

**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/92245/W

Site: 31A, York Avenue, Fartown, Huddersfield, HD2
2QU

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 16-Oct-2025

Applicant: DIL Safehaven

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Application number: 2025/92245

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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 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.

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 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 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 31A York Avenue which is a detached bungalow which sits behind No's 29/31 York Avenue and 2 York Avenue. Access is taken off York Avenue between No's 29/31 and No. 33 York Avenue. The main amenity space for the dwelling is to the front of the property. The submitted details demonstrate that the existing property has 5 bedrooms over 2 floors and the proposed plans demonstrate that the property, as internally altered would be a 6 no. bedroom property.
- 5.2 The ground floor accommodation would comprise of a large hallway, kitchen, bedroom 1, bedroom 2 with en-suite, a bathroom, office 1, quiet room with a lounge and a dining room with conservatories. At first floor the property would accommodate bedroom 3, bedroom 4, bedroom 5 with en-suite and bedroom 6 and a bathroom.
- 5.3 The property is located within a predominantly residential area being predominantly semi-detached and terraced dwellings.

6.0 Planning History

- 1990/01130 Outline application for residential development
Conditional Outline Permission
- 1994/93968 Outline application for residential development (1 dwelling)
Granted under Reg. 4 general regulations
- 1996/91470 Erection of dormer bungalow
Conditional Full Permission

7.0 Representations

- 7.1 None

8.1 Evidence submitted in support of the application

- 8.1 The applicant has provided the following information:
- Application form – ref: PP-14240175
 - Location plan – ref: PP-14240175v1

- Existing site plan, elevations and floor plans – ref: 25-011 - P – 02
- Existing site plan and elevation and proposed floor plans – ref: 25-011 - P – 03
- Planning Statement – ref: The Appeals Guy dated July 2025

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 detached bungalow and its curtilage which does not include the access to the property between No's 29/31 and No. 33 York Avenue but does include a limited space to the rear of the property and the land to the front of the property where there is car parking provision.
- 11.3 Materially, 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 Institutions).
- 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 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, personal care for children. The applicant is seeking confirmation that they can use the property as a children's home for 4 no. looked after children. The submitted details within the Planning Statement states that 3 no. staff would provide care with 2 no. saying overnight. There would be a support team that would provide 24 hour care with a Manager while will work most weekdays between 9.30 am and 5.30 pm. Shifts would be 12 hours long with shift changes at 9.30am and 9.30pm and will last approximately 10 minutes. Therefore, in summary and for clarity, there would be 4 no. looked after children aged 7-17 years old with 3 no. support staff and/including 1 no, manager during the day with 2 no. staff sleeping in the home caring for the children on a rota basis.
- 11.9 The use of 31A York Avenue for 4 no. looked after children and 3 no. support staff including a day Manager would not fall within Class C3 as the carer/support staff 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 looked after children in these circumstances can more accurately be considered to fall, in general, within Class C2 (Residential Institutions).
- 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 Planning Statement states that (sub-paragraph 1.2) that '*There would be no business activities on site or any commercial activities that would change the character of the dwelling house.*' It goes on to say that (sub-paragraph 3.26) '*it will be clear that activity levels at the site and the general scale and nature of the use will not be materially different than if*

the property was occupied by a normal Class C3 use. Use of the property will specifically be arranged to mirror the routine of a normal home, as this is the best means of providing the focused care needed to the residents. The property will be the young peoples permanent place of residence, and they will have a 'traditional' family routine (eating meals together, attending school, going on trips, etc.). The residents and small number of carers will essentially create a family setting which provides continuity and assists in maintaining the residential character (as would be expected for a Class C3 use).'

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 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.

11.15 It is expected that a dwellinghouse would have occupants on a permanent basis and it is typical for children to make up part of a family home. The use proposed in this case would be 4 no. looked after children.

11.16 There would be 3 no. support workers at the site who would be on a rotating shift pattern including a manager working office hours during the day. This would be clearly 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 manager can make a material difference to the character of a residential property dependant upon the amount of time spent at the site and the frequency of visits. The presence of a manager working office hours with 2 no. rotated staff, whether as a carer or not introduces a ratio of 3 staff looking after 4 no. children. While the applicant suggests a third person present during the day is akin to a support worker or cleaner visiting a residential property, it is considered generally untypical of a dwellinghouse. A cleaner or support worker attending a typical dwellinghouse up to 7 days a week (the applicant is unclear which weekdays the manager would attend), particularly where two other adults are also present, is not considered to be a occupation that could normally be expected at a typical dwellinghouse. Moreover, a manager commuting to the property most weekdays from 9.30am to 5.30pm along with staff changes appears more institutional and business. Therefore, it is considered that this would alter the character of the dwelling in terms of introducing a significant business element 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 children to commit anti-social acts or for an increase in crime levels. No evidence has been presented to show that the use of the premise would result in an increase in crime and disorder or that the welfare of the children would be put at risk.
- 11.18 The applicant is vague of the support needs of the children proposed to occupy the institution other than state that they a "looked after" children. These are likely to include children with emotional behaviours or other complex needs or other vulnerable children. The applicant has not provided any evidence to demonstrate otherwise or any management plan to demonstrate how any impacts resulting from the possibility a child may cause a noise disturbance or cause Police incidents from a child "running away" from the property are mitigated. West Yorkshire Police have also raised concern around criminal activity in the area and the potential of persons being attracted to a property known to house vulnerable children. This potential of increased Police activity/concern is considered to have a material impact upon the change in character of the property.
- 11.19 No specific details have been submitted in terms of security measures other than the fact that ...*'the scheme does not propose any locked or re-inforced doors....'* for the safety of the children or employees.
- 11.20 In relation to traffic movements, it is proposed that there would be 3 no. staff during the day with 2 no. staff overnight on a rotational basis. This would indicate that a shift change times there could be a maximum 5 no. vehicles. This would be in additional to any other professionals attending the property however infrequent these may be. The Planning Statement states that all staff or visitors arriving by car would park on site unless exceptionally the driveway at the property is full and on street parking is required. It goes on to state that...*'Given the extent of off-street car parking available at the site, the proposal is unlikely to result in an increase in parking stress and associated annoyance and inconvenience for existing residents in the area, compared to a very large six bedroom dwelling house, which could easily generate parking requirements for at least five cars.'* However, the number of vehicle movements beyond those that may be typical at a dwellinghouse e.g. school runs/shopping trips, generated a shift changes would introduce a significant number of vehicle movements beyond what may be expected at a dwellinghouse, particularly a 9:30 in the evening.
- 11.21 As part of the submission, the Planning Statement refers to a number of appeal decisions and court cases however, these do not appear to be comparable to the proposal in this case in terms of staff to child ratio and the inclusion of a Manager.

11.22 Therefore, the use of the premises which would consist of 3 no. staff during the day with 2 no. staff overnight on a shift basis including a Manager present during office hours is considered to constitute a material change Under se Class C2/C2A as it would operate differently to the use of the property under Use Class C3.

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 4 children with 3 no. staff during the day as well as 2 carers working the night shift, with an office manager working office hours within the land edged red on the submitted plan amounts to a material change of use as defined by Section 55 of the Act. The change of use is considered to change the character of the property. It is therefore recommended to refuse the Certificate.

Recommendation: Refuse Certificate

Decision Authorisation – Delegated Powers

Application number: 2025/92245

Officer Recommendation:

On the balance of probabilities, the proposed use of the dwelling as a residential institute for 4 no. children and 3 no. support workers at any one time on a rota basis and/including 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 (ClassC3) 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
Location plan	PP-14240175v1		8 th August 2025
Existing site plan, elevations and floor plans	25-011 - P - 02		8 th August 2025
Existing site plan and elevations and proposed floor plans	25-011 - P - 03		8 th August 2025
Planning Statement	The Appeals Guy dated July 2025		8 th August 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 Planning Authority have, where possible, made a pre-application 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: 3rd September 2025