

**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/92852/E

Site: 7, Highfield Court, Soothill, Batley, WF17 6HR

Description: Certificate of lawfulness for existing use of dwelling  
for supported living accommodation for children 17 -18 years old

Case Officer: Laura Yeadon

**Decision Reference: EXISTING 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 26-Jan-2026**

**Applicant:** Rostine Services Ltd

**Site:** 7, Highfield Court, Soothill, Batley, WF17 6HR

**Description:** Certificate of lawfulness for existing use of dwelling for supported living accommodation for children 17 -18 years old

**Application number:** 2025/92852

[Weblink](#)

## **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 supported living accommodation (C3(b)) does not constitute a material change of use and would therefore result in a lawful use. The application form states that the use of the building as supported living started 13<sup>th</sup> January 2025.

## **2.0 Lawful Use Certificates**

- 2.1 Section 191(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 relates to a three-storey semi-detached dwelling located within an area without notation on the Kirklees Local Plan. There is a driveway to front leading to an integral garage at ground floor with accommodation above. An enclosed garden area is located to the rear of the property.
- 5.2 The property is located within a small cul-de-sac. Beyond that are residential properties are sited to the north, east and west.

## **6.0 Planning History**

- 1987/01906 Single storey bedrooms extension  
*Granted conditionally*
- 1992/02649 Erection of single storey extension  
*Conditional Full Permission*
- 2003/90923 Demolition of buildings and outline application for residential development  
*Conditional Outline Permission*
- 2004/95222 Reserved Matters application for erection of 15 no. dwellings with associated garages and parking  
*Withdrawn*
- 2025/90190 Change of use of dwelling to children's home  
*Withdrawn*

## **7.0 Representations**

- 7.1 The Kirklees Development Management Charter details how the Local Planning Authority will undertake a formal period of publicity. The Charter is clear (page 4) that notification on types of applications for which there is no statutory requirement to do so will not be carried out. This includes applications for certificates of lawfulness of proposed/existing uses or development. The Charter goes on to

comment (page 7) that applications for exiting, or proposed use/development will not be advertised by site notice, neighbour notification letters or newspaper advertisement, however the applications will be advertised on the Kirklees website.

7.2 As a result of the application being advertised on the Kirklees Council website, 3 no. emails have been received in total. The comments received are summarised below:

- Update request to explain what s being asked for by the applicant
- Restrictive covenant attached to no. 7 and all properties in Highfield Court preventing use for anything other than residential family dwellings
- Serious risk to health and safety of residents caused by a significant increase in traffic flow in a very small cul-de-sac with limited parking
- Planning consent for development was granted by Kirklees Council on condition that the properties would be built for use as single private dwellings in the occupation of one family only
- To approve the application would be in breach of a planning condition itself imposed
- Incentivised by this restriction to buy the homes relying on the Council to keep Highfield Court as a collection of single family homes as originally intended by the planning condition
- Any legal action against the applicant will include the Council as a party
- Substantive response with additional information will be sent in due course
- Critical lack of sufficient and adequate parking for staff and residents with the 2 parking spaces nor enough for a home housing 4 separate and unrelated residents in addition to multiple staff members to satisfactorily serve the needs of the residents
- Currently parking spaces in cul-de-sac are limited and not enough parking for current householders
- Having a children's home in the cul-de-sac with its associated parking needs will make matters even worse for all. There are no additional parking spaces to serve the high number of vehicles that will regularly visit the site and this reason on its own should be enough to evidence the unsuitability of a children's home in this location.
- Having a children's home will increase the flow of traffic with disturbance by staff coming in and out of the site on possibly an hourly basis.
- Cul-de-sac is not equipped to handle a surge in vehicles causing inconvenience and increasing safety risks
- As a result there is a restrictive covenant in all our house deeds which explicitly states that 'no trade or business whatsoever shall be set up or carried upon thereon'.
- Our cul-de-sac and the area adjacent to the proposed children's home is extremely small. This means the intensification of staff movements to and from the home on a regular and frequent basis each day, including

at unsociable times, would result in an unacceptable and negative impact on neighbours from the increase in noise and disturbance.

- 7.3 In response to all the above comments, the National Planning Practice Guidance states that in relation to Certificates of Lawful Development (Paragraph: 008 Reference ID: 17c-008-20140306) that '*Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.*' Therefore, whilst concerns have been raised regarding the application, these are not a consideration which is material in determining whether the proposed use constitutes a material change of use.

## **8.0 Evidence submitted in support of the application**

8.1 At the time of submission, the applicant provided the following information:

- Application form
- Location plan
- Block plan

8.2 At the request of the Local Planning Authority the applicants completed and submitted a Management Plan which was published onto the Council's website.

## **9.0 Evidence submitted against the application**

9.1 Third party representations have been submitted (summarised in Section 7).

## **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 semi-detached three-storey residential dwellinghouse and its curtilage which includes a driveway, integral garage and amenity space to the rear. Any material change of use is considered with the planning unit indicated on the land

edged red on the submitted location plan (drawing number RD2501\_101).

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)).

11.4 It is noted that the application form states that the home is used as Use Class C3(b). The Town and Country Planning (Use Classes) Order 1987 defines Class C3(b) as;

*C3(b) covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems*

11.5 In terms of the C3(b) or C3(c) uses, it is noted that there would be 3 no. young people with 2 no. support workers during the day and 1 no support worker carrying out a sleeping night shift. Therefore, the number of resident threshold is met in terms of a C3(b) and C3(c) use as there would be no more than six people living together as a single household. However, in this case there is also an additional Registered Manager who would be employed to attend the property.

11.6 With regard to the care differentiation between C3(b) and C3(c) the Guide to the Supported Accommodation Regulations including Quality Standards (2023) document states that supported accommodation can meet some needs and states that *'For most children who are not yet ready for greater levels of independence, and especially those who require increased care due to high needs, or who have additional needs, this is best achieved through a placement in foster care or a children's home'*. It goes on to state that...*'This type of provision is not automatically the right choice for young people aged 16 and 17. Where young people of this age have needs that would best be met in a children's home or foster care placement, that is where they should be placed.'*

11.7 The Guide is very clear in that *'Where a young person has complex needs and/or requires a greater level of ongoing care and supervision, we do not expect that supported accommodation would be appropriate.'* The Management Plan is precise in that the young people placed will present low to medium needs requiring support which would be at a ratio of 1:1 support worker to occupier. It is therefore suggested that a 'supported living' scenario would not necessarily meet the requirements of the young people in this setting.

11.8 It is legal requirement that all registered homes that accommodate 16–18-year-olds are Ofsted registered and part of the requirement is that a home manager is required (as proposed in this case). This, therefore, indicates that the provision set out by the applicants are more of a 'care' setting than a 'supported living' setting. The Guide (referenced above)

states that *'where a young person has complex needs and/or requires a greater level of ongoing care and supervision, we do not expect that supported accommodation would be appropriate.'* The requirement by the applicant that 1:1 support is the staffing structure and numbers from 8am to 8pm indicates that a greater level of support is required than that intended for 'supported living'. Whilst it is accepted that the level of care is not determinative, it is most probable that the care provided is not simply supported living but the care for more complex needs falls into the "care" definition as set out in the Use Classes Order 1987 ( as amended)..

- 11.9 In this particular case, it has been confirmed that the Council's Children and Families Commissioning Manager that the applicant is not a Kirklees approved supported accommodation provider. It has been confirmed that contact has been made to the Service and that an application could be applied for in May 2025 however it is noted that the Service has stated that the criteria would not be met. Consequently, if the occupation is considered to be as a single household, it would most likely fall into Class C3(b).
- 11.10 However and in either event, due to the presence of a manager attending the property 5 days a week for a shift from 9am to 5pm, this is considered to fall outside of the scope of a C3(b). Use by a manager attending during the working week would not form part of a single household. The presence of a manager on a daily basis adds a material difference from that expected to be seen in a single household.
- 11.11 Therefore, it is concluded that for the reasons outlined above, the use of the building would not result in a C3(b) use of the property.
- 11.12 As such, consideration needs to given as to which Use Class the use falls into.
- 11.13 Based on the information submitted, it is not considered that the use would fall within Use Class C1 hotel as the information submitted indicates that the young adults would reside at the property.
- 11.14 Equally it is not considered that the use falls within C2A as a Secure Residential Institution as this provides for secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks. It is not proposed that there would be any curfew for the occupants and the security measures would include external CCTV.
- 11.15 With regards to Use Class C4, this is the provision of small, shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen and bathroom. However, the occupiers of this property require a level of

support as young adults are placed specifically for care purposes with full time staffing arrangements rather than occupation by persons living in individual units of accommodation with shared amenities. Moreover, the Use Classes Order 1987 (as amended) defines the house of multiple occupation as the same meaning in section 254 of the Housing Act 2004. The applicant has not provided any information regarding floor layouts or whether any individual units of living accommodation can be considered as such or whether the tests as set out on section 254 are met. Consequently, the use cannot reasonably be considered to fall within this this Use Class either.

11.13 As highlighted above, the use of 7 Highfield Court for 3 no. young people with support staff would not fall within Use Classes C1, C2A, C3 or C4 as the carers would not live permanently within the premises with a manager attending and as such, cannot be living as a single household (C3). Therefore, the care of the young adults in these circumstances are can more accurately be considered to fall within Class C2 (Residential Institution)..

11.15 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.

11.16 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.

11.17 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 in this case would include a maximum of 3 no. children/young adults and it is likely that this would for their permanent address for an unspecified period of time.

11.18 There would be 2 no. support workers during the day with 1 no. sleep in night staff and a Registered Manager working weekday office hours. The submitted Management Plan states that this is in the form of:

- Day shift - 08:00-20:00 (2 support workers)
- Night shift - 20:00-08:00 (1 sleep night staff)
- Registered Manager – 09:00-17:00 (Monday to Friday)

Handovers would take place at 08:00 and 20:00

11.19 There would be 2 no. support staff and a registered manager working during the day with the Manager also providing supervision. This equates to a staff to child ration of 1:1 which far exceeds that that would normally be required for supported living, thus akin to care a home setting (Use Class C2). Nevertheless, this would clearly be different to a

setting of a residential dwellinghouse. Whilst occasional day workers such as domestic cleaners may not always make a material difference from a use as a dwellinghouse, each case must be considered upon its own merits. In this instance the property is a relatively modest dwellinghouse with limited parking to the front. The presence of a day manager attending each day will add to the number of vehicle movement. The Council considers that non-caring staff such as a manger can make a material difference to the character of a residential property dependent upon the amount of time spent at the site, the frequency of calls and the impact of on-street vehicle parking. The presence of a day manager working hours with 2 no. day staff, whether as a carer or doing administrative duties introduces a ratio of 1 staff to 1 young adult. A day manager attending the property when there are two other adults also present, is not considered to be an occupation that could normally be expected at a typical dwellinghouse. Moreover, a manager commuting to the property on weekdays 9am to 5pm along with staff changes would increase vehicle movements. Therefore, it is considered that the this would alter the character of the dwelling in terms of increase of vehicle parking that goes beyond what may be expected to be seen at a typical dwellinghouse.

11.20 It is important to note that there would be 1 no. support staff during a night shift who would be present at the property between 20:00 and 08:00. Whilst the staffing required would also be subject to Ofsted regulations, the Management Plan states that the home is going through an application for Supported Accommodation Provider under the Supported Accommodation (England) Regulations 2023. However, it has been established earlier within this assessment that the young adults in a care setting of this nature would not fall within Use Class C3(b) and that the use more akin to a C2 use. Therefore, the night staffing ratio raises concerns in that the Management Plan states that the home would be staffed 24/7 and that the young people are never left without adult supervision. Therefore, there is no provision with the Management Plan in the case of a young person failing to return to the property. Whilst the Plan states that there is no curfew for the young persons, it is noted that the care provider is responsible for searching for a missing person in their care and bring them home (as outlined within the West Yorkshire Police Missing Persons Policy). Also, should an incident or emergency occur at the premises or should the lone night worker suffer illness or unexpectedly needs to leave the property, there does not appear to be any measures in place in these eventualities.

11.21 The details submitted within the Management Plan are clear in that the staff would work on a shift pattern and that there would be regular shift changes. The details cite that there would be 2 no. shift changes a day, at 8:00 and 20:00 however it is not known for what period of time this would require. In addition to these shift changes, a Manager would be present at the property during office hours (09:00 to 17:00) on weekdays.

- 11.22 No details or evidence has been submitted as to the ratio of staff that would/would not drive to the site to commence their shift and it is noted that there are no details submitted in terms of parking provision for the property. Google Streetview is clear that there is one parking space on the driveway to the property and there is an integral garage however, it is not known if the internal garage would be utilised by staff or is used for storage, or that it is of sufficient size to accommodate a modern vehicle. Notwithstanding this it is clear that 1 no. night worker would replace 2 no. day workers and vice versa, 7 days a week resulting at 3 no. vehicles potentially being present at the property during shift changes. The day manager would also be in attendance at the property during the day which would be outside of the hours of shift changes but would again, result with up to 3 no. vehicles being present at the property during the day. The Management Plan also states that visitors would include social workers, personal advisors, key workers, independent reviewing officers, educational mentors and health professionals as required. It goes on to state that visitors to the property would be pre-arranged in collaboration with staff and the placing authority and that staff handovers, key-work sessions and supervision meetings would take place within the office room at the property. Therefore, this gives rise to the potential of more than the 3 no. staff vehicles during the day on weekdays.
- 11.23 It is the view of the Local Planning Authority that the use has the potential to be managed to address these issues however this is for the applicant to show. It is therefore concluded that the number of vehicle movements, particularly during shift change times and appointments and meetings taking place at the property would not be typical at a C3 dwellinghouse.
- 11.24 In relation to the representations received, concerning restrictive covenants, this is a legal matter which would not be overridden in the event of any grant of approval for a certificate of lawfulness and with regard to the conditions imposed on the development via the planning permission process there are no conditions imposed on the decision notice with regard to the dwellings being for the occupation of one family only.

## **12.0 Recommendation**

- 12.1 Based on information above, it is concluded, on the balance of probabilities, that the proposed use of the dwelling for 3 children/young adults with 2 support workers during the day as well as 1 support worker in attendance for 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 and a planning application for full consideration of all "planning" matters fully assessed.

12.2 Therefore, on the balance of probabilities, the occupation of the building at 7, Highfield Court, Soothill, Batley, WF17 6HR by 3 children/young adults aged 16-18 with care provided by staff, with 2 support workers during the day as well as 1 support worker in attendance for the night shift, with an office manager working office hours, Monday to Friday within the land in addition to visits from professionals within the land edged red on the submitted plan amounts to a material change of use from a Dwellinghouse (Class C3(a)) to a Dwellinghouse (Class C2) as defined by the Use Classes Order 1987 (as amended).

**Recommendation:** Refuse Certificate

**Decision Authorisation – Delegated Powers**

**Application number:** 2025/92852

**Officer Recommendation:** Refuse

It is concluded that, on the balance of probabilities, the occupation of the building at

7, Highfield Court, Soothill, Batley, WF17 6HR by 3 children/young adults aged 16-18 with 2 support workers during the day as well as 1 support worker in attendance for the night shift, with an office manager working office hours, Monday to Friday in addition to visits from professionals within the land edged red on the submitted plan amounts to a material change of use from a Dwellinghouse (Class C3(a)) to a Residential Institution (Class C2) as defined by the Use Classes Order 1987 (as amended).

Plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Application form	PP-14400129		13 <sup>th</sup> October 2025
Location plan	RD2501_101		13 <sup>th</sup> October 2025
Block plan	RD2501_102		13 <sup>th</sup> October 2025
Management Plan			29 <sup>th</sup> October 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: 25<sup>th</sup> November 2025