

**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.: 2019/CL/91669/E

Site: 17, Forge Lane, Norristhorpe, Liversedge, WF15
7AU

Description: Certificate of lawfulness for proposed use of
dwelling for 4 bed childrens home

Case Officer: Jennifer Booth

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 29-May-2019

**APPLICATION FOR CERTIFICATE OF LAWFUL USE
(Proposed)**

APPLICANT: Sandcastle Care Ltd, 49 Whitegate Drive, Blackpool, FY3 9DG

SITE: 17 Forge Lane, Norristhorpe, Liversedge, WF15 7AU

APPLICATION: 2019/91669

1. Application

- 1.1 The applicant seeks to prove that altering the use of the building from a dwelling (C3) to a care home (C2) does not constitute a material change of use and would therefore result in a lawful use.

2. Lawful Use Certificates

- 2.1 Section 192(1) (a) 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.
- 3 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 or operations described in the application would be lawful if instituted or begun at the time of the application.

3. The Relevant Test

- 3.1 The burden of proof lies firmly with the Applicant and the relevant test for whether the use can be deemed lawful is the "balance of probability".
- 3.2 The Applicant's evidence does not need to be corroborated by "independent" evidence. If the Local Planning Authority have no evidence of their own, or from others, to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the Application, provided the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability

4. Limitations

- 4.1 A LDC must contain precise details of what use, operations, or failure to comply with a condition are found to be lawful, why and when. These 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 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, a Local Planning Authority may then take enforcement action against the subsequent breach of planning control.

5. Relevant Information

The dwelling is located on a residential road with a drive to the front. The dwelling has an existing integral garage with a living room, dining room, kitchen, study and downstairs w.c on the ground floor with a bathroom and 4 bedrooms, 1 with ensuite on the first floor.

The property also has gardens to the rear.

6. Evidence submitted in support of the Application

The application form details the site, there are a number of supporting documents including a statement outlining how Sandcastle Care Ltd operates in terms of providing stable family style living solutions for their charges, traffic information and appendices as well as a location plans, existing floor plan and proposed floor plan.

7. Evidence submitted against the Application

None

8. Site Visit

None

9. Assessment of the Evidence

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.

The recognised starting point in considering whether a material change has occurred would be to initially consider the planning unit (Burdle v SoS [1972]). The existing planning unit is a detached dwelling and its curtilage. Any material change of use is considered within the proposed planning unit indicated on the land edged red on the submitted plan.

Materiality in the context of the meaning of development is dependent upon whether there is a change in the character of the property (Guildford Rural DC v Penny [1959]). A change of use from a residential property to a care home is not always considered to change the type of use as the carers and the group of residents may emulate a family household as closely as possible. Consequently it cannot necessarily be concluded that the proposed use is introducing a substantially different use within the building. However, a

residential use for care purposes may fall within either use class C3(b) or C2 (Residential Institution). The Use Classes Order defines care to be where there is a dependency on carers providing care for disabilities and in the case of a C2 use, care for children. In this case there appears to be a mix of children (under the age of 18) and older adults in case.

If the use falls within C2 it may be argued, however, that a change in the degree of a particular use, in this case C3, could amount to a material use, if that change is marked (Circular 67/49 (now cancelled)). Under such circumstances, development would be considered to have taken place.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Class C3 as follows:-

“Use as a dwelling house (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;
- 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).

Interpretation of Class C3.

For the purposes of Class C3(a) “single household” shall be construed in accordance with section 258 of the Housing Act 2004” Under Class C3(a), people will only form a single household where they are related to each other as a family. The position under paragraphs (b) and (c) is quite different, since the statutory definition of a single household only applies to Class C3(a). The statutory definition does not apply to paragraphs (b) and (c) of the Use Classes Order and there is no statutory requirement under those parts of the Order for anyone living in the property to be related to any other person.

Circular 05/10: Changes to Planning regulations for Dwelling houses and Houses in Multiple Occupation, Annex A, paragraph 9 states that “the criteria for determining whether the use of particular premises should be classified within the C3 use class include both the manner of the use and the physical condition of the premises. Premises can properly be regarded as being used as a single dwelling house where they are:

- A single, self-contained unit of occupation which can be regarded as being a separate ‘planning unit’ distinct from any other part of the building containing them;
- Designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house;

Class C3 (b) refers to “use as a dwelling house by not more than six residents living together as a single household, (including a household where care is provided for residents).” If a children’s home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there

would be no requirement for planning permission in such an instance. However, the matter is less clear when the care is based on shift patterns. The North Devon District Council [2003] case 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.”

The North Devon judgement confirms that it is unrealistic to expect children to look after themselves in a single household. 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 this use class (C3). In such circumstances, the use cannot therefore be considered to fall within Class C3 (b). A children’s home run on shift patterns could not be considered to fall within Class C3 (a), because clearly, this is not occupation of a dwelling house by a single person or people living together as a family. In essence the essential element of Use Class C3 was absent, in that the carers did not live as part of the household as they ordinarily lived elsewhere, nor could the children form a household as they needed to be looked after by an adult. Notwithstanding this, it was concluded that the proposed use was not materially different. In *North Devon District Council v SoS 2003* the Courts considered a similar case to this application where a residential property was used for care for two children with a team of 7 carers working in shift patterns. The Court was satisfied that whilst a change in use may have occurred, “the inspector was entitled to consider whether that change of use was material. It would only be material if, as a matter of fact and degree in the circumstances of an individual case, the change of use was material.”

It is therefore necessary to determine whether a change of use as described in the application would be lawful if implemented. That is, whether there would be a “material” change in use of the dwelling which would constitute “development” for the purposes of section 55(1) of the Act, having regard to the fact that not every change of use of land or buildings is a material change. The materiality of a change in use being judged in the broad context of the likely planning consequences of that change, and not just by comparing the different activities (if any) that will take place at the location itself. The question of what constitutes “material” being 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. The two key tests of materiality in a change of use 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 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 case, a change of use from a residential unit to a residential home for up to four children and/or adults would not appear to introduce any different

way in which the building would operate. There would not be any changes to the external elevations of the existing dwelling. The proposed use would not result in vehicle movements that are dissimilar or would be over and above that existing given the range permitted under Use Class C, which includes a use by up to 6 people living as a single household. In this instance there will be two carers in residence at all times. The car movements would be what could be expected at any residential premises particularly movements in connection with the day to day running of the household. No changes are proposed to the existing parking or access arrangements which are adequate for the proposed use.

Furthermore, all residents including staff members would share mealtimes, facilities and relax in the same areas. In addition, it cannot be said that there will be any significant intensification in the numbers of residents residing at the premises. The use of the premises will consist of 4 children and two carers living together as a single household. It is understood that the activities in the home will not greatly differ from what happens in any family home. Many families have children with additional needs, whether it is special educational needs, an illness or a disability, but the dwelling in which they reside remains a family home. The degree of change in the character of the building thus would appear to be marginal.

On this basis, the occupation of the dwelling by up to four children and/or young people, with two carers on in the house 24 hours a day would not constitute a material change of use of the dwelling, thus it would not operate any differently to use as a dwelling within use class C3.

The proposed change of use to a residential home for up to four children and/or young people is proposed to include the ancillary land. In terms of planning control, the proposed use of the building would be retained as residential and is it not considered unreasonable to conclude that the land shown on the plan edged red would continue to be ancillary residential land.

10. Recommendation.

Based on the above, it is considered that on the balance of probability that the proposed use of the dwelling as a residential home for up to four children and/or young people with two carers on site at all times within the land edged red does 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 any “planning” effect upon the neighbourhood. It is recommended to approve the certificate and confirm the lawful use.

Specified Use

Whilst it is not considered to be materially different to a C3 use as defined by the Use Classes Order, as stated above the use as proposed is not considered to fall within a C3 Use Class.

Equally it is not considered the use as a residential home at this degree of use could comfortably fall into a clear definition of “institutional” as provided by Class C2 within the Use Classes Order. As stated above the use of the premises is not materially different to that of a typical dwellinghouse. Consequently and for the purposes of describing the use it is not considered appropriate to specify the use class.

Recommendation – Grant Certificate

Decision Authorisation - Delegated Powers

Application Number: 2019/90617

Officer Recommendation: Grant Certificate

On the balance of probability the occupation of the building at 17 Forge Lane, Norristhorpe, Liversedge, WF15 7AU by up to a maximum of four children with up to two carers on 24 hour shift basis including sleeping in overnight would not constitute a material change in the use of this building and as such is not considered to amount to development as defined within Section 55 of the Town and Country Planning Act 1990 (as amended) and would therefore be lawful pursuant to section 192 of the Act.

Plans and specifications:-

Plan Type	Reference	Web ID	Date Received
Application form	-	751622	20/05/2019
Location Plan	-	751626	20/05/2019
Floor plan - existing	-	751625	20/05/2019
Floor plan - proposed	-	751642	20/05/2019

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 Dated

30/05/2019
