

**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/93061/W

Site: 116, Victoria Road, Lockwood, Huddersfield, HD1
3RT

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

Case Officer: Laura Yeadon

Decision Reference: PROPOSED USE REFUSE

**I hereby authorise the refusal 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 13-Dec-2023

APPLICATION OF CERTIFICATE OF LAWFULNESS – PROPOSED

Applicant: I Rasool

Site: 116, Victoria Road, Lockwood, Huddersfield, HD1 3RT

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

Application number: 2023/93061

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 191(1) of the Town and Country Planning Act 1909 (“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 to make an application to the Local Planning Authority
- 2.2 Section 191(2) of the Act provides that uses are lawful if the Local Planning Authority is provided with information satisfying them that the use of 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 providing that 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

5.1 116 Victoria Road comprises of the following:

Ground floor – lounge, toilet, kitchen
First floor – two x bedrooms, bathroom and study/bedroom 4
Attic space – bedroom 3

It is proposed that the property would comprise of the following:

Ground floor – lounge, toilet, kitchen/utility
First floor – two x bedrooms, bathroom and office
Attic space – bedroom 3

Planning History

None

Site specific

The property is a mid-terraced dwelling with amenity space to the front and rear.

There is no off-street parking available to the property.

Based upon the information submitted by the Applicant and Agent it is proposed that the property would accommodate “at least 3 no family members”. No ages of the occupants have been submitted however the information submitted by Apex Pathway indicates that these would be children as they state to provide “supported accommodation for Looked After Children and Care Leavers”. Subsequent information received suggests that there would be 8-10 staff members looking after the children on a 2:1 staff/child ratio on a shift pattern “of at least 2 members of staff on duty at all times”. Within an email received it is stated that there will be “number of staff: 8-10. There will be 2 staff on shift during the day and 1 staff during the waking night shift.” However, it is not made clear whether this is per one child or overall. It is stated that the property would be staffed 24 hours a day, 7 days a week.

The applicant also states that “Social Workers visit is at least once a month for each young person. As part of their responsibility, the young people will be supported to attend medical appointment, CAHMS, YOT meeting etc. There will be a Child in Care Review meeting conducted every six month for each child. The meeting will include an average of 4-5 professionals at one time. In light aforesaid, they envision to have at

least one professional at a time with at least 4-5 visits a month from social workers.”

6. Evidence submitted in support of the Application

- 6.1 Existing and proposed plans have been submitted demonstrating the existing and proposed layouts of the property along with an application form, Design and Access Report, supporting statement from the care providers and location plan.

7. Evidence submitted against the Application

- 7.1 None

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 mid-terraced property and its curtilage. Any material change of use is considered with the planning unit indicated on the submitted location plan (drawing number 100 – revision A).
- 9.3 Materially, in the context of the meaning of development is dependant upon whether there is a material 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 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 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 sets 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 Deven judgment confirms that it is unrealistic to expect children to look after themselves in a single household 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 use class C3.
- 9.8 The use of the application site, 116 Victoria Road for the care of at least 3 no. family members with at least 2 daytime staff and one night staff would not generally fall within Class C3 as the carers would not live permanently but the application proposes to have 8-10 staff members at a ratio of 2:1 and therefore cannot be considered as a single household and must be regarded as C2.
- 9.9 The Use Class Order defines care to be where there is a dependency in carers providing care for disabilities and in the case of C2 use, care for children. In this case, the information submitted by both the Agent and care provider cites that the proposal is for at least 3 persons (children or young people) of the same family. The information submitted is contradictory in that the supporting information from the care provider have stated that the minimum staff ratio is 2:1 for each child however it includes to say at least 2 members of staff will be on duty at all times. However, it is also confirmed by email that there would be 8-10 members of staff with 2 staff during the day and one staff during the waking night shift. Therefore there is conflicting information regarding the staffing of the premises and therefore the level of care which may be required.
- 9.10 Based upon the submitted information, the care of children in these circumstances can more accurately be considered to fall within Class C2 of the Use Class Order 1987.
- 9.11 That being said, consideration needs to be given as to whether a C2 use, operated in this manner proposed within the submitted information would constitute 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 of use from an existing C3 use to a C2 use for at least 3 young people with two daytime support workers and one waking night staff raises concerns with the LPA. An email has been received which confirms the shift patterns however the care provider's supporting statement cites that there would be "at least 2 members of staff on duty at all times" with "a minimum staff ratio of 2:1 for each child/young person". This, therefore indicates that the actual number of support workers at the proposed could be more than the two per shift, day and night. This, in turn would result in at least 3 children and based on the information received any number between 5-9 support workers potentially being in attendance at the property. Whilst this may not be at the same time it is considered that the ratio of 2:1 staff per occupant would result in the number of people present at the property at one time would be between 5 and 9 (3 children plus at least two staff per child). It also suggests a fluctuation in the number of staff being present at one time would increase the number of vehicle movements throughout the day.
- 9.16 Email correspondence indicates that 40% of the works at the site would drive with 60% taking public transport/cycle to work. This cannot be enforced or inherent to the use and therefore there is the potential for up to 100% of staff using vehicles to commute to the premises. It is however accepted that it is not uncommon for carers to visit residential properties where care is provided and any increase in vehicle traffic movements may be typical of the comings and goings from a home where care is provided. In this instance, given the number of staff members who may visit the property throughout the day, particularly during shift changes would result in between 8 and 24 vehicle movements resulting from staff changes depending on whether 2 or 6 staff are present. This would be in addition to further vehicle movements to and from school, shops and other visits.

- 9.17 In addition, email correspondence has been received which states that a Child in Care Review will take place every six months per child and that an average of an additional 4-5 professionals in attendance at one time. In addition, social workers would be in attendance each month per child and that the young persons will be supported at medical appointments and other appointments deemed necessary to meet the needs to the occupants. This would result in further vehicle movements with the potential for addition vehicular movements. Given that there is no off-street parking for the property, vehicles would be dependant on on-street parking.
- 9.18 Given the potential number of vehicle movements the use is likely to create, particularly at times when social workers are convening a review meeting and traffic movements during shift changes it is considered that the activity at the property is considered beyond what could normally be expected at a residential property and is therefore materially different.
- 9.19 The floor plans of the property indicate that the property is a 3 no. bedroom property with a small first floor room which would be used as an office space. Given the provision of care required for at least three children at ration of staff workers per child being 2:1, it can be reasonably said that there would be a significant intensification in the number of persons at the premises over and above a typical C3 use. The presence of at least three young persons plus 2 carers per child would result in at least 9 persons present at the property. The general comings and goings and general activities of these persons occupying the property is considered to change the character of the property to a use more typical of a care institute rather than a residential family home. The operations of the staff managing and caring for the residents appears more akin to a commercial operations rather than a care use attempting to emulate a typical family home environment.
- 9.20 It can also be reasonably said that should the minimum staffing numbers be two day staff and one waking night worker be maintained without other staff members present it is possible any residents with behaviour problems may not be able to be reasonably managed and could easily give rise to fear of disorder in the area particularly due to a ratio of 1:3 or more worker to child during the evening. The fear of disorder from at least 3 children with Emotional and Behaviour Disorder (EBD) under the care of potentially minimal staff would likely introduce a change in the character of the property towards a care institute rather than a family dwellinghouse.
- 9.21 In terms of planning control, the use of the building for at least 3 children (family members as stated within the Design and Access Report) with EBD looked after by 6-9 staff with at least two staff present during the day and 1 during the nighttime is considered to be a material change of use from the current lawful use as a single dwellinghouse. The change of use therefore amounts to a material change of use from

Dwellinghouse (Class C3) to a Residential Institution (Class C2) as defined by the Use Classes Order 1987 (as amended).

10. Recommendation

- 10.1 Based on the information above, it is concluded that on the balance of probabilities, that the proposed use of the dwelling as a residential home for at least 3 children with staff ratio of 2 workers per 1 child with at least two support workers at the property during the day and on waking night worker within the land edged red on the submitted details amount to a material change of use as defined by Section 55 of the Act. The change of use is considered to substantially change the character of the building. It is therefore recommended to refuse the certificate and a planning application for full consideration of all “planning” matters fully assessed.

Recommendation – Refuse

Decision Authorisation – Delegated Powers

Application Number – 2023/93061

Officer Recommendation – Refuse Certificate

On the balance of probabilities, the occupation of the building at 116, Victoria Road, Lockwood, Huddersfield, HD1 3RT by 3 children with care provided by a staff ratio of 2 workers per 1 child with at least two support workers during the day and at least one waking night worker including regular visits from care professionals within the land edged red on the submitted details amounts to a material change of use from a Dwellinghouse (Class C3) to a Residential Institution (Class C2) as defined by the Use Classes Order 1987 (as amended).

Plans and specifications schedule:

Plan Type	Reference	Version	Date Received
Location plan	100 – Rev: A		19 th October 2023
Existing ground floor plan	101		17 th October 2023
Existing first floor and attic plan	102		17 th October 2023
Proposed ground floor plan	110		17 th October 2023
Proposed first floor and attic plan	111		16 th October 2023
Design and Access Report	2023 enquiry 88		19 th October 2023
Supporting Statement	Apex Pathway		19 th October 2023
Email from Agent			30 th October 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

preapplication 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: 5th December 2023