

DELEGATED REPORT

Application No: P/25/0078

Site Address: 42 Aberfan Road
Aberfan
Merthyr Tydfil
CF48 4QL

Development: Proposed use of the property as a children's home

Case Officer: Rebecca Owens

Application Expiry Date: 19th May 2025

APPLICATION SITE

The application relates to a semi-detached dwelling located within the settlement boundary. It is in an area which is mainly residential in its makeup but with some retail and commercial uses also present within the vicinity. The property fronts onto Aberfan Road and is bound on either side by other dwellings and by a lane to the rear. The property does not benefit from any off street parking.

PROPOSED DEVELOPMENT

A Lawful development certificate is sought to use the existing dwelling, which falls within the C3 use class, as a children's home. The applicant has indicated that they consider this to constitute lawful development as the use as a children's care home would not constitute a change of use from the C3 use class.

The proposed use would not require any external alterations, and the only internal work would be in relation to the introduction of fire safety measures. The property provides a living room/dining room, kitchen and bathroom at ground floor with three bedroom on the first floor. This layout would not be altered but one of the bedrooms would be used as a small office used in association with the running of the home and its proposed use. The supporting statement indicates that the bedrooms would be lockable for security purposes but staff would hold keys and be able to enter the rooms when required.

The care home would accommodate a single child and two carers. The carers would work a 48 hour shift pattern supporting the child during the day and sleeping at the property a night. There would be a change over of staff every two days with the shift leader providing an additional 15 minute handover to the relieving staff at the end of their shift.

There is no on site parking benefiting the property so staff parking would need to be accommodated on the adjacent highway. This would be limited to two cars.

The child housed at the property would not have any additional care or special needs. However, due to their backgrounds they may have some additional emotional needs but not to the extent that would require third party interventions. The child would also be placed at the home on a long term basis (likely to be in excess of 18 months).

The typical routine of the care home would include meals taken together and normal tasks around the property. The child would attend the local school and be transported to school either by carer or by public school transport, depending on age of the child and their ability to travel to school unaccompanied by a carer. They may also participate in after school activities and would have typical hobbies, parties or other standard childhood activities. Similarly, the child would require routine appointments (for example, dentist, doctors etc.) which would take place outside of the property.

PLANNING HISTORY

There is no recent planning history which needs to be considered when determining this application.

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 (RLDP) 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 RLDP 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.

CONSULTATION

No consultation exercise was considered necessary given this is an application for a lawful development certificate.

PUBLICITY

No publicity exercise was undertaken given the nature of the application. However, the details of the application were published on the Local Planning Authority's weekly list and subsequently six letters of objection were received. Notwithstanding this, this is an application for a lawful development certificate and as such these do not form part of the consideration of this application.

PLANNING CONSIDERATION

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 property would be used as a children's home, providing residential care for a single child aged under 18. The child would be looked after by two 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 and other appointments/activities. While they would spend a substantial amount of time at the property, the carers would not permanently reside at the property. Therefore, the carers cannot be regarded as forming

part of the household. 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.

The *North Devon District Council v First Secretary of State* [2003] 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). It was established in this 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 with child 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. Furthermore, 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 therefore 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.

Having regard to the above it is clear that the proposed use would fall within the C2 use class as it does not satisfy any of the definitions of a C3 use.

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 is a 3 bedroom semi-detached 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). The property may also be occupied, under Class C3(a) and C3(c), by up to six 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 many respects, the property would operate in a way that is very similar to a typical family home. The property would provide a single child with their sole and main residence on a long term basis of at least 18 months. Their needs would be met by two carers who would also undertake the domestic tasks and running of the property while also transporting the child, where necessary, to and from school, appointments and extra curricular activities. Although the 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 and would sleep at the property during their 48 hours shift. The proposal seeks to foster a lifestyle that would be the same as the children living in a typical 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 resident and staff would in all likelihood be very similar to that of a family unit. In addition, the use a bedroom as an office by the carers would not be dissimilar in character or impact to a typical occupier having a home office or study space. The applicant's evidence is that the proposed use is to provide a stable home environment for the occupant as their main and sole residence until they reach adulthood and 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 and the proposed interior would remain the same.

It is recognised that the home would provide care for children who cannot live with their biological families and that due to their backgrounds these children may have additional emotional needs. However, this would not be to a level that would require specialist care to be provided within the property and third part interventions would not be required. The children housed would not require any additional or special needs. It is also acknowledged that these uses can sometimes be associated (rightly or wrongly) with anti social behaviour and noise and disturbance but this is not inherent of the use and such issues could arise from occupiers in its current use as a dwelling. In addition, the activities within the property itself would remain domestic in nature and thus the use would not generate a level of noise and disturbance dissimilar to that of a dwelling and thus would not represent a 'material change' in terms of amenity impacts.

In this case, the planning unit comprises a modest property with ample garden space and the neighbouring residential properties surrounding the property are set back from the garden boundaries. Any noise from the occupants would likely be well absorbed across the planning unit and would not significantly impact the surroundings or be of any detriment to local amenity.

It is recognised the proposed use would have associated traffic movements and parking requirements. While it is unlikely that the occupier would drive due to their age, the staff, who provide care on a shift basis, would come and go over a 48 hour period. There would be trips taking the children to and from school, appointments and extracurricular activities, as well as potential visitors to the property. 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 the adult 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. It is acknowledged that the property does not benefit from any off street parking which would therefore need to be met along the adjacent highways. However, it is not considered that the parking demand nor impact on the highway would be notably different from the existing use as a three bedroom property. As such the proposed use would not result in a material impact on its surroundings and cannot be obviously identified as an indication of a 'material change'.

CONCLUSION

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 child with adult carers living together and using the property in a way similar to that of a family home. 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: BE APPROVED for the following **REASON:**

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



Director of Neighbourhood Services

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DATE: 15.05.2025