

**2023/0619**

**Applicant:** David Chitombo

**Description:** Change of use from a C3a dwellinghouse to C3b Children's Care Home  
(Lawful development certificate for a proposed use)

**Address:** 27 Primrose Way, Hoyland, Barnsley, S74 0HN

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### **Site Description**

The application site refers to 27 Primrose Way, Hoyland – which is a two-storey, semi-detached residential dwelling. The site is located in the Urban Fabric in what is an entirely residential area. There is a parking space/area to the front of the dwelling, forward of the existing integral garage. The site is located in the Urban Fabric in what is an entirely residential area characterised by dwellings similar in appearance to the site.

### **Relevant Planning History**

B/84/0832/HN – Conversion of car port into garage (Historic)

2021/0986 – Erection of two storey side extension to dwelling (Approved with Conditions)

### **Proposed Development**

The application is for a S192 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 use of the building shall be used as a therapeutic residential children's home for 2 children with a live in matron (primary care giver) who would be available 24/7 for a registered Company Optimum Healthcare Ltd. The statement goes on to state that the use would not be materially different to the property's current lawful use as a dwellinghouse and would therefore not require planning permission. The information submitted indicates that the two children/young persons would be between the ages of 10 and 18 years and would live at the property as their principal residence.

The live in matron would provide 24/7 cover as the primary care giver living permanently with the children/young persons, however other members of staff will be associated with the proposed use:

2 x care assistants (8am-8pm; Daily)

Registered manager (8am-5pm; Monday-Friday)

The total number of employees on site is 7, with two staff on shift plus the registered manager at any given time with not all staff being present on site. During the day, 4 members of staff would be present on site with the live-in matron present during the night. In addition to support staff, there would be 'short and infrequent' visits from social workers and other support professionals.

## **Consultations**

Legal – Provided Case Law and previous Council examples of similar applications for such development. Also responded to a query from a neighbour which informed the Council that there was a legal covenant on the land by stating that it is well established that private property rights are irrelevant to planning decisions and it is not material to the consideration of the application. It is possible that the party who has the benefit of the covenant could take action but this is not a matter for the Local Authority.

Ward Councillors (*N.B. Ward Councillors were not consulted on the Lawful Development Certificate application but were made aware of the application by residents. Three ward councillors have contacted the Council regarding the LDC application on several occasions*).

Cllr. Sumner understood that the certificate does restrict the reasons for objections on use, however the following concerns have been raised:

1. Primrose Way is located in a quiet and tranquil part of the ward, close to Milton Ponds. Nearby to the site is an area of great depravation – the Cloughs, which has severe drug and alcohol related problems, as well as anti-social behaviour. A home for children and young adults with possible alcohol, drugs and mental disorders is not a good position for such development.
2. Neighbouring residents do not wish to be disturbed further by such residents who may have possible problems.
3. Concerned that the home will have 7 members of staff for 2 children, which seems like a very high ratio for children which would indicate a great deal of issues. The high level of care will include regular change overs of staff through the night which is acknowledged in the supporting documents. The comings and goings of staff are also of concern in terms of disturbing residents.
4. The local secondary school is regularly over subscribed for school places. Queried as to whether the children would be placed at the secondary school.
5. Very high level of crime in the ward which has led to a successful campaign to re-open Hoyland Police Station. Councillors are working hard to improve crime rates and not to increase worries.
6. Dissatisfaction that these types of developments are available to developers/applicants which effectively bypass Local Authority scrutiny.

Cllrs. White and Wray questioned whether the correct consultation process has been carried out for the proposed development and whether residents should have been consulted on the application. Cllr. Wray also informed the Council that there is a legal covenant on the land which restricts the dwellings on Primrose Way from being used as businesses.

## **Representations**

There is no statutory requirement for Local Planning Authorities to consult third parties, including neighbouring residents or parish councils on a lawful development certificate application. This is due to the LPA being unable to decide the LDC application purely on planning merits.

However, neighbour canvassing has led to a significant number (of neighbour objections to proposed development. The total number of objections received is 33, raising the following concerns:

1. Significant portions of the applicant's submitted planning statement are inaccurate and do not accurately portray the impact of the proposed use on the surrounding area. Additionally, the proposed use will be materially different than that of a standard residential dwelling.
2. The proposed use is referenced as being a single household which is disputed given the level of care required for the proposed use.
3. Lack of consultation for neighbouring properties in what is a residential area, with the site surrounded by existing residents.
4. The street and the surrounding area is a quiet residential neighbourhood, with no facilities for children/teenagers in the immediate area. The proposed use may result in increased noise and general disturbance to neighbouring residents, alongside safety concerns and the potential rise in anti-social behaviour in the area. The lack of clarity in regards to what type of residents would be staying in the dwelling is also a cause for concern.
5. The development would result in the use of the site as a business – which is not allowed within the deeds of the properties on Primrose Way.
6. Parking issues, as Primrose Way is a residential cul-de-sac with the application site residing at the head of it which vehicles use as a turning circle. Additionally, the applicant's statement indicates that there will be seven full-time members of staff with 1 existing parking space on site. There are also concerns raised with bin collection.
7. Concerns that the proposed development would result in the loss of a family home for a business.
8. Concerns that the plans do not reflect the current building, with the extension incorrectly plotted on the proposed plans.
9. There is a perceived lack of transparency to the background of the development as the extension was approved in 2021 which the neighbouring residents did not raise an objection to on the basis that this would be used for the current use as a single dwelling.

A petition has also been received, signed by 27 residents, largely reiterating the concerns raised above. Specifically, the petition opposes the proposed development stating that the site is an unsuitable location for a children's home due to the following:

1. Milton Ward is made up of a high % of elderly people, disabled people and 'economically inactive' people.
2. There is a high crime rate in the area.
3. No secure outdoor play area for the children.
4. Unfenced ponds nearby which represent a safety concern for the children living on site.

## **Assessment**

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 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 applicant's statement indicates that the proposed use will cater for 2 children with a total of 7 full time staff. The principal member of staff to be on site would be the live-in matron who will be available 24/7 (applicant's statement paragraph number 3.7). However, this statement and arrangement provides unclarity as to whether the matron would indeed be on site at all times, even when the other residents are not at the property – for example at school. More pertinently, it also provides unclarity as to what the proposed arrangement is when the matron is on leave, off with illness, or aspects of their personal life such as to where the matron's family/partner etc. would reside. The applicant has been questioned on this aspect of the proposed development with a response in an email 9<sup>th</sup> August 2023 stating:

*The live in matron would be present at the property 24/7 as the primary care giver to establish the nucleus of a family environment of the children in our care. They would be the sole matron with their main responsibilities being overnight as the main care giver. During the days there would be the two staff to assist them as agreed on the Rota. Overnight there would be one other staff member ever present, in the event the matron does ever fall ill as you've described, there would be someone there. Regarding the 3<sup>rd</sup> point, about where the family of the care giver will reside, I firmly believe that the location of their family should not be the determining factor in evaluating this application. Assessing the family's residence location could inadvertently lead to a bias in any anticipated judgment. It is important to uphold a fair and unbiased evaluation process, devoid of any personal circumstances. The application should remain focused on the merits of the proposed use change, its alignment with zoning regulations, and its impact on the neighbourhood. The family's residence, being a personal and unrelated aspect, should not be a decisive criterion in this evaluation process. But to answer your question, no they wouldn't be resident at that address, if they did or do have a family. We foresee these children in our care being their family and sole responsibility.*

There clearly remains unclarity in the above statement and some evidence that the proposed use and residents would be managed through some essence of a rota system to provide the level of care needed for the proposed use applied for in the LDC application.

Furthermore, the level of care required for the residents, in particular the potential rise in vehicular movements is significant for what has been described in the applicant's statement as 2 residents. The number of full-time employees outweighs the residents at a ratio of 3.5-1 (7 FTEs to 2 residents), which is a significant level of care, more akin to that of a C2 use (residential care home). Clearly, the live-in matron would need to be supported heavily by additional members of staff. Likewise, there is some conflict/unclarity within the submitted information from the applicant in relation to vehicular movements and parking provision. The use will be supported by 7 full time employees, one of which (the live-in matron) will be on site at all times, presumably with a car parked on site constantly. The details of the application need to be assessed by the LPA to determine whether the proposed falls within Use Class C2 or C3b – as proposed.

The applicant has presented an argument (paragraph 3.10 in the statement) stating that the site has sufficient on-site parking and outdoor amenity space for the proposed use and that there will be approximately 1-2 cars on the site during the day and 'far less overnight'. The site currently has 1 off-street parking space with a second 'potential' space located in a small area of the site currently used for outdoor amenity space. The Council makes a judgement on the merits of a Lawful Development Certificate based on the existing arrangement – i.e., a snapshot in time based on the information submitted. The applicant has provided a site plan showing 1 parking space within the red line boundary of the property with a 'potential 2<sup>nd</sup> parking space' within the site, and a '3<sup>rd</sup> potential parking space outside of the red line boundary'. In other words, there is one current parking space on site which will facilitate 7 employees and 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 applicant has argued (paragraph 5.26 of the statement) that there would be little material difference with the number of vehicle trips that could be associated with the proposed use compared to the existing, which would not warrant a material change of use or intensification of the site. However, in paragraph 5.27 it is indicated that 'there are likely to be additional vehicle movements associated with staff at the start of shift and end of shift, over time'. Again, there is unclarity in this statement and makes another reference to the management of the use using a shift/rota system. The rota system has not been clearly defined by the applicant, i.e. how long a shift would be and how many members of staff would be on site at any one time. There are other paragraphs within the appellant's statement relating to the business processes and vehicular movements which are unclear and lacking. Paragraph 3.9 states that 'there would be short and infrequent visits from social workers and other support professionals', as well as rare visits from family members to the home. Paragraph 3.10 reads 'The application site has sufficient on-site parking and outdoor amenity space for the proposed use. There would likely be approximately 1-2 cars on the site during the day and far less overnight.' Far less cars overnight than 1 or 2 would presumably be a total absence of cars as far less than 1-2 cars would be zero. The unclarity and complexity of the business processes is further convoluted later in the planning statement (paragraph 5.21) which indicates that the fourth bedroom on site will be used for the overnight staff. Then, paragraph 5.22 reads that one of the bedrooms or studies may be used as a small office for administration purposes. Again, there is little clarity to these pieces of information which somewhat conflict with one another. The key piece of missing information is how often the overnight staff would use the fourth bedroom, and more pertinently to the case, why there is a need for this given that there will be a live-in matron on site available at all times. Likewise, the use of the fourth room for administration purposes has not been specified.

Ultimately, the onus of proof test for an LDC application always falls with the applicant, not the Council to prove. To conclude, there is a significant amount of unclarity with the proposed use and the business processes on the site which would enable to LPA to determine as to whether the use would be a C2 or C3b use. In particular, a key element of the decision process is to establish whether a material change of use to C2 will occur and will relate to whether the children/young adults will be cared for on a shift/rota system. According to the applicant's statement, a live-in matron will be on site and available 24/7 which raises questions as to where their family would reside, and how the residents would be cared for in the case that the matron is absent. The applicant's statement does acknowledge that there will be some element of a rota system and shift patterns to care for the residents, including overnight staff which would sleep in the fourth bedroom in the dwelling/building. More generally, the level of (7 employees) for 2 children/young adults is high with a ratio of 3.5 staff to one resident. This level of care would be more akin to that of a C2 use and without further clarity as to why this level of care would be needed, specific details of shift patterns and the lack of clarity in regard to the live-in matron, the Council would not have sufficient information to be in a position to grant the LDC for Use Class 3Cb. In any case, based on the current information, the Council would likely determine that the proposed development would lead to a material change of use on the land to Use Class C2.

For the above reasons, the Lawful Development Certificate is recommended for refusal, primarily due to the lack of information but also the strong likelihood that the proposed use would in fact fall under a Use Class C2 (Residential Institution) use rather than Use Class C3b.

**Recommendation: Refuse**