

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/92246/W

Site: 41, Greenhead Lane, Dalton, Huddersfield, HD5
8EE

Description: Certificate of lawfulness for proposed change of
use from dwelling (use class C3) to children's care home (use class 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 16-Oct-2025

Applicant: M Walder

Site: 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE

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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 has been recently granted a Certificate of Lawful Development for the proposed change of use of the dwelling identified as 41 Greenhead Lane, Dalton as a children's home. The application form is clear in that the only change to the proposal from its recent approval is *'to remove the names from the previous application and replace with my name on the new application. All else is exactly the same.'* For clarity purposes, the details detailed within the previous report in terms of the operation of the dwellinghouse have been sent to the applicant for confirmation that these details are still correct. These have been confirmed by return email.

6.0 Planning History

- 2003/93002 Erection of detached dwelling with integral garage and detached garage for 41 Greenhead Lane
Refused – appeal upheld
- 2007/92649 Erection of 2 no. detached dwellings with integral garages
Refused
- 2008/91842 Erection of detached dwelling with integral garage and link to existing dwelling
Conditional Full Permission
- 2018/91965 Lawful development certificate to confirm commencement of development approved under planning permission no. 2008/91842 within the 3 year time limit given in condition 1
Granted
- 2018/92840 Discharge of condition 3 (Materials) on previous application 2008/91842 for erection of detached dwelling with integral garage and erection of garage and link to existing dwelling
Approved
- 2022/90395 Work to TPO(s) 86/91
Granted
- 2024/92215 Certificate of lawfulness for proposed change of use from dwelling (use class C3) to residential care home (use class C2)

Refused

2025/90075 Certificate of lawfulness for proposed change of use from dwelling (use class C3) to residential care home (use class C2)

Refused

2025/90663 Certificate of lawfulness for proposed use of dwelling as children's care home

Granted

7.0 Representations

7.1 None received

8.1 Evidence submitted in support of the application

8.1 The applicant has provided the following information:

- Application form
- Location plan – ref: PP-14235905v1
- Proposed floor plans
- Site plan and floor plans – ref: Bramleys
- Car parking layout
- Working hours statement

In addition, the Applicant has confirmed the details from the previous assessment of the scheme by email dated 19th August 2025:

- There will be a maximum of three children in the property at any time.
- Two residential care workers will be present on a rota basis. They will work 48 hours on (sleeping nights) and the remaining of the week off. After 5.00pm there will only be two Residential Care Workers present at the home until 9.00am. At which point they will be joined by the Deputy Manager during the week at 9.00am.
- A Deputy Manager will be present 2-3 times per week for a couple of hours (max. 6 hours per week, on weekdays)
- A Registered Manager will work remotely and only visit if their intervention is required for auditing purposes. The audit is conducted once a year in preparation for Ofsted inspection. The manager has to ensure everything is in order for compliance purposes. This is a requirement once a year.
- The age of the young persons will range from 7 to 17 years of age.
- Average length of stay of young persons: It is likely to be medium term approximately 2 years plus.
- They will not be admitting children who display severe anti-social behaviour. In short, those who may be a concern to the residents and the wider community. They will ensure that each step is taken with

extreme caution under the scrutiny of the regulatory body Ofsted, local authorities, and social services, to ensure the right child is placed in the right home.

- Social Worker likely will visit once every 4 to 8 weeks.
- Operations manager / Responsible individual once to twice a month.
- Maintenance once a month.
- Academic tutor dependent on the individual child. One visit per week up to two hours. Alternatively, tuition will be conducted online.
- All children will visit doctors, dentists, opticians, hospitals etc, appointment based and under the supervision of care staff.
- The time of visits will be mostly between the hours of 9am and 5pm.
- The comings and goings will be no different to a normal residential home.
- The house is a detached property and the evidence submitted allows parking for 6 cars on the driveway and garage.
- There will be no building works undertaken. There are no internal modifications needed.

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 property and its curtilage. Any material change of use is considered with the planning unit indicated on the submitted location plan ref: PP-14235905v1.
- 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 Consequently, it cannot be concluded that the proposed use is introducing a substantially different use within the building currently in use as a residential dwellinghouse. 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 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 of the application site, 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE, for the care of 3 young persons, with 2 carers on a 48-hour rota, working sleeping nights, and a Deputy Manager visiting the site 2 to 3 days for a total of 6 hours per week would not generally fall within Class C3 as the carers would not live permanently, but the application proposes to have between 2-3 staff members during the day and night shifts (inclusive) and therefore cannot be considered as a single household and must be regarded as C2.
- 11.9 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 information submitted by the applicant cites that the proposal is for a C2 use.
- 11.10 Based upon the submitted information, the care of children in these circumstances can more accurately be considered to fall within Class C2 of the Use Class Order 1987.

- 11.11 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 The materiality of a change of use being judged in the broad context of the likely consequences of that change upon the character of the property, comparing the different activities (if any) that will take place at the location itself before and after the change takes place is the starting point for such an analysis.
- 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 In this case, the change of use from an existing C3 use to a C2 use for 3 young people with 2 carers on a 48-hour rota, working sleeping nights, a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week, would not appear to be significantly different to that which the building would operate if it was a residential dwelling. Whilst most dwellinghouses do not have a Deputy Manager attending for work office hours, it is not considered that in this case this would alter the character of the dwelling in terms of introducing a significant business element to the activities. The business activities will be carried out in business offices elsewhere and visits to the property by the Deputy Manager will be ad hoc and akin to a regular visitor to a residential property which is not uncommon where mobile care is provided to a resident.
- 11.16 There is no evidence presented to show that the use of the premises as a small-scale care facility for three children would result in any increase in noise or behaviour. There is also no evidence to show the use of the premises would result in an increase in crime or disorder or that the welfare of the children would be put at risk.
- 11.17 West Yorkshire Police have raised no objection to the proposal however thumbturn locks with an override facility on the external face are recommended along with CCTV, door chimes and opening restrictors/lockable hardware for non-accessible above ground floor windows for child safety.
- 11.18 The information advises that four parking spaces are available on the driveway of the property plus two in the garage. The information submitted by the applicant indicates that visitors to the property would

be infrequent. This could also be expected in a residential setting, where adults or children may have health needs leading to visits from care professionals. The daily parking requirements would be for 3 vehicles for the Deputy Manager (when they attend) and two care staff, which at shift changes, would potentially mean 5 vehicles generating 10 car movements in total, during the cross over of care staff every 48 hours. It is not considered that the movements in total, would increase car movements to more than would be expected at any residential premises on a typical day.

- 11.19 The use of the premises would consist of up to 2 carers on a 48-hour rota, working sleeping nights, a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week, with three children living together and accommodating rooms which are presently used as a dwelling. The degree of change in the character of the building would appear to be marginal.
- 11.20 On this basis the occupation of the dwelling by three children (aged 7-17 years old) with up to 2 carers on a 48-hour rota, working sleeping nights, a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week would not constitute a material change of use under C2, thus it would not operate differently to use as a dwelling within use class C3.
- 11.21 In terms of planning control, the use of the building would be retained as primary residential with care being given to three children; and it is considered reasonable to conclude that the dwellinghouse would not have materially changed in use from C3 to C2 and the development would not occur which would subsequently have required planning permission.

12.0 Recommendation

- 12.1 Based on the above, it is considered, on the balance of probabilities that the proposed use of the dwellinghouse as a residential home at, 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE, for up to three children (aged 7-17 years old), with 2 carers working sleeping nights, on a 48 hour rota, a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week within the land edged red on the submitted details, do not amount to a material change of use as defined by Section 55 of the Act. The change of use is not considered to substantially change the character of the building, nor does it have “planning” effect upon the neighbourhood. It is therefore recommended to approve the certificate and confirm the lawful use.

Recommendation: Grant Certificate

Decision Authorisation – Delegated Powers

Application number: 2025/92246

Officer Recommendation: Grant Certificate

On the balance of probabilities, the occupation of the building at 41, Greenhead Lane, Dalton, Huddersfield, HD5 8EE, by three children (aged 7- 17 years old), with up to 2 non-residential carers working sleeping nights, on a 48 hour rota and a Deputy Manager visiting the site 2-3 times for up to total of 6 hours per week would not amount 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-14235905		8 th August 2025
Location plan	PP-14235905v1		8 th August 2025
Proposed internal layout			8 th August 2025
Site plan and floor plans	Bramleys		8 th August 2025
Parking layout			8 th August 2025
Statement			8 th August 2025
Email confirming all details are identical to previous granted Certificate	M Walder		18 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: 2nd September 2025