

<b>Application Reference Number:</b>	2025/0543		
<b>Application Type:</b>	Lawful Development Certificate – Proposed.		
<b>Proposal Description:</b>	Certificate of proposed lawfulness for use of dwellinghouse (Use Class C3) as registered children's home (Use Class C3(b)).		
<b>Location:</b>	2A Dearnley View, Barnsley, S75 1EA.		
<b>Applicant:</b>	More Than Safe Ltd.		
<b>Third-party representations:</b>	None.	<b>Parish:</b>	
		<b>Ward:</b>	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 the proposed change of use to C3(b) to provide a registered children's home for three children is lawful and does not require planning permission. No external or internal structural alterations would be carried out.

Based on relevant case law and the information submitted by the applicant, the local planning authority determines that the proposed use cannot be considered to fall within Class C3(b) as both there would be no permanent adult resident at the premises to form a single household.

Recommendation: **Refuse.**

**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.	Approved.
B/03/0737/BA	Erection of 1 no. detached dwellinghouse with attached garage (Reserved Matters).	Approved.

### 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 the proposed change of use to C3(b) to provide a registered children’s home for three children is lawful and does not require planning permission. No external or internal structural alterations would be carried out.

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 (LPA) describing the use or operations in question.

Section 192(2) then states that if, upon an application under this section, the LPA 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 seeks confirmation for the change of use from C3(a) (a single person or by people to be regarded as forming a single household (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 (an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant) and a carer and the person receiving the care and a foster parent and foster child) to C3(b) (not more than six residents living together as a single household where care is provided for residents e.g. supported housing schemes such as those for people with learning disabilities or mental health problems).

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.

## Consultations

There is no statutory requirement for LPAs 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 not determined on planning merits or judged against national and local planning policies and guidance. Nevertheless, this application was made available online. No representations were received.

Children and Adolescent Care Homes (BMBC)	<i>No comments received.</i>
Legal	<i>No comments received.</i>
Local Ward Councillors	<i>One objection was received due to concerns regarding: traffic and parking; noise and amenity; and community character.</i>

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

## Assessment

### General

Where activity would 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 would fall into either a C3 (dwellinghouses) or C2 (residential institutions) use classification. In this instance, the applicant has applied for a change of use to C3(b). Regarding the requirement for planning permission for this change of use, the issue centres on whether the children are 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.

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. It states that the children would form a single household.

There is clarity in the applicant's statement that the proposed use, residents and professional carers would be managed through a rota-based system to provide the level of care needed. Consequently, there would be no permanent adult occupant of the property.

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 confirms that it is unrealistic to expect children to look after themselves in a single household and clarifies that carers who provided 24-hour care but did not permanently reside at the property 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 North Devon case, the use cannot be considered to fall within Class C3(b). When applying Justice Collins' precepts from the North Devon case, the applicant's arguments regarding the operation proposed at 2A Dearnley View falling within C3(b) would be false. The ever-changing supervising adults cannot be considered part of the household. For a household to be formed, there would need to be at least one adult permanently residing at the premises with the children.

In contrast, the applicant's statement refers to the North Devon 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 discussed above and does not reflect the high court ruling which found a Class C3(b) use not to be possible with a rotating carer and no permanent adult resident.

The applicant's statement also refers to a precedent in Barnsley. However, no actual application has been referred to or evidence provided to support this. The statement reads:

*"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 within the borough, the LPA has not granted any such approval, and in any event, each application must be determined on its own merits.

As a result of the North Devon case, the use cannot be considered to fall within Class C3(b). This is 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 due the lack of a permanent adult resident. Consequently, the proposed operations at 2A Dearnley View by virtue of the ever-changing supervising professional carers caring for up to three permanent child residents would not constitute a single household. The proposal would thereby fall outside the ambit of Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) and will require planning permission.

Considering the above, this lawful development certificate application should be refused.

**RECOMMENDATION: Refuse.**

**Reason(s) for Refusal:**

1. 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 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.