

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.: 2024/CL/90631/E

Site: 466A, Huddersfield Road, Mirfield, WF14 0EG

Description: Certificate of lawfulness for proposed change of
use from residential dwelling to three bed children's residential home

Case Officer: Jennifer Booth

Decision Reference: REFUSED

**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 01-May-2024

APPLICATION FOR CERTIFICATE OF LAWFUL USE

(Proposed)

APPLICANT: AJL Care Holdings

SITE: 466A, Huddersfield Road, Mirfield, WF14 0EG

APPLICATION: 2024/CLD/90631/E

1. Application

1.1 The applicant seeks to prove that using 466a Huddersfield Road to provide living accommodation for up to three children with three support staff on a shift basis and a manager on site during the day does not constitute a material change of use and would therefore result in a lawful use.

2. Lawful Use Certificates

- 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.
- 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.

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”.
- 3.1 The Applicant’s evidence does not need to be corroborated by “independent” evidence.

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 dwelling with accommodation over two floors on Huddersfield Road. The property has a shared drive with an open area to the front and an enclosed garden to the rear. The property has a garage attached to the side. The layout of the property includes a kitchen, lounge, utility room, conservatory and toilet on the ground floor with four bedrooms one of which includes an ensuite and bathroom on the first floor.

6. Evidence submitted in support of the Application

- 6.1 The agent has submitted a completed application form, a site located plan, proposed floor plan and a supporting statement with additional questions section which outlines how the property will operate.

7. Evidence submitted against the Application

- 7.1 None – although comments from the three ward councillors have been received. However, these question the highways implications and the impacts in terms of residential amenity, which are not up for debate for this type of application.

8. Site Visit

- 8.1 None

9. Assessment of the Evidence

The property is a 4 bedroom detached dwelling. AJL Care Holdings are seeking confirmation that they can use the house as a small specialist children's home for up to three children with three support workers on a shift basis and a manager on site during the day without needing to apply for a change of use planning application. The current lawful use of the building is dwellinghouse, Class C3 as defined by the Use Classes Order 1987 (as amended). Class C3 is defined as a building occupied by up to 6 people living together as a single household.

North Devon District Council [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."

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 466a Huddersfield Road for the care of 3 “looked after” children with three support staff at any given time working on a shift basis and a manager during the day would not fall within class C3 as the carers would not live permanently within the premises and as such cannot be considered to be living as a single household.

It is noted that the supporting statement indicates that AJL Care Holdings operate their homes by creating an environment that is akin to a family home rather than a secure institution. The submitted management plan states “We will try and match the young people’s ages appropriately, for example we would not house an 8 year old with an 18 year old but would look to match them with someone around their age. Thus, in keeping with the family feel. Each young person will be assessed and matched with the home prior to admission, to ensure that they fit in with the home’s values and ethos, as well as being well suited to meet the needs of the other children in placement.”

That being said, based on the information available, the care of children/young persons in these circumstances can more accurately be considered to fall within class C2 (residential institute).

Therefore, consideration needs to be given as to whether the C2 use, operated in the manner proposed within the supporting statement, 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 be to initially consider the planning unit (*Burdle v SoS* [1972]). The existing planning unit is a detached dwelling.

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 dwelling to a care/children’s home would not always be considered to change the type of use. In this instance, the intention to operate the house as a home for 3 carers and 3 children with a manager on site during the day 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” being 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 in borderline cases 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.

One would expect a dwellinghouse to have occupants there on a permanent basis and it would not be unusual for children to make up part of a family home. The use proposed here would also include three occupants up to the age of 18 and this would form their permanent address for an unspecified length of time, although the statement does state that this would be medium to long term.

There would also be at least three carers on site at all times on a shift basis over three shift changes at 8am, 4pm and 10pm with a manager from 8am to 4pm. The applicant also states that professional support workers will visit the site although the applicant does not indicate the frequency of these visits although states only one visit will be arranged at any one time. Additionally, the applicant states that whole team meetings will most likely take place at the site consisting of 11 team members meeting during the day.

In comparison with activities that could normally be expected to see at a dwellinghouse, the numbers of persons present at the site is not considered to be typical of a ordinary dwellinghouse. Up to three children, potentially three 18 year olds, three support staff and a manager present at the property 24 hours a day results in 7 persons with at least 4 adults occupying the building would not emulate a typical family environment. Additionally, an unspecified number of additional visits of support workers will visit the property during the day adds to the character of a care facility rather than a typical dwellinghouse. Moreover, staff meetings consisting of 11 members of staff present at the property further changes the character of the dwellinghouse to a work environment albeit not likely a regular occurrence, such meetings are not generally expected to be carried on at a dwellinghouse. Finally, the crossover of staff during a shift changes three times a day and in particular at 10pm in addition to other vehicles movements including school runs and shopping trips, adds to activities more expected at a working care facility. While it is noted from the submitted management plan that the activities in the home will not greatly differ from what happens in any family home and 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. However, with the staff ratio of 1 carer per 1 young person and the presence of a manager during the day, the degree of change in the character of the building cannot in this instance be considered to be marginal.

Overall, the material increase in the intensity of persons present and visiting the premises and vehicle movements significantly changes the character of the property to that more expected to be seen at care facility rather than a dwellinghouse, thus materially changing the use to Class C2 from Class C3.

On this basis, the occupation of the dwelling by three children with three support workers in the house 24 hours a day and a manager during the day would constitute a material change of use of the dwelling, which would

operate in an intensified way to the existing use as a dwelling within use class C3.

10. Recommendation.

Based on the above, it is considered that the proposed use of the house as a residential home for three children with three support workers on site at all times with a manager during the day and additional support worker visits with occasional staff meetings up to 11 persons within the land edged red does 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 through intensification. It is recommended to refuse the certificate and confirm the lawful use.

Recommendation – Refuse Certificate

Officer Recommendation: Refused Certificate

It is considered, on the balance of probabilities, the proposed use of the house as a residential home for three children with three support workers on site at all times with a manager during the day and additional support worker visits with occasional staff meetings up to 11 persons within the land edged red does amount to a material change of use as defined by Section 55 of the Act. The change of use is considered to materially change the character of the dwellinghouse (Class C3 as defined by the Use Classes Order 1987(as amended) to a care facility (Class C2 as defined by the Use Classes Order 1987(as amended)).

Plans and specifications: -

Plan Type	Reference	Web ID	Date Received
Application form	-	1031928	04/03/2024
Location Plan	-	1031932	04/03/2024
Proposed floor plan	-	-	26/03/2024
Management plan	-	1032986	13/03/2024

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 30/04/2024