

**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.: 2023/CL/92829/W

Site: 19, St Thomas Gardens, Bradley, Huddersfield,  
HD2 1SL

Description: Certificate of lawfulness for proposed change of  
use from dwelling (use class C3) to residential care home (use class C2)

Case Officer: Lucy Taylor

**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 14-Nov-2023**

**Site:** 19, St Thomas Gardens, Bradley, Huddersfield, HD2 1SL

**Application Number:** 2023/92829

**Proposal:** Certificate of lawfulness for proposed change of use from dwelling (use class C3) to residential care home (use class C2)

### **1. Application**

1.1 As part of this application, it is proposed that the home is used for up to two children with up to two support staff 24 hours a day, on a shift pattern. As well as the support staff, the applicant also indicated a manager would be present during office hours (9 till 5) Monday to Friday. It should also be noted that social workers would visit the site occasionally.

### **1. Lawful Use Certificate**

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.

### **2. The Relevant Test**

3.1 The burden of proofs lies firmly with the Applicant and the relevant test for whether the use can be deemed lawful is in 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.

### **3. 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.

#### **4. Relevant Information**

5.1 The property is two-storey and detached, with on-site parking amenity space to the front and private outdoor amenity space to the rear. No existing floor plans have been submitted with the proposal.

#### **5. Evidence Submitted in Support of the Application**

6.1 The submitted information includes an application form, a location plan and a document of evidence to verify the application which outlines how the property will operate. For clarification, the site has been operating as a dwellinghouse (C3).

#### **6. Evidence Submitted Against the Application**

7.1 None – although it is noted that two objections have been received. However, these objections speak to the merits of the proposed use, which is not up for debate under this type of application.

#### **7. Site Visit**

8.1 None

#### **8. 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 two-storey 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 location plan.

9.3 Materially 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 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 support staff, 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 23<sup>rd</sup> 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 with the care of up to two children with two day time staff and two night time staff working on a rota pattern is intended to emulate a family household as closely as possible. In addition, the information submitted by the applicant sets out that social works will only visit the site occasionally.

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 is 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 as a residential dwelling.

9.15 In this case, a change of the use from a dwelling (C3) to a residential care home for up to two children, with 3 daytime staff and 2 overnight staff would not appear to introduce any different way in which the building could operate as a dwelling. The information submitted by the applicant sets out that social workers will only visit the site occasionally which would appear little different to occasional visitors to a dwellinghouse.

9.16 The submitted information indicates that no internal works are required, and the information advises that parking would be provided. Additional information has been sent between the applicant and West Yorkshire Police, 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 It is anticipated that 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, with the shifts of support staff to start at 8am and the shifts of the manager to be between 9am and 5pm Monday to Friday. In addition, given that social workers will only visit the site occasionally, this is considered to emulate the same patterns of movement as visitors to a dwelling. No changes are proposed to the existing parking or access arrangements, which are adequate for the proposed use.

9.18 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.

9.19 On the basis, the occupation of the dwelling by up to two children or young person, with 3 daytime staff and two night time staff in the house 24 hours a day would not constitute a material change of use of the dwelling, thus it would not operate any different to the use as a HMO within use class C3.

## **9. Recommendation**

10.1 Based on the above, it is considered that on the balance of probabilities, the proposed use of the dwelling as a residential home for up to two children, two staff during the day, two staff during the night and a manager in during the day with social workers visiting occasionally, within the land edged in red on the submitted location plan, would 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 “planning”

effects upon the neighbourhood. It is therefore recommended to approve the certificate and confirm the lawful use.

### **10. Specified Use**

11.1 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.

11.1 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.

11.2 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:** 2023/92829

**Officer Recommendation:** Grant Certificate

On the balance of probability the occupation of 19, St Thomas Gardens, Bradley, Huddersfield, HD2 1SL by up to a maximum of two child or young persons with 3 daytime staff and 2 overnight staff 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	-	-	22.09.23
Location Plan	-	-	22.09.23
Evidence to Verify Application	-	-	22.09.23

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**

02.10.23

