

**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.: 2020/CL/90720/E

Site: West Holme Residential Home, 340, Whitehall
Road, Wyke, BD12 9DP

Description: Certificate of lawfulness for proposed use of
premises for home for young adults (16-18)

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 07-Jul-2020

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

APPLICANT: Horton Housing

SITE: West Holme Residential Home, 340, Whitehall Road, Wyke, BD12 9DP

APPLICATION: 2020/90720

1. Application

- 1.1 The applicant seeks to prove that using West Holme Residential Home as a home for 16- 18 year olds 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.
- 2.1 Section 192(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”.
- 3.1 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

- 5.1 The application relates to a natural stone built detached property, located on Whitehall Road. The building has two and three storey elements with a drive to the side leading to a large area of land to the rear of the building which currently has a number of outbuildings.
- 5.2 The building is located on a main road with residential properties to each side and on the opposite side of the road.

6. Evidence submitted in support of the Application

- 6.1 The agent has submitted a completed application form, a site location plan and two supporting statements, one outlining the proposed model of operation by Horton Housing and the other evidencing the care home use. It is noted that the application form does refer to the building as a former children’s home. The agent has corrected this in the 2nd statement and refers to the last use as a residential home for the elderly. The statement includes a copy of the 1976 decision notice for change of use, an officer report from a planning application to extend the home in 1997 and two web directory records for the care home.

7. Evidence submitted against the Application

- 7.1 This application was advertised to residents by letter giving till 06/05/2020 for interested parties to provide evidence to either corroborate the use or provide proof of a different use.
- 7.2 82 responses were received expressing strong local opinion as to the suitability of the site for housing young people, potential for crime and anti-social behaviour, poor transport links, limited facilities for young people in the area. As this is a certificate of lawful use, none of these matters can be considered as part of this process.
- 7.3 A number of the representations questioned whether the proposed use did fall under C2 or would it fall under C2a as a secure residential facility. Again, given the type of application, this is not material to the considerations. However, it should be noted that the applicant is explicitly seeking confirmation regarding C2 use and has not indicated that they intend this to be a prison, detention centre, custody centre or young offender’s institute. Furthermore, it cannot be assumed that 16 – 18 years olds are automatically in need of a secure facility purely based on their age.
- 7.4 50 of the representations did explicitly state that to the knowledge of the resident, the building was used as a care home for the elderly.

8. Site Visit

8.1 None

9. Assessment of the Evidence

- 9.1 West Holme Residential Home, 340 Whitehall Road is a large detached stone building which has a drive to the front and side leading round to a large area to the rear with outbuildings. Horton Housing Association are seeking confirmation that they can use the building as home for 16 – 18 year olds without needing to apply for a change of use planning application. This application for a certificate of lawfulness is therefore to be considered on the basis that a home for the elderly and a home for 16 – 18 years olds are both C2 uses as defined by the Use Classes Order 1987.
- 9.2 For clarification, the use class C2 covers residential care home, hospitals, nursing homes, boarding schools, residential colleges and training centres.
- 9.3 It falls therefore to consider the authorised use of the premises, 340 Whitehall Road. It is appreciated that the building is currently vacant and has been on the market for some time. However, the last use would still be considered to be the authorised use of the building. The evidence submitted by the agent includes the original decision notice from 1976 where permission was granted to change the use of 3 flats into a care home for the elderly. Also included is a copy of the officer report for a planning application submitted to Bradford Council for an extension to the care home from 1997 where the officer stated in their description that the building was used as a care home for the elderly and that the proposal would extend the existing facilities to include a further 4 bedrooms, a lounge, office, staff room and laundry on the ground floor with 9 bedrooms and two bathrooms on the first floor with a lift. The planning application was refused by Bradford Council, however, the application was upheld on appeal. Whilst the permission was not implemented, the officer report made clear reference to the use of the building at the time. Further information submitted also includes copies of internet directory pages for care homes which show West Holme Residential Home inclusive of the Whitehall Road address.
- 9.4 No evidence has been put forth which would contradict this or indicate an intervening use which would override the authorised use. Out of the 82 responses received to the publicity, 50 interested parties have also confirmed the use as a care home for the elderly through local knowledge.
- 9.5 Therefore, based on the evidence under consideration, the evidence submitted together with the information held by the Council does clearly

indicate that 340 Whitehall Road was last used as a care home for the elderly.

- 9.6 On the balance of probability, it is considered that the use of the building, 340 Whitehall Road is a C2 residential care home.
- 9.7 It now needs to be considered whether the proposed use for 16 – 18 years olds does also fall within the same use class.
- 9.8 The age of maturity in England is 18. As such persons under that age are still considered to be children in the eyes of the law. North Devon District Council v First Secretary of State [2003] EWHC 157 the justice stated 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.”*
- 9.9 The statement provided by the agent outlining how Horton Housing intend to operate the home confirms that the building would be used to house 16 – 18 year olds who are leaving care, homeless or at risk of becoming homeless. The young persons will be in either full time education or training. The building would be staffed at all times by a manager and support staff 24 hours a day, 7 days a week. Article 2 of the Use Classes Order 1987 define “care” to be *“personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.”* As such the personal care of children falls precisely within class C2, as does the care of persons of old age.
- 9.10 Based on the information regarding the operation of the home by the agent, the occupation of 340 Whitehall Road for the residential care of young persons (16-18) with 24 hour support staff in these circumstances can be considered to fall within class C2. The previous use as a care home for the elderly also falls within class C2.
- 9.11 Section 55 of the Town and Country Planning Act 1990 defines “development” for the purposes of the Act which including a material change of use from one use to another. Section 57 provides that planning permission is required where development has occurred and section 171A provides that where development has occurred without planning permission, a breach of planning control has occurred which would be unlawful.
- 9.12 However, section 55 also provides a number of exceptions to the definition of development and crucially section 55(2)(f) where *“in the case of buildings or other land which are used for a purpose of any class specified in any order made by the Secretary of State under this*

section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land for any other purpose of the same class.”

- 9.13 In this instance the use of the building is changing from a care home for the elderly (Class C2) or a home providing care for children (Class C2). This change in the use of the building cannot therefore be regarded as development requiring planning permission and it follows the use cannot therefore be unlawful.

10. Recommendation.

- 10.1 Based on the above, it is considered that on the balance of probability that the authorised use of 340 Whitehall Road is a residential care home and that the proposed use of 340 Whitehall Road as a home for 16 – 18 year olds with 24 hour support does fall within C2. It is recommended to approve the certificate and confirm the lawful use.

Recommendation – Grant Certificate

Decision Authorisation - Delegated Powers

Application Number: 2020/90720

Officer Recommendation: Grant Certificate

The use of 340 Whitehall Road was established through a planning approval under 1976/4919 as a residential home for the elderly falling within Class C2 as defined by the Use Classes Order 1987. The use of 340 Whitehall Road as a residential home with 24 hours support for 16 – 18 year olds is considered

to also fall within Class C2 and would therefore not be regarded as development requiring planning permission by virtue of Section 55(2)(f) of the Town and Country Planning Act 1990 and therefore lawful pursuant to section 192 of the Act.

Plans and specifications: -

Plan Type	Reference	Web ID	Date Received
Application form	-	798295	04/03/2020
Location Plan	-	798296	04/03/2020
Statement regarding operation	-	806948	14/05/2020
Supporting statement	-	814319	30/06/2020

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

06/07/2020