

DELEGATED REPORT

Application No: P/21/0199

Site Address: 13 Heol Rhos Las
Gellideg
Swansea Road
Merthyr Tydfil
CF48 1HF

Development: Certificate of lawfulness to use dwelling (within C3 use class) as a children's care home

Case Officer: David Cross

Site Visit: 8th July 2021

Application Expiry Date: 1st August 2021

APPLICATION SITE

This application relates to a mid-terraced property situated in a predominantly residential area. The existing two-storey dwelling currently accommodates 3 bedrooms and a bathroom at first floor level with an open plan living room and kitchen area at ground floor. There is a private garden to the rear (west) of the property with a small grassed area to the front (east). Access to the site is from adopted highway (Heol Rhos Las), with parking in the vicinity provided along one side of the street.

PROPOSED DEVELOPMENT

A certificate of lawful development is sought under Section 192 of the Town & Country Planning Act for the proposed use of the dwelling, within Use Class C3(b), as a children's care home. It is the applicant's position that the proposal would constitute lawful development, for which planning permission is not required.

It is proposed that the property would be used to provide a home for a maximum of 2 children between the ages of 8 to 18 years old. The children would receive 24hr support and would be supervised by care workers on a 15hr rotating shift pattern, of which two of the care workers would also sleep at the property and utilise one of the bedrooms.

The children would come from families whose parents cannot manage their upbringing for various reasons. This may include parental insufficiency where the parents are a risk to the children, or where the children may have been subjected to domestic abuse and have suffered trauma, in which they need a safe and nurturing environment with therapeutic support.

The children would be placed at the property where they can live, eat and operate as a single family unit. The aim is for the children to be brought up in a household

environment, where they can eventually be integrated back with their family or into foster care. In the case of older children, they would be given help to prepare them for living on their own independently. The care that the children would receive is intended to support their upbringing and to teach them the necessary skills to live independently in the future. The children would also attend local schools and participate in sport and leisure activities.

There would be up to 7 members of staff providing care for the children with generally 2 to 3 carers at the property at any one time.

The submitted details indicate that the internal layout of the property would remain the same. Two of the bedrooms would be used for the children, one would be used by the carers as a bedroom/office. The property would also include a communal lounge and kitchen area where the children can interact in the same manner as a typical functioning house.

PLANNING HISTORY

There is no relevant planning history relating to this site.

CONSULTATION

No consultation exercise was undertaken.

PUBLICITY

No publicity exercise was undertaken.

POLICY CONTEXT

The determination of this application does not require consideration of the planning merits of the proposed use. Therefore, the policies in the Merthyr Tydfil Replacement Local Development Plan (LDP) 2016-2031 are not of direct relevance in so far as they go to the merits of the proposed use. However, in considering whether there would be a material change in the character of the use, the development plan is relevant in so far as it may indicate a particular planning consequence of the proposed use. In this respect regard has been given to *The Queen on the Application of Royal Borough of Kensington and Chelsea v Secretary of State for Communities and Local Government* [2016] EWHC 1785 (Admin) Holdgate J, Paragraph 7, which sets out:

'(3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;

(4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use.'

This means that matters such as the residential character of the area, strain on the welfare services and reduction on the stock of private accommodation available, traffic movements etc might all be relevant to the assessment that needs to be made. In this

instance, there are no specific policies within the LDP that would be significantly affected by the proposed children's care home.

Welsh Office Circular 24/97: Enforcing Planning Control, Annex 8, deals with 'Lawfulness and the Lawful Development Certificate':

Paragraph 8.26 states that if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, they shall issue a certificate to that effect and, in any other case, they shall refuse the application. The burden of proof is firmly on the applicant.

Paragraph 8.28 advises that a LDC granted under Section 192 shall specify the land to which it relates, describe the use or operations in question (identifying the relevant 'use class' where appropriate), and give the reason why the proposal would be lawful.

PLANNING CONSIDERATIONS

In order to determine that the proposed use of the property as a children's care home would be lawful and does not require planning permission, it would need to be demonstrated that:

- The proposal would fall within the same classification as the existing use as specified in the Use Classes Order 1987, or
- That there would be no 'material change' in the use and so does not constitute development that is subject to the controls of the planning system.

Change of use classification

The Town and Country (Use Classes) Order 1987 groups and specifies different uses within broad categories of classification. Under Section 55(2)(f) of the Town and Country Planning Act 1990, where a use falls within a particular designated class, then no planning permission is required for any change which falls within the same class.

In this case, the application relates to a residential property that currently falls within Use Class C3 (dwellinghouses), which is formed of three parts:

- C3(a): a single person or people living together as a family;
- C3(b): not more than 6 people living together as a single household and receiving care;
- C3(c): not more than 6 people living together as a single household who do not fall within the C4 definition of a House of Multiple Occupation (HMO).

It is proposed that the dwelling would provide a home for up to 2 unrelated children who would live together as a single household and due to their circumstances, they would receive care from non-resident care workers. As such, it is clear that the residents would not form a family and would require assisted living. Therefore the proposed use would not fall within either Class C3(a) or C3(c).

Turning to whether the proposal would fall within Class C3(b), the *North Devon District Council v First Secretary of State* [2004] 1 P&CR 38 is of particular relevance to this application, where it was considered whether a dwellinghouse used to care for two children by non-resident staff on a rota basis, should properly be considered to fall

within use class C2 (residential institutions) or C3 (dwellinghouses). For the purposes of Class C3(b), it was noted that the definition of 'care', as set out in the Use Class Order, excludes the personal care of children except in Class C2.

It was established in the North Devon case that children on their own cannot be regarded as a household as they need to be looked after. They cannot run a house or be expected to deal with the matters that go with running a home. As a matter of principle, children are regarded as needing full-time 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. It was then questioned whether carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care can be regarded as living together. In this respect, it was noted that the concept of living together as a household means that a proper functioning household must exist, which must mean that the children and a carer must reside in the premises. It was concluded in the North Devon case that a home for children where only non-resident care is provided should be considered a C2 use, rather than a C3 Use.

Given the similarities between the North Devon case and the current proposal, with some children being as young as 8 years old, it is clear that the use of the property as a children's care home in this instance would fall within Class C2, rather than Class C3(b).

Notwithstanding the above, the North Devon case also makes it clear that the mere fact that there is a change from a C3 to a C2 use does not mean that the change requires planning permission. It must be considered whether the change is a 'material' one, which is a matter of fact and degree in the circumstances of the individual case.

Material change of use

It is necessary to determine whether the proposed children's care home use as set out by the applicant would be 'materially' different to that of a dwellinghouse and would result in the development requiring planning permission.

The Town & Country Planning Act does not define what constitutes a 'material change of use'. Therefore, it is necessary to exercise some considered judgement based on the individual circumstances of each case. In general, the differences that might be considered 'material' are those, which would result in a change in the character of the use of the land. This requires consideration of whether there would be any significant planning consequences as a result of the change.

In the first instance, it is necessary to provide a baseline in which the materiality of the proposed change of use can be measured for comparison. The existing residential property was last used as a 3 bedroom terraced house that was built for this purpose. There is no limit on the size of a 'family' that can occupy a dwellinghouse within Class C3(a) and it is likely that the property with its private garden area could be occupied by a small family. The property may also be occupied, under Class C3(a) and C3(c), by up to 6 people who are not related as a family, but live together as a single household, which can include an arrangement where those residents are also provided with care.

In so many respects, the property would operate in a way that is very similar to a normal family home. The property would provide the children with their sole and main residence, where they would have the freedom to socialise together and use the shared

living room and kitchen facilities. The children would likely have shared meals prepared for them or they could make their own food and drink. The residents would be taken to school and brought home each day, as well as to any extra curriculum activities they wish to attend. Although their carers would not be resident, while in attendance, they would interact with the property and the residence in a way that is very similar to a parent or guardian. The proposal seeks to foster a lifestyle that would be the same as if the children were living in a normal family home.

It is acknowledged that the home would be provided by a commercial organisation and that the carers would be employees attending the home as their place of work. However, these are perhaps more coincidental factors, which actually have little effect on the character and way in which the property would be used on a day to day basis. The conduct, activity and interaction between residents and staff would in all likelihood be very similar to that of a family unit. If for example, the care workers use the spare room as an office within the property, this is not obviously different in character and impact to the resident of a dwellinghouse normally using a home office or study. The applicant's evidence is that the proposed use is to provide a stable home environment for the occupants as their main and sole residence until they reach adulthood or can be reintegrated back with their family or foster parents. The applicant has indicated that the length of stay is generally more than temporary or passing. It would not for example be a 'half way' house or provide overnight emergency lodgings.

The distinctive characteristic of a dwellinghouse is its ability to afford to those who use it, the facilities required for the day-to-day private domestic existence. It does not lose this characteristic simply because it is under commercial management to provide its residents with care. It is noted that there are no significant alterations necessary to the property to accommodate the children's care home.

The home would provide care for children who, through no fault of their own, may have come from families that are unable to cope with their upbringing. The home would provide a safe environment where the children can receive care in response to their needs and learn the necessary skills to live independently in the future.

It is perhaps expected that from time to time some of the residents might display rather extreme behaviours (shouting, screaming etc), particularly if they have behavioural issues. However, the residents would not have any medical or clinical condition requiring secured facilities. Such behaviours are unlikely to define the prevailing character of the resident's conduct or the land use. Indeed, such behaviours are more likely to be displayed occasionally as an emotional episode, where shouting and screaming might be comparable to a family's children playing in the garden or a troublesome teenager's outburst at any other dwellinghouse. In this context, predicted externalities and amenity impacts are not obvious indicators that there would be a 'material change'.

The house would have a maximum of 2 residents, none of whom drive or own a car. This would be in contrast to most family households, where it is likely that at least two adult members, often more where there are adult children, own and use a car. Additionally, in the case where 6 adults might be living together as a single household, it is possible that all 6 members could all use their own car, with all of the associated comings and goings that might be expected.

Although the residents themselves would not drive, there would no doubt be some

vehicle movements associated with the proposed use. For instance, the staff, who provide care on a shift basis, would come and go over a 24hr period, there would be trips taking the children to and from school, as well as friends or family visiting on occasion. However, when considered together, the cumulative level of activity, traffic movement and requirement for parking is unlikely to be any greater than a typical dwellinghouse use, where all of those residents make journeys to and from work, school, shops and services and can take any number of deliveries and visits from friends, family or tradesmen etc. Indeed, the proposal might be most comparable to a dwellinghouse within Class C3(b), where up to 6 people living together as a single household who receive care, don't drive themselves but would nonetheless be attended by care workers and other services.

In this case, the property is adequately accessed via the adopted highway that serves a number of properties. Although the carriageway is narrow with vehicles often parking on part of the pavement along one side, the proposal would not change this existing arrangement. The applicant has indicated that a hardstanding could be provided in the rear garden to accommodate some off-street parking, which could potentially be done under permitted development rights. Within this context, the fluctuations in the number and regularity of vehicle movements of the proposed use, in comparison to the existing dwellinghouse, would not be felt as a material impact on its surroundings and cannot be obviously identified as an indication of a 'material change'.

CONCLUSIONS

The lawful use of a dwellinghouse, within Class C3 of the Use Classes Order, is broad in its scope and could in association bring with it considerable activity and vehicle movements.

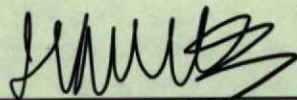
The prevailing character of the proposed use would be that of a small group of children living together and using the property in a way similar to that of a family home where they would be supervised and cared for by adult guardians. While there might be identifiable differences, between the proposed and existing uses, these would not be 'material' or easily measurable and quantifiable against the rather flexible characteristics and impacts of a lawful dwellinghouse.

Accordingly, the proposed children's care home would not amount to a 'material' change of use. Therefore, the following recommendation is made:

RECOMMENDATION: the certificate of lawfulness **BE APPROVED**

1. The proposed children's care home, under Section 55(1) of the Town & Country Planning Act 1990, would not result in a material change in the current use of the building as a dwellinghouse. Therefore, the proposal does not constitute development that requires planning permission.

RECOMMENDATION ENDORSED



Head of Town Planning

DATE:

13/7/21