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/90865/W

Site: 45, Kennedy Avenue, Fixby, Huddersfield, HD2 2HH

Description: Certificate of lawfulness for proposed change of use from residential dwelling (C3) to a residential children's home

Case Officer**:** Chris Cockroft

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.

Lee Stoney

AUTHORISED OFFICER

Date 29-May-2024

APPLICATION OF CERTIFICATE OF LAWFULNESS – PROPOSED
Applicant: Mr Muhammad Imran
Site: 45, Kennedy Avenue, Fixby, Huddersfield, HD2 2HH
Description: Certificate of lawfulness for proposed change of use from dwelling (C3) to residential children's home
Application number: 2024/90865

1.0 Application

1.1 The applicant seeks a certificate of lawful development from the Local Planning Authority to confirm that altering the use of the building from dwellinghouse (C3) to residential children's home, does not constitute a material change of use and would therefore result in a lawful use.

2.0 Lawful Use Certificates

2.1 Section 191(1) of the Town and Country Planning Act 1990 ("The Act) permits any person who wishes to ascertain whether any operations or existing use of buildings or other land would be lawful to make an application to the Local Planning Authority.
2.2 Section 191(2) of the Act provides that uses are lawful in any person wishes to ascertain whether –
(a) Any proposed use of buildings or other land is lawful
(a) Any operations which have been carried out in, on, over or under land are lawful; or
(b) Any other matters constituting a failure to comply with any condition or limitation subject to which planning permission has been granted lawful he may make an application for the purpose to the local planning authority specifying that the land and describing the use, operations and other matter.

For the purposes of the Act, a use is lawful at any time if no enforcement action may then be taken against the use, and the use does not contravene the requirements of any enforcement notice then in force.

3.0 The Relevant Test

The burden of proof lies firmly with the applicant and the relevant test for whether the operations can be deemed lawful is in the 'balance of probability'. The Applicant's evidence does not need to be corroborated by 'independent' evidence. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

4.0 Limitations

The Lawful Development Certificate can contain precise details of what use or operations are found to be lawful, why and when. The 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 at 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, the Local Planning Authority may then consider further development has taken place.

5.0 Relevant Information
5.1 The application site is 45 Kennedy Avenue, a two-storey semi-detached dwelling. It has a small garden to the primary elevation adjacent to Kennedy Avenue. It also has a garden to the rear elevation. There is limited off road parking at the site**.**
5.2. Planning History
97/92671 – Erection of kitchen and dining room extension.

6.0 Evidence submitted in support of the application
6.1 Evidence to verify the application was submitted Planning Statement was submitted. Based upon the information submitted by the Applicant, it is proposed that:
- The property would accommodate maximum of 2 children at any time.
- The age of the young persons will range from 7 to 17 years of age.
- Two carers will be sleeping overnight (every night), working on a rota basis.
- Two carers will be working through the day (every day) because of the policy of no lone workers with young persons.
- There will be an Office Manager during office hours 9am – 5pm.
- The carers will be on a shift pattern.
- The shifts will start at 8am and finish at 8am. -
- Social workers will visit occasionally
- There will be no building works undertaken.
- There are no internal modifications needed.
- The comings and goings will be no different to a normal residential home.

Further information was requested from the applicant for clarification via email but was not provided.

6.2 Delegated Report for application 2023/9174 - Certificate of Lawfulness for proposed use as residential children's home. This was a change of use HMO (C4) to Residential Children's Home
6.3 A location plan has been provided by the Applicant.

7.0 Evidence submitted against the application
7.1 No objection in principle of the application by West Yorkshire Police, however security measures and a Management Plan are requested which have been sent to the applicant who should liaise directly.

8.0 Site Visit
8.1 A site visit by the case officer was considered to be unnecessary in this instance.

9.0 Assessment of 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 with the planning unit indicated on the submitted location plan (Planning Portal Reference: PP-12763465v1).
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 dwellinghouse (C3) to residential children's home (C2) is not always considered to change the 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 residential children's homes, including for changes of use from dwellinghouses in Class C3 of the Use Classes Order 1987 where the residential children's home remains within Class C3 or there is no material change of use to Class C2.

9.7 The North Devon 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, 45, Kennedy Avenue, Fixby, Huddersfield, HD2 2HH, for the care of 2 young persons, with up to 3 carers, including 1 Officer Manager and 2 night care staff, would not generally fall within Class C3 as the carers would not live permanently, but the application proposes to have between 2-5 staff members during the day and night shifts (inclusive) and therefore cannot be considered as a single household and must be regarded as C2.
9.9 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.
9.10 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, given the Section 55 of the Act establishes that the making of a material change of use of a building represents development.
9.11 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.
9.12 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.
9.13 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.
9.14 In this case, the change of use from an existing C3 use to a C2 use for 2 young people with up to three carers, including 1 Office Manager during the day (9am – 5pm), and two night-staff, would not appear to be any different to that which the building would operate, if it was a 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.
9.15 The submitted information does not indicate that any internal works are proposed.
9.16 The information advises that parking would be provided for three people and that three parking spaces are available on the driveway of the property and other parking available on the road outside.
9.17 It is not considered that up to 5 carers, with a maximum of 3 at any one time, including the office manager (working office hours 9am-5pm) and 2 night carers, generating 10 car movements for shift changes, would increase car movements to more than would be expected at any residential premises on a typical day.
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 The use of the premises would consist of up to 3 day-time carers and up to 2 night-time carers, 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.
9.20 A representation has been made by West Yorkshire Police and 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 need looking after and it is not reasonable to assume that looked after children would automatically be susceptible to criminal activities.
9.21 On this basis the occupation of the dwelling by two children (aged 7-17 years old) with up to three carers (including the Office Manager), working during the day and two carers, working during the night, 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.
9.22 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.

10.0 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 children's home for up to two children (aged 7-17 years old) with up to 3 carers, including the Office Manager, present during the day and up to two carers present during the night, 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 to 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: 2024/90865
Officer Recommendation: Grant Certificate
On the balance of probabilities, the occupation of the building at 45, Kennedy Avenue, Fixby, Huddersfield, HD2 2HH, by 2 children with care provided by up to three staff members during the day and two night staff members, would not amount 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
Application Form			25/04/2024
Location Plan			25/04/2024

Application Evidence	Evidence to Verify Application		25/04/2024
Decision Notice	2023/91741		29/01/2024
DOCN Response			03/05/2024

Report Date: 21/05/2024