

DELEGATED REPORT

Application No: P/20/0072

Site Address: 16 The Park
Treharris
CF46 5RH

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

Case Officer: Caroline Pulley

Site Visit:

Application Expiry Date: 15th May 2020

Consultation reply date expired:

APPLICATION SITE

The application site is a two-storey, detached dwelling situated within the residential area of Treharris. The property is located within a reasonably sized plot on the northern side of the road. It is set back and is accessed from the adopted highway to the south, and has a principal elevation which faces southwest onto a private driveway. The surrounding area is predominately residential in nature comprising with dwellings of varying design and scale.

PROPOSED DEVELOPMENT

A Certificate of Lawfulness is sought to use the dwelling (within Use Class C3) to accommodate children with carers.

It has been indicated by the applicant that there would be a maximum of 4 children residing at the property, between the ages of 11 – 17 years old. The children will all be on care orders and accommodated through local authorities. They would not have complex physical or mental health needs. However, the applicant has confirmed that the children may have emotional and/or behavioural difficulties, anxiety or educational needs for which the staff would receive training for.

The home would be staffed by a minimum of three residential care workers during the day, with two of these care workers carrying out sleep-in duties at night, ensuring a 24 hour care provision. The carers would operate from a shift pattern, working two consecutive shifts, followed by four consecutive days off. Within this, they would complete two 15 hour shifts between 08:00 and 23:00 hours during the day, with in-sleep duties being carried out between 23:00 and 08:00 hours.

The residents receiving care would be under the supervision of a team of 10 staff consisting of:

- A Registered Manager
- A Deputy Manager
- 2 Senior Residential Care Workers
- 6 Residential Care Workers

The residential care workers would be responsible for the day to day running of the home (i.e. cleaning, preparing meals, tidying the home, transporting and assisting children/young people to their place of education, creating reports for social workers, taking children to various activity events). The Registered Manager would oversee the work of the team and would be responsible for creating staff rotas and liaising with social workers etc. The applicant has also confirmed that the Manager would operate an 'On Call' system for additional support if required.

The submitted plans indicate that the property would be laid out to provide a living room, dining room, kitchen and office on the ground floor. At first floor there would be a staff bedroom, a bathroom and four other bedrooms for the residents. The dining room would be accommodated within a single storey extension, which is currently being constructed at the rear of the property. While this extension does not form part of the application proposal, it is included on the proposed floor plans and the applicant has confirmed that the dining room will form part of the proposed use.

PLANNING HISTORY

There is no relevant planning history to be considered in the determination of this application.

CONSULTATION

None undertaken with this type of application.

PUBLICITY

No publicity required for this type of application.

POLICY CONTEXT

Town and County Planning (Use Classes) Order 1987

Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016.

PLANNING CONSIDERATIONS

The purpose of this application is to establish whether or not the proposed children's home would fall into the existing use of the property as a C3 dwellinghouse.

The C3 Use Class is split into three parts and is described as the use of a dwelling (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 6 residents living together as a single household where care is provided for residents; or
- c) Those living together as a single household who do not fall within C4 definition of a House of Multiple Occupation (HMO).

A single household under C3(a) is typically formed by a family (a couple whether married or not with dependants). It may also include an employer and certain domestic employees (i.e. a nurse or nanny), as well as a foster parent and foster child. C3(c) allows for groups of up to 6 people living together as a single household which do not fall in the C4 HMO definition. This could include a small religious community or a homeowner who is living with a lodger.

Class C3(b) refers to the use of a dwellinghouse by no more than 6 residents living together as a single household where care is provided. In order to form a 'household' for the purposes of Class C3(b), the persons who live together do not need to be related as family members. Article 2 of the Use Classes Order indicates that, for the purposes of the Order, 'care' means 'personal care for people in need of such care....and in class C2 also includes the personal care of children...'.

It is proposed that the property would be used as a children's home, providing residential care for up to 4 children aged between 11 and 17 years old. The children would be looked after by two/three carers working at the property on a shift basis, providing 24 hour care. The carers would be responsible for domestic chores, cleaning and preparing meals and transporting the children to and from their place of education. While they would spend a substantial amount of time at the property, the carers would not permanently reside at the property. They would occupy the fifth bedroom on rotation with other staff every two days. Therefore, the carers cannot be regarded as forming part of the household for the purposes of Class C3(b). As such, the key issue centres on whether the children are in themselves capable of living together as a single household in order for the proposed use to fall within Class C3(b).

In the High Court Case of North Devon District Council v The First Secretary of State [2003], the judge held that 'the concept of living together as a household means that, as I have put it, a proper functioning household must exist and, in the context of a case such as this, this must mean that the children and a carer must reside in the premises'. He said that children cannot on their own be regarded as forming part of the household within the scope of Class C3, as they are not capable of looking after themselves. Hence, in this case, the absence of a permanent carer resulted in there being a change of use of the property.

It would appear from the North Devon case above and an interpretation of the meaning of 'care' within the Use Classes Order, that the purpose of the carers (within Use Class C3) is largely to assist the residents in the day-to-day tasks as opposed to undertaking those tasks themselves on behalf of the residents, irrespective of whether those carers are resident at the property (with exception to children). If the carers do not permanently reside at the property they cannot be regarded as forming part of the household. Therefore, the children themselves would not be capable of forming a household together and the use would fall within Class C2.

Additional information was requested from the applicant to better understand the facts of this particular case and to determine the level of independence the residents would have to undertake household duties. This has revealed that the resident children would be

reliant on the carers to undertake normal day-to-day tasks such as cleaning and preparing meals. Indeed, children aged between 11 and 14 in particular would almost certainly be dependant on an adult for their everyday care and at this age, would not have the level of maturity to live a safe independent life. As such, without at least one adult living with them at the property, the children would not be capable of being regarded in the true sense as a household. Taking all of this into account, the proposed use would not fall within Class C3(b).

Notwithstanding whether the use falls within Class C2, rather than Class C3, consideration needs to be given to whether or not the proposal would constitute a material change of use. In this respect, it is noted that the property is currently a five bedroom detached home. There is no limit on the size of a family that could occupy a dwelling house and it is likely that a sizeable property with a reasonable size curtilage could be occupied by a relatively large family. In many respects, the proposed care home use would operate in a way that is similar to a normal family home. Four children would occupy the property as their main residence. They would be taken to and brought home from their place of education each day and while their carers would not be permanent residents, they would interact with children in a very similar manner to an adult resident, parent or guardian. The children would eat together and get ready on a daily basis to attend school or college. The applicant has also stated that the resident children would have free access to a communal living area, dining room and kitchen and that their aim is to provide a domestic environment that would very much resemble a family home. While the similarities of the two uses has been acknowledged, the carers would not live at the property and the shift changes every two days would result in more comings and goings of cars and people than what might be expected in a normal domestic household. Car parking requirements may also increase because of the shift changes. Residential use of the property by troubled and displaced children could also bring more disturbance than would be expected from most family homes. These factors lead to the proposed use of the property being materially different to a residential dwelling.

Therefore, based on the evidence submitted, it is concluded that it has not been adequately demonstrated that the proposal falls within Use Class C3.

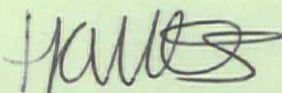
Accordingly, the following recommendation is made:

RECOMMENDATION: BE REFUSED for the following REASON:

REASON:

1. Having regard to the evidence submitted in support of the application, the use of the dwelling to accommodate children with carers within Use Class C3 of the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 is not lawful.

RECOMMENDATION ENDORSED



Head of Town Planning

DATE:

30/4/20