

**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/93269/W

Site: 1A, Lydgate Drive, Lepton, Huddersfield, HD8 0EN

Description: Certificate of lawfulness for proposed use of
dwelling as children's home

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 21-Jan-2026

Applicant: K & A Booth

Site: 1A, Lydgate Drive, Lepton, Huddersfield, HD8 0EN

Description: Certificate of lawfulness for proposed use of dwelling as children's home

Application number: 2025/93269

[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 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 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.

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 1A Lydgate Drive, Lepton which is a detached dormer bungalow located on the corner of Lydgate Drive and Wakefield Road. The property hosts an integral garage which is accessed from Lydgate Drive with the submitted details indicating that the property is a 4-bedroom dwellinghouse which is defined as a dwellinghouse under Use Class C3 which is corroborated by evidence held on the Council's mapping system.

6.0 Planning History

- 2018/92422 Demolition of single storey side extension and garage and erection of single storey and two storey rear extension and dormer windows to front and rear
Conditional Full Permission
- 2018/92587 Erection of detached dwelling
Conditional Full Permission
- 2019/91379 Discharge of conditions 3 (materials) and 4 (boundary treatments) on previous permission 2018/92587 for erection of detached dwelling
Approved

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 notifications 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 use or development. The Charter goes on to comment (page 7) that applications for certificates of lawfulness for existing 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, 21 representations have been received in total all of which raise

objections to the proposal. The comments received are summarised below:

Parking and highway safety

- Parking will be a nightmare as it's right next to the junction
- It is claimed that 4 off-road parking spaces available whereby 3 spaces is a more realistic claim
- 3 times per day 6 staff vehicles will need to park and with additional visitors on-road parking will be required too including visits from family members and external professionals
- Will cause to traffic flow on the road and congestion, especially at peak times for residents who work and will likely disrupt neighbouring properties with parking overspill
- Cause a hazard for cars turning off Wakefield Road which is very busy at peak times of the day
- Would result in unwelcome congestion/potential safety issues on the main road and will compound the current congestion
- Will be near misses as larger vehicles such as bin lorries, delivery vans etc will struggle to navigate around cars parked regularly outside the property and could delay access to emergency vehicles
- Number 1A was built in the gardens of No.1 so this has already added to the parking and volume of traffic within the quiet residential road of Lydgate Drive
- Dangerous turning into Lydgate Drive if a vehicle is exiting with parked cars on-street outside the property
- Not enough room to park 4 vehicles
- Pedestrians would also be at increased risk

Antisocial behaviour

- Number of police visits due to antisocial behaviour
- Noise disturbance from teenagers TV's hi-fi systems and group gatherings
- Amount of police visit to this quiet road when it gets out of hand with the young teenagers
- Strongly object to this application on the grounds of our safety, security and peace of mind
- We pay a significant amount of council tax in this area, what kind of measures are Kirklees council putting in place, should any disruptions arise which may affect residents

General comments

- Bins at property already overflowing
- Don't commercial properties need some form of emergency exit?

- Conventional residential dwellings of families with children have permanent parents / guardian living there and are unoccupied for periods of time i.e. when children go to school, parents to work/out, outings at weekends, away on holidays etc.
- In a conventional family home, the children would be out at school during the day and have to assume that the foster children would be present at the property given the proposed staffing levels
- Lack of information made available - who will be responsible for running the children's home?
- Urge Kirklees Council to refuse the planning application in order to properly assess the impacts
- It is stated that the building is to be electronically locked and that a curfew will be enforced. This suggests that the children being housed at the home obviously may need extra support
- Impact on property values
- Respectfully urge the planning committee to consider these concerns before making any decisions on the application
- The area is a very quiet cul-de-sac with residents primarily people in their later years looking forward to peace and quiet in their retirement
- If a child did manage to get out of the home unnoticed they could end up on the very busy Wakefield Road
- The intensity of comings and goings associated with a children's home is materially greater than that of a single household, and therefore the application should be assessed against Local Plan criteria for amenity protection

Character of the area

- No permanent resident staff and rolling staff changeovers 3 times a day makes it far less likely that the occupants will integrate into the local community
- Road is silent by 9pm - traffic noise and staff at shift changeover plus potential police visits should incidents arise will definitely be audible to residents and will cause considerable disruption, distress and disharmony to the local community
- Unsuitable location as there is a lack of nearby play areas and facilities for children
- This is a quiet residential neighbourhood, with a significant amount of elderly living on the road. Will this future commercial installation bring with it extra noise from not only visiting personnel, but also emanating from within the premises
- The street is mainly occupied by bungalows and family homes and is characterised by low noise levels and minimal vehicle movements. The introduction of an institutional use with shift-working staff and associated activity would materially harm the established residential character

Application type

- Contest that 'the nature of activities associated with the use would be those of the day-to-day functionality of a conventional residential dwelling/use, with the proposed use not leading to a greater difference in activity and disturbance to that which may be anticipated with any other conventional domestic household' and that in fact, the proposal constitutes a material change of use requiring planning permission
- Would be operational as a business with no resident carer living in the property and would be staffed by non-resident workers on a 3 shift rolling rota
- This would be a significant change to the current use of the property as it would be occupied full-time by up to 6 people, 3 of whom will be non-residents (9 different people per day) plus visitors
- Operate as a commercial workplace for rotating shift workers. The installation of "external-facing CCTV," "access controls," and enforced curfews further defines the property as a secure facility rather than a standard family home
- The Council should refuse the Certificate and require a Full Planning Application to properly assess these impacts

Privacy

- Privacy likely to be considerably impacted on
- Current boundary treatment between gardens offers insufficient protection

Publicity

- No planning notifications put up next to the property to inform residents of the planning application, so residents only found out by word of mouth
- Contravenes the local planning authority's duty of transparency to inform the community about proposed developments (as per The Town and Country Planning Order 2015)
- We as residents had to contact the "planning department" to raise this question and was told it must have been a mistake, which is somewhat concerning when it has been noted that the same planning officer and planning agent, previously passed through the same type of application in Dalton (October 2025) and again there was no open and close dates available for residents to comment
- It appears that the same case officer and Agent dealt with a similar application in Oct 25 and that also had no open and close date for comments, and it would appear no comments were raised and that was passed

7.3 In response to 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 significant 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 The applicant has provided the following information:

- Application form – Ref: PP-14509200
- Location plan – Ref: PP-14509200v1
- Elevations and floor plans – ref: PL02
- Management Plan

8.2 During the course of the application, further information was requested by the Case Officer with regards to staffing levels. This information was submitted by return email on 5th December 2025.

8.3 In addition, the Agent submitted a photograph on 8th January 2026 demonstrating that 4 no. vehicles could be accommodated within the site frontage.

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 with the planning unit indicated on the submitted location plan ref: PP-14509200v1.

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 would accommodate 3 no. children, aged 7 to 17 years with the home supporting *‘children with non-complex needs who require a stable, nurturing placement rather than specialist therapeutic or high-risk interventions.’*
- 11.8 With regards to staffing, the Management plan states that *‘A consistent staffing ratio of 2-3 staff on shift will be maintained at all times to ensure adequate supervision safety and support. So 1-1 staff to child.’*
- 11.9 The Management Plan goes on to state that the home would be supported by a shift pattern of 8am-5pm, 5pm-9pm and 9pm-8am (waking night) and that across these shifts there would be 2-3 care staff on duty, alongside management oversight from the Registered Manager or on-call leadership working remotely, further information was sought from the Agent regarding staffing levels.

11.10 The Agent has confirmed (by email dated 5th December) that in terms of staffing, the following is proposed:

- Registered Manager

The Registered Manager would work remotely. They will only be attending the home if intervention is required or for auditing purposes.

- Residential Care Workers

Two residential care workers will be present on a rota basis throughout the weekday and night.

- Weekend Schedule

Throughout the weekends there will only two Residential Care Workers persons at the home. Again on a rota.

11.11 Based upon the above information, it is clear that the carers would not live permanently at the property with the planning unit and as such, cannot be considered to be living as a single household.

11.12 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.

11.13 A change of use from dwelling to a care/children's home would not always be considered to change the type of use of the property. In this instance, the applicant submits that *'given the nature of the activities associated with the use are those of the day to day functionality of a conventional residential dwelling/use, with the proposed use not leading to a greater difference in activity and disturbance to that which may be anticipated with any other conventional domestic household, it is not considered that it will amount to a material change.'*

11.14 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.

11.15 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. 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.

11.16 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 proposed in this case would include a maximum of 3 children and the information states that this would be their permanent address for a short to long-term basis and is not a respite or short-term arrangement.

- 11.17 The Agent has clarified that there would be 2 no. employees at that property at all times on a shift rota. The submitted Management Plan states that this would be in the following patten:
- 8am-5pm
 - 5pm-9pm
 - 9pm-8am (waking night)
- 11.18 It has also been conformed that there would be a Registered Manager that would work remotely and would only attend the property if intervention is required or for auditing purposes. The presence of a Manager on-site would be further subject to Ofsted regulations, considering that the Management Plan states that the home would operate as a fully Ofsted-registered home. The applicant states the manager would be present if intervention is required although no evidence is provided to understand how frequent intervention is likely to occur. Whilst the Management Plan states that 2-3 staff would be in attendance on duty however this has been updated to altered to 2 no. staff is considered to supersede the details within the Management Plan.
- 11.19 From the details submitted, the principle of 3 children with 2 adults residing at the property aligns with what would be typical of a C3 (dwellinghouse) use. Whilst this does not appear to be an unreasonable number of people and would be akin to a typical number of occupiers for the size of this particular property the presence of a manager attending is an unusual activity occurring at a dwellinghouse particularly as it has not been shown the visits from a manager would be so infrequent so as to not result in a noticeable difference to that of a dwellinghouse.
- 11.20 The Management Plan indicates that the home would support children with non-complex needs and therefore it does not necessarily indicate that any additional support for additional needs would be required. It is however acknowledged that visitors to the property would include professionals involved with the support of the children including social workers, reviewing officer's and visits from potentially three different types of family members. This which would further result in activity/visits beyond what could be considered a normal number of visits from friends and family at a typical dwellinghouse.
- 11.21 The details submitted within the Management Plan and subsequent email are clear that the staff would work on a shift pattern and there would be regular shift changes. The details cite that there would be 3 no. shift patterns including a day shift, evening shift and waking night shift. It is not clear within the submitted details as to the anticipated time of a shift change. The application form states that there would be 4 no off-street parking spaces, whilst comments have been received stating that this may not be the case, photographic evidence has been submitted to demonstrate that this is possible.

- 11.22 It is therefore reasonable to assume that when 2 no. staff are replaced with 2 no. staff that there would be up to 4 no. vehicles in attendance at the property, manoeuvring and parking at and within close proximity of the residence at every shift change (8am, 5pm and 9pm) every day, 7 days a week. There would also be visitors from professionals (as noted within the Management Plan) which could result in further vehicles at the property at certain times.
- 11.23 This is a similar scenario to ref: [APP/Z4718/X/23/3335781](#) which relates to an appeal to refusal of application [2023/92843](#) by the LPA whereby the Inspector concluded that *'The manoeuvring of vehicles on this scale and pattern is not typical of activities at a C3 dwelling. In my view it would be very noticeable to neighbouring occupiers, particularly since it would take place at weekends as well as weekdays and would mark the appeal property out as something other than a dwellinghouse. It may be that the use could be managed to address these issues, but that is for the appellant to show.'* Therefore, given the view of the Inspector with regards to a similar scheme (in terms of staff change overs), it is the view of the Local Planning Authority that based on a similar model in this case, the number of vehicular movements, particularly at shift change times, would not be typical at a C3 dwellinghouse.
- 11.24 In terms of the character of the area, there have been a number of representations received in this regard including the risk of anti-social behaviour. The information within the Management Plan cites that the children will never be left unsupervised at any time and that the children will not leave the property unsupervised under any circumstances with all outings staff-supported and risk assessed. It also confirms that a curfew would be in place and that in the event of a breach of curfew, safeguarding procedures would be followed.
- 11.25 The process of a Certificate of Lawful Development is limited to assess whether there has been a material change in the character of the use of the premises. If there is no specific evidence that the supposed effects of the dwellinghouse proposed to be used as a C2 dwellinghouse would materially alter the character of the property, then Officers are unable to take a general observation into account.
- 11.26 In terms of planning control the use of the building for the care of 3 children looked after by 2 staff comprising off 3 no. shift changes per day, 7 days a week, attendance of a manager when necessary and the significant resulting traffic movements associated with such a use would, on the balance of probability alter the character of the property and would be materially different to that of the exiting lawful use as a C3 dwellinghouse and would therefore result in a material change of use of the property which would require planning permission.
- 11.27 In relation to the summarised comments received (under section 7.0 of this report) concerns regarding to the character of the area, anti-social behaviour, parking and amenity are noted. However, they relate largely

to observations within demonstrable evidence to give any significant weight to those comments.

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 3 children with 2 carers per shift working 3 shifts throughout a 24 hour period with a manager attending when intervention is required 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.

Recommendation: Refuse Certificate

Decision Authorisation – Delegated Powers

Application number: 2025/93269

Officer Recommendation:

On the balance of probabilities, the occupation of the building at 1A, Lydgate Drive, Lepton, Huddersfield, HD8 0EN by 3 children aged 7-17 with care provided by staff, with 2 carers per shift working 3 shifts throughout a 24 hour period with a manager attending when intervention is required within the land in addition to visits from professionals/family within the land edged red on the submitted plan amounts 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-14509200		1 st December 2025
Location plan	PP-14509200v1		1 st December 2025
Elevations and floor plans	PL02		1 st December 2025
Management Plan			1 st December 2025
Email	Confirming staffing details		5 th December 2025
Email	Evidence of off-street parking		8 th January 2026

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: 20th January 2026