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| Application Reference Number: | 2025/0558 |
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| Application Type: | Lawful Development Certificate – Proposed. |
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| Proposal Description: | Lawful development certificate for proposed change of use from private residential dwelling (C3) to children's residential care home (C2) for up to 2 children |
| Location: | 8 Prior Croft, Bolton Upon Dearne, Rotherham, S63 8BF |

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| Applicant: | Paradza |
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| Third-party representations: | 3 | Parish: | |
| | | Ward: | Dearne South |

Summary:

This application is for a Lawful Development Certificate under Section 192 of the Town and Country Planning Act 1990 and seeks confirmation that the proposed change of use from C3 (private dwelling house) to C2 to provide a children’s home for two children is lawful and does not require planning permission. No external or internal structural alterations would be carried out.

Based on relevant case law and the information submitted by the applicant, the local planning authority determines that the proposed use is considered Lawful.

Recommendation: **Approve**

Site Description

This application relates to a two-storey detached dwelling set within a corner plot of Prior Croft and Barrow Syke. The property is sited in an area that is principally residential characterised by detached and semi detached dwellings of varying scale and appearance. The property is served by an existing dropped kerb and a parking area to the front of the existing semi detached garage. The applicant also has an area of parking adjacent to the dwelling on the opposite side of Prior Croft as indicated on the site layout plan.



Planning History

None of relevance

Proposed Development

This application is for a Lawful Development Certificate under Section 192 of the Town and Country Planning Act 1990 and seeks confirmation that the proposed change of use to C2 to provide a children's home for two children is lawful and does not require planning permission. No external or internal structural alterations would be carried out.

Section 192(1) the Town and Country Planning Act 1990 states that if any person wishes to ascertain whether any operations proposed to be carried out in, on, over, or under land, would be lawful, they may make an application for the purpose to the local planning authority (LPA) describing the use or operations in question.

Section 192(2) then states that if, upon an application under this section, the LPA 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; and in any other case shall refuse the application.

No special restrictions or designations affecting the proposal are considered to apply to this site, such as permitted development rights having been removed, or listed status etc.



Proposed floor plans

Consultations

There is no statutory requirement for LPAs to consult third parties on a lawful development certificate application, including neighbouring residents or parish councils since such applications are a matter of fact and law and not determined on planning merits or judged against national and local planning policies and guidance. Nevertheless, this application was made available online.

The following representations have been received:-

3 objections and 1 email from Stephanie Peacock MP requesting the following:-

'I would be grateful if you could provide us with a response that we can share explaining more about how lawful development certificates work. It would also be helpful if you could provide a timeframe of when a decision is likely to be made.'

Objections:-

- Concerns regarding safeguarding of children.
- Noise and traffic from deliveries and carers
- unknown ages of children 7 - 17 is a massive age span
- Social and welfare needs of the residents impacting on amenity
- This property is on a main road ? Safety of resident children
- Parking problems may arise
- Loss of privacy in rear garden
- Would it be more beneficial to have a larger building that can home more than 2 children than use a new build home that will need renovating into children's home (not very cost effective)

Consultees

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| Legal | <i>No comments received.</i> |
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Whilst these concerns are acknowledged, they are not a material planning consideration and cannot be considered in the determination of this application for the reasons outlined above.

Assessment

General

Where activity results in a material change of use of a building to a use falling within a different use class then planning permission will be required to authorise that change of use. Depending on the circumstances of each case, a children's home will fall into either a C2 or C3 use classification.

A material change of use from class C3 to C2 amounts to development requiring planning permission. There is therefore a potential requirement for planning permission to use a dwelling house as a children's home. The starting point is to first establish as a matter of fact and degree, whether such a use would constitute a change of use from C3 to C2. The issue largely centres on whether or not the children are in themselves capable of living together as a single household.

Class C3 (b) of the Town and Country Planning (Use Classes) Order as amended refers to "up to six people living together as a single household and receiving care e.g., supported housing schemes such as those for people with learning disabilities or mental health problems." If a children's home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there would be no requirement for planning permission.

However, the matter is less clear when the care is based on shift patterns, as is the case proposed. In the North Devon District Council [2003] case Justice Collins made the point 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 fulltime 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 case was assessed against a two-stage test as follows:

- a. does the use lie within C3?
- b. in any event is there a material change of use involved?

As a result of the North Devon Case, the proposal is considered to fall outside C3, and within C2, because of the way in which the residents interact, including with the staff, to the extent that they may not be regarded as living together as a single household. However for the use to require planning permission we have to be satisfied that the use amounts to a "material" change of use. The law provides that a change within a use class (assuming a condition has not been added to the planning permission limiting the scope of the authorised use) is to be treated as lawful and not a material change. However the converse is not necessarily the case when there is a change from one use class to another one still has to demonstrate that the change is "material".

What constitutes a 'material change' is not defined within planning legislation and is a matter of fact and degree to be determined on the individual merits of each case, so the LPA has to

weigh up the facts of this case and make a planning judgement as to whether the change would amount to a material change or not.

The applicant has provided the following information in support of the application:- 'This property is for the accommodation of 2 children, with up to two staff on 48 hour shifts staggered by 24hrs, would create two staff changeover event (with potentially one additional car) per 48 hrs. Staff changeover would not be expected to last more than 30 minutes and would take place at around 10am to avoid peak times for vehicle movements. Parking for the house is located via a driveway and garage to the side of the property. Given the number of children to be placed it is not anticipated that no more than two car spaces will be in use for the majority of the time. The property can however accommodate an additional 5 cars on ground opposite the property which is under the same title. Street parking is unrestricted.'

It is agreed that this property is a 4 bedrooomed, dwellinghouse set on a reasonably large corner plot, and in consequence it would, in its dwellinghouse form, have on balance a larger number of vehicular movements than a smaller dwellinghouse would. The level of care required for the residents would not amount to any significant activity above what a 4 bedroom house would be. In addition, whilst parking standards are not a part of the LPA's assessment of an LDC, there is a need to assess the claim by the applicant that there will be no material change of use on the site compared to that of a single household dwelling. The property has parking within the curtilage and further parking on registered land adjacent to the property which will allow for cars to be parked off road. With a property of this size, it would be expected that there would be a similar amount of movement and parking demands as proposed by the use.

Ultimately, the onus of proof test for an LDC application always falls with the applicant, not the Council to prove. The submitted information indicates that the use of the dwelling as a small 2 child, children's care home would not operate in a way which would amount to a material change to the existing use as a 4 bedrooomed dwelling, which could have a large family residing within it. It is not proposed to carry out any external alterations, or internal physical works. The property will continue to function in very much the same way as it does as a dwellinghouse and the Council determines that the proposed development and associated activity would not lead to a material change of use of the property to C2 and that the LDC for the proposed use should be granted.

RECOMMENDATION: Approve