

DELEGATED REPORT

Application No:	P/22/0210
Site Address:	Iscoed House Pontmorlais West Merthyr Tydfil CF47 8UY
Development:	Certificate of lawfulness to use dwelling (within C3 Use Class) as a step-down care facility, including the renovation of the property and the infilling of the existing garage doorway with the installation of a new door and window.
Case Officer:	David Cross
Application Expiry Date:	20th September 2022

APPLICATION SITE

This application relates to a large three storey property with an attached side garage. The building has a frontage towards Park Terrace to the north and Pontmorlais West to the south. Residential properties adjoin the site to the east and west. The main vehicular access is from Park Terrace with a small hardstanding area that can accommodate 2 vehicles and a narrow driveway serving the garage, which is at a lower level to the street. There is also pedestrian access on to the highway to the south via a gated entrance.

The submitted existing floor plans indicate a small basement room with a kitchen, utility room, dining room, sitting room, lounge and toilet provided at ground floor level. There are currently 4 bedrooms, a dressing room and bathroom at first floor level and a self-contained 2 bedroom flat with an open kitchen/lounge/dining room and bathroom. The flat is accessed via an internal staircase, as well as an external staircase.

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 to provide step-down care within Use Class C3(b). Additionally, it is proposed to renovate the property, which would involve the repainting of the existing windows and cills, the boarding up of some windows internally with opaque film to be applied to the glazing. The existing doors at first floor and second floor levels would be replaced with new doors and the garage door would be removed and infilled with a new window and doorway introduced.

It is the applicant's position that both the proposed use and the proposed alterations/renovation of the property would constitute lawful development, for which planning permission is not required.

The proposed floor plans indicate the self-contained flat on the 2nd floor would no longer be provided and that it would instead be utilised as part of the rest of the building. At the ground floor level, an office with a toilet would be provided within the garage, together with a communal kitchen, dining room, lounge, laundry room and a bedroom with en-suite facilities. At first floor level, 3 bedrooms would be provided with en-suite facilities, as well as an office and welfare room. At 2nd floor level, there would be two bedrooms with en-suite facilities, a communal bathroom and activity room. The property would accommodate a total of 6 residents.

It is proposed to use the property to provide a step-down facility that offers specialist care for adults with learning difficulties and those recovering from a mental health crisis, which may have led to short or long term in-patient care. The residents would not require a clinical environment. It is intended that the property would provide a place where the residents can be supported and prepared for independent living, which would include a range of activities for daily living, including assistance with shopping and cooking. They would also receive support for their social care, such as applying for housing, employment and benefits etc.

The applicant has indicated that the intention is to support residents towards reintroduction into everyday life as quickly as possible, with each resident having a bespoke care package with the aim of living independently. The applicant has highlighted that the preparation of the residents for interacting with the wider community is crucial to the care provided. Whilst the residents would have their own room and en-suite, various communal facilities are provided within the property to encourage social interactions and promote a household environment as part of the rehabilitation process. It is anticipated that the residents receiving care would reside at the property on average between 12 to 18 months before moving on to more independent living.

The applicant has indicated that the residents are unlikely able to drive, however there would be some traffic movements associated with staff coming and going. The residents may also occasionally be visited by members of their family.

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 step-down care facility 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 6 unrelated adults 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).

However Class C3(b) enables up to 6 unrelated people to live together as a single household whilst receiving care, which would be the case in this instance. The regulations do not pose any limitation on the number of carers that may be required or the regularity of care to be provided, for example there is no distinction between a household that receives occasional visits from care workers and those that require 24 hour care support. Furthermore, the regulations do not make any specific distinction about the type of care that may be received. In this regard, the applicant has indicated that the residents do not require medical treatment that may otherwise be provided within a care home that falls within Use Class C2. It is only that the residents are living together as a single household that is crucial to the considerations of this application, as to whether the proposal falls within Class C3(b).

It has been noted by the applicant that the residents would receive 24 hour care where the carers would act as guardians and support the residents living together as a single household, whilst developing their ability to live more independently in the future. Although the residents would have their own bedrooms with en-suite facilities, this in itself does not indicate the residents are living separately within the property. Indeed, the residents would still be reliant on the communal areas to undertake everyday household activities, where typical social interactions would also take place with other members of the household. It is noted that an office would be provided for the care workers, however this would not be dissimilar to any other dwellinghouse that has a home office or study room. Furthermore, the applicant has indicated that the persons residing at the property would likely do so for periods of 12 to 18 months as their main residence before they move on to living more independently. This suggests the proposal would provide long-term accommodation and that the residents would likely form social bonds with each other, which further unifies the household over a period of time.

The proposal does not seek to increase the number of bedrooms provided within Iscoed House. As such, there would be no intensification of the existing residential use of the property. The applicant has noted that the residents are unlikely able to drive, due to their circumstances. However, it is noted that there would continue to be traffic movements associated with the coming and going of carers, as well as from any potential visits from friends and family. This would not differ to that which would be expected from a typical household where the residents are receiving care.

Based on the information provided by the applicant and for the above reasons, it is evident that the proposal would not result in a change to the existing residential use of the property within Use Class C3.

Alterations & renovation works

Turning to the matter of the proposed garage alterations and the renovation of the building, it is first necessary to determine whether such works falls within the definition of development under Section 55(1) of the Town Country Planning Act 1990. It states *'development means the carrying out of building, engineering, mining or other operations in, on over or under land, or the making of any material change in the use of the buildings or other land'*.

Section 55(1A) clarifies for the purpose of the Act 'building operations' include:

- (a) Demolition of buildings;
- (b) Rebuilding;
- (c) Structural alterations of or additions to buildings; and
- (d) Other operations normally undertaken by a person carrying on business as a builder.

Section 55(2) of the Act states *'the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land'*, which includes amongst other criteria:

(a) the carrying out for the maintenance, improvement or other alterations of any building of works which (i) affect only the interior of the building, or, (ii) do not materially affect the external appearance of the building.

In respect of the proposal, it is considered that the necessary internal works required to provide a step-down facility, together with any internal blocking up of windows, would not constitute development that requires planning permission. Additionally, the use of opaque film to provide obscured glazing, the painting of the property and any necessary repairs to the guttering would also be excluded from the definition of development. This would form part of the general maintenance of the property and would not result in a materially different appearance to the building.

However, it is consider that the alterations to the garage and the replacement of a first and second floor doors (access via the external staircase), would fall within the definition of development. Accordingly, consideration should be given as to whether these works would constitute 'Permitted Development' by virtue of Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2013.

1. The proposal does not involve any extension to the property that may otherwise result in more than 50% of the dwelling's curtilage being covered by buildings;
2. The proposed alterations would not exceed the height of the highest part of the roof of the existing dwellinghouse;
3. The proposed alterations would not exceed the eaves height of the main roof of the dwellinghouse;
4. No part of the property would be enlarged within 2 metres of the boundary of the curtilage of the dwelling;

5. There would be no extension beyond a wall comprised in the principal elevation;
6. There would be no extension beyond a wall comprised in a side elevation of the existing dwellinghouse;
7. There would be no extension beyond the rear wall of the original dwellinghouse;
8. The proposal does not involve the provision of a veranda, raised platform, balcony or roof terrace.

Section A.3 of the regulations also notes that development is permitted by Class A subject to a series of conditions, which includes:

- (a) The appearance of the materials used on the walls, roof or other element of any exterior work must so far as practicable match the appearance of the materials used in the majority of the equivalent element of the existing dwellinghouse.

In this regard, it is noted on the submitted plans that the garage opening would be infilled with a rendered exterior finish to match the rest of the property.

Accordingly, for the above reasons the proposed alterations to Iscoed House would constitute 'permitted development'.

CONCLUSIONS

It has been adequately demonstrated that the lawful use of a dwellinghouse would remain within Class C3 of the Use Classes Order and that the proposed alterations to the property would constitute permitted development.

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

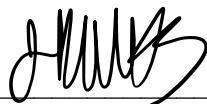
RECOMMENDATION: the certificate of lawfulness **BE APPROVED**

REASONS:

1. The proposed step-down care facility, under Section 55(1) of the Town & Country Planning Act 1990, would not result in a change of the existing use of the building as a dwellinghouse. Therefore, the proposal does not constitute development that requires planning permission.

2. The proposed alterations and renovation of the building is permitted development by virtue of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (as amended in Wales) Order 1995.

RECOMMENDATION ENDORSED



Director of Neighbourhood Services

DATE:

10/10/22