

**2025/0079**

**Flexi First Class Care Ltd Lucy Taviringana**

**12 Folly Way, Monk Bretton, Barnsley, S71 2SP**

**Certificate of lawfulness for a proposed C3(b) children's home**

---

### **Site Description**

The site is a recently constructed two storey detached dwelling located on Folly Way in Monk Bretton. Folly Way has a consistently residential street scene featuring a mix of detached and semi-detached two storey dwellings. The dwelling has a parking area and integral garage to the front and a garden area to the rear. The dwelling is set in between Monk Bretton Cricket Club and informal green space the estate is built around.

### **Planning History**

2015/0646 - Demolition of existing dwelling at 30 Cross Street and erection of 95 no. dwellings (Approved Subject to Legal Agreement)

### **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 statement indicates that the proposed use will cater for up to four children to be living together with the children receiving 24-hour care from professional carers working on a rota basis. Longer term staff, generally two carers will be present at any given time with shifts starting at 09:00 and ending at 09:00 the next day. The carers do not reside permanently at the property but work in shifts to provide necessary support and supervision. The proposed use and residents would be managed through a rota system to provide the level of care needed for the proposed use.

### **Consultations**

Monk Bretton Ward Councillors were consulted and have verbally and informally raised concerns regarding the proposed development however no formal comments have been received.

## 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 (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.

Despite this, 21 letters of representation have been received in objection to the proposal, a number of which were identical. However, as the application is determined on the basis of fact and law, the comments cannot be taken into account. Below is a summary of the comments submitted, and issues raised.

- Change to the character of the estate
- Children's home management
- Community safety concerns
- Concerning history of the company involved
- Deeds of the property's are for private family dwellings
- Effect on neighbouring residents living conditions
- Effect on property values
- Existing police presence on the estate
- Existing use of the property causing stress
- Impact to young families on the estate
- Increase in traffic congestion
- Increase in vehicular movements
- Insufficient information provided
- Intensification of additional support services
- Lack of available parking
- Lack of community consultation
- Lack of robust supporting evidence
- Local community unaware and not consulted on the existing use
- Local community united against the development
- Noise and disturbance concerns
- No precedent in Barnsley for this scale of operation under Class C3(b)
- Other children's homes ran by the same company have issues with Ofsted
- Proposal does not align with other residential uses
- Proposal is in conflict with adopted Barnsley Local Plan Policies
- Proposal is in conflict with adopted Barnsley Supplementary Planning Documents
- Risk to children on the estate

## 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. In this circumstance the applicant has applied for a change of use to C3(b). With regards the requirement for planning permission for this change of use 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.

The applicant's statement indicates that the proposed use will cater for up to four children to be living together as a single household. It is therefore noted that there will not be a permanent adult occupant of the dwelling. The applicant states that the children will receive 24-hour care from professional carers working on a rota basis, with longer term staff, generally two carers being present at any given time with shifts starting at 09:00 and ending at 09:00 the next day. The applicant further states the carers do not reside permanently at the property but work in shifts to provide necessary support and supervision. There is clarity in the above statement that the proposed use and residents would be managed through a rota system to provide the level of care needed for the proposed use.

In assessing the submitted shift patterns there would be no permanent adult occupant of the dwelling. 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 judgement confirms that it is unrealistic to expect children to look after themselves in a single household. It also clarified that carers who provided 24-hour care but were not permanent residents could not 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 permanently reside in the premises.

As a result of the above, the use cannot therefore be considered to fall within Class C3(b). When applying Justice Collins precepts from the North Devon case, the appellant's arguments that the operation proposed at 12 Folly Way would fall within Class C3(b) would be false. The constantly changing supervising adults cannot be considered part of a household. For a household to be created, there would need to be at least one permanent adult living on the premises with the children.

In contrast to this, the applicant in their statement have referred to the North Devon District Council [2003] case as supporting evidence for their argument as quoted below;

*"This case confirmed that children in care, along with non-resident carers, can form a single household. The court ruled that a children's home where up to six children lived with rotating carers falls within Class C3(b)."*

This is an incorrect interpretation of the ruling as previously discussed above and does not reflect the high court ruling which found a Class C3(b) use to not be possible with a rotating carer and no permanent adult resident.

Furthermore, the applicant also makes reference to a precedent in Barnsley. However no actual application has been referred to or evidence provided to support this. The applicant states;

*"Barnsley Metropolitan Borough Council has previously assessed applications for children's homes under Class C3(b) and C2. In a recent case (Planning Application 2024/XXXX), the Council determined that a single-child children's home with rotating carers was lawful under C3(b). This precedent aligns with the proposed use in this application."*

On checking the planning history for Lawful Development Certificates of this type in the borough, the LPA has not granted any such approval and in any event, each individual application must be determined on its own merits.

As a result of the North Devon Case, the proposal is considered to fall outside C3(b), 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 due to the lack of a permanent adult resident. Therefore, the use of 12 Folly Way by the constant changing of adult supervisors of up to four permanent child residents would not constitute a single household of not more than six persons.

It would thereby fall outside the ambit of Use Class 3(b) of the Schedule to the Town & Country Planning (Use Classes) Order 1987. As a consequence, the proposed use requires planning permission and this lawful development certificate application to be refused.

**Recommendation**

**Refuse**