

PLANNING & DEVELOPMENT COMMITTEE

08 SEPTEMBER 2022

REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT

PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

APPLICATION NO: 22/0743/09 (EL)
APPLICANT: Values in Care Limited
DEVELOPMENT: Application for a lawful development certificate for a proposed use Class C3(b) care home (for up to six residents living as a single household with care provided)
LOCATION: WINDY RIDGE, PLEASANT VIEW, YNYS-Y-BWL, PONTYPRIDD, CF37 3PF
DATE REGISTERED: 28/06/2022
ELECTORAL DIVISION: Ynysybwl

RECOMMENDATION: Approve certificate

Reasons: On the basis of the information and evidence provided, it is considered that the use proposed would be lawful under Class C3(b) of the Use Classes Order.

REASON APPLICATION REPORTED TO COMMITTEE

Three or more letters of objection have been received.

APPLICATION DETAILS

A certificate of lawfulness is sought for a proposed use at Windy Ridge, Pleasant View, Ynys-Y-Bwl, Pontypridd, CF37 3PF.

The application seeks clarification that the building in question may be utilised for an activity which falls within Class C3 of the Use Classes Order. In this case, the use in question is the occupation and operation of the property as a Class C3(b) care home for up to six residents living as a single household with care provided.

A statement, which accompanies the application confirms that the applicants, 'Values in Care Limited' are an established company who provide; *"high quality, flexible and responsive residential care and support for people with learning disabilities, autism, acquired brain injuries, mental health support needs and other complex care needs to live life to the full."* It is stated that the intention (at the application property) is to run

a service for six adults with learning disabilities and autism. It is commented that the anticipated form of service will be focused on providing a long-term and hopefully permanent home for adults, with high-end learning difficulties or other related conditions (often on the autistic spectrum), for whom a closely structured form of social care in a community setting has been proven to allow them the best opportunity to lead a fulfilling and “normal” a life as possible.

It is commented that typically this form of support is best delivered within a small household-type setting, which will enable support to be provided by a very regular staff team who become very familiar with the individual’s needs and abilities. It is also commented that the expectation is that by placing together residents with a reasonable degree of compatibility, that they will become a cohesive household entity. Residents will also be encouraged to assist with collective activities such as shopping and preparing for communal needs such as cleaning of their own and communal areas, in addition to taking meals together and participating in social activities together where possible. It is also commented that, where possible, residents may participate in more mainstream education and developmental activities and some may even have a part-time job which they will go out to each day before returning to their home in the usual manner.

In summary the agent comments that;

“One of the over-riding objectives of this form of service is to provide residents with greater independence and ability to navigate society and function with a somewhat greater degree of autonomy. It would be fair to equate this to the typical process many families experience in bringing up children in a household setting.”

The Planning Statement sets out that such a service, for a maximum of six persons, care staff would work on a rota/shift basis as follows:

- Manager – Monday – Friday 8am – 5pm
- Care staff – Monday – Sunday shifts between 8am – 8pm, with 7 care staff on day shift and 2 waking night duty staff

In order to facilitate the proposed use, no external changes are proposed. Internally, there may be some minor reconfiguration of the existing layout, but any works would not be subject to planning control.

The application is accompanied by the following information:

1. Site location plan.
2. A cover letter / planning statement describing the use/ activity proposed.
3. A copy of the opinion of Mr Vincent Fraser QC in respect of Saer Coed, Load of Hay Road, Crumlin (February 2020) and Addendum (March 2020).
4. The Planning Committee Report in respect of Saer Coed, Load of Hay Road, Crumlin.
5. The Planning Officer’s Report in respect of Cyncoed Road, Cardiff.

6. Hertfordshire County Council v. The Secretary of State for Communities and Local Government and Metal Waste Recycling Ltd 2012.

SITE APPRAISAL

The application property, Windy Ridge, is a sizeable, detached property, occupying a substantial plot of approximately 3000sqm, set back from the road by an extensive frontage/driveway which provides a large area of off-street parking in addition to a double garage. The property has, in addition to sizeable family living accommodation which includes 5 reception rooms, (up to) 10 bedrooms and 5 bathrooms.

The property lies approximately 0.7km north of the main settlement of Ynysybwl, in a small group of residential dwellings, which are accessed off Pleasant View. Neighbouring dwellings vary in style but are predominantly detached dwellings set without large plots. The closest property Derwen Fawr is located approximately 50 metres south of the site.

PLANNING HISTORY

There is no recent planning history recorded at the site.

PUBLICITY

The application was advertised by direct neighbour notification, four letters of representation have been received (from three households). These are summarised as follows:

- One letter comments that they are part owner of the land that sits next door to the property, it is noted that the land is used daily by their family to ride attend to their horses. It is noted that there are teenagers and young children that are back and forth the stables on a daily basis alone.
- It is also commented that the area is used by farm machinery regularly.
- It is commented that the road (which serves the property) is known spot for speeding and is already an extremely busy and dangerous road. Concern is expressed that the proposed use would increase traffic movements and the road would become busier still, presenting a risk for road users and the children riding their horses.
- Concerns are raised with regard to privacy impacts which may result given the property directly overlooks Derwen Fawr (especially in winter time when the trees are bare).
- Concerns are expressed with regard to the potential for the use to generate noise at unsociable hours.
- It is commented that it is a quiet residential area not a commercial area.

CONSULTATION

County Borough Legal & Democratic Services were consulted. Having considered the supporting information, they are of the opinion that the Council can be satisfied that the proposed use would be lawful and so a certificate can be issued.

POLICY CONTEXT

The principal of the development is not tested, as this is an application for a Certificate of Lawfulness for a proposed use. Therefore, Development Plan policy is not relevant to this kind of application, which are determined on matters of fact and law.

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 change of use of the property from a dwelling to a care home (specifically for up to six residents, living as a single household, with care provided) would be lawful for planning purposes. In effect, the application seeks to establish whether or not the proposal is 'development' and is therefore capable of being carried out without the need for planning permission.

Use Class

It is important to stress that this is not an application for planning permission for the change of use of the dwelling. Since the application is for a certificate of lawfulness, the relative planning merits of this application are not tested. The Certificate is sought on the grounds that the established use of the application property as a residential dwelling is within Class C3 and, therefore, the proposed use detailed in the application, as a care home for up to six residents, living as a single household, with care provided also falls within Class C3(b) and is not materially different for planning purposes.

It is first necessary to establish the existing use of the property. In this case, it is considered that the existing property appears as a conventional residential dwelling, located in a residential area of Ynysybwll. The property has recently been marketed for sale and from both the estate agents' particulars and photographs of the property it is clear that the bungalow has a conventional layout, albeit that it is a particularly

large property, with kitchen, dining and living spaces, in addition to (up to) 10 no. bedrooms and 5 no. bathrooms. There are also gardens to the front and rear, along with areas of off-street car parking. As such, it is reasonable to conclude that the existing property would fall within Class C3(a) of the use Classes Order.

As noted above, Welsh Office Circular 24/97: Enforcing Planning Control, places the burden of proof for demonstrating that a use is lawful firmly upon the applicant. Therefore, in support of their submission, the current application is accompanied by a range of supporting information, including a Planning Statement describing the use/activity proposed in detail. In their Planning Statement the agent confirms that The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Class C3 as:

Class C3 Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by –

A) A single person or by people living together as a family;

B) Not more than 6 residents living together as a single household (including a household where care is provided for residents); or

C) Not more than six residents living together where no care is provided to residents (other than a use within Class C4).”

The supporting statement contends that the application site currently comprises a Class C3(a) use. It also clarifies that Section 55(2)(f) of The Town and Country Planning Act 1990 states that any change in the primary use of land or buildings, where the before and after use falls within the same use class does not amount to development.

As noted above, it is considered reasonable to conclude that the existing dwelling falls within Class C3(a). The agent contends that the proposed use would also be within Class C3, albeit C3(b). This assertion is based on the fact that there would be not more than six residents living at the property and that those residents would occupy the property as a single household.

Single household concept

In support of the application a range of information has been provided, including a copy of the opinion of Mr Vincent Fraser QC prepared for the same applicant (Values in Care) in respect of a comparable use at Saer Coed, Hay Road, Crumlin (dated February 2020) and Addendum (dated March 2020).

The opinion observes that the common thread running through the definition of a Class C3 use is that it involves use as a dwellinghouse by a single household.

It is also commented that ‘this is a point that was made in Circular 13/87 which provided guidance on the Use Classes Order. The circular explained that amendments made to the Use Classes Order provided that “*development is not involved when a*

dwelling house becomes used as a small C3 community care home, provided that all the residents live together as a single household and that they number no more than six including resident staff". The circular further explained that the –

“key element in the use of a dwelling house for other than family purposes is the concept of the single household. In the case of small residential care homes or nursing homes, staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions class, regardless of the size of the home. The single household concept will provide more certainty over the planning position of small group homes which play a major role in the government’s community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community”

The opinion also highlights that there is nothing in Class C3 or within the definition of ‘care’ itself, which limits the amount or level of care which can be provided within Class C3(b).

As such, the key question is whether the residents would be living together as a single household. It is considered, based on the information provided with respect to the proposed use, that the residents would be living together as a single household. The house would be laid out in the same way as a conventional dwelling, with shared communal living, dining and kitchen areas and residents would be supported by their allocated care staff to assist in the completion of domestic tasks, tailored to their abilities, such as cleaning of communal areas and cooking for one another.

Resident numbers

Following on from the above matter, the second key consideration relates to the number of residents living at the property. As set out above, there is nothing in Class C3 or within the definition of ‘care’ itself, which limits the amount or level of care which can be provided within Class C3(b), or indeed the number of staff who can provide that care.

However, on similar cases, the question has been raised of whether staff, who are required to sleep overnight at such properties should be regarded as residents and as such, considered in the total number of ‘residents’ of the property.

The opinion in the Addendum (dated March 2020) confirms that *“the ordinary meaning of the word resident is somebody who is living somewhere they would regard as their “home”, as can be seen in the various dictionary entries: for example, somebody who lives somewhere permanently or on a long-term basis or a person who lives or has their home in a place.”*

The opinion concludes that *“a member of staff who may sleep from time to time in a room when on duty is not a resident in any normal meaning of the word and is not to be considered to be a resident for the purposes of the use class....Whilst the member*

of staff may take the opportunity to sleep if there is no work to be done, the member of staff is in fact at his/her place of work and can only sleep if there is no work to be done. The reason why the member of staff is at the Property is to be at work."

As such, it is clear from the Use Classes Order and the circular that it is only persons who are resident who count towards the limit of 6 persons.

In the case of the current submission, there will be no more than six residents living together as a single household. Whilst it is accepted that care will be provided for those residents by care staff on site, none of the staff would be permanent residents, but rather would provide support on a rota/shift system.

As such, on the basis of the information provided, it is reasonable to conclude that the property would be occupied as a single household of no more than six residents, with any care being provided by non-residents staff and as such the use would fall within Class C3(b) of the Use Classes Order.

Other matters

As outlined in the publicity section of the report, three letters of representation (from the occupiers of two neighbouring properties) have been received in relation to the application. The letters, cover a number of issues, including the potential impacts of the use upon matters of highway safety, privacy and amenity. Whilst the points raised are acknowledged, Members are reminded that the current submission is an application for a lawful use certificate and not an application for planning permission. As the submission is not an application for planning permission, the relative merits of the proposed use are not matters for consideration. The only question to answer is whether the proposed use is lawful in planning terms. As such, matters relating to issues such as highway safety, amenity and privacy may not be taken into account in the assessment of the current submission.

Conclusion

To conclude the application seeks clarification that the building in question may be utilised for an activity which falls within Class C3 of the Use Classes Order. In this case, the use in question is the occupation and operation of the property as a Class C3(b) care home for up to six residents living as a single household with care provided.

The application is accompanied by a range of supporting information, which has also been referred to the Council's Legal Services Section for consideration. Having assessed the information they have concluded that they are of the opinion that, on the basis of the information available and evidence presented, the Council can be satisfied, that the proposed use of the dwelling for the supported living of six adults as one household would be lawful under Class C3(b) and so a certificate can be issued.

Consequently, it is considered that the change of use would be within the same use class (C3) and would not fall within the definition of 'development' as defined in Section 55 (1) of the Town and Country Planning Act 1990. Consequently, planning permission is not required for the proposed use and a Lawful Use Certificate can be issued on this basis.

RECOMMENDATION: Grant Lawful Development Certificate for a proposed use – use within class C3(b) Care Home (for up to six residents living as a single household with care provided).