



PLANNING STATEMENT (Revised December 2021)

RE: CHANGE OF USE FROM DWELLING HOUSE (CLASS C3) TO RESIDENTIAL CARE HOME (CLASS C2) AT 9 TYN Y BANWEN ROAD, TREHARRIS

- 1.1 This statement is submitted in support of an application made under Section 192 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) to certify that the use of 9 Tyn y Banwen Road, Treharris as a care home is not materially different from the property's existing lawful use as a Class C3 dwellinghouse, and therefore does not require planning permission.
- 1.2 This statement provides details of the current lawful use of the property and evidence to demonstrate that, whilst the proposed use does not fall within the same Use Class (as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended)) as the property's existing lawful use, there is no material difference in planning terms between the two uses. Therefore, planning permission is not required for the proposed use as no material change of use would occur.

Proposed Application

- 1.3 The Applicant Orbis Education and Care Ltd operates several homes throughout Wales that provide specialist care for adults and children. The proposed use would operate in a similar manner to the Applicant's other homes.
- 1.4 The site is in the residential area of Edwardsville to the west of Treharris. The site comprises a traditional end of terrace 2 storey dwelling containing 3 bedrooms, with enclosed rear amenity space.
- 1.5 On review of Merthyr Tydfil Councils' online records, the site has no planning history.
- 1.6 This application seeks formal confirmation under Section 192 of the Town and Country Planning Act 1990 that the proposed use of 9 Tyn Y Banwen Road, Treharris as a care home for a single child aged up to 18 years old (plus up to 2 care staff at any one time) would not require planning permission.





- 1.7 The existing property has the layout, facilities, and services of, and has the character of, a “traditional” residential dwellinghouse. The proposed use would not change this, and the external appearance of the building would not be altered.
- 1.8 Day-to-day living facilities, including bathroom, kitchen, dining / sitting rooms would be for the use of the resident and carers.
- 1.9 The preparation of meals would be principally undertaken by the carers; however, the resident child would be encouraged to assist. The carers and resident child would eat their meals together at the dining table and would socialise together.
- 1.10 One child would live at the property as their principal residence. People who are in the guardianship of Orbis are in care for a variety of reasons, including fears for their physical wellbeing, learning disabilities or because of emotional or behavioural difficulties. Typically, the reason for them needing care is simply that they require additional support that cannot be provided within their current setting.
- 1.11 During both the day and night a member of care staff would normally be present at all times. The application property would not be their permanent residence. They would live elsewhere but work at the property on a shift basis to cover the full 24 / 7 presence required. A manager would also be present at varying times. On weekdays the resident child would usually attend school or college / employment. Staffing ratios and education / employment arrangements may change over time to respond to the needs of individual residents.
- 1.12 The property has sufficient on-street parking and outdoor amenity space. This would be used in the same way as if the property were occupied by a single household.
- 1.13 The use of the dwelling would therefore be very similar in character to a “traditional” dwelling of this size, with similar activities taking place and similar numbers of vehicle trips to and from the site, as well as similar car parking needs.

Legislation





- 1.14 Section 192 of the Town and Country Planning Act 1990 (as amended) (hereafter referred to as the 1990 Act) provides that an application may be made to the Local Planning Authority (LPA) to ascertain whether any proposed use of land or buildings would be lawful. If such an application contains information to satisfy the LPA that the proposed use would be lawful if begun at the time of the application, they shall issue certificate to that effect.
- 1.15 The Town and Country Planning (Use Classes) Order 1987 (as amended) (hereafter referred to as the Use Classes Order) classifies land uses and identifies certain uses which do not fall within any of the specified classes.
- 1.16 The classes of the Order relevant to this application are Class C2: Residential Institutions and Class C3: Dwellinghouses.
- 1.17 Amendments were made in 2016 (Wales) to the 1987 Order. The effect of these amendments was to amend Class C2A, introduce a new Class 4 and to further sub-divide Class C3. It is the subdivision of Class C3 that is of some relevance to this application. The amended Class C3 reads as follows:
- “Class C3. Dwellinghouses
- Use as a dwellinghouse (whether or not as a sole or main residence) by:
- a) a single person or by people to be regarded as forming a single household;
 - b) not more than six residents living together as a single household where care is provided for residents; or
 - c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).”
- 1.18 The Use Class Order thus differentiates between dwellinghouses where residents live together as a single household and small houses in multiple occupation (which are not included in the new Class C4), but class C3 specifically includes separate reference to a household of 6 or fewer people where care is provided for residents (Class 3(b)). Whilst the Order identifies three different types of dwellinghouse uses, it should be noted that the subdivisions remain within the overall Class C3. Consequently, permission is not required for a change between any of the subdivisions of the Class.





1.19 Class C2: Residential Institutions remains unchanged by the 2010 amendment and reads:

“Use for the provision of residential accommodation and care to people in need of care (other than within Class C3 (dwellinghouses)). Use as a hospital or nursing home. Use as a residential school, college or training centre.”

Material Planning Considerations

1.20 The following documents are considered material to the determination of this application and are attached as appendices A, B & C;

- Barrister’s opinion prepared by Mr J Barrett of Kings Chambers, Manchester (EP4); and
- Case law: North Devon District Council and the First Secretary of State (Queens Bench Division, 30th January 2003) – [2003] J.P.L. 1191.
- Decision Notice - 20/02368/MNR - Change of use from dwellinghouse (class c3) to residential care home (class c2) for up to 2 children at Ty Fry Cottage, 87 Ty-Fry Road, Rumney, Cardiff, CF3 3NS

1.21 The North Devon case and Counsel’s opinion provide very useful indicators for determination of this application. In addition, the specific circumstances of this case are a primary consideration.

1.22 In terms of the assessment of whether the premises could properly be regarded as a dwellinghouse, the physical condition of the premises accords with the characteristics outlined in paragraphs 24 and 25 of Circular 02/2010. Indeed, the property has a lawful use as a single family dwellinghouse. It is not proposed to make any significant changes to the physical condition of the premises and it would retain all the elements for day-to-day private domestic existence when used as a care home. Therefore, in terms of its physical condition, the premises would retain all the characteristics of a dwellinghouse.

1.23 It is clear from paragraph 25 of the Circular that the classification of particular premises as Class C3 includes the manner of its use as well as its physical condition. In terms of occupation of a dwellinghouse (Class C3(a)), such a household may comprise adults and





children living together with the children being cared for by either their parents or foster parents and possibly a nanny, governess or au-pair.

- 1.24 In the case of 9 Tyn Y Banwen Road, Treharris, the child would be resident in the dwellinghouse and would require all the facilities for day-to-day living. However, their carers would not be part of their family and would not be resident at the premises. We acknowledge, as determined in North Devon, that since only a single child would be resident at the property, they would not constitute a “household”. A property must be occupied by a single household for it to be classified as C3. We therefore acknowledge that the proposed use is not C3 (dwellinghouses) but falls within Class C2 (residential institutions).
- 1.25 The outcome at North Devon, however, is that despite there being change of use between Class C3 and C2; that change was not material and planning permission was therefore not required. Mr Justice Collins made it clear that his judgment was based on the individual facts of the case and that whether or not a change is material is a matter of fact and degree. Therefore, in respect of 9 Tyn Y Banwen Road, Treharris, it must be determined whether the change of use from a single dwelling to the small care home proposed would be a material change, based on the facts of the specific case.
- 1.26 The existing dwelling is capable of accommodating a family or up to 4 adult house-sharers living as a single household in accordance with Class C3. It has 3 bedrooms and generous living accommodation, so this level of occupancy is a realistic expectation. As with many modern households, if it was an all-adult household, it could be expected that many, if not all house sharers could have their own private car, and use it on a daily basis for commuting, shopping, social and other journeys. If a family with children were resident it would not be unusual for the property to contain two or 3 private cars, which again could be used on a daily basis for the above mentioned journeys as well as for the school run. Such a household would be likely to generate a number of such trips each day.
- 1.27 We have mentioned that the physical condition of the premises would remain consistent with a dwellinghouse. With a single child and up to 2 staff members on site at any one time, the occupancy of the home would not be materially different to what could be anticipated with a Class C3 use. The difference would have no material planning impacts.





- 1.28 The level of care in the home would be supervisory in nature and it would not be a secure unit. The resident child would be a long-term resident, and 9 Tyn Y Banwen Road, Treharris would be their home. They would develop social attachments to their care staff and within the local community. They would hopefully to go on to lead independent adult lives.
- 1.29 The vehicular movements that are necessary for shift changes and for other errands are little different to what would be expected with a Class C3 dwelling.
- 1.30 The manner of the use of the dwelling would not be materially different in planning terms to its use by a single household and therefore it must be concluded that no material change of use would occur.
- 1.31 The grant of a positive certificates identified in para 1.20 of this statement, acknowledged that a change of use from a C3 dwellinghouse to a care home can be considered to not be a material change. This application is very similar, if not identical to the identified cases. The proposed care home would contain a similar number of staff and occupants and would be operated in an identical way.
- 1.32 We emphasise that it is not our position that there is no material difference between Class C3 and Class C2 in a general sense. Our position is very clearly that in this individual case, because of the specific characteristics of the proposed use, it would not be materially different than the current lawful use of the premises. We draw comparison to the identified cases, as the characteristics of both of these cases are very similar, if not identical.
- 1.33 On the merits of this individual case, based on the significance of the change and resulting impact on the use of land and building, it should be concluded that no material change of use would take place, and therefore planning permission is not required.
- 1.34 As stated above, having searched the LPA's historic planning application records, there are no planning condition or other limitation that would prevent the use of the property as proposed in this application.

Conclusion





- 1.35 In accordance with Section 192 of the 1990 Act, and by virtue of case law presented in the North Devon case and the opinion submitted, the proposed use would not have any land use consequences that would lead to the conclusion that a material change of use would occur. Because there would be no material change of use, the proposed change from Class C3 to the specific use proposed (which falls within Class C2) would not be significant and planning permission would not be required.
- 1.36 We conclude that in accordance with the said statutory framework, a certificate of lawfulness should be issued for the use of the property as proposed in this application.

