

**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/91563/W

Site: 2, Ponyfield Close, Birkby, Huddersfield, HD2 2BF

Description: Certificate of lawfulness for proposed use class C2  
(within a Conservation Area)

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.**

Kevin Walton

**AUTHORISED OFFICER**

**Date 20-Aug-2024**

## **APPLICATION OF CERTIFICATE OF LAWFULNESS – PROPOSED**

**Applicant: Mr Mohammed Zaheer**

**Site: 2, Ponyfield Close, Birkby, Huddersfield, HD2 2BF**

**Description: Certificate of lawfulness for proposed use class C2 (within a Conservation Area)**

**Application number: 2024/91563**

### **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 care home (C2) does not constitute a material change of use and would therefore result in a lawful use.

### **2.0 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 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 2, Ponyfield Close, Birkby, Huddersfield, HD2 2BF, a two-storey detached dwelling situated on the corner of Birkby Hall Road and Ponyfield Close. It has a small amenity space/garden to the primary elevation. It also has an amenity space /garden, off-road parking area and garage, to the rear elevation, adjacent to Ponyfield Close.

5.2. Planning History  
None

#### **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:

- There will be a maximum of Two children in the property at any time.
- There will be a maximum of Two Support staff supporting the children.
- There will also be a manager.
- The Manager will work 9 to 5 Monday to Friday
- The support staff will be on a shift pattern. The shifts will start at 8am and finish at 8am.
- The house is a detached property and there is parking for 4 cars on the driveway.
- 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.

- The age of the young persons will range from 7 to 17 years of age.
- Average length of stay of young persons: It is likely to be medium term approximately 2 years plus.
- Number of support workers per individual young person: If there is one child in the house there will be two support workers plus the manager during office hours. If there were two young people, there would be two support workers plus the manager working office hours.
- What are the expected support needs of young person's likely to include? To guide and nurture them to overcome past traumas.
- Will there be provision for young person with challenging disorders and behaviours e.g. Emotional and Behaviour Disorder (EBD)? Yes( That is our speciality)
- Frequency of visits by social workers per day/week/month etc: Social Worker likely will visit every 4 to 6 weeks.
- There are likely to be no other visitors to the home as child in care reviews are done via Microsoft teams and our young people attend education provisions.
- All medical appointments etc are carried out at doctors' surgeries, hospitals as with any family.

6.3 A location plan has been provided by the Applicant.

6.4 A floor plan was submitted by the Applicant.

## **7.0 Evidence submitted against the application**

7.1 None

## **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 C3 dwellinghouse to residential care 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 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 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, 2, Ponyfield Close, Birkby, Huddersfield, HD2 2BF, for the care of 2 young persons, with up to 3 carers during the day, 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 2-3 staff members during the day and 2 on 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 two 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 with a typical family of 2 children and two adults. 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 or increase traffic movements.

9.15 The submitted information does not indicate that any internal works are proposed.

9.16 The information advises that four parking spaces are available on the driveway of the property. The information submitted by the applicant states that visitors to the property would be infrequent and any therapeutic care would be carried out by the carers via online Teams meetings. Infrequent visits 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 significantly unusual 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.

9.17 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) during the day 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 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.

9.21 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 home at, 2, Ponyfield Close, Birkby, Huddersfield, HD2 2BF, 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: 2024/91563**

### Officer Recommendation: Grant Certificate

On the balance of probabilities, the occupation of the building at 2, Ponyfield Close, Birkby, Huddersfield, HD2 2BF, by up to 2 children with care provided by up to three carers during the day, including the Office Manager and two night carers, 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			31/05/2024
Location Plan	LP		31/05/2024
Application Evidence	Evidence		31/05/2024

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 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 Date: 02/08/2024