

**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.: 2025/CL/90632/W

Site: 16, Kaffir Road, Edgerton, Huddersfield, HD2 2AN

Description: Certificate of lawfulness for proposed change of use from dwelling to holiday let (Listed Building within a Conservation Area)

Case Officer: Jessica Irwin

**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 12-Jun-2025**

## **Officer report**

### **Site Description**

The application site relates to a large stone-built two-storey Victorian style dwelling, which is stepped back from the public highway and fronted by Grade II listed gate piers. The property benefits from a large driveway to the front and garden/amenity areas to the front and rear. The host dwelling is also a Grade II Listed building.

#### Dwellinghouse:

1. 5113 SE 1217 SE 1317 27/700

KAFFIR ROAD (North Side)

No 16 (Woodlands) (Formerly listed as No 8 (Woodlands), KAFFIR ROAD)

2. Mid C19. Ashlar. Shallow pitched slate roof. Bracketed eaves. 2 storeys and attics. Continuous 1st floor sills. Front has gable to west slightly projecting. Ground floor has oblong bay with Tuscan piers, moulded cornice and blocking course. 1st floor has paired round-arched sashes with plain raised frame and moulded cornice. Attic has segment-headed sash. East range has paired segment-headed sashes in moulded frame with moulded cornice on ground floor. 1st floor has paired round-arched sashes with keys and moulded surrounds. 3-storey tower in re-entrant angle. Bracketed eaves cornice. Hipped fish-scale tile roof with weathervane. One range of roundarched sashes on each side, with keystones and moulded surrounds. On 2nd floor they are paired. On ground floor they have moulded impost band.

#### Gate Posts

Gatepiers. 16 Kaffir Road, Edgerton (Grade II) Mid C19. Ashlar. Cylindrical. Moulded caps. Ball finial.

### **Description of the proposal**

The application is for a certificate of lawfulness for proposed change of use from dwellinghouse to holiday let.

The proposal is to change the use of the existing dwellinghouse to a holiday let, no external works or structural alterations are taking place as a result of the proposed change.

The property is currently being used by a single household (family), the dwellinghouse benefits from 7 bedrooms.

### **Relevant Planning History**

2024/90483 - Listed Building Consent for installation of electric vehicle charger – consent granted

2021/91753 – Listed Building Consent for installation of metal gates between existing listed stone gate posts – consent granted

2021/91752 – installation of gates between existing listed stone gate posts – conditional full permission

2003/90321 – listed building consent for formation of new window opening – consent granted

2002/92911 – listed building consent for erection of entrance gate – consent granted

2002/92910 – erection of entrance gates – conditional full permission

2002/90561 – change of use from student hostel to 1 dwelling – conditional full permission

2002/90504 – Listed Building Consent for removal of wall, alterations to openings, new tarmac and stone flags – consent granted

### **Consultation Responses**

No consultations were deemed necessary for this proposal as it is an application for a Lawful Development Certificate.

### **History of negotiations or amendments received**

I contacted the agent acting on behalf of the applicant and asked for further information in regard to the existing use, number of bedrooms, whether the building would be let as a single household and the maximum number of guests. The agent responded that the building is currently being used as a dwellinghouse, there are 7 bedrooms, the property will be let as a single household and the maximum number of guests would be 16. I replied attaching an appeal decision (APP/Y0435/X/23/3332075) relating to a certificate of lawfulness application for proposed use of a dwellinghouse for holiday rentals, let out as a whole property as a single booking, with a total of 7 bedrooms for up to 14 people, in which the appeal was dismissed. No comment was received from the agent in response.

### **Policies & Legislation**

Section 192(1) (a) of the Town and Country Planning Act 1990 (“the Act”) permits any person who wishes to ascertain whether any operations or proposed use of buildings or other land would be lawful to make an application to the Local Planning Authority.

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.

The Lawful Development Certificate System provides the possibility of obtaining a statutory document confirming that the use, operation or activity named in it is lawful for planning purposes on the dates specified in the document. Once it is granted, the new type of certificate remains valid for the use or development described in it, on the land it describes, provided there is no subsequent material change in the circumstances.

The grant of a certificate applies only to the lawfulness of development carried out, or proposed, in accordance with the Planning legislation. A certificate granted for a proposed use or operation will describe the precise use or operation on a site in the terms considered permissible without the need to make a planning application for it.

Section 191(2) of the Act states that “For the purposes of this Act, uses and operations are lawful at any time if:-

a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force”.

Section 192(2) of the Act states:-

“If on an application under this section, the local planning authority are 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 they shall issue a certificate to that effect...”

Therefore if the Local Planning Authority is satisfied on balance, and having regard to the above sections read together, that no enforcement action could be taken because the use does not constitute as a material change, if the

information submitted complies with the relevant criteria, then a certificate should be issued on the grounds that the change complies with said criteria. Otherwise, the application should be refused.

#### The Relevant Test

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”.

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, provided the Applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

#### **Evidence submitted in support of the Application**

N/A

#### **Evidence submitted against the Application**

N/A.

#### **Assessment**

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.

The main considerations in the determination of this application are whether the proposed use of the land as a holiday let would constitute a material change of use from its existing use as a dwellinghouse.

Section 55 of the Act defines ‘development’ and this includes the making of any ‘material change in the use’ of any building or other land. Therefore, for a change of use to be development, it needs to be a material change. As established by case law, the basic approach is that for a material change of use to have occurred, there must be some material difference in the character of the activities from what has gone on previously.

The assessment is a matter of fact and degree, for the decision maker to make depending on the individual circumstances and merits of that use. With regard to a change from residential dwelling to holiday let the case being of Moore vs SSCLG [2012] is relevant. The court of appeal in this case rejected that use as a holiday let can never be regarded as falling within Class C3; and equally rejected that use as a holiday let must always fall within Class C3. In accordance with the judgement in Moore, it is considered that the LPA is unable to assess with certainty whether a holiday let use would be a material change of use from a residential dwelling (C3), as this would depend on the character of the holiday let use.

The dwellinghouse benefits from 7 bedrooms, the property is to be let as a single unit with the maximum number of guests to be 16. In an appeal decision (APP/Y0435/X/23/3332075) not too dissimilar to the circumstances in this case held that while not all bedrooms may always be occupied at any one time, or not occupied by 2 people, the house can hold up to 16 people and as conditions to restrict occupancy cannot be added to an Lawful Development Certificate, the proposed maximum occupancy is the basis for assessment; which in this case is 16. Taking this principle further and as the applicant has

not provided any information to suggest otherwise, it must be considered that the property will be let on a regular basis throughout the year and whilst it is inevitable that there will be periods of un-occupation there is no reason to suggest these periods will be short and on limited occasions throughout the year. It is therefore considered the property will, for all intents and purposes, be occupied more often than not.

Moreover, no evidence has been provided by the applicant which would conclude that when in holiday rental use, the occupants would be living together as a single household as defined in Class C3(a) of the Use Classes Order 1987 (as amended). In light of the number of occupants the applicant has quoted, it is improbable that the holiday let would be used throughout the year solely by families up to 16 people. Furthermore, in the event the property is occupied by up to 16 people this also exceeds the number of 6 unrelated residents living together as a single household as defined in Class C3(b) or (c) of the Use Classes Order 1987 (as amended). Due to this, the proposed use of the site would not simply fall within the same use class as a single dwellinghouse, class C3. Change of use from use class C3 dwellinghouses or indeed as C4 houses in multiple occupation (HMO for up to 6 residents). A material change of use from C3 to any other use therefore requires planning permission as defined by section 55 of the Town and Country Planning Act 1990.

The use of the site by up to 16 people would result in more activity than would generally be associated with a single dwellinghouse. The degree of change would result in significantly more incomings and outgoings, vehicle movements and parking, more general disturbance and waste generation. Such change in the character of the dwellinghouse would be noticeable by neighbours, despite the property being situated in relatively large grounds, particularly as large numbers of people will be arriving and departing on a regular basis throughout the year. This would constitute a significant difference in the character of the activities from what would be normally expected for a C3 dwellinghouse. Therefore, the proposed change of use would amount to a material change of use, classifying as development, and requiring planning permission.

In assessing the information provided by the applicant and as a matter of fact and degree, the proposed use of the dwelling at 16 Kaffir Road for holiday lets occupied for 16 people would constitute a material change of use. This material change of use is development for which planning permission would be required. Planning permission has not been granted. Consequently, the proposed use if commenced at the time of this application would not be lawful.

## **Conclusion**

It is considered that use of 16 Kaffir Road as a holiday let with maximum of 16 guests constitutes development and a certificate of lawfulness for the proposed development cannot be granted.

It is considered, on the balance of probabilities, that the change of use from dwellinghouse to holiday let occupied by up to 16 people constitutes the carrying out of development as defined by section 55 of the Town and Country Planning Act 1990. The use of the dwellinghouse as a holiday let is considered to be a material change of use requiring planning permission.

It is considered, on the balance of probabilities, that the change of use from dwellinghouse to holiday let occupied by up to 16 people constitutes the carrying out of development as defined by section 55 of the Town and Country Planning Act 1990. The use of the dwellinghouse as a holiday let is considered to be a material change of use without planning permission.

Plan type	Reference	ID	Date received
Application form	-	1080238	07-March-2025
Block plan	-	1080236	07-March-2025
Location plan	-	1080235	07-March-2025
E-mail with agent with attached appeal decision	-		01-May-2025

## Development within a Coal Mining Area

### **DEVELOPMENT LOW RISK AREA - STANDING ADVICE**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Mining Remediation Authority on 0345 762 6846 or if a hazard is encountered on site call the emergency line 0800 288 4242.

Further information is also available on the Mining Remediation Authority website at: [Mining Remediation Authority - GOV.UK](https://www.mra.gov.uk)