

Application Reference Number:	2026/0020
--------------------------------------	-----------

Application Type:	Certificate of Lawfulness - Proposed
--------------------------	--------------------------------------

Proposal Description:	Lawful Development Certificate for the proposed use of the dwellinghouse (currently C3(a)) as a C2 residential institution
------------------------------	--

Location:	101 Newhill Road, Smithies, Barnsley, S71 1XH
------------------	---

Applicant:	Mrs Gillian Spinks
-------------------	--------------------

Third-party representations:	Twenty-Five	Parish:	None
		Ward:	Old Town

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 up to two children is lawful and does not require planning permission.

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:

Lawful Development Certificate - Approve

Site Description

The property is located in Smithies on Newhill Road. It is a two-storey detached property. To the front is a driveway which provides off-street parking for two vehicles with an adjacent garden area. The surrounding properties are varied in terms of their age, size and design but are all detached.



101 Newhill Road, Barnsley, S71 1XH

Planning History

Application Reference	Description	Status
B/80/1696/BA	Erection of garage and extension to dwelling	Approve with Conditions
B/99/1140/BA	Remove existing single storey garage extension and replace with a two storey extension	Approve with Conditions
B/04/2101/BA	Erection of side detached double garage	Approve 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 up to two children is lawful and does not require planning permission.

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 two children to be living together and receiving 24-hour care from professional carers working on a 24-hour rota basis starting at 09:45. The carers would not permanently reside at the property.

Consultations

Legal – No objections

Representations

There is no statutory requirement for a Local Planning Authority to consult third parties, including neighbouring residents or parish councils on a lawful development certificate application, 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. Twenty-Five objections including two from Ward Councillors were received with the concerns raised summarised as follows:

- Anti-social behaviour and criminality in the area
- Applicant is an out-of-area provider
- Children's needs not stated within the planning application
- Community safety
- Effect on health and wellbeing
- Effect on local property values
- Frequent visits of professionals to the facility
- Future change to HMO
- House in multiple occupation due to the turnover of staff
- Impact on character of area
- Impact on highway safety
- Impact on residential amenity
- Increased traffic, parking pressure and activity
- Intensity and pattern of use that goes beyond normal residential occupation
- Lack of information
- Lack of planning scrutiny
- Location is not suitable
- Loss of privacy
- Material affects to residents' quality of life
- Material change of use has not been adequately disproven
- Neighbours not notified
- Noise and disturbance
- Need for the facility
- Number of facilities in locality
- Parking restricting entry and egress to neighbouring properties
- Proposed use is not akin to a family dwelling
- Safeguarding and management concerns
- Siting next to other continuous care use
- The change of use is material
- Will cause planning harm

Whilst these concerns are acknowledged, the determination of this application is a matter of fact and law and therefore the above cannot be taken into account in the determination of this application.

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.

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.

This application relates to a detached dwelling located in a predominantly residential area characterised by other detached dwellings. The application property benefits from two off-street parking spaces to front. It is to be established whether the use of the existing dwelling (C3) as a children's home for up to two children (C2) is material and would require planning permission.

The submitted supporting statement states that the proposed C2 use would provide care for up to two children under the age of 18 by up to two carers working at one time working on a 24-hour rota basis starting at 09:45 therefore following normal patterns of adults going to work with no staff changeover to occur during late night or early morning hours. There is a manager operating during normal working hours. The carers would be present at any given time but would not permanently reside at the property. It is stated that the running of the home is kept as close as possible to a typical family household. This includes eating together, cooking together and sharing chores.

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 up to two 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 two staff vehicles which is typical of a family home. Whilst potential on-street parking and additional vehicle movements could present some challenges, there are no on-street parking restrictions on the street.

There is some concern regarding the potential presence of up to five vehicles on site at peak handover periods (home car, manager's car, up to two staff cars, and one departing staff vehicle). This does exceed the level typically associated with many family dwellings.

However, the applicant has provided a series of mitigation measures, which go some way towards addressing this concern:

- **Professional visitors** – May briefly increase vehicle numbers but visits are short and not for full-day periods.
- **Staff protocols** – Staff will be briefed on appropriate parking, drop-off, and pick-up practices to minimise congestion.
- **Visitor management** – Visits will be staggered to avoid multiple professionals arriving at the same time unless unavoidable.
- **Parking guidance** – Visitors will be directed to use on-site parking where possible or otherwise park responsibly on-street.
- **Neighbouring amenity protection** – Vehicles will not obstruct driveways or pedestrian routes.

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 the 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 two 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.

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 two 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.

On the balance of probabilities, the applicant has now provided sufficiently detailed and credible evidence to support an argument that the proposed C2 use would not result in a material change of use when compared with the existing C3 lawful use. The evidence appears adequate to conclude that the proposed use would function in a way that is comparable to a small household, and the overall level and pattern of activity would not materially exceed what could arise under a typical C3 residential use.

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

Lawful Development Certificate – Approve

Barnsley Metropolitan Borough Council hereby certify that the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged red on the plan submitted as part of this application, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason;

- Whilst the application proposes a change of use from C3(a) to C2 of the Town and Country Planning (Use Classes) Order 1987, planning permission is only required when the change amounts to a material change of use. In this case it has been demonstrated that the change from use class C3(a) to use class C2 having regard to its nature and extent as specified in the planning statement and supporting documentation would not be a material change from the existing use to the proposed use.

First Schedule: Lawful Development Certificate for the proposed use of the dwellinghouse (currently C3(a)) as a C2 residential institution

Second Schedule: 101 Newhill Road, Smithies, Barnsley, S71 1XH