



## **PLANNING & DEVELOPMENT COMMITTEE**

**20 MAY 2021**

### **REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT**

#### **PURPOSE OF THE REPORT**

Members are asked to determine the planning application outlined below:

**APPLICATION NO:** 21/0038/09 (CA)  
**APPLICANT:** Phoenix Childcare Ltd  
**DEVELOPMENT:** Certificate of Lawful Use (Proposed) for residential children's home within Use Class C3.  
**LOCATION:** 16 LLANERCH GOED, LLANTWIT FARDRE, PONTYPRIDD, CF38 2TB  
**DATE REGISTERED:** 20/01/2021  
**ELECTORAL DIVISION:** Church Village

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**RECOMMENDATION:** That a Lawful Development (Proposed Use) Certificate be issued.

**REASONS:** The proposal to utilise the existing residential dwelling for the provision of residential accommodation and care for up to 2 no. children between the ages of 8 and 18, along with up to 3 no. support staff 24 hours a day, operating in shifts is considered to result in a prima facie change of use, Class C3 to Class C2.

Based on the evidence and supporting information submitted by the applicant however, as a matter of fact and degree, the change of use would not be considered material. Consequently, the proposed use is lawful for planning purposes and planning permission is not required. Therefore, a Certificate of Lawfulness can be issued.

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#### **APPLICATION DETAILS**

This is an application for a Certificate of Lawfulness for a Proposed Use under Section 192 of the 1990 Act ('CLOPUD') that seeks to establish whether the proposed use of a residential dwelling, 16 Llanerch Goed, Llantwit Fardre, Pontypridd, as a residential children's home (as detailed in the description and submitted documents), would be lawful for planning purposes. In effect the application seeks to establish whether the proposal would result in a material change of use of the property or if it is capable of being carried out without the need for planning permission.

The proposal is supported by a statement which identifies the existing residential dwelling would be used for the provision of residential accommodation and care for up

to two children between the ages of eight and eighteen (inclusive). There would be six members of staff employed at the property, with two or three on duty at any one time during the day and two on duty at any one time during the night. The home would be supervised by staff, who would operate in shifts, for 24 hours a day. It is not envisaged there would be part time employees as the ethos of the care provider is to provide the children with a stable core team. The duration of stay of the children would vary, ranging from a few months to several years and the placements would aim to reintegrate the child back to their family or to a foster placement. For older children not planning to return home, help would be provided to prepare them for independent lives as adults. The use of the property would be managed Phoenix Care Ltd who would provide help and support for the children which would be referred to the home by the Local Authority.

The evidence submitted details the children and staff would live as a single household with the house operating as a typical domestic home in terms of daily living, cleaning, cooking, shopping etc. The children would be encouraged to attend local schools during the week and the support staff would assist the children with recreational activities and enable them to access local services within the community.

No internal or external alterations are proposed at the property as part of this application.

## **SITE APPRAISAL**

The application site consists of a detached dwelling located on a substantial plot within a residential area of Llantwit Fardre. The dwelling is of brick construction under a tiled roof. The site is set back from the road frontage and benefits from a detached garage to the front and a garden to the rear. The surrounding area is characterised by detached dwellings of similar style and design.

## **PLANNING HISTORY**

None.

## **PUBLICITY**

The application seeks the determination of whether the proposed use is lawful without the need for planning permission. As such, no consultation with nearby properties is required to be, or has been, undertaken.

Notwithstanding the above, one letter of support and twenty letters of objection have been received from local residents. In addition, the Local Member has objected to the proposal.

## **CONSULTATION**

Legal and Democratic Services – The Council's Solicitor commented that on the basis of the evidence submitted, the proposal would not constitute a material change of use which would require planning permission.

Children's Services – No objections.

## **POLICY CONTEXT**

The determination of this application does not include any consideration of the planning merits of the case and there are therefore no Local Development Plan policies need to be taken into account.

### National Guidance:

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.

## **REASONS FOR REACHING THE RECOMMENDATION**

This is an application for a Certificate of Lawfulness for a Proposed Use under Section 192 of the 1990 Act ('CLOPUD') that seeks to establish whether the proposed use of a residential dwelling, 16 Llanerch Goed, Llantwit Fardre, Pontypridd, as a residential children's home (as detailed in the description and submitted documents), would be lawful for planning purposes. In effect the application seeks to establish whether the proposal would result in a material change of use of the property or if it is capable of being carried out without the need for planning permission. As such, the application should be determined on the facts submitted and the law rather than on planning policy or the planning merits of the case.

16 Llanerch Goed is a detached dwelling house located within a residential area of Llantwit Fardre. Phoenix Care Ltd intend to use the property for the provision of residential accommodation and care for up to two children between the ages of eight and eighteen (inclusive), with up to three support staff at the property at any one time during the day and up to two support staff at the property at any one time during the night. The staff would work in shift patterns to allow for care to be provided 24 hours a day. The applicant contends that the property would be the children's home and the support staff (whilst not permanently resident at the property) would care for the children as per a domestic home. As such, it is submitted that the proposed use would not result in a material change of use of the property and that subsequently planning permission would not be required.

The supporting information details that the property would not alter externally in any way, continuing to appear as it does currently. Additionally, the applicant has stated that the property would operate as per a normal domestic home in terms of daily living, cleaning, cooking, shopping, accessing the community, sport and leisure etc. In addition, the children would contribute to household type tasks such as cooking and

clearing. Furthermore, the children would be encouraged to attend education during the week.

A children's care home use falls within Use Class C2 (residential institutions) rather than Use Class C3 (dwelling house). The children residing at the property would need to be looked after as they could not run a house or be expected to deal with all the matters that go in to running a home without the full time care of an adult and further, they would need adult supervision to ensure the household operates as it should. Additionally, in the context of this case, whilst providing care on a continuous 24 hour basis, the care would not necessarily be provided by the same person as the support staff would not reside at the property permanently, operating in shifts. Consequently there is no doubt in this instance that the proposed use would fall within Class C2. As such, in this case, the main question for determination is whether the proposed use of the property as a care home for two children would be a material change of use from a residential dwelling.

Whilst the proposed use clearly falls within Class C2, the applicant, through the supporting information, contends that the way in which the residents would occupy the property would not result in a material change of use. With regard to this point and the consideration of this application, the following Court of Appeal decision is relevant: 'North Devon District Council v First Secretary of State (2003)'.

The case relates to a semi-detached 3 bedroom dwelling house in a residential area that was being used by a private company to provide residential care for two children aged between ten and seventeen. Outside the house looked like any other house in the street and internally there was a small office at ground floor level. The children slept in individual bedrooms and there were the typical kitchen and bathroom facilities. Two non-resident support staff were on duty at all times with the house under the supervision of a team of adult carers operating in shifts. The company applied for a Certificate of Lawful Use to North Devon District Council and the application was refused. The company then appealed the Council's decision and the Inspector determined the appeal in the company's favour stating whilst the use fell within Class C2, there was no material change of use from its Class C3 use as a dwelling house. The Council appealed against that decision and the question for determination was whether the situation in this case fell within Class C2 or Class C3(b), and if it fell within Class C2, was there was a material change of use from its Class C3 use as a dwelling house. In his judgement, Mr Justice Collins concluded that:

*'It seems to me 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, that must mean that the children and a carer must reside in the premises. Otherwise, as it seems to me, it clearly falls within Class C2. It is apparent that the size of the institution is irrelevant for the purposes of C2. If it falls within that definition it is not to be regarded as a dwelling house, then whether there are 1, 2, 10 or 15 children makes no difference to the Class. It does, however, clearly make a difference in planning terms when one considers the second point, which is whether there was, in the context of this case, a material change of use.'*

*Although it may sound somewhat illogical, it is accepted by both Mr Fletcher and Mr Gibbon that, notwithstanding that this may fall within Class C2 rather than Class C3,*

*nonetheless planning permission may not be required if the change of use was not a material change of use. I am bound to say that if an Inspector is satisfied that the use falls within C2 rather than C3, then it would appear that there is 'prima facie' a change of use. Nonetheless, the Inspector is entitled, as indeed are the Local Planning Authority, to consider whether that change of use was material. 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.'*

*The Inspector understandably deals with this very briefly. In paragraph 20 he states:*

*"In the alternative, the Council state that the change of use is a significant factor which when weighed with other changes to the character of the use of the premises amounts to a material change of use. Since I have found that the use is as a dwelling house, the alternative does not fall to be considered. There is nevertheless no indication from my consideration of all the representations and from my detailed inspection of the site and the surroundings, that there has been a change of use from a dwelling house which could, as a matter of fact and degree, be considered as being a material one."*

In light of the above and with respect to this case, given the evidence and supporting information submitted by the applicant, the future residents of 16 Llanerch Goed are considered to have a common need for accommodation and support which would be provided for by Pheonix Care Ltd. It is therefore considered this common need and purpose together with the sharing of facilities and how the residence would operate would result in the residents broadly forming a single household and subsequently the character of the property would not alter from its current use. Furthermore, care would only be provided to a maximum of two children at any one time and they would be encouraged to attend school and carry out their lives as they would in a typical domestic setting. In addition, the public would not be permitted to visit the site and the applicant has stated that the site has adequate off-street parking to accommodate the vehicles required for the proposed use.

Consequently, having considered the evidence submitted, whilst there is no doubt that the proposed use would fall within Class C2, as a matter of fact and degree, the change of use would not be considered material. This view is reiterated by the Council's solicitor who commented that having assessed the information submitted and the nature of the proposed use described, the Council could issue a Certificate of Lawfulness on the basis that the proposal does not constitute a material change of use. Consequently, planning permission is not required.

## **Conclusion**

The proposal to utilise the existing residential dwelling for the provision of residential accommodation and care for up to two children between the ages of eight and eighteen, along with 24 hour care and supervision, provided by staff operating in shifts, is considered to result in a prima facie change of use, Class C3 to Class C2. However, based on the evidence and supporting information submitted by the applicant, as a matter of fact and degree, the change of use would not be considered material. Consequently, it is considered that as the development is lawful for planning purposes and planning permission is not required. As such a Certificate of Lawfulness can be issued for this proposal.

**RECOMMENDATION: That a Lawful Development (Proposed Use) Certificate be issued.**