

**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/92521/E

Site: 15, Moorcroft Road, Dewsbury Moor, Dewsbury,
WF13 4EA

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:

**I hereby authorise the approval/refusal* (delete as appropriate) 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 04-Nov-2025

Applicant: HJ First Step Care

Site: 15, Moorcroft Road, Dewsbury Moor, Dewsbury, WF13 4EA

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

Application number: 2025/92521

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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.

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 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 15 Moorfield Road which is a two storey, semi-detached dwelling constructed from red brick. Aerial imagery indicates that the front garden of the property has been removed and replaced with off-street parking provision for approximately 3 no. vehicles. The property is set up from the roadside accessed via steps and host a lawned garden to the rear. The submitted floor plans indicate that the property accommodates 3 bedrooms and a bathroom at first floor with a lounge, kitchen/diner and hallway at ground floor.

6.0 Planning History

6.0 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:

- Application form
- Site location plan – ref: 72_01
- Existing ground floor plan – ref: 72_02
- Existing first floor plan – ref: 72_03
- Existing elevations – ref: 72_04
- Proposed ground floor plan – ref: 72_05
- Proposed first floor plan – ref: 72_06
- Proposed elevations – ref: 72_07

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 two storey, semi-detached dwellinghouse and its curtilage which includes parking provision to the front of the property and a lawned garden to the rear. Any change of use is considered with the planning unit indicated as being the land edged in red on the submitted location plan (drawing number 72_01).

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 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.”*

11.5 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.

11.6 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.

11.7 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 to change the use from a dwellinghouse to a children's home for 2 children under a C2 use. The submitted proposed floor plans indicate that there would be 2 no. bedrooms for children and 1 no. bedroom for staff.

11.7 The information contained within the application form is limited to the information above. Due to the lack of information provided, the applicant was contacted and it was requested that a Management Plan template was completed and returned to the Local Planning Authority in order for a full assessment as to whether the proposal would fall within Use Class C2 or whether a material change of use would occur which would require an application for full planning permission or not.

11.9 The information requested fell into the following sub-headings:

- How many children would be accommodated?
- What is the ratio of staff to children that is required?
- What is the likely level of need of the children accommodated i.e. is there a focus on complex needs?
- What is the likely shift pattern of staff i.e. how many staff (management and care staff) would likely be at the premises at any one time and when would shift changes occur?
- What support officers would be likely to visit the property?
- How would visits be scheduled and would staff/support worker meetings take place at the property?
- Would therapeutic care be offered on site?
- Would case reviews take place on or off site?
- Are friends and relatives of residents able to visit at any time?
- Will the property be Ofsted registered?
- Are children ever left alone at the property?
- Under what circumstances are children allowed to leave the property?
- Would staff members be informed/aware if a child left the property.

11.10 Requests were made to submit the information by email on 2nd October 2025, 13th October 2025 and 28th October 2025 with the latter email giving a

deadline of 31st October 2025 to submit the required information. To date, no response or contact has been made by the applicant to the Case Officer.

11.11 Consideration needs to be given as to whether a C2 use, operated in the manner proposed within the submitted information form and plans 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 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 In this case, the change of use is proposed from an existing C3 use to a C2 use for 2 children. In the absence of any clear and detailed evidence/information in relation to staffing numbers, shift patterns, vehicular movements, level of care, operational details etc, the application fails to demonstrate whether or not a change of use would be triggered, based upon the balance of probabilities.

11.16 National Planning Policy Guidance (Lawful Development Certificates), paragraph 005 states *"An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate."*

11.17 In this instance the limited information provided is ambiguous and imprecise and therefore the Local Planning Authority are unable to fully assess whether or not a material change of use would occur.

12.0 Conclusion

12.0 Therefore, on the balance of probabilities it has not been demonstrated that the proposed use would not constitute a change of use requiring planning permission. In the absence of clear and detailed evidence regarding the nature of the proposed use, the level of care to be provided, staffing arrangements, and the extent of any operational changes, the Local Planning

Authority is unable to determine whether the proposed use would fall within Use Class C2 or whether it would result in a material change of use.

Recommendation: Refuse Certificate

Decision Authorisation – Delegated Powers

Application number: 2025/92521

Officer Recommendation:

In the absence of clear and detailed evidence regarding the nature of the proposed use, the level of care to be provided, the number of residents, staffing arrangements, and the extent of any operational changes, the applicant has not demonstrated, on the balance of probability, that the proposed change of use does not require planning permission from the Local Planning Authority.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			16 th September 2025
Site location plan	72_01		16 th September 2025
Existing ground floor plan	72_02		16 th September 2025
Existing first floor plan	72_03		16 th September 2025
Existing elevations	72_04		16 th September 2025
Proposed ground floor plan	72_05		16 th September 2025
Proposed first floor plan	72_06		16 th September 2025
Proposed elevations	72_07		16 th September 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 November 2025