

**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/93465/E

Site: 41, Cemetery Road, Heckmondwike, WF16 9DZ

Description: Certificate of lawfulness for proposed change of
use of dwelling to care facility for up to 6 occupants

Case Officer: Chris Cockroft

Decision Reference: PROPOSED USE 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 05-Feb-2025

APPLICATION OF CERTIFICATE OF LAWFULNESS – PROPOSED

Applicant: Mr Adam Maguire (Above & Beyond Extra Care)

Site: 41, Cemetery Road, Heckmondwike, WF16 9DZ

Description: Certificate of lawfulness for proposed change of use of dwelling to care facility for up to 6 occupants

Application number: 2024/93465

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 to care facility for up to 6 occupants, 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 41, Cemetery Road, Heckmondwike, WF16 9DZ, is a large two-storey, five-bedroom, stone-built detached dwelling, situated in a residential street. It has a small garden to the primary elevation and a large outbuilding to the rear elevation. There is limited under-croft off-street parking for three vehicles to the east-facing side elevation. Parking on the street is limited due to the narrow highway and site location at a junction.

5.2. Planning History

None

6.0 Evidence submitted in support of the application

6.1. The information submitted by the Applicant states that:

- *There will be a maximum of six adults, receiving support, in the property at any one time.*
- *Average length of stay of individuals is approximately two weeks, but could be extended due to individual circumstance.*
- *Expected support needs of individuals includes: personal care, washing, dressing, bathing, administration of medication, feeding, meal provision, continence care and socialising.*
- *Social Worker visits will vary, as individuals usually do not have face to face visits with social workers. All communication is done via telephone.*
- *There are likely to be visitors. There will be an offer of visiting in-between the hours of 10am until 2pm and 6pm until 8pm. Also, there will be two visitors allowed per service user, this will be appointment arranged with time slots.*
- *There will be a maximum of four support staff during the day and one support staff during the night.*

- *The support staff will be on a continental shift pattern. The shifts will run: 6 am –2pm, 2 pm –10 pm, 10pm – 6 am*
- *There will also be a manager on site. The manager will work 8am to 6pm Monday to Friday and will be available out of hours. The manager will be on site to oversee all care operations throughout the day and to take in new clients and manage appointments. They will provide care or support when needed. Further information provided in email dated 28/01/2205 expands on the role, stating that 'the role referred to as "manager" is more accurately described as a care coordinator or the main liaison staff member. Their primary responsibilities involve coordinating the care provided to residents, overseeing medication management, liaising with families and professionals, and managing household needs such as bedding, laundry, and supplies. While there is a staff room and office space, these are used solely for care-related tasks and are typical of larger family homes with additional support needs. No business or administrative activities unrelated to the household are conducted on-site.'*
- *There is off-street parking on site for 3 staff vehicles and on street parking on Cemetery Road for three vehicles. The manager will use public transport or be dropped off at work. The support staff are predominantly non-car drivers and use public transport or car share.*
- *There will be minimal external building works undertaken in the form of an access ramp. Internal modifications are limited to additional handrails.*

6.3 A location plan has been provided 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. Section 55 (f) also exempts a change of use from a use in a use class as defined in the Use Classes Order 1987 (as amended) to another use in the same use class from the definition of development.

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 detached property and its curtilage. Any material change of use is considered with the planning unit indicated on the submitted location plan (Reference: 10045-ZZ-DR-A-S2-0001-P01).

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)). The applicant's case is that a change of use from C3 (a) (single dwellinghouse) to C3 (b) (not more than six residents living together as a single household where care is provided for residents) is exempted from the definition of development and would not therefore require express planning permission.

9.4 However, a residential use for care purposes may fall within C3(b), C2 (Residential Institutions) or C2A (Secure Residential Institution).

9.5 Class C3 of Schedule 1 of the Use Classes Order 1987 (as amended) defines, in particular, that dwellinghouse can consist of the use "by not more than 6 residents living together as a single household (including a household where care is provided for residents)." In this instance the applicant claims this is exactly the case as the property will be occupied by six persons living together sharing some facilities and care is provided by staff visiting the property to administer the care. Whilst not clarified in the submissions, care is assumed to be care as defined in the Use Classes Order which states ""Care' means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class C2 also includes the personal care of children and medical care and treatment."

9.6 The Courts¹ have judged that to fall within C3(b), the residents must live together as a single household. In this case Justice Richards states:

"In my judgment, the correct position is that, in every case, the judgment to be made in the application of the criteria in Class C3 depends upon the specific facts of the individual case. There may indeed be cases where, having regard to the nature of the disability suffered and the degree of care required, persons resident in a house cannot sensibly be said to constitute a household. But there will be other cases, and in my judgment this is one of them, where persons resident in a house can sensibly be said to constitute a household notwithstanding that they have some disability and need care. That is so even if the need is for full-time care."

9.7 The Courts did not go on the judge that the carers would be consider to be a resident for the purposes of calculating the maximum number of residents although there is inference that they do not. However, it is clear that factors such as the degree of care required may lead to a conclusion that the residents cannot form a single household. In this instance the six residents are to be

¹ Crawley Borough Council, R (on the application of) v Helberg (t/a The Evesleigh Group) [2004] EWHC 160 (Admin)

looked after full time by the provision of all the day to day needs for existence including feeding, washing, dressing, personal care and the administration of medication. It appears the degree of care is significant and not, for example, where residents are looking after themselves with assistance with day to day tasks. The level of care appears to be at a level where residents are not capable of running a household. The applicant has not provided any evidence to demonstrate otherwise. The applicant also states that the occupants will on average only stay for a period on two weeks which would suggest a large degree of respite care or temporary accommodation before other accommodation can be found. In light of the short duration of occupation, while the residents will reside there, it is clearly not a main or sole place of residence nor can it be said that the residents are placed in the property to form part of a household whereby all residents are there for a common purpose or could live together with each residents adding to a single purpose of creating a single household within the short period of stay. Moreover, the presence of a manager beyond the carers would be a shift change away from the property operating as a single household. The presence of the manager is more akin to a residential institution where staff are managed by a supervisor overseeing the whole operation. When considering all the facts submitted it appears the residents are not capable of forming a single household but are looked after individuals staying in the property for a short period of time and thus not a single household.

9.8 Therefore, the use of the application site, 41, Cemetery Road, Heckmondwike, WF16 9DZ, for six adults with 2 support carers (6am-2pm) and 2 support carers (2pm-10pm) and one office manager (8am – 6pm), during the day and one night-staff support carer (10pm-6am), would not fall within Class C3 (b) as the carers would not live permanently and the application proposes to have between 3-6 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 adults 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. 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 six adults with 2 support carers (6am-2pm) and 2 support carers (2pm-10pm) and one office manager (8am – 6pm), during the day and one night-staff support carer (10pm-6am), raises concerns with the LPA. A residential dwellinghouse would not have a manager visiting the property on a daily basis, undertaking business support activities on the premises – the manager will be on site to oversee all care operations throughout the day and to take in new clients and manage appointments. While the manager will largely be inconspicuous while working within the building, the regular comings and goings of a staff member clearly not part of the residential use, is considered to introduce an unusual activity not normally seen at a dwellinghouse, thus altering the character of the dwelling towards a commercial/business use.

9.15 The information submitted by the applicant states that visitors are likely to be frequent. There will be an offering for visitors, in-between the hours of 10am until 2pm and 6pm until 8pm; with two visitors allowed per service user, which will be appointment arranged with time slots. With up to six residents at any one time, this could result in up to 12 visitors to the site each day. This would increase vehicle movements significantly and would be highly unusual for a family home, even taking into account the day-to-day activities associated with a family, where children are taken to and picked up from school, shopping trips are undertaken and any other typical comings and goings from a family home.

9.16 The onsite parking is limited to three spaces. The information provided by the applicant, is that the staff working within the home are predominantly non-car drivers and use public transport to get to and from work, or with car share when needed; and the office manager will use public transport or be dropped off at work. Whilst this may be the case currently, it is not inherent to the operation of a care home and staff members either now or in the future would likely depend on car travel to commute to this place of work. Consequently, it is reasonable to expect at least three cars parked at the site with additional vehicles coming and going through visitor hours and shift changes.

It is common to experience two vehicles at a typical dwellinghouse, in this instance, given the staff numbers and the possibility of car use in future, up to five staff vehicles during the day and the potential of up to 12 visitors vying for on street parking, would result in activity not typically experienced at a dwellinghouse.

9.17 There is no evidence presented to show that the use of the premises as a small-scale care facility for six adults would result in any increase in noise, although the onus is on the applicant to show the potential for noise from adults

who require care by reason of any mental disorder would be managed. No evidence has been provided to demonstrate noise disturbance can be controlled to the degree it does not result in a material change from a dwellinghouse. Moreover, vehicle movements resulting from shift changes at 10pm it likely to generate noise untypical of a dwellinghouse and thus a marked change in how the property is seen to operate.

9.18 The care of six adults by four support carers and an office manager during the day and one support carer during the night-time, results in the occupation of the dwellinghouse by up to eleven adults during the day and is not akin to a typical family occupation of a dwellinghouse. The change in character to a residential institute is considered materially different to a typical dwellinghouse.

9.19 On the basis of the above, the occupation of the dwelling by six adults with four support carers, and one office manager working during the day and one support carer working during the night and the possibility of up to twelve visitors per day, with the resulting vehicle movements and on street parking, would constitute a material change of use under C2.

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 care facility, at, 41, Cemetery Road, Heckmondwike, WF16 9DZ, for up to six adults, with four carers and an office manager present during the day, one carer present during the night, within the land edged red on the submitted details, amounts to a material change of use as defined by Section 55 of the Act, from Dwellinghouse (Class C3) to a Residential Institution (Class C2) as defined by the Use Classes Order 1987 (as amended). It is therefore recommended to refuse the certificate.

Recommendation: Refuse Certificate

Decision Authorisation - Delegated Powers

Application Number: 2024/93465

Officer Recommendation: Refuse Certificate

On the balance of probabilities, the occupation of the building at 41, Cemetery Road, Heckmondwike, WF16 9DZ, by six adults, with care provided by four carers during the day in addition to one office manager and one night carer, 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
Application Form			12/12/2024
Elevations (Existing)	1045(P01)0003		12/12/2024
3D View - Existing	1045(P01)0004 & 3D View		12/12/2024
Floor Plans (Proposed)	1045(P01)0012 First & Second Floors		12/12/2024
Floor Plans (Proposed)	1045(P01)0002 First & Second Floors		12/12/2024
Floor Plans (Existing)	1045(P01)0001 Proposed Site & Ground Floor Plans		12/12/2024
Floor Plans (Proposed)	1045(P01)0011 Proposed Site & Ground Floor Plans		12/12/2024
Elevations (Proposed)	1045(P01)0013		12/12/2024
3D Plans (Proposed)	1045(P01)0014 & 3D View		12/12/2024
Planning Statement			12/12/2024
Location Plan	APAS Map		12/12/2024
Supplementary Information	280125 Supplementary Information From Applicant		28/01/2025
Supplementary Information	290125 Supplementary Information From Applicant		29/01/2025

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: 29/01/2025

