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.:	2022/CL/90173/W
Site:	233, Leeds Road, Huddersfield, HD1 6NS
Description: premises as Class C2	Certificate of lawfulness for proposed use of
Case Officer**:**	Tom Hunt
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 16-Mar-2022

APPLICATION FOR CERTIFICATE OF LAWFUL USE (Proposed)

APPLICANT: Whiterose Care

SITE: 233, Leeds Road, Huddersfield, HD1 6NS

APPLICATION: 2022/90173

1. Application

1.1 The applicant seeks to prove that altering the use of the building from a HMO (C4) 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.

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

5.1 233 Leeds Road is an end-terraced two storey dwelling registered as a HMO with Kirklees Council with the following rooms:–
Basement – Bedroom and ensuite shower-room
Ground Floor – Hall, kitchen, two bedrooms with ensuite shower-room
First Floor –two bedrooms with ensuite shower-room

The property has a front amenity space and a rear amenity space.

There would be no off street parking spaces supplied.

It is proposed to have 3 children 8-18 years old being cared for by two carers sleeping overnight on a rota basis with an additional carer visiting during the daytime.

6. Evidence submitted in support of the Application

6.1 A floor plan showing the accommodation has been supplied with a location plan to identify the property within the area, an HMO licence held by the applicant (now expired) and a Planning Statement from Rose Consulting Planning & Regeneration outlining their position on the provision of small sized family units.

7. Evidence submitted against the Application

7.1 None.

7.2 An objection has been noted by West Yorkshire Police on the basis of security, public safety and citing policies within the Kirklees Local Plan. This will be reflected upon during the assessment of the evidence.

8. Site Visit

8.1 A site visit was not carried out.

9. Assessment of the Evidence

9.1 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.

9.2 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 an end terraced

two-storey 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.

9.3 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 an HMO/C4 residential property, confirmed as an HMO by the submitted Kirklees Council HMO Licence to a 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 the group of residents may emulate an residential use as closely as possible remaining residential in style and use.

9.4 Consequently it cannot necessarily be concluded that the proposed use is introducing a substantially different use within the building previously or currently in use as an HMO. However, a residential use for care purposes may fall within either use class C3(b), C2 (Residential Institution) or C2A (Secure Residential Institution).

9.5 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*".

9.6 The North Devon judgement confirms that it is unrealistic to expect children to look after themselves in a single household under C3. 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.

9.7 The use of 233 Bradford Road for the care of three "looked after" children with two carers at any given time would not generally fall within Class C3 as the carers would not live permanently but have two carers working on a rota basis with a shift pattern (either 3 days on and 4 days off, or 4 days on and 5 days off) and as such cannot be considered as living as a single household and must be regarded as C2.

9.8 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 proposal for 3 resident children (8-18 years old) and up to three older adults carrying out carer roles.

9.9 It had been confirmed in the Planning Statement (page 5) that it would not be in use as secure accommodation under C2A.

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

9.11 That being said, consideration needs to be given as to whether a C2 use, operated in the manner proposed within the Planning Statement 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.

9.12 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.

9.13 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.

9.14 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.

9.15 In this case the existing use of the HMO to a residential home/C2 for three children and 2 carers sleeping overnight on a rota basis additionally supported by a carer visiting during the daytime at any one time would not appear to introduce any different way in which the building would operate as a house of multiple occupation.

9.16 There would not be any changes to the external elevations of the existing dwelling as confirmed by the Planning Statement. Fire doors would have to be utilised for those leading to the kitchen which would not be a material change. Locks on bedroom doors and emergency lighting would also not be a material change. There would not be any changes to the internal layout of the property. The basement bedroom occupied by a carer would have a small office space for the necessary administration.

9.17 There are no changes in available car parking spaces. Residents would be taken to and from school each day. The Planning Statement puts forward that these children will not require regular visits from social workers and clinicians. However legally a child in care would require regular social worker contact and multi-person care reviews adding to the potential use of vehicle parking which may have a

cumulative impact with three looked after children. This could also be expected in a residential setting, where adults living in HMO accommodation may have medical or health needs leading to visits from care professionals.

9.18 As the shift pattern is either 3 days on and 4 days off, or 4 days on and 5 days off, it is considered that the proposed use would not result in vehicle movements that are dissimilar or would be over and above than its existing potential occupants in use as a HMO. 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.

9.19 Furthermore, all residents including staff members would eat together, share kitchen facilities and have their separate bedrooms. In addition, it cannot be reasonably said that there will be any significant intensification in the numbers of residents residing at the premises from a potential use of 2 occupants per bedroom = 10 to an occupant per 5 bedrooms to be 5.

9.20 It is noted that there would be no shared living or dining room facility however this is the same as the existing layout. While Officers consider this to be inappropriate for its proposed use, it is also not a material change and cannot be controlled under the Certificate of Lawful Development process. It is acknowledged that this may not meet OFSTED standards as it would not have shared dining or living areas away from the kitchen however the registration of the dwellinghouse as a children's care home would be assessed under their processes and standards.

9.21 There is no evidence presented to show the use of the premises as a small-scale care facility for three children would result in any increase in noise or behaviour that would be beyond any potential for others living in a house of multiple occupation. No evidence has been provided to show the use of the premises would result in an increase in crime or disorder or that the welfare of the children would be put at risk.

9.22 The use of the premises will consist of three children and two carers living together and accommodating rooms as is presently used by adults in a HMO in terms of bedroom space and shared facilities. The degree of change in the character of the building thus would appear to be marginal.

9.23 A received representation by West Yorkshire Police set out that they would not support the application and recommends that consent be refused. While Officers are mindful of both National Planning Policy Framework and Kirklees Local Plan Policies, 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

and secondly the effects of this change upon neighbouring uses. If there are no material specific evidence that the supposed effects of the dwellinghouse proposed to be in use as a C2 dwellinghouse would materially impact negatively on neighbouring uses other than a general objection, Officers are unable to take this into account. Children in care still require being looked after and it is not reasonable to assume that looked after children would automatically have negative impacts on residential amenity or the welfare or the children living in the premises.

9.22 On this basis, the occupation of the dwelling by three children (8-18 years old), with two carers in the house present 24 hours a day and one carer in the daytime would not constitute a material change of use of the property under C2, thus it would not operate any differently to use as a dwelling within use class C4.

9.23 In terms of planning control, the proposed use of the building would be retained as primarily residential with care being given to three children; and it is considered reasonable to conclude that the house of multiple occupation would not have materially changed in use from class C4 to class C2 and that development would not occur which would subsequently have required planning permission.

10. Recommendation.

10.1 Based on the above, it is considered that on the balance of probabilities that the proposed use of the dwelling as a residential home for up to three children (8-18 years old) with two carers present overnight and an additional carer on site during the day 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.

Recommendation – Grant Certificate

Decision Authorisation - Delegated Powers

Application Number: 2022/90173

Officer Recommendation: Grant Certificate

On the balance of probabilities the occupation of the building at 233, Leeds Road, Huddersfield, HD1 6NS by up to a maximum of three children with up to three carers present (of which two remain overnight on a rota basis) 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**
Location Plan	Location Plan of HD1 6NS	913937	19/01/2022
Floor Plan	Floor Plans. Job No. 2234. Drawing No. 060. Revision: -.	913936	19/01/2022
Supp Info – General	Planning Statement. 233 Leeds Road.	916414	08/02/2022

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: 08/03/2022