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**2024/0733**

Mr N Hussain

Lawful Development Certificate for proposed use of dwellinghouse as a children's home for a maximum of 1 child with 2 carers, with one sleeping overnight working on a rota basis.

6 Elizabeth Street, Goldthorpe, S63 9NA

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## Description

The application site refers to 6 Elizabeth Street, a 2 bedroomed mid terraced dwelling located within a residential area characterised by similar sized dwellings. The property is red brick with a pitched roof and has a single storey rear flat roofed extension. The property benefits from a long-enclosed garden to the rear.

The site is allocated as Urban Fabric within the Local Plan.

Date Produced: 19-Aug-2024

Scale: 1:1250 @A4



Planning Portal Reference: PP-13341033v1



## Proposed Development

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

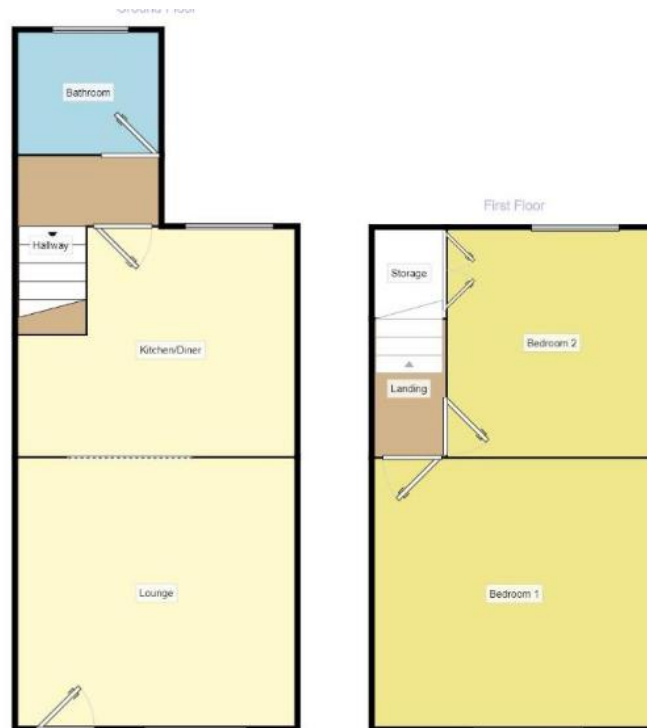
1. If any person wishes to ascertain whether –
  - a. Any proposed use of buildings or other land; or
  - b. Any operations proposed to be carried out in, on, over or under land, would be lawful.

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 C3b (covers 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).

The applicant's planning statement indicates that the property will be used as an Emotional and Behavioural Home. The proposal is for a small specialist care home for a maximum of one child. The children/service users would be from 8 years up to 18 years of age and the children will undergo a stringent impact assessment to ensure they integrate with the local community. This is intended to be long term accommodation. There will be two carers with one proposed to stay overnight on a rota basis.

The floorplans outline the existing accommodation arrangement, consisting of a living room, kitchen/dinning room, and bathroom at ground floor and two bedrooms at first floor level. An enclosed garden area is located at the front of the property. No physical changes are intended internally or externally.



## Policy Context

Local Plan: Urban Fabric

## Consultations

Legal – No comments received

## 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 its planning merits or judged against National or Local planning policies or guidance. No representations have been received.

## **Assessment**

### General

The site falls within the urban fabric which has no specific land allocation; however the site and immediate surrounding area is made up principally of housing.

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. The applicants have referred to a number of appeal decisions where this change has not been found to be material.

### Specific

The application relates to a 2-bedroom mid terraced dwelling located within a residential area which is characterised by similar dwellings. The property benefits from a long enclosed garden to the rear.

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

The applicant's statement indicates that the proposed use is for the accommodation for one child and two care staff. Two care staff will work during the day, with one carer staying overnight on a 48-hour rota basis. Changeover will happen every two days at round 9:30 am. There will be no more than two members of staff on the premises at any one time.

Appeal decisions have found that even where staff providing care to other residents are on a shift system living in their own homes, the use may still, on its facts, be within use class C3. It is proposed that the dwelling will provide the child/ children with a homely setting within a wider residential environment.

The applicant has provided details in relation to the vehicular movements at the premises and in relation to education opportunities and visitors. It is outlined that the children/young adults (aged 8-18) will attend education facilities where possible, and that other professional visits, would normally take place away from the home; it is considered that the movements would not be materially different to those associated with a standard household.

The child would be taken to and brought home from school each day where required and with their carers they would interact with the property and the residence in a way that is very similar to an adult resident, parent or guardian. The child/ carers would eat together and carry out domestic chores. The home would seek to foster lifestyles which would be the same as if the residents were children living in a family home. It is considered that the level of staffing proposed for one child would not amount to a material change of use of the premises.

It is not considered that the proposed use would lead to a significant increase in vehicular movements which would give rise to an increase in noise and disturbance above that of a standard 2-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 2-bedroomed dwelling, which could have a larger family unit residing within it. Essentially, this terraced property will continue to function in very much the same way as it does as a dwellinghouse.

In this case, based on the current information, the Council determines that the proposed development and associated activity would not lead to a material change of use on the land or this 2-bedroomed property to C2(b) and that the LDC for the proposed use should be granted.

### **Recommendation**

**Approve** subject to conditions.