# 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**

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|---|---|
| Reference no.: | 2023/CL/91412/W |
| Site: | 48, Waterloo Road, Waterloo, Huddersfield, HD5 0AF |
| Description: | Certificate of lawfulness for proposed change of use from C3 to C2 |
| Case Officer**:** | Laura Yeadon |
| **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 06-Jul-2023**

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

**Applicant:** Mr M Azam

**Site:** 48, Waterloo Road, Waterloo, Huddersfield, HD5 0AF

**Description:** Certificate of lawfulness for proposed change of use of dwelling from C3 to Class C2

**Application number:** 2023/91412

## 1. Application

1.1 The applicant seeks to prove that altering the use of the building from dwellinghouse (C3) to 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) of the Town and Country Planning Act 1990 ("the Act") permits any person who wishes to ascertain whether any proposed use of buildings or and 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 as 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 probabilities.

## 4. Limitations

4.1 A Lawful Development Certificate (LDC) must contain details of what use, operations, or failure to comply with a condition are found to be lawful, why and when. These details are not 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 addressed. If the use subsequently intensifies or changes in some way to the point where a “material” change takes place, a Local Planning Authority may then take enforcement action against the subsequent breach of planning control.

## 5. Relevant information

5.1 48 Waterloo Road comprises of the following:

Hallway. Kitchen, living area and dining area at ground floor
4 x bedrooms and bathroom at first floor

*Planning history:*

None

*Site specific:*

The property has outdoor amenity space to the front and rear.

It is proposed that parking for 2 vehicles is available in the driveway to the front/side of the property with on-street parking available.

It is proposed that the property would accommodate a maximum of two children aged 16 to 18 on a long term basis. The children would be supported by 2 no. carers during the day with a manager was well as two staff members providing supervision and support through the night if required with sleeping facilities provided for carers working the night shift. The home will be under staff supervision 24 hours a day, 7 days a week.

## 6. Evidence submitted in support of the Application

6.1 A floor plan has been submitted demonstrating the existing layout of the property with an application form detailing the operation of the premises along with a location plan.

## 7. Evidence submitted against the Application

7.1 None

7.2 No objection in principle of the application by West Yorkshire Police, however security measures are requested which have been sent to the applicant who should liaise directly

## 8. Site Visit

8.1 A full site visit was not undertaken

## 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 of use has occurred would be to initially consider the planning unit (Burdle v SoS [1972]). The existing planning unit is a semi-detached property and its curtilage. Any material change of use is considered within the proposed planning unit indicated on the land edged in red on the submitted plans.

9.3 Materially in the context of the meaning of development is dependant upon whether there is a change in the character of the property (Guildford Rural DC v Penny (1959)). A change of use from C3 dwellinghouse to 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, manager and children may emulate a residential use as closely as possible whilst remaining residential in terms of style and use.

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

9.5 With regards 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 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."*

9.6 On 23rd May 2023, the Housing Minister issued a written ministerial statement on planning for accommodation for looked after children. The statement sets out that the planning system should not be a barrier to providing homes for the most vulnerable in society. The statement also set out that planning permission will not be required in all cases of development of children's homes, including for changes of use from dwellinghouses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2.

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

9.8 The use of the application site, 48 Waterloo Road for the care of 2 no. 'looked after' children with 2 no. carers at any given time would not generally fall within Class C3 as the carers would not live permanently but the application proposes to have up to 4 no. carers with a manager working office hours and as such, cannot be considered as a single household and must be regarded as C2.

9.9 The Use Classes Order defines care to be where there is a dependency on carers providing care for disabilities and in the case of C2 use, care for children. In this case there appears to be a proposal for 2 no. children (aged 16-18 years old) and up to 5 (during office hours and day and night shift patterns) adults carrying out managerial and caring duties although no more than 3 present on the site at any one time.

9.10 Based upon the submitted information within the application form, the care of 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 submitted information, would constitute a material change of use, given the 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 of use being judged in the broad context of the likely consequences of that change upon the character of the property. Comparing the different activities (if any) that will take place at the location itself before and after the change takes place is the starting point for such an analysis.

9.13 However, 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 key test of materiality in a change of use are whether there would be a change in the character of the use of the premises and only in borderline cases the effects of this change of use of the premises upon residential uses may be able to assist in the analysis. 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 change from an existing C3 use to a C2 use for two children with 2 daytime carers and 2 carers at night if needed would not appear to introduce any different way in which the building would operate as residential dwelling. Whilst most dwellinghouses do not have a manager attending for work office hours, it is not considered that this would alter the character of the dwelling in terms of introducing a significant business element to the activities.

9.16 The submitted information does not indicate that any internal works are proposed and the information advises that parking would be provided. Additional information has been sent to the applicant at the request of West Yorkshire Police however this information is required separately and does not form part of the assessment of this application.

9.17 Parking spaces are available on the driveway of the property. The information submitted by the applicants states that visitors to the property would be infrequent and any therapeutic care would be carried out by the carers. This could also be expected in a residential setting, where adults or children may have health needs leading to visits from care professionals. Moreover, it is not uncommon for carers to visit residential properties where care is provided and any increase in vehicle movements are not considered to be significant usual or different to a family home where children are taken to and picked up from school, shopping trips undertaken and any other typical comings and goings from a home.

9.18 It is not considered that up to 4 carers (maximum of 2 at any one time) and an office manager working office hours would increase car movements to that what could be expected to any residential premises particularly in the day to day running of a household.

9.19 Furthermore, the floor plans of the property indicate that the building would function as a dwellinghouse with a kitchen provided and 4 individual bedrooms. In addition, in cannot be reasonably said that there will be any significant intensification in the numbers of residents residing at the premises over and above a C3 use.

9.20 There is no evidence presented to show that the use of the premises as a small-scale care facility for two children would result in any increase in noise or behaviour that would be beyond any potential for others living in a residential dwelling. No evidence has been presented 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.

9.21 The use of the premises would consist of two adult day time carers and up to 2 night time carers if needed with two children living together and accommodating rooms which are presently used as a

dwelling. The degree of change in the character of the building would appear to be marginal.

9.22 A representation has been made by West Yorkshire Police sets out the request for further information from the application. 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. If there are no material specific evidence that the supposed effects of the dwellinghouse proposed to be use as a C2 dwellinghouse would materially alter the character of the property then officers are unable to take a general observation into account. Children in care still require being looked after and it is not reasonable to assume that looked after children would automatically be susceptible to criminal activities.

9.23 On this basis the occupation of the dwelling by two children (aged 16-18 years old) with two carers working during the day up to two carers working during the night with a manager working office hours would not constitute a material change of use under C2, thus it would not operate any differently to use as a dwelling within use class C3.

9.24 In terms of planning control, the use of the building would be retained as primary residential with care being given to two children; and it is considered reasonable to conclude that the dwellinghouse would not have materially changed in use from C3 to C2 and the development would not occur which would subsequently have required planning permission.

**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 two children (aged 16-18 years old) with two carers present during the day and up to two carers present during the night if needed with a manager working office hours within the land edged red on the submitted details do not amount to a material change of use as defined by Section 55 of the Act. The change of use is not considered substantially change the character of the building, nor does it have “planning” effect upon the neighbourhood. It is therefore recommended to approve the certificate and confirm the lawful use.

**Recommendation – Grant Certificate**

**Decision Authorisation – Delegated Powers**

**Application number:** 2023/91412

**Officer Recommendation:** Grant Certificate

On the balance of probabilities the occupation of the building at 48, Waterloo Road, Waterloo, Huddersfield, HD5 0AF by up to two children with two carers present during the day and up to two carers present during the night if needed with a manager working office hours would not constitute a material change in the use of the building and as such is not considered to amount to development as defined within Section 55 of the Town and Country Planning Act 990 (as amended).

Plans and specifications schedule:-

| Plan Type | Reference | Version | Date Received |
|---|---|---|---|
| Location plan | PP-12115825v1 | | 15th May 2023 |
| Floor plans | | | 15th May 2023 |

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:** 3rd July 2023