

**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.: 2018/CL/90225/W

Site: Woodfield, 267, Holmfirth Road, New Mill,
Holmfirth, HD9 7LX

Description: Certificate of lawfulness for proposed change of
use of dwelling to residential care home for up to 5 young people.

Case Officer: Adam Walker

Decision Reference: PROPOSED OPERATIONS 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 29-Nov-2018

Officer Report

APPLICATION FOR A CERTIFICATE OF PROPOSED USE OR DEVELOPMENT – APPLICATION NO: 2018/90225 – WOODFIELD, 267 HOLMFIRTH ROAD, NEW MILL

SUMMARY

Application no: 2018/90225 is an application for a Certificate of Lawfulness of Proposed Use or Development which seeks confirmation from the Local Planning Authority that the proposed use of the Use Class C3 (a) dwelling for occupation of up to 4 young people receiving care would fall within Use Class C (3) (b) or Class C2 of the Town and Country Planning (Use Classes) Order 1987 (“Use Class”) and consequently would not constitute “development” within the meaning of the Town and Country Planning Act 1990, as it is a change of use without a material change.

LEGISLATIVE PROVISIONS

Section 55(1) Town and Country Planning Act 1990 (“the Act”) defines the meaning of development as being:-

“Subject to the following provisions of this section, in this Act except where the context otherwise requires, “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the material change of use of any buildings or other land”

The above section determines the extent of planning control. It provides a definition of “development” for which planning permission is required. Any development which requires planning permission and has not received consent is unauthorised and may be the subject of enforcement action taken by the local planning authority under section 172 of the Act.

Section 55(2) (f) of the Act identifies those operations and uses, which are **not** to be taken as involving development. This includes a use within the same Use Class.

Use Class C3 of the Use Classes Order permits:-

“Use as a dwellinghouse (whether or not as a sole or main residence) by:-

(a) a single person or by people to be regarded as forming a single household; or

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)”

THE APPLICATION

A supporting statement has been submitted by the applicant during the course of the application which sets out how the premises would operate. This refers to there being a maximum of 4 young people residing at the property at any one time however the application form refers to up to 5 young people. The description of development reflects the application form (description of development was amended by the LPA to specify 5 young people).

Given that the supporting information consistently refers to 4 young people residing at the property and this supporting statement was submitted after the original submission it is considered that the application should be assessed on this basis. Indeed the Council’s Legal Officer has provided comments on the basis of this supporting information. The description of development has consequently been amended to allow for up to four young people rather than five.

It is necessary to determine whether the occupation of the dwelling by four young people receiving care falls within Class C3 (b) or is a use falling within Class C2 of the Use Classes Order. Use Class C2 states:-

“Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))...”

Care being defined in the Use Classes Order as meaning:-

“personal care for people in need of such care by reason of old age, disablement, past or present mental disorder, and in Class C2 also includes the personal care of children and medical care and treatment”

The application is accompanied by a statement from the property owner that provides confirmation that the property has been in use as a domestic residence and office space as per a 1999 planning permission and that later planning permissions obtained for change of use were never implemented.

The planning application referred to is:

99/90573 Change of use from residential home to dwelling and office –
Approved

Information from later planning applications submitted on this site indicate that the office space is accommodated within 2 annex buildings.

LAWFULNESS OF PROPOSED USE

Section 192(2) of the Act states:-

“If on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application they shall issue a certificate to that effect...”

MATERIALITY OF THE CHANGE OF USE

The existing property benefit from a planning permission granted 31 March 1999 (ref: 99/90573) for C3 (Dwelling) & B1 (Office). The applicant has submitted details to state this use remains to be the lawful use of the premises. The Local Planning Authority have no reason to believe this is not the case. The lawful use of the building is considered to be a mixed use as dwellinghouse and office. The proposed use is as care home for the care of children and young adults with domiciliary care from up to 3 carers. For development to have occurred a material change of use as defined in section 55 would need to have been carried out. There is no doubt a change from dwelling and office to care home is a change of use although whether or not this change is material is critical for development to have occurred.

In this case the carers would not reside permanently in the premises but would rotate in shifts so they could not be regarded as residents. Therefore the number of persons living in the premises would not exceed six as stated in Class C3(b). It is acknowledged, however, there can be a fine distinction between a use falling within Class C3 (b) and C2 of the Use Classes Order. However court judgements point to such occupation of the building as being within Use Class C2 rather than C3 (b) by virtue of non-residential carers staying overnight. This would make no difference however if the change of use was not material enough to tip the use from Class C3/B1 to Class C2.

The two key tests of materiality in a change of use are whether there would primarily be a change in the character of the use of the premises and secondarily the effects of this change upon neighbouring uses. 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. In this instance the dwelling would be a place of work for the carers and a home for the young persons.

It is proposed that the number of residents would be limited to a maximum of four young people between the ages of 16 to 24. The care provided would consist of “talking therapies”. There would be no form of medical procedures beyond first aid. The average stay for a resident is in the region of 2 years. The on-site care team would comprise 9 members of staff working on a rota system. There would be a maximum of 3 carers to 4 residents at any one time. On occasions a manager may work on-site between the hours of 9 a.m. and 5 p.m.

It is therefore necessary to determine whether a change of use from Use Class C3 (a) & B1 (office) to C2 has occurred and whether this is a “material” change which would constitute development for the purposes of section 55(1) of the Town and Country Planning Act 1990. The question of what constitutes “material” being a matter of “fact and degree” which is for the local planning authority to determine in the first instance and the Secretary of State in the event of an appeal. The two key tests are whether there would be a change in the character of the use of the premises and secondly the effects of this change upon neighbouring uses. This assessment requires particular consideration to the comings and goings generated and the activities undertaken and whether these activities exceed what might reasonably be considered to be incidental to the enjoyment of the dwelling.

In this instance the dwelling would be a place of work for the carers and manager and a home for the young persons. It is considered that car use and levels of activity would be unlikely to generate significant movements over and above that which could be generated by ordinary domestic premises, especially given that Class C3(b) permits up to 6 people to live together as a single household and each of these people may own a car. Whilst shift changes may create car movements more than a typical domestic premises, in this case the current use also operates as an office for up to 6 people (see planning condition 3 on 99/90573) and as such future shift changes are not likely to create significantly more vehicle movements than 6 office workers; particularly as the residents will not be using vehicles for transport.

There will be no external alterations to the dwellinghouse and so it would retain its domestic character. The dwellinghouse is in spacious grounds and is bound by New Mill Road to the south and Weavers Mill Way to the east. There is some new residential development to the north and more established residential development to the west. I do consider that the residential amenity of neighbours will be materially affected by the change.

In summary, it is the opinion of the LPA that whilst there will be a change in use of the premises, such change will not be sufficiently “material” to take enforcement action. As such it is recommended that a certificate can be issued confirming the lawfulness of the future use.

OTHER MATTERS

Consultation has been carried out with Kirklees Council’s Family Support and Child Protection service and Kirklees Council’s Commissioning Manager for Children’s Trust Management and Development. No comments have been received in response.

West Yorkshire Police have submitted some comments on the application. Concerns have been raised on the basis of their experience of another

property that the applicant operates within the district. Concerns have also been expressed in relation to the number of care homes already in Kirklees and the impact these can have on Police resources; the proposal would add to this.

The concerns of the Police are acknowledged however the suitability or otherwise of the applicant to operate the premises is not something that can be taken into account as part of the planning process. The number of similar care homes already in the district also cannot be taken into consideration under this Certificate of Lawfulness because the assessment is limited solely to the materiality of the change of use.

Recommendation - Grant

Decision Authorisation - Delegated Powers

Application Number: 2018/90225

Officer Recommendation: Grant

The occupation of the dwellinghouse/office by four young persons, looked after on a twenty four hour basis by three carers and a visiting day manager would not constitute a “material change in use” constituting development for the purposes of section 55(1) of The Town and Country Planning Act 1990 (as amended) and would therefore be lawful pursuant to 192 of the Act.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location Plan	-	-	16/3/18
Supporting statement relating to proposed use	Prepared by Care in Mind March 2018	-	27/3/18
Supporting statement relating to established use	Signed letter dated 17/1/18	-	16/3/18

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 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. Additional information was requested from the applicant in relation to how the care home would operate.

Report Dated: 22/11/18