to the ground floor of the building and would have constituted a material change of use from B1 to A2 without planning permission. However, the introduction of Class E in 2020 placed both B1 and A2 into Class E with regulation 7 providing that any use of a building previously in Part A or B of the Use Classes Order 1987 before 31 August 2020 should be treated as used for purposes in Class E on or after 1 September 2020. The regulation is silent on any unlawful uses benefiting from the change to Class E although in this instance it is clear that the current uses as a matter of fact and degree have operated within the building for a period in excess of 10 years prior to this application irrespective of the use class.

Taking all the above into account, the Local Planning Authority have no evidence on the contrary to disprove the applicant's claim that the building subject to this application does not fall within current Use Class E.

As such, to change the use of the building from office E(g)(i) to childcare centre E(f), would fall within the exceptions to the definition of development as set out in Section 55 of the Town and Country Planning Act 1990 apply therefore meaning that the proposed change is not development for the purposes of the Act.

### **Conclusion**

On the balance of probabilities, the proposed change of use of the building within the red line boundary as office/professional service use to childcare centre falls within Class E of Schedule 2 of the Use Classes Order 1987 (as amended) and the Certificate of Lawful Development is therefore granted.

### **Conclusion**

On the balance of probabilities, the proposed change of use of the building within the red line boundary as office/professional service use to childcare centre as described in the supporting statement falls within Class E of Schedule 2 of the Use Classes Order (as amended) and the Certificate of Lawful Development is therefore granted.

**Recommendation:** Grant Certificate

## **Decision Authorisation – Delegated Powers**

**Application number – 2025/92165**

### **Officer Recommendation – Grant Certificate**

On the balance of probabilities, the existing use as office/professional service and proposed use of the building within the red line boundary as a childcare centre as described in the supporting statement at Oak House, 89, Fitzwilliam Street, Huddersfield, HD1 5LG fall within Class E of Schedule 2 of the Use Classes Order 1987 (as amended). Section 55(f) of the Town and Country Planning Act 1990 provides that a change of use from a use as specified in the Use Classes Order to another use within the same use class does not constitute development for the purposes of planning control.

Plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Application form	PP-14220083		20 <sup>th</sup> August 2025
Location plan	Promap		1 <sup>st</sup> August 2025
Photographs			1 <sup>st</sup> August 2025
Supporting Statement			20 <sup>th</sup> August 2025

**Report dated:** 30<sup>th</sup> September 2025