

Date: 23rd April 2024
Our Ref: JH/DB 24.156

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Appendices

Town and County Planning Act 1990 (As Amended)

Lawful Development Certificate

Lawful Development Certificate for proposed use of property as a residential care home for 4no. children (C3 use class)

40 Lletty Dafydd, Melincourt, Clyne, SA11 4BG

Planning Portal Reference: PP-13000220

The following planning applications and appeals of proposed developments similar to this proposal are considered relevant information for the justification of the case:

Appendix	Application ref.	Location	Description	Decision
Appendix 1	Neath Port Talbot County Borough Council, P2023/0323 (LPA Ref.)	103 Main Road Dyffryn Cellwen Neath, SA10 9LG	Certificate of lawful development (proposed) for the use of the existing dwelling (use class C3) as a small children's home for the care of 2 children together with associated 2 no. live-in staff under use class C3	Approved, 27 th July 2023
Appendix 2	Caerphilly Borough Council, APP/K6920/A/20/3252721 (Appeal Ref.)	Saer Coed, Load of Hay Road, Crumlin, NP11 3AY	Conversion of the existing garage to annexe accommodation with the addition of 2 Velux roof windows, and internal alterations to the main property with the addition of external door accesses	Appeal allowed, 9 th September 2020

Appendix 1

**NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
CYNGOR BWRDEISTREF SIROL CASTELL-NEDD PORT TALBOT**

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as
amended by section 10 of the Planning and Compensation Act 1991)**

**THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (WALES) ORDER 2012**

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT (PROPOSED)

Reference No.: P2023/0323
Address or 103 Main Road
Location: Dyffryn Cellwen
Neath
Neath Port Talbot
SA10 9LG

The Neath Port Talbot County Borough Council hereby certify that on 25th April 2023 the matter described in the Schedule to this certificate in respect of the above-specified land, edged red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

The application contains sufficient evidence to demonstrate that the existing property known as 103 Main Road, Dyffryn Cellwen has a lawful use as a residential dwelling (Use Class C3). Furthermore, whilst the proposed use could be considered to fall within Class C2, based upon the specific nature of the use proposed as set out in the applicants submission, it is nevertheless concluded, on balance of probabilities, that the proposed use would not amount to a 'material' change of use of the property, and accordingly would not amount to 'development' as defined by section 55 of the Planning Act 1990 (as amended).

Accordingly, the proposed use would be lawful and does not require planning permission.

Schedule: Certificate of lawful development (proposed) for the use of the existing dwelling (use class C3) as a small children's home for the care of 2 children together with associated 2 no. live-in staff under use class C3

Signed: 
Ceri Morris – Head of Planning & Public Protection

Date: 27 July 2023

Notes

- (1) This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
 - (2) It certifies that the matter specified in the schedule taking place on the land on the plan attached to the certificate would have been lawful, on the specified date and, thus, would not have been liable to enforcement action under section 172 of the 1990 Act on that date.
 - (3) This certificate applies only to the extent of the matter described in the schedule and to the land identified on the attached plan. Any matter which is materially different from that described or which relate to other land may render the owner or occupier liable to enforcement action.
 - (4) The effect of the certificate under section 192 of the 1990 Act (certificate of lawfulness of proposed use or development) is also qualified by the proviso in section 192(4) of that Act, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.
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IMPORTANT:

(1) Please note that for all decisions issued after 16th March 2016 for outline or full planning permission, a revised decision notice will be issued whenever a subsequent consent is given, for example providing details of any Reserved Matters approvals (outline applications only) and/or approval of conditions (including on Reserved Matters). This will ensure that the current status of the conditions applied to a consent is clear. Accordingly you are advised to visit www.npt.gov.uk/planning to view the application documentation to see if this is the current version, or whether it has been superseded by a more up-to-date revision of this Decision Notice. For Reserved Matters approvals the revised Decision Notice will only be shown under the Outline approval.

(2) Please note that this consent is specific to the plans and particulars approved as part of the application. Any departure from the approved plans will constitute unauthorised development and may be liable to enforcement action. You (or any subsequent developer) should advise the Council of any actual or proposed variations from the approved plans immediately so that you can be advised how to best resolve the matter.

(3) In addition, any conditions that the Council has imposed on this consent will be listed above and should be read carefully. It is your (or any subsequent developers) responsibility to ensure that the terms of all conditions are met in full at the appropriate time (as outlined in the specific condition). Please note that any works carried out without compliance with the conditions attached to this approval will be entirely at the risk of the persons involved and may result in formal action being taken by the Local Planning Authority.

(4) The developer should have regard to Sections 4, 7, 8 and 8A of the Chronically Sick and Disabled Persons Act 1970 and to the British Standards Institution's Code of Practice for "Design of buildings and their approaches to meet the needs of disabled people" (BS 8300:2009+A1:2010).

(5) From 1st October 2012 it has been an offence to install a public sewer or lateral drain without having an adoption agreement in place. From the 1st October 2012 the vast majority of all existing private sewers and lateral drains which link with the public sewer network were transferred to Welsh Water. For further details on how this will affect your development please contact: Welsh Water Developer Services, PO Box 3146, Cardiff, CF30 0EH. Telephone No. 0800 9172652 or email: developer.services@dwrcymru.com.

(6) Welsh Water Dwr Cymru advise that the planning permission hereby granted does not extend any rights to carry out any works to the public sewerage or water supply systems without first having obtained the necessary permissions required by the Water Industry Act 1991.

Please note, in accordance with Construction and Design Management (CDM) Regulations, it is the applicant's responsibility to ensure that any proposed works within their curtilage do not conflict with any underground services and is recommended they review their land registry title deeds for any legal covenants. For Sewers or Watermains that may be present and affected by your proposals, you are advised to contact Dwr Cymru Welsh Water who will be able to explain whether your proposed works will be acceptable as well as any consent required. Prior to commencing works, it is also recommend the applicant review the information and guidance on Building Over Sewers

available on Welsh Water's website at

<https://developers.dwrcymru.com/en/applications/planning/build-over-or-near-to-sewers>

The applicant is also advised that some public sewers and lateral drains may not be recorded on Welsh Water maps of public sewers because they were originally privately owned and were transferred into public ownership by nature of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011. The presence of such assets may affect the proposal. In order to assist us in dealing with the proposal the applicant may contact Dwr Cymru Welsh Water to establish the location and status of the apparatus. Under the Water Industry Act 1991 Dwr Cymru Welsh Water has rights of access to its apparatus at all times.

IMPORTANT INFORMATION: TOWN AND COUNTRY PLANNING ACT 1990

The applicant's attention is drawn to the notes below.

- (1) If the applicant is aggrieved by the decision of the Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Welsh Government under Section 78 of the Town and Country Planning Act 1990 (as amended).
- (2) You can also appeal to the Welsh Government against a decision to refuse permission or grant subject to conditions in respect of applications made for :- Listed Building or Conservation Area Consent; Consent under a Tree Preservation Order; Advertisement Consent.
- (3) You can also appeal If your application for a Certificate of Lawful Existing Use or Lawful Proposed Use is partly or wholly refused or is granted differently from what you asked for (under Section 195/196) of the Town and Country Planning Act 1990 (as amended).
- (4) If you are aggrieved of the LPAs decision, the following deadlines apply for appeals to be submitted to the Welsh Government (from the date of the Council's decision):-

(1) Planning Permission (with the exception of Minor Commercial and Householder applications – see below)	Within 6 Months
(2) Householder Appeal see endnote i	Within 12 weeks
(3) Minor Commercial Appeal see endnote i	Within 12 weeks
(4) Listed Building or Conservation Area Consent appeals	Within 6 months
(5) Tree Preservation Order (TPO) Consent	Within 28 days
(6) Advertisement Consent	Within 8 weeks
(7) Certificate of Lawfulness of Existing (Section 191) or Proposed (Section 192) Use or Development	Within 6 months
(8) Hazardous Substances Consent	Within 6 months
- (5) Appeals must be made on a form which is obtainable from the Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ – Tel 0303 444 5940, or online at www.planningportal.gov.uk/pcs .
- (6) The Welsh Government has power to allow a longer period for the giving of notice of appeal but they will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- (7) The Welsh Government is not required to entertain an appeal if it appears to them that permission for the proposed development could not have been granted having regard to the statutory requirements to the provisions of the development order, and to any directions given under the Order. They do not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by them.
- (8) If permission to develop land is refused or granted subject to conditions, whether by the Local Planning Authority or by the Welsh Government, and the owner of the land claims that the land has become incapable of reasonable beneficial use in its existing state and cannot be rendered capable of reasonable beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the County Borough Council, in which the land is situated, as the case may be, a **purchase notice** requiring that Council purchase his interest in the land in

accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

Making an Appeal

- (9) Please note that for all applications received by the LPA after 5th May 2017, it is now a requirement that any appeal made to the Planning Inspectorate (other than Householder and Minor Commercial Appeals, and appeals against refusal to grant advertisement consent) must be accompanied by all the information and evidence you intend to rely upon (a **“full statement of case”**). You must also send a copy of the notice of appeal and full statement of case to the LPA.
- (10) In addition, for ‘planning appeals’ an amendment to an application following notice of appeal may only be made to correct an error.
- (11) Additional details and information on making an appeal to the Welsh Government is available from the Planning Inspectorate at the above address and website. The relevant documents are entitled “making your planning appeal” and “planning appeals Public Local Inquiries”.
- (12) Further correspondence regarding this application should bear the reference number quoted on the top of the decision notice.

THIS NOTICE RELATES ONLY TO A PLANNING DECISION AND DOES NOT RELATE TO OTHER LEGISLATION INCLUDING ANY LEGISLATION UNDER:

- BUILDING REGULATIONS – Please contact buildingcontrol@npt.gov.uk or 01639 686820 to discuss all aspects of the service that is offered by Building Control
- HIGHWAY LEGISLATION

IF PLANNING CONSENT HAS BEEN GRANTED IT IS ADVISABLE TO ESTABLISH WHETHER ANY OTHER FORM OF CONSENT IS REQUIRED AND TO OBTAIN SUCH CONSENT BEFORE COMMENCING DEVELOPMENT

ⁱ Please see the [Town and Country Planning \(Referred Applications and Appeals Procedure\) \(Wales\) Regulations 2017](#) for appeal procedures and for full definitions of:

- *“householder application”* (essentially an application for the enlargement, improvement or other alteration of a dwellinghouse, or development within the curtilage of such a dwellinghouse, or change of use to enlarge the curtilage of a dwelling house)
- *“householder appeal”* means an appeal in relation to a householder application, but excludes an appeal against conditions on the grant of planning permission; or an appeal which is accompanied by an enforcement or listed building consent appeal.
- *“minor commercial application”* (essentially relates to existing buildings of no more than 250 square metres gross external floor space at ground floor level, currently in use for any of the purposes set out in Schedule 1A to The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015 which is an application for change of use from Class A1 to A2 or A3; or Class A2 to A3); or the carrying out of building or other operations to a shop front.
- *“minor commercial appeal”* means an appeal in relation to a minor commercial application but excludes an appeal against conditions on the grant of planning permission; or an appeal which is accompanied by an enforcement or listed building consent appeal.

Appendix 2

Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 27/07/20

gan Clive Nield BSc(Hon), CEng,
MICE, MCIWEM, C.WEM

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 09.09.2020

Appeal Decision

Site visit made on 27/07/20

by Clive Nield BSc(Hon), CEng, MICE,
MCIWEM, C.WEM

an Inspector appointed by the Welsh Ministers

Date: 09.09.2020

Appeal Ref: APP/K6920/A/20/3252721

Site address: Saer Coed, Load of Hay Road, Crumlin, NP11 3AY

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Values in Care Ltd against Caerphilly County Borough Council.
 - The application Ref 19/0857/FUL, is dated 17 October 2019.
 - The development proposed is conversion of the existing garage to annexe accommodation with the addition of two Velux roof windows, and internal alterations to the main property with the addition of external door accesses.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of the existing garage to annexe accommodation with the addition of 2 Velux roof windows, and internal alterations to the main property with the addition of external door accesses, at Saer Coed, Load of Hay Road, Crumlin, NP11 3AY in accordance with the terms of the application, Ref 19/0857/FUL, dated 17 October 2019, and the plans submitted with it, subject to the conditions in the attached annex.

Application for Costs

2. An application for costs was made by Values in Care Ltd against Caerphilly County Borough Council. This application is the subject of a separate Decision.

Main Issues

3. Since the appeal was lodged the Council's Planning Committee has resolved that, if it still had jurisdiction to determine the application, it would have granted planning permission subject to a number of conditions. Thus, there are no issues in dispute between the 2 main parties.
 4. However, a number of matters have been raised by neighbouring residents, landowners and their elected representatives, and I have duly taken these into account. On this basis, the main issues to be considered in this appeal are the effects of the proposed development on the amenity of neighbouring residents, the effects on highway safety, and whether or not the proposed use of the property as a small care home amounts to a change of use.
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Reasons

Residential Amenity

5. The neighbouring residents have expressed concern about noise and visual impact as a result of the proposed use of the garage building, which would have Velux windows and an entrance door close to their kitchen window and rear patio area respectively. The Council has considered these possible impacts and concluded that, as the Velux windows would be non-opening, the proposal would be in accordance with Local Development Plan (LDP) Policy CW2. Policy CW2 aims to safeguard amenity, including that there should be no unacceptable impact on adjacent properties.
6. With regard to noise, the neighbouring residents have referred to the number of staff likely to use the annexe, and the Appellant has explained that these are expected to amount to up to 6 during the day and 2 at night. These are modest numbers, and I consider it unlikely they would generate significantly more noise than would normally be expected. On amenity matters as a whole, I agree with the Council's conclusions.

Highway Safety

7. The second matter of concern to local residents is the increase in traffic likely to be generated by use of the property as a small care home, as the access road is a narrow country lane with no proper passing places and a junction with severely limited visibility. However, it is not a through-road and serves only a small number of properties.
8. Use of the appeal property as a care home (albeit one than falls within Use Class C3) would tend to involve a different pattern of vehicular movements than if it were used as a typical family home and probably an increased number. However, family homes can generate a wide range of traffic movement numbers and patterns, and the inclusion of this scale and type of use within the same Use Class would indicate that its traffic movements would be expected to fall within the wide envelope of that generated by dwellinghouses.
9. The Highway Authority has raised no objections to the application, and the Council has reached the conclusion that the proposed works would not have "any detrimental impact on the safe, effective and efficient use of the transportation network, subject to the imposition of a condition attached to any consent to limit use of the annex to ancillary accommodation and incidental to the residential enjoyment of Saer Coed".
10. No substantive evidence has been brought forward to support the assertions that the development would lead to an unacceptable increase in traffic and, on the evidence before me, I share the Council's conclusions. This appeal is in connection with operational development and not a change of use, even if it is to facilitate use of the dwellinghouse as a small care home. That operational development would not have a significant effect on traffic levels along the local road network, and the proposal would comply with LDP Policy CW3.

Material Change of Use

11. It has been asserted that the proposed future use of the appeal premises as a small care home would fall within Use Class C2 (Residential Institutions) and so would need planning permission for change of use. However, Use Class C3 includes "*Use as a dwellinghouse – (b) by not more than 6 residents living together as a single household (including a household where care is provided for residents)*".

12. The Appellant has confirmed that the home would accommodate up to 5 permanent residents who would be supported by a number of Values in Care staff (estimated to be up to 6 staff during the day and 1-2 at night, including an element of sleeping on the premises overnight). It has also explained that the residents would be adults with a diagnosis of autism and/or learning disabilities who would live together in a stable household unit. As such, the property would be used for supported living accommodation and not to provide medical or convalescent care. The residents would be expected to take part in routine household duties and to develop skills towards running the property. Furthermore, it is anticipated that the household unit would be stable over a period of years and would not involve regular changes in residents.
13. The Appellant has provided legal advice by a barrister that the proposed use would fall within Use Class C3 rather than C2, and the Council has taken similar advice with the same conclusion. The Appellant's barrister has also provided further advice that the presence of carers on the premises does not affect this definition of Use Class as it would not change the number of residents living on the premises.
14. The perception of change of use of the premises is clearly of considerable concern to nearby residents and their elected representatives. However, the Council has accepted that there would be no change of Use Class and, in the absence of legal advice to the contrary, I reach the same conclusion. Consequently, this is not a material consideration in the determination of this appeal.
15. The local Senedd Member, Rhianon Passmore, and a planning consultant acting on behalf of local residents have both drawn my attention to a 2018 report commissioned by the Welsh Government entitled "The categorisation of uses and management of change: a planning review", carried out by the University of the West of England in Bristol. Paragraph 5.5.1 says that "The differentiation of C2 and C3 was raised as a matter which could cause clarification challenges for local authorities", and the report recommended that the Welsh Government support the creation of further guidance concerning clarification matters. No such guidance has been forthcoming. However, it is asserted that I should take that report into account.
16. I have looked at the report, but it has little standing in this appeal. It may be taken to be a material consideration but, as there is no indication of any possible resulting change in legislation or Government policy, I give it negligible weight. My conclusions are primarily based on current legislation and development plan and Welsh Government policy.

Overall Conclusion

17. My overall conclusion is that the proposed development would not significantly affect any interests of acknowledged importance, including the amenity of neighbouring residents and highway safety, and would comply with the relevant development plan policies. For the reasons given above I conclude that the appeal should be allowed and that planning permission should be granted subject to a number of necessary planning conditions.
18. The Council has suggested a set of conditions, and the Appellant has raised no objection to any of these. I consider these conditions to be necessary for the reasons attached to each one.

19. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of delivering quality health and care services fit for the future.

Clive Nield

Inspector

ANNEX OF CONDITIONS

- 1) The development shall begin not later than five years from the date of this decision.

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

- 2) The development shall be carried out in accordance with the following approved plans:
- Site Location Plan, Drwg. No. 100 Rev P0, received 18 October 2019;
 - Proposed Site Block Plan, Drwg. No. 201 Rev P0, received 18 October 2019;
 - Proposed Garage Plan, Drwg. No. 250 Rev P5, received 14 February 2020;
 - Proposed Front and Side Elevation – Garage, Drwg. No. 255 Rev P5, received 14 February 2020;
 - Proposed Rear and Side 2 Elevation – Garage, Drwg. No. 256 Rev P5, received 14 February 2020;
 - Proposed Front and Side Elevation – House, Drwg. No. 205 Rev P1, received 18 October 2019;
 - Proposed Rear and Side 2 Elevation – House, Drwg. No. 206 Rev P3; received 18 October 2019;
 - Proposed Ground Floor Plan – House, Drwg. No. 203 Rev P4, received 18 October 2019;
 - Proposed Loft Floor Plans – House, Drwg. No. 204 Rev P3, received 18 October 2019.

Reason: To ensure that the development is carried out only as approved.

- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Reason: In the interests of the visual amenities of the area, in accordance with Policy CW2 of the adopted Caerphilly County Borough Local Development Plan.

- 4) The development hereby permitted shall not be occupied at any time other than for purposes ancillary and incidental to the C3 residential use of the existing dwelling known as Saer Coed at the site.

Reason: For the avoidance of doubt as to the nature of the approved development, and to ensure that the development is not occupied as a separate unit of accommodation.

- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification), no extension of the annexe hereby permitted shall be constructed without the approval of the Local Planning Authority.

Reason: In the interests of residential amenity, in accordance with Policy CW2 of the adopted Caerphilly County Borough Local Development Plan.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows, other than those expressly authorised by this permission, shall be constructed without the approval of the Local Planning Authority.

Reason: In the interests of residential amenity, in accordance with Policy CW2 of the adopted Caerphilly County Borough Local Development Plan.

- 7) Notwithstanding the plans hereby approved, the roof lights on the rear roof plane of the annexe shall be fixed and non-opening and shall be retained as such in perpetuity.

Reason: In the interests of residential amenity, in accordance with Policy CW2 of the adopted Caerphilly County Borough Local Development Plan.