2024/0443

Dr Usman Amjid

Certificate of lawfulness for the use of existing residential property (C3) to proposed residential children's care home (C2)

2 Wood Walk, Royston, Barnsley, S71 4FH

Site Location and Description

The application relates to an extended, detached 2 storey dwelling located on the corner of Wood Walk and Monkton Way in Royston. The dwelling has a 2-storey side extension on the southern elevation approved under application 05/1421). It also has had a recent garage conversion carried out under permitted development rights. To the front of the property are an open plan garden area and driveway. To the rear is an enclosed private amenity space.
The dwelling sits within a residential development. There is an immediately adjacent detached dwelling to the North, detached dwellings opposite Wood Walk to the West and detached dwelling, at right angles to the application property, opposite Monkton Way to the South. Beyond the rear boundary, to the East, are open fields.





Planning History

2021/0905 - Change of use from use a class C3(a) to C3(b) dwellinghouse (Lawful development certificate for a proposed use) – Refused for the following reason;
It is unrealistic to expect children to look after themselves in a single household. Carers who provided 24-hour care but do not reside at the property and work in shift patterns cannot be regarded as living together in a household. The concept of living together as a household means that a proper functioning household must exist, and children and carer must reside in the premises. In such circumstances, the use cannot therefore be considered to fall within Class C3 (b) 'Dwellinghouse' and would fall into use class C2 'Residential Institution'. Given a change of use from C3(a) to C2 is not permitted development, a Lawful development Certificate in this instance cannot be granted.

2021/1506 - Change of use of dwellinghouse (Use class C3) to care home for children (Use class C2) – Refused for the following reasons;

1. *The change of use would result in the loss of a 'larger dwelling' from the housing stock. This would be contrary to Local Plan Policy H9 'Protection of Existing Larger Dwellings' , and Supplementary Planning Document 'Design of Housing Development', which state that it is important to ensure the endurance of existing housing stock of this type. In recent years*

dwelling conversions have been taking place at an increasing rate in the borough. These conversions have resulted in a loss of larger homes, contributing to the imbalance in the housing stock.

2. *In the opinion of the Local Planning Authority, the proposed change of use would be materially detrimental to the amenities of the occupants of the neighbouring dwellings by reason of noise and disturbance generated through the proposed occupants, staff members and movements/activities associated with the use. This would be contrary to Local Plan Policy GD1 'General Development'.*

3. *The applicant has not submitted sufficient details to justify the need for the development which may add to the disproportionate and high number of children in care placed in the Barnsley Borough from neighbouring authorities. This would put additional strain on local services, contrary to Local Plan policy GD1.*

2024/0194 - Change of use of dwellinghouse (Use class C3) to care home for children (Use class C2) – Refused for the following reasons;

1. *The change of use would result in the loss of a 'larger dwelling' from the housing stock. This would be contrary to Local Plan Policy H9 'Protection of Existing Larger Dwellings' , and Supplementary Planning Document 'Design of Housing Development', which state that it is important to ensure the endurance of existing housing stock of this type. In recent years dwelling conversions have been taking place at an increasing rate in the borough. These conversions have resulted in a loss of larger homes, contributing to the imbalance in the housing stock.*

2. *In the opinion of the Local Planning Authority, the proposed change of use would be materially detrimental to the amenities of the occupants of the neighbouring dwellings by reason of noise and disturbance generated through the proposed occupants, staff members and movements/activities associated with the use. This would be contrary to Local Plan Policy GD1 'General Development'.*

3. *The applicant has not submitted sufficient details to justify the need for the development which may add to the disproportionate and high number of children in care placed in the Barnsley Borough from neighbouring authorities. This would put additional strain on local services, contrary to Local Plan policy GD1.*

Proposed Development

The application is for a Section 192 Lawful Development Certificate of proposed use or development which is used for the following.

1. If any person wishes to ascertain whether –
    a. Any proposed use of buildings or other land; or
    b. Any operations proposed to be carried out in, on, over or under land, would be lawful.

The applicant seeks confirmation for the change of use from **C3a** (covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and

foster child) to use class **C2** (relates to residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.).

The children's home would be occupied by up to two children aged between 5 and 18 years, who are for various reasons unable to live with their parents but are not old enough to live independently. They would live at the property as their main residence.

The children would be looked after by two carers at a time. The carers would work 48-hour shifts, during which they would sleep and take meals at the property. At the end of their shift, they would be replaced by another two carers. There would also be a floating manager who would occasionally attend the property, alongside other similar residential children's homes, between 9am and 5pm. Outside of these hours they would remain on call.

The children and carers would effectively be living in the house as a family. Each child and carer would have their own bedroom. The bathrooms, living rooms and dining room would be shared by the children and their carers. The children and carers would take meals together, and in the daytime the children would be likely to attend local schools.

The proposed children's home would not be a secure facility. The resident children would not be detained offenders or have any medical or clinical condition requiring secured facilities or hands on attention.

The children's home will be licenced by Ofsted and will be managed and operated in strict accordance with their guidelines and requirements.

Consultations

Ward Cllrs – Comments received from a local resident via the local Ward Member. The Local Ward Member gave the resident a summary of the current situation with this application and application 2024/0194.

Representations

There is no statutory requirement for Local Planning Authorities (LPA) to consult third parties, including neighbouring residents or parish councils on a lawful development certificate (LDC) application since an LDC application is a matter of fact and law and is not determined on it planning merits or judged against National or Local planning policies or guidance. Despite this, 7 letters of representation have been received from separate addresses. The representations raise the following concerns:

- Residents not notified of the application
- No evidence of the demand for such use in the area.
- Work has already taken place at the property, both inside and outside.
- The applicants are trying to navigate around the planning system with the LDC application
- The property has been left empty and uncared for.
- The business will not operate like a family unit.
- Confusion as to why there are 2 applications on the same property at the same time.
- This application should be rejected in the same way as the other applications have.
- Increased noise and disturbance.
- Additional demand on parking.

However, whilst these concerns are acknowledged, they cannot be taken into account during the determination of this application for the above reasons.

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 in order 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 the LPA has 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. The opposite is not necessarily the case when there is a change from one use class to another, one still must 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.

Specific

The application relates to a large 4/5 bedroomed detached dwelling located within a purely residential area which is characterised by 2-storey family sized dwellings. As outlined above in the planning history section, there have been several applications on this site for a change of use from C3 to C2 which have been refused. There has also been an LDC application refused as it was determined that a change from C3a to C3b was not appropriate in this instance and a care home for children was a C2 use. Since those previous refusals the number of children has been reduced to 2 and the staffing levels and shift patterns have been amended.

It is to be established whether the use of the existing large family dwelling (C3) as a children's home (C2) is material and would require planning permission.

The property benefits from a large parking area to the front (facing towards Wood Walk) and an enclosed garden area to the rear, which backs onto open fields.

The applicant's statement indicates that the proposed use is for the accommodation of up to two children and two care staff with an additional carer/manager visiting the site between 9am and 5pm Monday to Friday. The 2no care staff would work on a 48hours shift pattern.

The use of the property as a dwellinghouse falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) is established and is lawful. The proposed use as a residential children's home does not fall within Use Class C3, since the lack of any permanent adult resident means that the occupiers cannot be regarded as a household in the true sense. However, it is not considered that the proposed use would be materially different in character or nature than the continued use of this large 4/5 bedroomed property as a family home. Section 57 of the Town and Country Planning Act 1990 prescribes that planning permission is required for the development of any land. It follows that where no development has occurred, planning permission is not required.

The applicant has indicated that there is off street parking to the front of the property for upto 5no. vehicles which would easily accommodate the 2no. vehicles of the care staff plus the visiting manager. It is acknowledged that there may be more cars parked during the shift changeover times, however, the driveway could accommodate this and staff are encouraged to use public transport where possible.

Whilst parking standards and vehicular movements 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 and parking arrangements and movements is a method of doing so. The comments in relation to the potential on-street parking at these premises are acknowledged, however given the lack of parking restrictions on the residential cul-de-sac, it is not considered that any on-street parking associated with the proposed use would result in there being a material change due to the similarities between the dwelling and its existing use as a large family dwelling. Furthermore, there is ample off street parking and the number of vehicles at the property is likely to be 2, with the exception of shift changes and when the manager visits during working hours.

It is agreed that this property is a substantial 4/5 bedroomed dwellinghouse set within a good sized plot, and as a consequence it would, in its dwellinghouse form, have a larger number of vehicular movements than a smaller dwellinghouse would.

Concerns have been raised in relation to an increase in noise and disturbance from the children occupying the property and the business nature of the use. However, it is not considered that a home

for upto 2 children, and 2 staff members, would give rise to an increase in noise and disturbance above that of a standard 4/5 bedroom family dwelling.

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 the children's care home would not operate in a way which would amount to a material change to the existing use as a large 4/5 bedroomed dwelling, which could have a large family residing within it. Essentially, this large detached property will continue to function in very much the same way as it did as a dwellinghouse.

On balance the Council determines that the proposals would not constitute a material change of use. Since no operational development is involved, it follows that in this instance the proposals do not constitute development, and that in accordance with Section 57 of the Town and Country Planning Act 1990 planning permission is not required and that the LDC for the proposed use should be granted.

Recommendation: **Approve**