

DELEGATED REPORT

Application No: P/21/0423

Site Address: 9 Tyn-y-banwen Road
Treharris
CF46 5NU

Development: Certificate of lawful development to use dwelling (within C3 Use Class) as a residential care home (within Class C2)

Case Officer: Caroline Pulley

Application Expiry Date: 17th February 2022

APPLICATION SITE

The application site relates to a two-storey, end of terrace dwelling situated within the residential area of Treharris. The existing property currently accommodates three bedrooms, a bathroom, a living room, a dining room and kitchen. Access to the property is from the adopted highway (Tyn-y-Banwen Road), which also serves the surrounding residential properties and a number of garage buildings.

PROPOSED DEVELOPMENT

A Certificate of Lawful Development is sought under Section 192 of the Town and Country Planning Act to change the use of the dwelling (use class C3) to a residential care home within use class C2.

It is proposed that the property would be used to provide a home for a single child/young person between the ages of 5 to 18 years old. The child/young person would be in the guardianship of Orbis Education and Care (the applicant). They would live at the property as their principal residence and would receive 24-hour support from two care staff on a shift basis, with a manager also being present at the property at varying times. The carers would be responsible for preparing meals, however, the applicant indicates that the child/young person would be encouraged to assist. The carers and adults would eat their meals together at the dining table and the adults would socialise together. The child/young person would also attend school/college or employment.

The submitted details indicate that the internal layout of the property would largely remain the same and would continue to be characteristic of a dwellinghouse. On the ground floor, the property would have an open plan living room, a kitchen and a utility room. At first floor, it is proposed to merge the two front bedrooms into a single en-suite bedroom. The remaining bedroom at the rear of the property would be converted into an office. The day to day living facilities, including the bathroom, kitchen and living areas would be for the use of the residents and carers.

The supporting statement accompanying the application highlights that the level of care provided to the child/young person would be supervisory in nature and the property would not be a secure unit. In their statement, the agent explains that children/young people are in the care of Orbis for a variety of reasons, including fears for their physical wellbeing, learning disabilities or because of emotional or behavioural difficulties. It is stated that typically the reason for the child/young person needing care is simply because they require additional support that cannot be provided in their current setting.

PLANNING HISTORY

The recent planning history relating to the property is as follows:

P/21/0356	Certificate of lawful development to use dwelling (within C3 Use Class) as a residential care home (within Class C2) Withdrawn – 03.12.2021
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CONSULTATION

No consultation was undertaken with this type of application.

PUBLICITY

As this application is for a Certificate of Proposed Lawful Use, the local planning authority has not undertaken any neighbour consultation, nonetheless, a total of 7 representations have been received in relation to this application.

Five letters of representation/support have been submitted raising the following points to the proposed use:

- There is a need for additional housing facilities for children and adults with learning disabilities, mental health and/or complex issues and these individuals should be welcomed into the community;
- People have the right to live within our society without prejudice.

Two letters of objection have also been received raising the following concerns:

- The use of an existing residential care home at no. 6 Treharne Terrace, has, and will continue to generate, unacceptable levels of noise and disturbance to local residents.
- Concern that the approval of this application will exacerbate existing levels of disturbance to local residents.
- Concern that there is an over-concentration of properties with similar usage in the localised area.

- Proposal would exacerbate existing 'on-street' parking problems in the area and the ability for refuse vehicles to access the street.
- Concern that if CCTV cameras are installed at the property, this could invade the privacy of neighbouring properties;
- The health of surrounding residents, both adults and children, will be further adversely affected as a result of the approval of this application.
- The use will cause anti-social behaviour;
- Visits from other agencies, i.e. Police will increase and exacerbate an already unacceptable disturbance to local residents.
- Safeguarding concerns are raised with reference made to the nature of the existing care home at 6 Treharne Terrace.

Several observations have also been made by the local ward Councillor Gareth Richards.

Whilst the comments raised to this application are noted, this application must be determined on the evidence submitted.

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 which 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/young person 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/young person'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.

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).

A 'residential care home' use would fall within Class C2 of the Schedule to the Order which incorporates 'Residential Institutions' for:

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

'Care' is defined within Article 2 of the Order as 'personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in Class C2 it also includes the personal care of children, medical care and treatment'.

In the case of this proposal, it is not contented by the applicant that the intended use falls within Use Class C3. Indeed it is recognised that the intended use falls within Class C2. What is contented is that despite the change in use class, the proposed use, does not constitute a 'material' change of use and, therefore, planning permission is not required. In considering this matter, the case law provided by the applicant, which comprises the judgement in *North Devon Council v The First Secretary of State* (2003), is of relevance. In this decision, it was noted that notwithstanding whether a change of use occurred from a C3 dwelling use to a C2 residential institution use, consideration needed to be given to whether this change of use was 'material'. The Judge noted that *'Although it may sound*

somewhat illogical, nonetheless planning permission may not be required if the change of use was not a material change of use'. In this respect, he noted that it will only be material, if, as a matter of fact and degree in the circumstances of an individual case, the change of use was material. Therefore, whilst there is no contention that the proposal would result in a change of use, it is necessary to determine whether the proposed residential 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'. Whether a change has occurred is a matter of fact and degree and depends upon the particular circumstances in 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 property. There is no limit on the size of a 'family' that can occupy a dwellinghouse within Class C3(a) and it is likely that a property of this size could be occupied by a family comprising two adults and two children. The property may also be occupied, under Class C3(b) 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.

It is fully accepted that 9 Tyn-y-Banwen Road would be a place of residence and a place of work. However, 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 child/young person with their sole and main residence, where they would have use of the shared living room, utility room and kitchen facilities. The child/young person would have meals prepared for him/her or they could assist or make their own food and drink. The child/young person would also attend school/college or employment each day. Although his/her carers would not be resident, while in attendance, they would interact with the property and the child/young person in a way that is very similar to a parent or a guardian. The proposal also seeks to foster a lifestyle that would be the same as if the child/young person 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 the child/young person and the carers 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, as suggested, 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 long term home environment for the child/young person until he/she reach adulthood or can be integrated back with his or her family or foster parents.

The distinctive characteristic of a dwellinghouse is its ability to afford 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 care home. The proposed interior would include the provision of an office and an en-suite bathroom. However, these facilities are not uncommon within any other dwellinghouse and are not in themselves obvious indicators that the proposed use would be materially different. The home would provide care for a child/young person 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 child/young person 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, a child/young person might display rather extreme behaviours (i.e. shouting, screaming etc), particularly as they may have recently been displaced from their family home or have behavioural issues. However, these residents would not have any medical or clinical condition requiring secured facilities. Such behaviours are unlikely to define the prevailing character of the child/young persons 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 case, the planning unit comprises a three bed property with a private rear amenity area. There are neighbouring residential properties to the east, west and north of the site. Any noise taking place inside the property from the occupants would likely be well absorbed within the walls of the building and would not significantly impact the surroundings or be of any detriment to local amenity. In this context, predicted externalities and amenity impacts are not obvious indicators that there would be a 'material change'. It is also acknowledged that there is another care home within the immediate vicinity of no. 9 Tyn-y-Banwen Road. Nevertheless, the majority of the properties in this locality appear to be privately owned and there is no indication that the proposal would lead to a significant increase or high proportion of care homes in the vicinity that may significantly change the character of the street or the surrounding area.

The house would have a maximum of 1 child/young person, and although possible from the age of 17, are unlikely to 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 child/young person to and from school/college or their place of work, 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, with on-street parking taking place along the highway. 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'.

To conclude, whilst the proposed use falls within a different use class (C2) to the lawful (C3) use of the land and buildings, on the balance of probabilities and for the afore mentioned reasons, the proposed use would not 'materially' change the use of the property. Therefore, as a matter of fact and degree of this case, planning permission would not be required. Accordingly, it is recommended that a Lawful Development Certificate be granted for the use of the property as a 'residential care home' for a single child/young person.

The duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act") has been taken into consideration when determining this application. In reaching the following recommendation, the ways of working set out at section 5 of the WBFG Act have been considered and thus the proposal is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.

Accordingly the following recommendation is made:

RECOMMENDATION: BE APPROVED

REASON:

1. The proposed residential 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:

11/2/22