

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL
MUNICIPAL YEAR 2022-2023:**

**PLANNING AND
DEVELOPMENT COMMITTEE
23rd NOVEMBER 2023
REPORT OF: DIRECTOR
PROSPERITY AND
DEVELOPMENT**

Agenda Item No.

APPLICATION NO:23/0712/10 – Proposed change the use of the property into a Children's Residential Home, 142 Kenry Street, Tonypany, CF40 1DD

1. PURPOSE OF THE REPORT

Members are asked to consider the determination of the above planning application.

2. RECOMMENDATION

That Members consider the report in respect of the application and determine the application having regard to the advice given.

3. BACKGROUND

This application was reported to 19th October 2023 Planning and Development Committee meeting with an officer recommendation of approval. A copy of the original report is attached as Appendix A. At the meeting Members were minded to refuse the application against officer recommendation. Members considered that the application property and location of the development was inappropriate with a lack of parking provision and lacked outdoor amenity space for future occupiers. Consequently, it was resolved to defer determination of the application for a further report to highlight the potential strengths and weaknesses of taking a decision contrary to officer recommendation.

4. PLANNING ASSESSMENT

The officer considerations regarding the proposed development are outlined in the original report, however, a brief summary is provided below:

The application seeks consent for the conversion of an existing residential dwelling to a children's residential care home at 142 Kenry Street, Tonypany.

The site is situated within the settlement boundary limits of Tonypany, in a predominantly residential area. The application site has good access to key services and facilities, being located within walking distance of both bus routes and a train station and is within walking distance of other facilities and local amenities. The application site is therefore considered to be in a sustainable location and the principle of providing a children's care home at this location is considered acceptable.

No external alterations are proposed, and it is not considered that the proposed development would adversely impact upon the privacy of neighbouring occupiers or result in harmful levels of noise and disturbance.

The application site is also considered to be of a sufficient scale, with reasonable levels of outlook provided and an area of outdoor amenity space provided to the rear. Consequently, it is considered that the development proposal would provide adequate space for future occupiers living needs both inside and out.

Finally, the Transportation Section considered that, in line with the Council's Access, Circulation and Parking Requirements Supplementary Planning Guidance (SPG), the increase in parking demand at the site would be minimal and given the sustainable location of the site, adequate parking provision would be provided.

Notwithstanding the above, Members were concerned with a lack of parking provision at the application site and considered that the children's home would represent a commercial operation with a lot of staff required. In this respect it is acknowledged that the property is located on a busy, narrow residential street where a high level of on-street parking occurs. The development could therefore be considered unacceptable in respect of a lack of adequate parking provision which would generate further demand for on street parking in the vicinity of the site and could therefore potentially impact upon highway safety, the free flow of traffic and the amenity of neighbouring occupiers.

With regard amenity space for future occupiers, Members considered that the application site lacked sufficient outdoor amenity space for the proposed use as a children's residential home. Policy AW5 of the Local Development Plan (LDP) sets out that all proposals must contribute towards creating quality places and, while some amenity space would be provided, it could be considered too small for the small number of residents proposed and therefore unacceptable in terms of the children's general living standards/needs. The application could therefore be considered unacceptable in these terms.

Finally, Members considered that the general location of the site was inappropriate for a children's home. However, it should be noted that the area is predominantly residential in nature, which, as outlined in the original report, was considered acceptable by officers. Furthermore, all social care homes in Wales must comply with the Regulations and Inspection of Social Care Act (Wales) RISCA and must comply with these regulations to be registered with Care Inspectorate Wales (CIW) to provide residential care provision. Care Inspectorate Wales would also therefore be the ultimate arbiter of whether this is an acceptable location to register a children's home. Nevertheless, as set out within the original report, recent discussions with CIW did highlight the potential for there to be a policy vacuum where some obvious and legitimate concerns brought forward by the Police or the Council's care professionals may, seemingly, fall through a gap (are not necessarily material planning considerations or covered by CIW). As such Committee is advised that, where legitimate land-use considerations exist, and are not covered by another regulatory body, it is open to the decision maker to decide what weight should be afforded to any material planning consideration when determining an application.

Notwithstanding the above, should Members be minded to refuse permission, then the following reasons are considered reflective of the concerns raised.

5. RECOMMENDATION

If, having considered the above advice, Members remain of a mind to refuse planning permission, it is suggested that the following reasons for refusal would be appropriate:

1. The proposed change of use to a children's residential care home is considered to be an inappropriate conversion of the property that would lack sufficient outdoor amenity space and internal facilities to serve the proposed use to the detriment of future occupiers of the property. As such the proposal is contrary to Policy AW5 of the Rhondda Cynon Taf Local Development Plan.
2. The proposal would lack adequate car parking provision for the proposed use resulting in the creation of a high demand for on-street parking in the vicinity of the site, to the detriment of highway safety, the free flow of traffic and the amenity of neighbouring occupiers contrary to Policy AW5 of the Rhondda Cynon Taf Local Development Plan.

PLANNING & DEVELOPMENT COMMITTEE

19 October 2023

REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT

PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

APPLICATION NO: 23/0712/10 (JE)
APPLICANT: Lolly Support Services
DEVELOPMENT: Proposed change the use of the property into a Children's Residential Home.
LOCATION: 142 KENRY STREET, TONYPANDY, CF40 1DD
DATE REGISTERED: 07/07/2023
ELECTORAL DIVISION: Tonypandy

RECOMMENDATION: APPROVE

REASONS: The application site is in a predominantly residential area and a highly sustainable location with good access to public transport and key services and facilities, which is considered acceptable. The site also relates to an existing residential property and, other than an element of care and the presence of a small number of staff, the proposed use would continue to be residential in nature.

Furthermore, the proposal would not involve external alterations and would not impact upon the character and appearance of the application property or upon the amenity and privacy of surrounding properties. Nor would it have any adverse impact upon highway safety in the vicinity of the site.

REASON APPLICATION REPORTED TO COMMITTEE

- More than 3 letters of objection have been received.

APPLICATION DETAILS

Full planning permission is sought for the conversion of an existing residential dwelling (Use Class C3) to a residential Children's Home (Use Class C2) at 142 Kenry Street, Tonypandy.

The proposal would be facilitated through internal conversion of the property only with no external works or enlargement of the property proposed. The proposal would see the following layout:

Ground Floor

- 1no. Bedroom
- Living Room
- Kitchen

- Bathroom
- Cloak Room

First Floor

- 2no. Bedrooms
- Office/sleep room

Externally, the property benefits from an outdoor amenity space and a detached garage to the rear.

The supporting information notes that the care home would have a maximum capacity of 3no. residents. When the home is fully occupied, the staffing ratio throughout the day would be 1no. manager, 1no. duty manager, 1no. shift lead/ senior and 2no. residential care workers. Overnight, there would be 2no. night staff with a senior or support worker on sleep and 1no. on a waking shift.

SITE APPRAISAL

The application property relates to a traditional mid terrace dwelling located within a residential area of Tonpandy. To the front the property is set back and elevated from the highway at Kenry Street with a small area of amenity and steps providing access to the property. To the rear of the property is area of amenity space which is enclosed on both side elevations by neighbouring properties and an access lane to the rear. The amenity space increases in level to the rear with the access lane at approximately first floor level of the property. The amenity space also accommodates a detached garage towards its rear boundary.

The area surrounding the site is residential in nature and is characterised by traditional terraced properties.

PLANNING HISTORY

There are no recent planning applications on record associated with this site.

PUBLICITY

The application has been advertised by direct notification to neighbouring properties as well as notices displayed at the site.

A total of 9 letters of objection which include the names of 11 local occupiers have been received following consultation. The points raised have been summarised below:

- Residential location is not suitable for the proposed use.
- Existing parking problems along Kenry Street would be made worse by the proposed change of use in particular during shift overlap and change over periods.
- Proposal will push parking resources to unacceptable levels.
- Work has commenced at the property and sprinklers have already been installed.
- Proposed use will cause unnecessary stress and anxiety to neighbouring occupiers.

- Application will affect elderly neighbours living nearby with families and young children.
- Concerns associated with works undertaken though the installation of water tanks and the sprinkler system which could cause structural damage.
- Concerns that decision has been made prior to the submission of the application.
- Risk of noise pollution due to the social situation. Many children in the category "complex needs" will have a history of antisocial behaviour. The staff will have very limited powers to intervene. The result could be shouting, screaming, banging doors, etc. at a time when most people will be trying to sleep. As such, application will need proper monitoring of noise levels.
- Lack of information on the applicant 'Lolly Support Services' which appear to be a newly formed company. Concerns associated with need to ensure that they possess the necessary expertise to operate the proposal.
- Concerns associated with anti-social behaviour that may be created by future occupiers.
- Loss of property values in area.
- Corporate businesses should not be allowed to purchase a property within a residential street as this results in a loss of housing supply for local residents.

CONSULTATION

Transportation Section: No objection, condition recommended.

Public Health and Protection: No objection raised.

South Wales Police: No objection, condition recommended for the submission of a Management Plan.

Welsh Water: No objection, advice provided in respect of foul water drainage.

Community and Childcare Services: Objection raised.

POLICY CONTEXT

Rhondda Cynon Taf Local Development Plan

Members will be aware that the current LDP's lifespan was 2011 to 2021, that it has been reviewed and a replacement is in the process of being produced. The Planning (Wales) Act 2015 introduced provisions specifying the period to which a plan has effect and providing that it shall cease to be the LDP at the end of the specified period. These provisions were commenced on 4th January 2016 but do not have retrospective effect. Therefore, the provisions do not apply to LDPs adopted prior to this date and plans adopted before 4th January 2016 will remain the LDP for determining planning applications until replaced by a further LDP. This was clarified in guidance published by the Minister on 24th September 2020. Subsequently, Members are advised that the existing Plan remains the development plan for consideration when determining this planning application.

The application site lies within the settlement boundary for Tonypany and but is not allocated for any specific purpose.

Policy CS1 – Sets out the criteria for development in the Northern Strategy Area.

Policy AW2 – Supports development in sustainable locations and includes sites that are accessible by a range of sustainable transport modes and would not unacceptably conflict with surrounding uses.

Policy AW5 – Sets out the criteria for new development in relation to amenity and accessibility.

Policy AW6 – Requires development to involve a high quality design and make a positive contribution to placemaking, including landscaping.

Policy AW8 – Sets out the criteria for the protection and enhancement of the natural environment.

Policy AW10 – Does not permit proposals where they could cause or result in a risk of unacceptable harm to health and/or amenity.

Policy NSA12 – Identifies the criteria for assessment of development proposals within and adjacent to settlement boundaries in the northern strategy area.

Supplementary Planning Guidance

- A Design Guide for Householder Development
- Access Circulation and Parking

National Guidance

In the determination of planning applications regard should also be given to the requirements of national planning policy which are not duplicated in the Local Development Plan, particularly where national planning policy provides a more up to date and comprehensive policy on certain topics.

Planning Policy Wales (Edition 11) (PPW) sets out the Welsh Government's (WG) current position on planning policy. The document incorporates the objectives of the Well-being of Future Generations (Wales) Act into town and country planning and sets out the WG's policy on planning issues relevant to the determination of all planning applications. Future Wales: The National Plan 2040 (FW2040) sets out guidance for development at both regional and national level within Wales, with the thrust and general context also aimed at sustainable development.

It is considered that the proposed development is consistent with the key principles and requirements for placemaking set out in PPW; and is consistent with the Well-being of Future Generations (Wales) Act's sustainable development principles through its contribution towards the Welsh Ministers' well-being objectives of driving sustainable development and building healthier communities and better environments.

Given the minor scale of the proposed development and its relationship with only the immediate surrounding area, there are limitations to the extent such a scheme can have in promoting planning objectives at a national scale. As such, whilst the scheme aligns with the overarching sustainable development aims of FW2040, it is not considered the policies set out in the document are specifically relevant to this application.

Other national policy guidance considered:

PPW Technical Advice Note 12 - Design

REASONS FOR REACHING THE RECOMMENDATION

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Furthermore, applications that are not in accordance with relevant policies in the plan should not be allowed, unless material considerations justify the grant of planning permission.

Main Issues:

Principle of the proposed development

The application relates to the change of use of an existing residential dwelling (Use Class C3) to a residential care home for up to 3 children (Use Class C2).

The site is situated within the settlement boundary limits of Tonypandy, in a predominantly residential area of the town where it would not conflict with surrounding uses. Further, the site has good access to key services and facilities being within walking distance of Tonypandy town centre which benefits from bus and train connections, and can therefore be considered a highly sustainable location.

The principle of providing a care home at this location is therefore considered acceptable, subject to other normal planning considerations which are discussed in the following sections.

Impact on the character and appearance of the area

The proposal would not result in any external alterations to the property. The character and appearance of the property would therefore remain as existing. Furthermore, the provision of a children's care home in a predominantly residential area would not be considered to alter or harm the general character of the area.

Impact on residential amenity and privacy

The proposal would not result in any external alterations to the property and as such, it is not considered that the proposed development would result in any physical detrimental to the amenities or privacy of neighbouring occupiers.

Furthermore, other than the element of care and the presence of staff, it is considered that the proposed residential care home, with a maximum number of 3 children, would be of a limited scale and would generally exhibit similar residential characteristics as that of the existing residential dwelling. Consequently, it is not considered that the use would result in harmful levels of noise and disturbance. As such, any potential impact upon surrounding properties would be limited in this regard.

Whilst concerns have been raised with regards to the location of the proposed care home for children, the area is predominantly residential with the property surrounded by other similar resident units. The provision of a care home for children in such an area and such a sustainable location with access to key facilities is considered the most appropriate site for this type of use.

The application site is also considered of a sufficient scale, with reasonable levels of outlook provided for occupants and an area of outdoor amenity space provided to the rear. Consequently, it is considered that the development proposal would provide adequate space for future occupant's living needs both inside and out.

Highway Safety and Parking Provision

The Council's Transportation Section were notified during the consultation process in order to provide comments on the suitability of the proposal with regard to highway safety and parking provision. Whilst the recent decisions by Committee for similar uses where lack of parking formed a reason for refusal were recognised. No objection was raised to the use proposed in this instance with the following response received:

Access

The property is served off Kenry Street which has high on-street parking demand with 1.7m footways and a 7.4m carriageway. There is a garage to the rear of the site which is served off a 3m wide adopted lane accessible via an unnamed road to the side of No. 144 Kenry Street or from Gelli Road.

Parking

The applicant states within the supporting statement that no physical alterations to the property are proposed and that the internal layout of the property will remain as existing. The existing use of a 3-bedroom residential dwelling has a parking requirement of 3 spaces in accordance with SPG: Access, Circulation & Parking Requirements 2011 with only 1 provided in the rear garage.

The applicant proposes 9 full-time staff as part of the proposed change of use with a maximum of 5 staff working at any one time. The proposed change of use to a residential children's home has an operational requirement of 1 space per resident staff, 1 space per 3 non-resident staff and a non-operational requirement of 1 space per 4 beds. Therefore, the proposed has a parking requirement of 3 spaces in

accordance with the previously mentioned SPG with only 1 provided in the rear garage, the same as the current use as a domestic family home.

It is noted that there is potential for increased car parking demand when staff rotate during hand over. However, this will be for short durations and is not accounted for in the Council's SPG.

The applicant has submitted additional information stating that staff would be encouraged to use the local public car park and walk to the property some 220m away which is considered a reasonable walking distance. Whilst this gesture is noted, there would be no control in place to ensure this occurs and a condition to secure this approach would not be meet the required tests.

Highway Safety Conclusion

The proposed is located in a sustainable location. In accordance with the Council's SPG the existing C3 use proposed C2 use require the same off-street car parking provision. There is potential that the demand will be increased for short durations when staff hand over, but as this is not accounted for in the adopted SPG no highway objection is raised.

Community and Children's Services

Consultation was undertaken with the Council's Community and Childcare Services Department, who have raised significant concerns with the scheme and have formally objected to the planning application.

In their response the Children's Services team noted that best practice in terms of establishing new care homes strongly supports that a location assessment is carried out ahead of establishing a new children's home. This is deemed necessary to match new development with local need and to seek Local Authority and Police views about the suitability of the site before commencing. Furthermore, it is noted that a location assessment is important from the point of view of safeguarding and crime prevention, particularly linked to safeguarding young people from criminal exploitation; and this case, such an assessment has not been carried out.

Further points raised by the Children's Services team include:

- (i) There is a shortage of supply of experienced, high quality, proportionately priced residential care in RCT.
- (i) Location assessment has not been carried out properly alongside Children's Services.
- (i) Until recently, there has been a lack of consideration about community impact and the need to co-plan alongside Children's Services.
- (i) By their own admission the organisation is not experienced in providing residential care. This is a concern when considering the context of need.
- (ii) The costing schedule includes costs that the public purse is unlikely to be able to sustain.
- (i) The provider has no plans for transition to not for profit after a change of law due on 31/3/27 which will restrict such care homes to operate on a not

for profit basis. This could have significant implications for the Council and its services at that stage.

Children's Services also noted that all social care homes in Wales must comply with the Regulations and Inspections of Social Care Act (Wales) (RISCA) in order to be registered with Care Inspectorate Wales (CIW). If they do not comply and cannot gain registration with CIW they cannot provide residential care in this form. As part of this process applicants need to provide a location assessment, statement of purpose, and policies in relation to the provision of care and support, along with other relevant information.

In light of the above, during the application process colleagues within the Children's Services team undertook a visit to the property to assess its suitability to become a registered children's home. Following the visit, they commented that there are a number of areas where the proposal is not considered to comply with the RISCA requirements. These are in relation to Part 12 of the RISCA regs and associated with sitting/recreation/dining space, private space, bathroom facilities, external space and staff facilities. As such, they set out that while the home has been refurbished to a good specification, it is not suitable in terms of size or location. Further, a statement of purpose submitted to CIW was for up to 3 young people which in Children's Services opinion, is not feasible in such a small home.

While the above comments received from Children's Services are noted and have been fully considered, the nature of their concerns and objections are not considered to be material planning considerations, instead issues that are controlled by other legislation and bodies outside of the remit of planning, i.e. the Regulations and Inspection of Social Care Act (Wales), the Care Inspectorate Wales and Children's Services themselves. It is only the land use planning issues that can be taken into account when determining this planning application. With regard the amenity of future residents, with no change to internal/external layout which could be occupied by a family with 3 children, in planning terms, the property is generally considered acceptable.

The Role of Care Inspectorate Wales in the Decision-Making Process.

Following recent concerns/decisions made by Committee in respect of children's care homes, a discussion was held with CIW to establish the degree of any overlap in the regulatory process and to ensure that any decision made through one process would not cut across or hinder the other regulatory body's ability to assess any proposal thoroughly (having regard to all issues raised).

Discussions seemed to suggest that obtaining Planning consent (either before or after consideration by CIW) was not a formal requirement. Clearly, Planning consent (where required) would need to be obtained but it was not a prerequisite of the CIW process. Obtaining Building Regulation consent, however, was.

In addition, CIW would fully consider and regulate the *operation* of the proposed use at a given property however (and perhaps more fundamentally from Committee's perspective) would not be able to consider whether the property was in the "right location" taking into consideration any comments made by the Council's Children's Services Team or the Police. It would seem that their remit extends to considering the operational requirements of the property put forward to them for regulation.

Similarly, no consideration can be given to issues such as the amount of garden area that is available for amenity nor the amount of car/vehicle parking spaces that a particular proposal will generate. Proximity to a public park or children's play area was also not a consideration. Neither was a property's proximity to a busy road, a public house, or schools, shops, public transport, etc.

Committee is advised that none of the above are intended as a criticism of the CIW regulatory process as they did clearly explain what can be taken into account and highlighted the post-regulatory inspections that are intended to ensure that the operation of the care facility continues to meet the appropriate standards. CIW also explained that there is an appeal process (if they refused a scheme) where any tribunal could only examine any issue that is specifically set out in the regulations (they cannot take into account anything that is not clearly within the remit of their legislation).

What the discussion did highlight was the potential for there to be a policy vacuum where some obvious and legitimate concerns but forward by the Police or the Council's care professionals may, seemingly, fall through a gap (are not necessarily material Planning considerations or covered by CIW).

Committee is advised that, where legitimate land-use considerations exist (and are not covered by another regulatory body) it is open to the decision maker to decide what weight should be afforded to any material Planning consideration when determining an application. However, as always, balance and proportion to any individual issue is a key feature in reaching a decision.

It is hoped that the discussions held with CIW helps to clarify the roles of the two respective regulatory bodies.

Other Issues raised by the objectors

The objectors raised concerns associated with the ability of a private company to purchase a residential home and the impact of the proposal upon future property values. Whilst these points are noted, they do not form material planning considerations and cannot be taken into account during the determination of this application.

With regard the comments that works have already commenced, Members are advised that internal refurbishment works and the installation of sprinkler systems do not require planning permission. Furthermore, the proposed use as children's car home has not yet commenced. As such, there is no breach.

With regard the comments that the applicant appears to be a newly formed company with limited experience in this field, while this point is noted, this is not a material planning consideration and would be addressed in any future registration with CIW as set out above.

Community Infrastructure Levy (CIL) Liability

The Community Infrastructure Levy (CIL) was introduced in Rhondda Cynon Taf from 31 December 2014.

The application is for development of a kind that is not CIL liable under the CIL Regulations 2010 (as amended).

Conclusion

The application site is in a predominantly residential area and highly a sustainable location with good access to public transport and key services and facilities, which is considered acceptable. The site also relates to an existing residential property and, other than an element of care and the presence of a small number of staff, the proposed use would continue to be residential in nature. Furthermore, the proposal would not involve external alterations and would not impact upon the character and appearance of the application property or upon the amenity and privacy of surrounding properties. Nor would it have any adverse impact upon highway safety in the vicinity of the site.

RECOMMENDATION: GRANT SUBJECT TO THE BELOW CONDITIONS:

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

Reason: To comply with Sections 91 and 93 of the Town and Country Planning Act 1990.

2. The development hereby approved shall be carried out in accordance with the approved plan numbers

- Floor Plans – received 04/08/23
- Site Location Plan – received 07/07/23

and documents received by the Local Planning Authority, unless otherwise to be approved and superseded by details required by any other condition attached to this consent.

Reason: To ensure compliance with the approved plans and documents and to clearly define the scope of the permission.

3. The premises shall only be used as a regulated children's home and for no other purpose; including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order. When the use hereby approved ceases, the premise shall revert back to its original Class C3 use.

Reason: In the interest of residential amenity and highway safety, in accordance with Policies AW5, AW6 and AW10 of the Rhondda Cynon Taf Local Development Plan.

4. Prior to the commencement of the use hereby approved, the operator shall submit a management plan for the premises to be agreed in writing by the Local Planning Authority. The premises shall operate in accordance with the agreed details for as long as the use is carried out at the property.

Reason: In order protect the amenities of neighbouring properties, in accordance with Policies AW5, AW6 and AW10 of the Rhondda Cynon Taf Local Development Plan.

5. Within 3 months of the date of this consent, a scheme for biodiversity enhancement measures shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: Future Wales requires all development to maintain and enhance biodiversity.