

Application Number: DM/2024/00206

Proposal: A lawful development certificate for the proposed use of the property as a Supported Living home for 5no. elderly persons (C3 use class).

Address: 28 Jasper Tudor Crescent, Llanfoist, Monmouthshire, NP7 9AZ

Applicant: C/O Agent

Plans: Floor Plans - Proposed FLOOR PLANS - , Location Plan SITE LOCATION PLAN - , Other APPENDICES

RECOMMENDATION: Approve

Case Officer: Ms Kate Young
Date Valid: 19.02.2024

This application is presented to Planning Committee at the request of the Llanfoist Fawr Community Council

1.0 APPLICATION DETAILS

1.1 Site Description

No. 28 Jasper Tudor Crescent is a large, modern detached residential dwelling adjacent to a children's play area in a modern housing estate. It contains 6 bedrooms over three floors, with two of the bedrooms being in the roof space. The ground floor comprises a kitchen/dinner, living room and play room as well as a WC and hall way. The property has a private enclosed rear garden, a private driveway and a garage.

1.2 Proposal Description

The application is for a Lawful Development Certificate (LDC) for a Proposed Use or Development, the purpose of which is to ascertain if planning permission is required for the proposed use. An LDC would provide certainty over the need, or not, for planning permission. It does not the granting of planning permission in itself.

In relation to this application, The Pobl Group propose to use the property as a Supported Living home for 5no. elderly persons to live in the property under the supervision of 1no. staff at any one time. The evaluation of this application is therefore a technical decision as to whether the proposed use requires planning permission or not.

2.0 RELEVANT PLANNING HISTORY (if any)

Reference Number	Description	Decision	Decision Date
DM/2024/00206	A lawful development certificate to for the proposed use of the property as a Supported Living home for 5no. elderly persons (C3 use class).	Pending Determination	

2.0 NATIONAL PLANNING POLICY

Future Wales - the national plan 2040

Future Wales is the national development framework, setting the direction for development in Wales to 2040. It is a development plan with a strategy for addressing key national priorities through the planning system, including sustaining and developing a vibrant economy, achieving decarbonisation and climate-resilience, developing strong ecosystems and improving the health and well-being of our communities. Future Wales - the national plan 2040 is the national development framework and it is the highest tier plan, setting the direction for development in Wales to 2040. It is a framework which will be built on by Strategic Development Plans at a regional level and Local Development Plans. Planning decisions at every level of the planning system in Wales must be taken in accordance with the development plan as a whole.

Planning Policy Wales (PPW) Edition 12

The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales, as required by the Planning (Wales) Act 2015, the Well-being of Future Generations (Wales) Act 2015 and other key legislation and resultant duties such as the Socio-economic Duty.

A well functioning planning system is fundamental for sustainable development and achieving sustainable places. PPW promotes action at all levels of the planning process which is conducive to maximising its contribution to the well-being of Wales and its communities.

3.0 REPRESENTATIONS

3.1 Consultation Replies

Llanfoist Fawr Community Council - Objects and wish the application to be considered by the planning committee for the following reasons.

LFCC consider the property inappropriate for a supported living home.

This is clearly not a simple extension of lawful use from C3(a) to C3(b).

LFCC share the concerns expressed by residents regarding the consultation process associated with this proposal.

3.2 Neighbour Notification

Letters of objection received from 23 addresses, these have been summarised to the following key points;

- The application involves a change of use from C3a to C3b and planning permission is required for the proposed new use. The property will become a care home and a commercial enterprise. The property will have 5 single tenancy agreements and therefore would not operate as one single household.
- Approving the application would devalue other homes and the property looks unsightly.
- That the proposed use would increase parking stress, more than that anticipated from an average household causing a dangerous situation on the roads and a visually unpleasant situation. The property only has parking for two cars and therefore is not suitable for 5 elderly people and a carer.
- Emergency services would fail to access the property on the narrow roads with a number of cars parked on the road.
- A single home would not fall under the fire safety regulations, where a care home would. The objector believes that the proposals fall under the Fire Safety Order 2005 and would

therefore be different use and require different fire safety measures, such as a sprinkler system.

- That the subject property overlooks a children's park which would be totally inappropriate and potentially unsafe for the use of clients with uncontrolled behaviours.
- Residents' needs could change over time and could serve a broader array of purposes beyond merely assisting the elderly, without any further planning approval. Concerns that the property could house individuals who have behavioural health conditions with the potential to cause anti-social issues or pose risks, especially to children.
- That the development sets a worrying precedent for changes of use that would change the nature of the estate and takes one more family home permanently off the market on an estate designed for that purpose. The property may need changes, including an external fire escape which would change the appearance.
- The concentration of adults at the property would increase waste
- When the estate was built, social and affordable housing was provided. Increasing this ratio is unnecessary and potentially places residents, many with children at risk of harm
- That the particular building is not suitable.
- The consultation process and assessment of the application carried out by MCC to date has been poor with little or no effort to engage. MCC have already determined the application without taking on board neighbour concerns.

3.3 Other Representations

None Received

5.3 Local Member Representations

None Received

Please note all representations can be read in full on the Council's website:
<https://planningonline.monmouthshire.gov.uk/online-applications/?lang=EN>

4.0 EVALUATION

4.1 Principle of Development

The application relates to a Lawful Development Certificate (LDC) which is a legally binding document issued by a local planning authority to confirm that either:

- A proposed development does not require planning permission OR
- that development that has already taken place either did not need planning permission or took place so long ago that it is immune from enforcement action.

A LDC provides proof that a development (existing or proposed) is lawful, or that planning permission is required.

In this case the applicants are asking the Local Planning Authority if the proposed use requires planning permission. This application seeks a decision from the Local Authority as to whether the proposed use of the building as a supported living home for 5 elderly persons is lawful, in that planning permission is or is not required for the proposed use.

The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. Planning permission is not needed for a

change of use of land to a new use within the same class, unless restricted by a planning condition.

The question is whether the proposed use of the building results in a change of use from the existing. At present the property at 28 Jasper Tudor Crescent is a C3 Dwellinghouse, used as a sole or main residence, this falls under use class C3. Use class C3 is split into three categories.

- **C3(a)** covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
- **C3(b)** up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.
- **C3(c)** allows for groups of people (up to six) living together as a single household to allow for those groupings that do not fall within the C4 HMO definition to be provided for, e.g. a small religious community may fall into this category as could a homeowner who is living with a lodger

Movement between these three categories is considered permitted development and would not require planning permission.

The Lawful Use Certificate is asking the Council as the Planning Authority if the use of the property falls within C3(b). If it is found that the proposed use is classified as C3(b) then planning permission will not be required, this is a matter of fact rather than a subjective issue.

The main issue in this case therefore is whether the proposed residents would be living together as a single household. There is considerable case law relating to this matter, most of which in Wales relates to residential care homes for children and when it is having a C3(b) use. Case law from England (*Barnes V Sheffield City Council 1995*) is helpful in determining what constitutes a single household. Some of the factors to take into account are:

- a) whether the persons living in the house came to it as a single group or whether they were independently recruited; what facilities were shared;
- b) whether the occupants were responsible for the whole house or just their particular rooms;
- c) whether individual tenants were able to, or did, lock other occupiers out of their rooms;
- d) whose responsibility it was to recruit new occupiers when individuals left;
- e) who allocated rooms;
- f) the size of the property;
- g) how stable the group composition was; and
- h) whether the mode of living was communal

To assist with this assessment additional information has been provided by the applicant to explain the proposals in more detail.

In this case, the group of 5 elderly ladies with learning difficulties are currently living together in another part of Abergavenny. The group has lived together for over 20 years. There is a low turnover of residents using the service as it is designated for adults with learning difficulties. In the last 5 years there has been one new service user joining the group. This change came about due to the death of a previous long-term resident. This is a very stable service provision. The carers provide background support to the group, helping with everyday living and assisting with some trips into Abergavenny. There is a carer on site at all times. There is an overnight shift where there is a carer on site, but is not required to be awake during that time. They are present to deal with any issues that may arise. Care is provided to the group as and when they may require it, including assistance with everyday activities (such as shopping or trips to Abergavenny). Each bedroom and the staff office/sleeping room will have a lock, with the service user and carers having keys. Rooms such as the living room and the kitchen have no locks on them. Service users are free to spend time together, or apart. Cooking is sometimes done together, or service users will prepare their own meals, with

assistance if it is required. There are no set meal times or provision of meals (as you may expect in a care home). Carers may eat with residents or not on a day-to-day basis. Residents are not 'monitored' in the sense of tracking all their movements and activities. The group's levels of independence vary from person to person, but these are in the nature of assistance when required, rather than being required to support them in all aspects of their lives. The resident's levels of interaction vary day to day and how the residents choose to spend their time (exactly like a single household).

4.3 Summary of Case Law

An inspector allowed an appeal and issued a LDC confirming that a group of five people with learning disabilities could lawfully occupy a house in east London without the need for planning permission, in Waltham Forest 31/07/2008 DCS No 100-057-069. The inspector decided that the issue was whether the use fell within Class C2 or Class C3(b). In dealing with this point various court judgements were referred to, the inspector placing particular weight on the judgement of *Hossack v Kettering Borough Council & another* 2002. In that case the court of appeal stated that Class C3 was intended to include small community care homes consisting of up to six people living together under arrangements which included some care from staff, whether the latter lived within the property or not. In his view, the residents would live together as a household and would enable those with learning difficulties including autism, cerebral palsy and Down's syndrome, who would otherwise have to be accommodated in an institution of some kind, to live as normal lives as possible within the local community. A member of staff would be present at all times but none would live on the premises. Residents would be selected and assessed in order to promote the formation of a living relationship between them and in this sense they would constitute a single household for the purposes of Class 3(b). There was no requirement, he ruled, for a resident carer to be part of the household in order for the use to fall within this class. Consequently, there would be no material change of use since the premises would remain as a dwellinghouse under Class C3.

An LDC was requested for the use of a dwellinghouse as a six-person care home for individuals recovering from mental ill-health. The scheme involved residents living together as a single household with the use of communal facilities and a member of staff sleeping in to provide 24-hour cover. The council refused to issue a certificate because the number of residents would exceed six and this would constitute a change of use from Class C3(b) of the Use Classes Order. An inspector held that whether staff should be counted as residents must be one of fact and degree. None of the staff would live permanently in the building but would take turns on a rota basis. It was concluded that staff should be regarded as residents thereby breaching the six-person threshold, but that it was also appropriate to assess whether there would be any material change from the last use of the premises as a dwellinghouse. The inspector felt that a normal dwellinghouse could well be occupied by an extended family which might include the care of children or the elderly. In addition, none of the residents would cook meals in their rooms since the intention was to rehabilitate them in a normal residential environment as part of the community. No material change of use was involved, see Waltham Forest 11/01/2001 DCS No 042-483-329.

A number of enforcement cases have been assessed at appeal, In Maidstone 02/10/2002 the inspector concluded that as of the occupants had a separate tenancy agreement and noted that the nature of the tenancy agreements indicated a degree of transience, greater than one would expect in a single household. In Macclesfield 08/09/2005 again placed emphasis on the tenancy agreements suggesting a constantly changing group of occupants. They noted that the communal areas could be shared but under strict supervision which was not something to be expected from a single household. Each of the bedrooms had locks, but this was in itself not determinative but noted that the short-term tenancies did not facilitate occupants to form close intimate relationships that might be expected as persons living together and therefore, they were not a single household. In Sheffield 01/2/2006 the inspector noted that there were no impacts from the present occupation that led to a significant increase in noise or activity and concluded that on the balance of probability there was no material change in use from a house being occupied by six persons living together as a single household.

4.4 Evaluation

In this case the number of residents proposed to occupy no 28 Jasper Tudor Crescent would not exceed 6. The proposed use includes small community care homes consisting of up to six people living together under arrangements which included some care from staff. The residents would live together as a household live and live normal lives within the community. Residents have been selected and assessed in order to promote the formation of a living relationship between them and in this sense they constitute a single household for the purposes of Class 3(b). This is with the aim of creating a cohesive stable and long term household helping to develop positive relationships between them. As identified above the current occupants have been living together as a group for 20 years suggesting a stable rather than transient occupancy profile.

In light of the case law and inspectors' decisions above, there is no need for a resident carer to be part of the household in order for the use to fall within this class. In this case the group composition is very stable, with a carer supporting where necessary and being able to sleep at the property overnight as per the other occupants, similar to a domestic employee. There would be locks on the bedroom doors but not on the communal areas, this is not unusual for a residential property in order to give privacy for personal care and sleep. Inspectors' decisions have considered this element but balanced this against the day to day activities in the household and not paid definitive weight to this. The model of use here is communal with residents having the shaded use of the kitchen/dinner, games room, garden and living room, the ability to cook together and to share in household chores. The occupants are well known to each other having lived together for some considerable time and have utilised communal spaces well not having set times to eat or being monitored in any way other than to have support where needed.

There would be no external alterations to the property and the property would remain typical of a residential dwelling. Unlike most residential properties, the residents generally do not have private cars. The carer may wish to drive to the property, in which case they would park on the drive or they may walk or arrive by public transport. The property is serviced with two off road car parking spaces and a double garage retained for parking by a condition on the original planning permission. During the day the cared-for residents would leave and return to the property on a daily basis, with the majority being unaccompanied and travelling by public transport or walking. Daytime visits from family members are anticipated, as well as a monthly visit by a chiropodist (no visits are planned by nurses or medical staff). However, the number of visitors would be no different than could be expected to be generated by any other C3 use. Therefore, the proposed use should not cause a materially greater detrimental impact in terms of car movements and parking demand than what would be reasonably expected to be generated by an average household within the same use class.

There is no evidence to suggest that the occupation of the building would increase noise or activity levels over and above the average household living in a property of this size. Occupants would have a bedroom space for quiet times and communal areas to socialise together, using the living rooms and garden spaces in the same manner as one household would.

In conclusion for the above reasons, including current case law, it is considered that the proposed use would align with the definition of a C3b and that movement within the C3 use would not require planning permission. The proposals relate to up to six people living together as a single household and receiving care, consequently, there would be no material change of use since the premises would remain as a dwellinghouse under Class C3. In summary, the use of the dwelling would not be materially different, in planning term to its use by a single household and no material change of use would occur.

4.5 Response to the Representations of Third Parties and/or Community/Town Council

The application that seeks a decision as to whether the development that is proposed is lawful or not, it is a matter of fact rather than an assessment of the merits of the proposals, to confirm, the assessment of the Certificate is not whether the development is appropriate or not, it is whether or not planning permission would be required for the proposed use. This has been addressed and considered above.

However, as a number of concerns have been raised, responses to these concerns are set out in turn below.

That the proposed development is a change of use. For the above reasons set out in the report it is considered that the proposed use falls within the same use class as the current legal use constituting individuals who, whilst receiving care, are living as one household sharing communal spaces and the general running of the home together.

That the proposed development would devalue the surrounding property prices. There is no evidence to suggest that the occupation of the property by 5 people in the form as proposed would devalue property prices. In addition, this is not a material consideration of the planning application and is given no weight in the assessment as to whether the proposed development constitutes a change of use.

That the development would increase parking stress and cause highway safety issues. During the day the cared-for residents would leave and return to the property on a daily basis, with the majority being unaccompanied. It is important to note that there will not be instances where residents will be picked up by minibuses or similar. Daytime visits from family members are anticipated, as well as a monthly visit by a chiropodist (no visits are planned by nurses or medical staff). The carers may arrive by car and park on the drive or they may choose to walk or travel by public transport. The level of traffic generated by this group of people living as a single household would not necessarily generate any more traffic movements that you would expect from any other property of this size. There is no reason to anticipate that the proposed occupiers would result in more deliveries to the property or that they would generate any more waste than the average household for a property of this size. There is no reason to suggest that the proposed use would generate a significant level of on road parking. In addition there is no evidence to suggest that the current parking provision and parking practices impede the emergency services, or that this development would cause obstruction in the future

That the development would need to comply with current fire safety regulations. The purpose of the planning legislation is to manage land use, the fire regulations sit outside of this remit and so their application is a separate matter not controlled or influenced by any decision made by the granting or not of this certificate. Where applicable, they are required to be adhered to separately to this certificate. In addition, the selected property will be registered and regulated by the Care and Social Services Inspectorate for Wales (CSSIW). The applicant, Pobl Group, are a fully registered service provider with Care Inspectorate Wales (CIW), again a process managed independently outside of the planning remit.

That the development could cause anti-social behaviour and could cause harm to children. The side gable of the property forms the boundary of the site with overlooking windows, to which it is immediately adjacent to the public open space providing children's play equipment. There is no evidence to suggest that the occupation of the property as proposed poses a risk to child safety or any other users of the public open space. It is unreasonable to assume that the proposed development would see an increase in risk over and above the occupancy of the property by any other household.

That the development would become a commercial activity and serve a broader array of purposes. The certificate is considered on the evidence submitted to the Planning Authority, to which it is considered that the development falls within the scope of one household living together and is within the use class C3. If this were to change, and the building was to be used for other purposes, for example a House of Multiple Occupation, then this would then be subject to a future planning application.

That the development would change the nature of the estate. As with other similar concerns, there is no evidence to suggest that 5 elderly occupants living as one household within this residential community would have an adverse effect and change the nature of the estate. It is considered that the household would function in the same manner as the other properties in the area.

That the development would increase waste. As with the above, there is no evidence to suggest that the proposed occupants of the dwelling would increase waste from the property over and above any other household living in a building of this size.

That social housing has already been provided when the development was initially built. This was the case, however the provision of affordable housing at the point of construction would not preclude any additional provision being provided at a later stage.

That the application property is not suitable for supported living. This is due to its three story nature and number of en-suite bathrooms. The residents in question already live as a family group in another part of Abergavenny but that premises is no longer financially nor operationally feasible. It is not within the scope of the certificate to assess whether the property provides suitable accommodation for the household or not. This is an assessment for the applicant to consider when allocating accommodation.

That the Planning Authority has not consulted or engaged with the local community about the proposals. Legally, in the case of a Lawful Development Certificate, there is no requirement for the Local Planning Authority to notify adjoining landowners or the community council, unlike a planning application. In this case Llanfoist Fawr Community Council was notified as a matter of courtesy. However, all the representations received from local residents and the community council have been read and their content noted.

1b 4.6 Well-Being of Future Generations (Wales) Act 2015

The duty to improve the economic, social, environmental and cultural well-being of Wales has been considered, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act). In reaching this recommendation, the ways of working set out at section 5 of the WBFG Act have been taken into account and it is considered that this recommendation is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives set out in section 8 of the WBFG Act.

6.7 Conclusion

The information submitted and the assessment above demonstrates that the use of the site as a small Supported Living home (C3 use) for 5no. elderly persons to live in the property under the supervision of 1no. staff at any one time, would not represent a material change of use from the existing C3 dwellinghouse. The proposal would fulfil the criteria of C3(b) as the household would contain less than 6 residents living as one household where care is provided to a degree similar to that expected within a typical family home. Therefore, the proposal is lawful as it would not result in a material change of use and does not require the benefit of planning permission.

7.0 RECOMMENDATION: Approve

Reasons for Approval :

1 Reasons for Approval :

The information submitted and the assessment above demonstrates that the use of the site as a supported Living home for 5no. elderly persons under the supervision of 1no. staff at any one time would not represent a material change of use from the existing C3 dwellinghouse. The proposal would fulfil the criteria of C3(b) as the household would contain less than 6 residents and care is provided to a degree similar to that expected within a typical family home. Therefore, the proposal is lawful as it would not result in a material change of use. In this case planning permission is not needed.

