

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2023-2024:

**PLANNING AND
DEVELOPMENT COMMITTEE
11th APRIL 2024**

**REPORT OF: DIRECTOR
PROSPERITY AND
DEVELOPMENT**

Agenda Item No.

**APPLICATION NO:23/1318/09 –
Certificate of Lawfulness for a proposed
change of use of a dwelling C3(a) to a
Children’s Residential Home C2 for up to 2
children, along with 2 no. support staff 24
hours a day, operating in shifts, and a
registered manager. 142 KENRY STREET,
TONYPANDY, 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 originally reported to the Planning and Development Committee meeting of 7th March 2024. A copy of the original report is attached below as Appendix A.

At that meeting Members resolved to refuse granting a certificate of lawfulness for a proposed use (hereafter ‘certificate’), contrary to the recommendation of the Director of Prosperity and Development, on the basis that the proposed use would represent a material change from Use Class C3(a) to Use Class C2.

As a consequence, 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

Members will note that the description of the proposed use set out above reflects the amendment reported to them prior to their debate. As agreed

with the Applicant's Agent, the revised description included reference to staffing levels to better reflect the scope of the proposal and to avoid any doubt as to the extent of any certificate granted, or not.

During the Committee debate Members recognised that a children's home would fall within Use Class C2, as established by case law, i.e., *North Devon District Council v First Secretary of State and Southern Childcare [2003]*.

In addition, it was noted that the scope of consideration could not include the planning merits of the development; hence, whether or not a certificate should be issued would rest on whether the new use would be considered to be a material or non-material change of use.

If the former, then a certificate would not be issued and, notwithstanding the Applicant's right to an appeal, an application for planning permission would be required for a change of use.

Whilst the North Devon case and previous appeal decisions provide helpful background for informing a decision, it is clear that no two proposals are the same and what might be considered material or non-material for one property will not be the same at another.

In exercising their judgement Members considered that the nature of the proposed operation would result in additional comings and goings to the property, and a level of activity and disturbance over and above that which would be considered characteristic of a dwelling of this kind; thus, the change of use would be a material one.

Of particular relevance is that the application property is a terraced dwelling which, like its immediate neighbours, is set back from the highway, in a prominent raised position, by a short front garden.

Therefore, unlike a detached or semi-detached house that might enjoy a degree of seclusion and privacy created by a driveway, mature landscaping or greater physical separation from its neighbours, any activity at the front door would be very conspicuous and in close proximity to other residents.

Furthermore, the development would result in additional traffic to the property, from the staff and manager employed there and at shift changeover time, as well as that generated by professional visitors.

This type of occupation, carers on duty all night, comings and goings more numerous than usual and patterns of life and different to those of most family homes would not reflect that of other dwellings in this location, which would be exacerbated by the absence of any off-street parking. The new use would therefore evidence a different character.

In addition, having two carers and a manager present during the daytime, in addition to the two children, if not at school, Members highlighted concerns about the capacity of the property to accommodate the proposed use.

Being of modest size and with three bedrooms, it would have to provide separate space for three adults for office use, work breaks and a bed for the sleep-in carer, as well as separate bedrooms for the two children.

There is also concern, given the number of unrelated individuals who would be present in the house, that they would have to share limited kitchen and bathroom facilities, all of which indicates that the intensity of use would likely be less comparable to other dwellings in the local area.

Whilst the numerous appeal examples referenced within Development Control Practice tend to indicate that small scale proposals to operate children's homes from dwellings will be more likely to be considered non-material changes of use, it is for the decision maker to determine the relevant factors in each unique case.

Therefore, should Members be minded to maintain their position that the change of use at 142 Kenry Street from C3 to C2 would be a material one, the following reason for refusal is recommended:

The operation of a children's home would not be reflective of the prevailing character of the neighbouring dwellings and surrounding area and would therefore be considered to constitute a material change of use for the following reasons:

- **the additional comings and goings to the property and the level and pattern of activity and disturbance would be over and above that considered characteristic of a dwelling of this kind;**
- **the type of occupation, carers on duty all night, comings and goings more numerous than usual and patterns of life would be different to those of most family homes;**
- **the additional traffic to the property, from the staff and managers employed there and at shift changeover time, as well as that generated by professional visitors, would be exacerbated by the absence of off-street parking facilities;**
- **the capacity of the property to accommodate the proposed intensive use, due to the need to provide separate space for three adults for office use, work breaks and a bed for the sleep-in carer, as well as separate bedrooms for the two children, with limited bathroom facilities.**

Consequently, the development would not be lawful for planning purposes, and the Local Planning Authority refuses to grant a certificate of lawfulness for the proposed use and planning permission would be required.

APPENDIX A

PLANNING & DEVELOPMENT COMMITTEE

07 March 2024

REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT

PURPOSE OF THE REPORT

Members are asked to determine the planning application outlined below:

APPLICATION NO: 23/1318/09 (JE)
APPLICANT: Lolly Support Services Ltd
DEVELOPMENT: Certificate of Lawfulness for a proposed change of use of a dwelling C3(a) to a Children's Residential Home C2 for up to 2 children, along with 2 no. support staff 24 hours a day, operating in shifts, and a registered manager.
LOCATION: 142 KENRY STREET, TONYPANDY, CF40 1DD
DATE REGISTERED: 22/11/2023
ELECTORAL DIVISION: Tonypandy

RECOMMENDATION: APPROVE

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 – 17, along with support staff providing care 24 hours a day, 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, the development is lawful for planning purposes and planning permission is not required. Therefore, a Certificate of Lawfulness can be issued.

REASON APPLICATION REPORTED TO COMMITTEE

- A request has been received from Councillor Gareth Hughes for the matter to come to Committee for members to consider the application.

APPLICATION DETAILS

This is an application for a Certificate of Lawfulness for a Proposed Development under Section 192 of the 1990 Act ('CLOPUD') that seeks to establish whether the proposed use of a residential dwelling, 142 Kenry Street, Tonypany as a residential children's home (as detailed in the description, submitted plans and associated 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 seeks to utilise the existing house for the provision of residential accommodation and care for up to two children between the ages of 8 – 18 years old. The children would be supported by up to three staff during the day and two at night.

The supporting information submitted with the application sets out that the registration of the home would be with for a maximum of two children on a staff ratio of 1:1, operating on the following basis:

- A registered manager would work Monday to Friday, between 8am and 5pm.
- Care staff would work shifts from 8am to 8pm, with two on a day shift and one working night duty and another one on a sleep-in basis.

The application details also outline that the existing residential setting would be maintained, which comprises three bedrooms, a lounge/diner, kitchen/breakfast room and a bathroom.

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

PLANNING HISTORY

The most recent planning applications on record associated with this site are:

23/0712/10: 142 KENRY STREET, TONYPANDY, CF40 1DD

Proposed change the use of the property into a children's residential home.

Decision: 05/12/2023, Refuse

PUBLICITY

The application seeks the determination of whether the proposed use is lawful and as such no consultation with nearby properties is therefore required to be or has been undertaken.

CONSULTATION

The application seeks the determination of whether the proposed use is lawful and as such no internal/external consultation is required to be undertaken. However, despite this fact, given the nature of the proposed determination, consultation has been undertaken with the Council's Legal and Democratic Services section in order to gain a legal opinion in respect of the proposed use from the Council's solicitors.

The Council's solicitor commented that having assessed the information submitted and the nature of the proposed use described, the Council could properly issue a Certificate of Lawfulness on the basis that the proposal does not constitute a material change of use and therefore planning permission is not required.

POLICY CONTEXT

Rhondda Cynon Taf Local Development Plan

The determination of this application does not include any consideration of the planning merits of the case. Therefore, there are no Local Development Plan policies that 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 Development under Section 192 of the 1990 Act ('CLOPUD') that seeks to establish whether the proposed use of the existing residential dwelling as a residential children's home, as detailed in the description, the submitted plans and associated 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 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/merits.

As noted further above, the property is a three-bedroomed, mid terraced dwelling house located within a residential area of Tonypany. The property is intended to be used for the provision of residential accommodation and care for up to 2 no. children between the ages of 8 – 18, with up to 2 no. support staff at the property 24 hours a day, operating in shifts through a sleep in service, and with a manager present during daytime working hours.

The new use would not result in any external alteration and the application does not include proposals to change the internal layout of the property. Consequently, the children and staff would share the kitchen, bathrooms and communal facilities and the children would each have their own bedroom. Furthermore, the children would be expected to attend education during the week and the support staff would assist the children with recreational activities after school and on the weekends.

As such, in this case, the main question for determination is whether the proposed use would fall within the current use class of the property, Class C3 (dwelling house), or Class C2 (residential institutions). However, there is also the subsidiary question of, if the proposed use falls within Class C2, would a material change from the current Class C3 use occur?

Section 55(1) of the Town and Country Planning Act 1990 defines the term 'development' which includes the making of any change of use of any buildings. Section 55(2) (f) explains in the case of buildings used for a purpose of any class specified by the Welsh Government the use of the building for any purpose within the same class shall not be taken for the purpose of the Act as amounting to 'development'.

On 25 February 2016 the Town and Country Planning (Use Classes) Order 1987 was amended in Wales by the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 whereby Part C of the Schedule now states:

'Class C3. Dwelling Houses

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

(a) A single person or by people to be regarded as forming a single household;

(b) Not more than six residents living together as a single household where care is provided for residents; or

(c) Not more than six residents living together as a single household where no care is provided to residents (other than a use within C4)' (Class C4 relates to the use of dwelling house by not more than six residents as a house in multiple occupation).

In light of the above, the proposed use of the property would clearly not fall within Class C3(a) as it would not be occupied by people living together as a family. Further, it would not fall within Class C3(c) as an element of care would be involved. Consequently, unless the proposed use falls within Class C3(b), it would fall within Class C2.

Whilst the definition of Class C3 was altered in the amendment Order 2016, the definition of 'care' was not, and therefore remains as stated in the original 1987 Order:

'In this Order, unless the context otherwise requires:

'care' means the 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 also includes the personal care of children and medical care and treatment;

The Order however does not define the term 'personal care' but the term is defined in the Cambridge Dictionary as:

'the job of helping people who cannot take care of themselves, for example because they are disabled'

Alternately, the Department of Work and Pensions defines the term 'personal care' as:

'personal care includes: assistance with dressing, feeding, washing and toileting, as well as advice, encouragement and emotional and psychological support.'

It is noted that the definition of 'care' within the Order appears to exclude the personal care of children, except in Class C2. In class C3 there is reference (in the parenthesis to C3(b)) to care provided for residents, but that care does not by the definition clause include the care of children.

The supporting information submitted with application details that the property would not be occupied by more than six residents in total at any one time and that an element of care would be provided. However, it does not detail that the children would be disabled, suffer from mental disorder, or any of the other factors or similar detailed within the Order's definition of 'care'. As such it is not considered that the care of the children in the context of this case would fall within that prescribed under Class C3(b). Instead, the occupiers would be children who, for whatever reason, have been put into the care of the Local Authority and the Local Authority is required to find somewhere for them to live and to be cared for during their minority, i.e. the property would provide residential accommodation and care to people in need of care because of their age (under 18s). The children residing at the property 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 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.

Notwithstanding the above, whilst the proposed use clearly falls within Class C2, the applicant, through the supporting information, contends that the residents would occupy the property as a single household and therefore a material change of use of the property would not occur. 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)'.

It was determined that children, on their own, cannot be considered to form a single household and carers who did not live there all the time meant that the use fell within Class C2. This has become the established case law position.

Moving onto the second issue and whether the proposal would constitute a material change of use is a matter of fact and degree. Development Control Practice contains numerous examples of past appeals where Inspectors have based their judgment on the level of occupation and intensity of use; any changes to the appearance of the property; any alterations to internal layout; the nature of the comings and goings associated with the use; the scale and location of the proposed use and any impact on local amenity.

These considerations are not an exhaustive list, but in judging whether the overall character of the proposed use at 142 Kenry Street would differ materially from that of a dwellinghouse or the existing residential use and context of the surrounding area, the following points are noted:

- The North Devon case operated on the basis of non-resident carers working a shift pattern but it was found that this would not result in a material change of use. Therefore, that the dwelling would effectively act as a place of employment for the relevant staff is not a concern.
- The proposed times of the shift changeover at 08:00 and 20:00 hours would not be at unsocial times or likely vary from, or be at odds with, the patterns of movement caused by other local residents returning to and from their homes either due to work, shopping, school or other social activities.
- No changes are proposed to the appearance of the property or its internal layout.
- Regarding intensity of use and the level of occupation, this is limited by the scope of the application and the physical size of the property and would therefore be comparable to other neighbouring dwellings.
- The proposed parking requirements would not be considered to be materially different from those associated with other residential uses in the locality, where

the number of vehicles associated with a family, or the number of comings and goings can vary.

- The two children would be accommodated and cared for in a manner that would be as close as possible to that of any other family occupied unit.

On the basis of the foregoing and having reviewed the outcomes of comparable appeal decisions at Fenland (re. 2155849), Poulton Le Fylde (ref. 3277997), Rochdale (ref. 3145074), Brecon (ref. 2205394), it is considered that the proposed children's home would not represent a material change of use and thus the issuing of a Certificate of Lawfulness would be appropriate.

Conclusion

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 – 18, along with support staff providing care 24 hours a day, 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, the development is lawful for planning purposes and planning permission is not required. Therefore, a Certificate of Lawfulness can be issued.

RECOMMENDATION: Approve: