

2025/0808

Mr Juan Fite

Bluebell Cottage, Brierley Road, Barnsley S72 9JQ

Certificate of lawfulness for the proposed change of use from C3 dwelling to C2 children's home for up to three children.

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### Site Description

The property is situated in the village of Brierley on Brierley Road. It is a large detached property with five bedrooms and a garage. To the front is a large gated driveway which is paved and bound by a low stone wall. The front driveway is sufficient to accommodate at least three vehicles. The surrounding properties are varied in terms of their age, size and design.

### Planning History

Reference	Description	Decision
2014/0192	Erection of 2no. detached dwellings with garages and alterations to access.	Approved with conditions
2015/0134	Variation of condition 2 of application 2014/0192 - (Erection of 2 no. detached dwellings with garages and alterations to access) to allow amendments to scale and design of plot 1 (Minor Material Amendment)	Approved with conditions
2016/0168	Variation of Condition 2 of application 2014/0192 (Erection of 2no. detached dwellings) to allow variation of house type	Approved with conditions
2016/0732	Variation of condition 2 of app 2015/0134 - Variation of condition 2 of application 2014/0192 - (Erection of 2 no. detached dwellings with garages and alterations to access) to allow amendments to scale and design of plot 1 and boundary treatment	Approved with conditions

### 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 to C2 to provide a children's home for three children is lawful and does not require planning permission. A supporting statement states that no internal or external works 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.

## **Consultations**

There is no statutory requirement for a Local Planning Authority 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. Nonetheless, the application was made available online and one comment was received from the neighbouring property.

Advice was sought from the following consultees:

South Yorkshire Police – no objections in principle and general safety advice given.

## **Assessment**

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 could be more of a temporary arrangement and where staff work on shift patterns.

For the proposal to require planning permission, the local planning authority must be satisfied that the proposal amounts to a material change of use. 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.

This application relates to a large detached located in a predominantly residential area characterised by other two-storey family-sized dwellings. The application property benefits from at least three off-street parking spaces to front within the enclosed private driveway and an enclosed garden to the rear. It is to be established whether the use of the existing dwelling (C3) as a children's home for three children (C2) is material and would require planning permission.

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. The statement sets out that there will be two staff members

present at any one time and that they will typically work on a 24hour shift pattern meaning that the main comings and goings will be around 'change over' time.

Whilst additional vehicle movements could present some challenges, there are three on-site parking spaces available meaning that if both staff members use vehicles and park at the property there should be an additional space available at all times for visitors. The site is also in a sustainable location with access to public transport, there are two bus stops within a 1 minute walk of the property. It is unlikely that the comings and goings, and number of visitors would significantly differ from what you would expect from a family living within the property, especially given the size of the property and that there would only be 3 children and 2 staff members present for the majority of the time.

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 different or detrimentally impacted.

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**

### **Grant Certificate**