

<b>Application Reference Number:</b>	2025/0746		
<b>Application Type:</b>	<i>Lawful Development Certificate – Proposed.</i>		
<b>Proposal Description:</b>	<i>Lawful development certificate application for the proposed change of use from dwellinghouse (Use Class C3) to Children's home (Use Class C2) for up to three children (Amended Description).</i>		
<b>Location:</b>	<i>2A Dearnley View, Barnsley, S75 1EA.</i>		
<b>Applicant:</b>	<i>Mrs Karen Holmes (More Than Safe Ltd).</i>		
<b>Third-party representations:</b>	<i>X1 Objection.</i>	<b>Parish:</b>	
		<b>Ward:</b>	<i>Old Town.</i>

**Summary:**

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

Based on the information submitted by the applicant, the local planning authority determines that the proposed development and associated activity would not constitute a material change of use of the land or the application property. Therefore, this lawful development certificate for a proposed C2 use should be granted.

Recommendation: **APPROVE.**

**Site Description**

This application relates to a large, two-storey detached dwelling set within a large plot located at the end of a residential cul-de-sac and in an area that is principally residential characterised by detached dwellings of varying scale and appearance. The property is served by an existing dropped kerb and an extensive parking area to the front and along the north of the site.



**Planning History**

There are several applications associated with the development site, but the most relevant are:

B/03/0412/BA	Renewal of outline consent B/00/0075/BA - Residential Development.	<i>Approved.</i>
B/03/0737/BA	Erection of 1 no. detached dwellinghouse with attached garage (Reserved Matters).	<i>Approved.</i>
2025/0543	Certificate of proposed lawfulness for use of dwellinghouse (Use Class C3) as registered children's home (Use Class C3(b)).	<i>Refused – It is unrealistic to expect children to look after themselves in a single household. Carers who provide 24-hour care on a rota basis but do not permanently reside in the premises cannot be regarded as living together in a household. The concept of living together as a household means that a proper functioning household</i>

		<p><i>must exist, and both children and carer must permanently reside in the premises. Consequently, the proposed use cannot be considered to fall within Class C3(b) and therefore, a lawful development certificate cannot be granted in this instance.</i></p>
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**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 a proposed change of use from C3(a) to C2 to provide a children’s home for three children is lawful and does not require planning permission. No external or internal structural alterations are proposed.

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 describing the use or operations in question.

Section 192(2) then states that 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; 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.

The applicant’s statement indicates the proposed use would cater for up to three children to be living together and receiving 24-hour care from professional carers working on a rota basis between 08:00 am and 08:00pm. Two carers would be present at any given time but would not permanently reside at the property.

**Representations**

There is no statutory requirement for a Local Planning Authority (LPA) 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 are not determined on planning merits or judged against national and local planning policies and guidance. Nevertheless, this application was made available online. One objection was received with the concerns raised summarised as follows:

- The term children is not acceptable or accurate considering the age of the adolescents.
- Concerns around the local elderly vulnerable population who many have carers and are already suffering the consequences of overcrowded parking and blocked driveways due to all of the meetings and visitors that such a home in a residential neighbourhood encompasses.
- Some elderly residents are too scared to express their concerns due to fear of repercussions.

Whilst these concerns are acknowledged, they are not a material planning consideration and cannot be taken into account in the determination of this application for the reasons outlined above.

**Consultations**

Children and Adolescent Care Homes (BMBC)	<i>No comments received.</i>
Highways Development Control	<i>No objection(s).</i>
South Yorkshire Police (SYP)	<i>No objection(s) subject to condition(s).</i>
Local Ward Councillors	<i>No comments received.</i>

While SYP have recommended conditions these cannot be considered in the determination of this application for the reasons outlined above. Nevertheless, they have been passed onto the Applicant for consideration.

## **Assessment**

### General

Where activity will result in a material change of use of a building to a use falling within a different use class, 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 C3 (dwellinghouses) or C2 (residential institutions) use classification.

A material change of use from Class C3 (dwellinghouses) to C2 (residential institutions) amounts to development requiring planning permission. There is therefore a potential requirement for planning permission to use a dwellinghouse to provide 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 the occupants are in themselves capable of living together as a single household.

Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) refers to the use of a building as a dwellinghouse, as a sole or main residence and occupied for more than 183 days in a calendar year by "not more than six residents living together as a single household where care is provided for residents". If a children's home was operating on this basis, with children being cared for by a permanent occupant of the dwelling, then there would be no requirement for planning permission.

However, the matter is less clear when the care is based on shift patterns, as is proposed. In the North Devon District Council v First Secretary of State [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 matters that go with 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 of Class C3, but within Class C2, because of the way in which the residents would interact, including with the staff, to the extent that they may not be regarded as living together as a single household. However, for the proposal to require planning permission, the local planning authority must be satisfied that the proposal 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, and one 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 local planning authority must 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. Several appeal decisions have determined that the type of change of use proposed is not material.

### Specific

This application relates to a large two-storey detached dwelling set within a large plot located at the end of a residential cul-de-sac and in an area that is principally residential characterised by detached dwellings of varying scale and appearance. The property is served by an existing dropped kerb and an extensive parking area to the front and along the north of the site.

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

The submitted supporting statement states that the existing dwellinghouse (C3) is currently rented by the Directors and Owners of More Than Safe Ltd. The statement adds that the proposed C2 use would provide care for up to three children under the age of 18 by up to two carers working on a rota basis between 08:00am and 08:00pm following normal patterns of adults going to and from work. Two carers would be present at any given time but would not permanently reside at the property. It is stated that the property would operate as a standard family home with communal living areas, individual bedrooms, and shared facilities. The children residing in the home would attend the owners' School and would not be at home during school hours.

Appeal decisions have found that the use of a dwellinghouse as a children's home may still, on its facts, fall within use class C3 even where staff are on a shift system and are providing care to residents but living in their own homes. In this instance, it is considered that the level of staffing proposed for three children would not amount to a material change of use of the premises.

Whilst noise and disturbance, vehicular movements and parking standards are not a part of the local planning authority's assessment of a lawful development certificate application, there is a need to assess the claim by the applicant that there will be no material change of use of the application property compared to that of a single household dwelling and the above are methods of doing so.

Within the submitted supporting statement it is stated that there is existing off-street parking provision for all staff vehicles within the development site and there would be no on-street parking. The application property is located on a residential cul-de-sac with no on-street parking restrictions. The cul-de-sac is double width with a turning head to its eastern end. Whilst potential on-street parking and additional vehicle movements could present some challenges, there are no on-street parking restrictions on the street. Additionally, the development site does appear to benefit from significant off-street parking arrangements which could accommodate several vehicles. Considering this, and other information included within the submitted supporting statement, it is considered that while there could be some additional comings and goings associated with the proposed use as a children's home, there is no evidence to dispute that applicant's case that the proposed use would not give rise to a greater level of disturbance that could be generated by the lawful use as a C3 dwellinghouse.

Regarding potential noise and disturbance, it is not considered that a children's home for up to three children would result in significantly increased levels of impact above those associated with the lawful use of the application property as a C3 dwellinghouse and therefore, it is not considered that existing amenity of residents would be materially detrimentally impacted.

Ultimately, the onus of proof test for a lawful development certificate application always falls with the applicant, and not the Council to prove. The submitted information indicates that the proposed use of the application property as a children's care home for up to three children would not operate in a way which would amount to a material change to its stated use or lawful use as a C3 dwellinghouse, which could accommodate a family. Essentially, the application property would

continue to function in very much the same way as it would as a C3 dwellinghouse.

In this case, based on the submitted information, the local planning authority determines that the proposed development and associated activity would not constitute a material change of use of the land or the application property and therefore, this lawful development certificate for a proposed C2 use should be granted.

**RECOMMENDATION: Approve.**