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.: 2021/CL/91398/W

Site: 608, New Hey Road, Mount, Huddersfield, HD3 3XJ

Description: Certificate of lawfulness for proposed use of premises as home for up to three children or young people

Case Officer**:** Emma Thompson

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 03-Jun-2021

Application for Certificate of Lawful Use (Proposed)

https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f91398

APPLICANT: Northern Communities Pathways Residential

SITE: 608 New Hey Road, Mount, Huddersfield, HD3 3XJ

APPLICATION NUMBER: 2021/91398

1. Application

1.1 The applicant seeks to prove that using 608 New Hey Road to provide living accommodation for up to 3 children or young people with 2 full time resident carers residing on a rota basis does not constitute a material change of use and would therefore result in a lawful use.

2. Lawful Use Certificates

2.2 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.

2.2 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".

3.2 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

5.1 The dwelling is a detached two storey house with a driveway to the side of the property and amenity space to the front, side and rear. The house is finished in a cream coloured render with concrete tiles for the roof. The property is a 4 bedroom dwelling with accommodation over 2 floors.

6. Evidence submitted in support of the Application

6.1 The Agent has submitted a completed application form, location plan and covering letter which provides further information as to how the property will operate.

7. Evidence submitted against the application

7.1 None

8. Site Visit

8.1 None

9. Assessment of evidence

608 New Hey Road is a four bedroom detached house with gardens to the front, side and rear. The applicants are seeking confirmation that they can use the house as a solo home with 2 staff per day (both sleeping in) and up to 3 child or young people.

The property is considered to be an established dwelling house and falls within class C3 as defined by the Use Classes Order 1987 (as amended).

With regard 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 fulltime 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.

The use of 608 New Hey Road for the care of up to three “looked after” children/young people with two carers at any given time rather than two full time residential carers would not generally fall within Class C3 as the carers would not live permanently but over a 24 hour shift pattern and a such cannot be considered as living as a single household.

Based on this information, the care of the child in these circumstances can more accurately be considered to fall within class C2 as defined by the Use Classes Order 1987.

That being said, consideration needs to be given as to whether a C2 use, operated in the manner proposed within the covering letter and by the submission of additional information by the Agent, would constitute a material change of use, given that Section 55 of the Act establishes that the making of a material change of use of a building represents development.

The recognised starting point in considering whether a material change has occurred would need to initially consider the planning unit (Burdle v SoS [1972]). The existing planning unit is a detached house with a modest curtilage.

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 dwellinghouse to a care facility may not always be considered to change the type of use if that change is not material in planning terms. In this instance, the intention to operate the house as a home for 2 carers and the group of up to 3 children is intended to emulate a family household as closely as possible.

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 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. 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 the existing use of the dwellinghouse to a residential home for up to three children and 2 staff members at any one time would not appear to introduce any different way in which the building would operate as a dwellinghouse. There would not be any changes to the external elevations of the existing dwelling. The Agent has confirmed that the 6 no. parking spaces are more than sufficient. As the shift pattern is 24 hour shifts, it is considered that the proposed use would not result in vehicle movements that are

dissimilar or would be over and above than existing. The car movements would be what which 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 as a small scale care facility for up to three children/young people is also not considered to result in any increase in noise or behaviour that would be beyond any typical dwellinghouse occupied by a family with a single child.

The use of the premises will consist of up to three children/young people and two carers living together in a similar fashion to 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 three children or young person, with two carers 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. In terms of planning control, the proposed use of the building would be retained as primarily residential with care being given to a single child and is it not considered unreasonable to conclude that the dwellinghouse has not materially changed from class C3 to class C2 and the development has not occurred which would require planning permission.

There may be a perception that the introduction of a children's care facility will attract anti-social behaviour and involvement from the emergency services. West Yorkshire Police were consulted in this respect and provide no evidence to suggest that the use would lead to any increase in anti-social behaviour.

10. Recommendation

Based on the above, it is considered that on the balance of probabilities that the proposed use of the house as a residential care home for up to 3 children/young people with two carers on site at all times within the red line boundary does not amount to a change of use as defined by Section 55 of the Act. The use of the building for the purposes outlined within the application is not considered to substantially change the character of the building, not does it have any "planning" effect upon the neighbourhood. It is recommended to approve the certificate and confirm the lawful use.

Recommendation **GRANT CERTIFICATE**

Decision Authorisation - Delegated Powers

Application Number: 2021/91398

Officer Recommendation: Grant Certificate

On the balance of probability the occupation of 608 New Hey Road, Mount, Huddersfield, HD3 3XJ by up to 3 children/young persons with two carers on a 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 schedule:-

Plan Type	Reference	Version	Date Received
Application form			6th April 2021
Supporting Statement			6th April 2021
Location plan			6th April 2021
Photographs			6th April 2021
Additional information			13th May 2021
Additional information			17th May 2021

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.

Report Dated: 1st June 2021

On the balance of probability the occupation of 2, Ings Road, Almondbury, Huddersfield, HD5 8TB by 1 child/young person with two carers on a 48 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 schedule:-

Plan Type	Reference	Version	Date Received
Application form			21st January 2021
Covering letter			21st January 2021
Location plan			4th February 2021

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.

Development within a Coal Mining Area

DEVELOPMENT LOW RISK AREA – STANDING ADVICE

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority