17 January 2017

16/P/01281/CEU

Application for Certificate of Lawful Development to retain the existing C3b use offering supported living to a maximum of 5 residents at Edlogan Villa, Avondale Road, Sebastopol, Pontypool.

Report submitted by: Richard Lewis, Head of Development Management
Report written by: Helen Smith, Principal Planner

1 Purpose of Report

1.1 To inform members of the application for a Certificate of Lawful Development for the use of Edlogan Villa, Avondale Road, Sebastopol, as a C3(b) offering supported living to a maximum of five residents.

1.2 Members will recall that this item was deferred at planning committee on 13 December following the submission of late petition from residents. The Head of Development Management deferred this item to enable proper consideration to be given to the content of the petition.

2 Report

2.1 Attached to this report is a Delegated Report for the above application for a Certificate of Lawful Development. In accordance with the Council’s scheme of delegation, the Head of Development Management is minded to grant the Certificate for the reasons set out in the attached report. This report has been updated following the submission of the petition referred to above.

2.2 Due to the history of this site and the high level of representations from local residents, this report is being presented to Planning Committee for information only as, whilst the resident’s concerns and issues which they are experiencing are noted, the application can only be determined on the facts and the law rather than planning policies or planning merits. Accordingly, the Local Planning Authority is required to issue a certificate for the proposed development if it is satisfied that the operation does not require planning consent.

3 Recommendation(s):

3.1 That the report be noted.

Appendices

| Delegated Report for 16/P/01281/CEU |

Background

Note: Members of the public are entitled, under the Local
Papers | Government Act 1972, to inspect background papers to reports. The following is a list of the background papers used in the production of this report.

None

For a copy of the background papers or for further information about this report, please telephone: Richard Lewis, Head of Development Management (Tel. 01633 647628)
OFFICER REPORT

Application Number: 16/P/01281/CEU

Received Date: 31st October 2016

Proposal: Application for Certificate of Lawful Development to retain the existing C3b use offering supported living to a maximum of 5 residents.

Site Address: Edlogan Villa Avondale Road Sebastopol Pontypool

Ward: Panteg

Agent: Mr Chris Jackson

Applicant: Ken Hart

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SITE HISTORY:

<table>
<thead>
<tr>
<th>App Number</th>
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<tr>
<td>16/P/01115/FUL</td>
<td>Change of use to supported housing unit for 10 residents and support staff</td>
<td>WDN</td>
<td>29.07.2016</td>
<td>19.09.2016</td>
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<tr>
<td>99/P/03501</td>
<td>conversion of part of roofspace into bedrooms</td>
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BACKGROUND

This application for a Certificate of lawful Development was due to be presented to planning committee on 13 December 2016 for information only, to inform members that the Head of Development Management was minded to grant the Certificate of Lawful Development applied for. However, the item was deferred due to the submission of a petition, to enable proper consideration as to whether any issues raised in the petition could have a bearing on whether the Certificate of Lawful Development should be issued or not.

The petition submitted raised the following comments/issues/queries:

- This is not an opposition to providing such services in the community but to make sure that services have a proven, clear and present need within the community, that all legal requirements are proven and met of qualifications to run and provide such a service.
- We the residents feel that Edlogan Villa and Hope Ministries fail to meet SAFE, SECURE and QUALIFIED needs to run such a business and care home.
- No proof of valid qualifications in caring for ex-offenders suffering from substance abuse or misuse have been provided.
- Hope ministries promised to publically withdraw the planning application and address the issues but now they are trying to circumvent the planning process.

In accordance with the relevant legislation the application must be determined on the facts and
the law rather than planning policies or planning merit. In addition, it has been held that a certificate can be issued even if the use may contravene other legislation. It is considered that the issues raised have no impact on the lawfulness of the use, and therefore are not relevant to the determination of the Certificate of Lawful Development. Nevertheless, although not relevant to the determination of this application the applicant was requested to provide a response to the petition to inform members and residents. Their response is as follows:

“Clyde Thomas is the UK director for Hope Ministries and has more than a decade of experience in the supported housing/substance misuse and employability fields. This has included work for national charities, trusteeship for a supported housing charity and contract work for the NHS. He now leads two Christian charities, one being a church which has worked with those battling addictions and other life controlling issues for more than 6 years and the other being Hope Ministries Cwmbran. He is educated to degree level in leadership and also holds a diploma in Christian Ministry with an emphasis on leading third sector organisations. He has also undertook various other vocational training including: Cognitive Behavioural Therapy, Dual Diagnosis, SMART goals training, to name but a few.

The day-to-day manager of Edlogan Villa is currently studying for an NVQ Level 5 in Health and Social Care and has more than five years experience in the field in various capacities.

Both director and manager have come through supported housing schemes locally, albeit many years ago. This in itself demonstrates the absolute necessity of accessible, local Supported Housing, that offers structure and support to the most vulnerable in our communities.

All paid staff possess experience and/or training that are suitable for the positions they hold. We have compared our recruitment process with several other providers. Including a secular national charity, and a similar local scheme.

All staff are also engaged in regular training to upskill them whilst they are employed by Hope Ministries. This includes formal NVQ training where staff don’t already possess NVQ’s. It also includes quarterly training blocks that are held by Hope Centre Ministries US. This is vital to our work with those in need as we want to achieve the same success levels that are celebrated by Hope Centre in the US (the charity to whom we are relationally connected).

It is worth noting that the Supported Housing field has no regulatory qualification guidelines as it is an unregulated sector, it is largely accepted that experience is hugely transferable and of great benefit to those who work in the sector. On this basis, it is clear that we are operating way above the necessary requirements and are seeking to pave a professional standard that will best serve those whose lives are being helped by our work.

As a Christian charity, all employees hold beliefs in line with the fundamental values of the charity. Supported Housing at this point is an unregulated field (nationally) and therefore, we realise that our success depends on the robustness of our internal policies and procedures. We are committed to a rigorous selection, interview, and assessment strategy for each member of staff, this includes significant voluntary involvement, references, etc.

We are not a rehab and therefore, we are not required to be audited by CQC or CSSIW. That said, we have contacted CSSIW for best practice advice, but were advised (back in May) that they have no involvement in Supported Housing schemes. At some point in the future, the government are likely to regulate the supported housing field and we will fully engage with all protocol as will all other providers nationally. We look forward to, and welcome regulation of the field, but at this point, we have met all the necessary requirements, and are committed to going above and beyond what is required anyway.

We have also built a great team of advisors which includes a doctor (NHS), a retired lady who
worked in Supported Housing for a national charity for many years, a substance misuse professional who works at a senior level in the Midlands.

Since May, we have worked with individuals at Edlogan Villa and there have been no issues internally, or externally that would affect the local community, this demonstrates the robustness of our work to support those who would otherwise be struggling in their lives.

In conclusion, the people best placed to assess our work are those whose lives are being helped, we operate an open door policy, we welcome anyone to meet the residents and see for themselves that these are just ordinary guys who need support. we of course welcome any inspection and/or visit that would help break down barriers. Our only intention is to pour our expertise and investment into the local community to help Torfaen become a better place.”

Following last committee a letter has been received from Nick Thomas-Symonds MP stating that he has been contacted by his constituents in relation to this application for the Certificate of Lawful Development. He states that providing properly-resourced rehabilitation services is absolutely vital to our justice system and that the residents were clear that they did not object to such services but that they were worried about location, lack of service provision and transparency, lack of regulation and safety and security of the premises.

The MP states that the Officer’s Report fails to identify case law in relation to whether a house is to be run as a single household having regard to the specific context. To give some examples: “there is no consideration as to whether the residents are individually referred or not; to what extent residents live independently; whether residents are collectively responsible for the whole house or just their rooms; or whether rooms have locks”.

He also states that residents have deep concerns particularly with regard to lack of regulation. He appreciated the steps that have been taken to listen to residents given that this is an application for a Certificate of Lawful development where consultation is not usual. He asks whether something that is self-described as a “next step support scheme” for those moving from structured rehabilitation programme is appropriate to be included in an application of this nature and whether there should be a wider debate on the use of this procedure.

The issue of the lack of regulation and safety issues raised by residents is addressed above and as previously stated is not a matter of law or fact to be considered as part of this application for a Certificate of Lawful Development. With regard to the issue of case law and the definition of a single household, consideration has been given to case law in the consideration of this application. The most relevant case is the Court of Appeal Decision “The Queen (On the Application of Yvonne Hossack) v Kettering Borough Council & Another v English Churches Housing Group 25 June 2002”. This case is discussed in the Assessment and Conclusion Section of this report.

In July 2016 a planning application was submitted for the change of use of this property to a supported housing unit for 10 residents and staff (Use Class C2). During the consideration of that application significant concerns and objections were received from local residents. The applicant held a public meeting to discuss the issues raised by residents. At this meeting the applicant advised the residents that they would withdraw the planning application to consider the issues raised and then resubmit a further planning application. The applicant subsequently withdrew the planning application in September 2016. However, the applicant has now changed his operation from accommodating 10 residents to accommodate a total of 5. This results in the Use Class being C3(b) as opposed to C2 as previously applied for.

During the consideration of the withdrawn planning application, comments were received from 71 neighbouring residents. The following is a summary of their comments:
- The type of residents that would be housed at this property would create unnecessary danger and unwanted risk for the local community which include children.
- The residents will not come from the local area.
- It will devalue my property.
- It is too close to existing residential properties.
- No details of what “supported living” means has been provided.
- More suitable location should be found away from housing and schools.
- The applicants have no respect for the community.
- Evidence shows that there is an increase in crime near such uses.
- Children of the area will not be able to play outdoors at ease.
- It will destroy the community spirit of Parc Panteg which is a family estate.
- It is understood that such services are required but it should not be in this area.
- I wouldn’t have bought my property if I had known of such a use in this building.
- The residents of the property will be former drug addicts.
- It is located in the wrong location.
- The organisers are not sufficiently qualified to run such a establishment and are ex-offenders themselves.
- Drugs paraphernalia will be left on roads and footpaths.
- There will be potentially an increase in burglaries and antisocial behaviour.
- There are questions over the credibility of Hope Ministries and qualifications of the staff.
- The content of the planning application is misleading.
- Renovations and building works have already been taking place.
- It is believed that there are other similar properties in the borough where there are issues.

There is no legal requirement to consult residents in relation to an application for a Certificate of Lawful Development. However, in this instance given the comments which neighbours raised when consulted on the withdrawn planning application, those who had commented were notified that the planning application was withdrawn and that a Certificate of Lawful Development had been submitted. They were informed that this was a notification only and comments from neighbours in relation to the planning merits of the development could not be taken into account in the determination of this Certificate as the planning merits are not to be considered, only the issue of whether the use is lawful for planning purposes.

Since the submission of this application 17 further representations have been received (16 objections and 1 supporting) stating the following:

- Hope Ministries are working on the property without the relevant permissions.
- Previous objections to the use are re-iterated.
- They are trying to circumnavigate the planning system to get what they want.
- It is a HMO not a C3(b) and Rent Smart Wales should apply and therefore this Certificate should be refused.
- The use is an important facility for people in need.

Whilst the resident’s concerns and issues which they are experiencing are noted, unfortunately these cannot be taken into account in the determination of the this application for a Certificate of Lawful Development.

The application is made under Section 191 of the Town & Country Planning Act 1990 (as amended). Accordingly, the Local Planning Authority is required to issue a certificate for the proposed development if it is satisfied that the operation does not require planning consent.

**DESCRIPTION OF SITE**
This site relates to a dwelling known as Edlogan Villa which is a substantial dwelling located off Avondale Road. The property is situated in a large garden and is located adjacent to existing dwellings on Avondale Road and opposite the entrance to Parc Panteg.

DESCRIPTION OF DEVELOPMENT

This application is for an application for a Certificate of Lawful Development for the existing use of this property as a C3(b) use offering supported living to a maximum of 5 residents.

The use of the property is be run by Hope Ministries who provide help and support to residents who have moved from structured rehabilitation programmes and who join their next-step support scheme to enable them to return to the community. Residents live as a single household sharing kitchen, bathroom and communal facilities.

ASSESSMENT AND CONCLUSION

This is an application for a ‘Certificate of Lawfulness’, therefore the planning merits are not relevant. The applicant is asking the Local Planning Authority to formally determine that planning permission is not required to change the use of this dwelling to a supported living residential home with a maximum of five adults who will live together as a single household.

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 the 25th February 2016 the use Classes Order 1995 was amended in Wales; Part C of the Schedule now reads as follows:-

“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 is a HMO for no more 6 residents).

The main issue to consider in the determination of this application for the Certificate is whether the use falls within Class C3(b) as defined above.

The number of residents residing at the property totals 5, which is within the 6 specified in C3(b).

The term “Care” is defined as follows:

In this Order, unless the context otherwise requires:- “care” means 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….. ”

The term “Personal care” is not defined in the Order but is defined in the Cambridge Dictionary as “the job of helping people who cannot take care of themselves, for example because they are disabled” and alternatively the Department of Work and Pensions defines personal care as “Personal Care includes: assistance with dressing, feeding, washing and toileting, as well as advice, encouragement and emotional and psychological support.”
With regard to the definition of a single household, the following court of appeal decision is relevant to the consideration of this Certificate of Lawful Development: “The Queen (On the Application of Yvonne Hossack) v Kettering Borough Council & Another v English Churches Housing Group 25 June 2002”. In this judgement, Lord Justice Simon Brown concluded that where a house is occupied by more than one person the occupants cannot be said to form a single household unless there is between them a relationship which provides a particular reason for their living in the same house. There is also no requirement that the occupiers should come to the house as a preformed group or for a predetermined period or that homogeneity in a group of residents is a necessary precondition to a group forming a single household. Therefore residents (not more than six) who have “a common need for accommodation, support and resettlement” can be considered as living as a single household. In this case the residents of Edlogan Villa have a common need for accommodation and support which is provided for by Hope Ministries and therefore this common need and purpose together with the shared facilities and how the residence operates, results in the residents forming a single household.

The following Planning Circulars are also relevant in this case:-


Paragraph 27 states “The key element in the use of a dwelling house for other than family purposes is the concept of a single household.” “The single household concept will provide more certainty over the planning position of small group homes which play a major role in the Government’s community care policy which is aimed at enabling disabled and mentally disordered people to live as normal lives as possible in touch with the community. Local Planning Authorities should include any resident care staff in their calculation of the number of people accommodated. The class includes not only families or people living together under arrangements for providing care and support within the community, but also other groups of people such as students not necessarily related to each other who choose to live on a communal basis as a single household.”

The Welsh Circular has not been updated in light of the changes to the Use Class Order and the introduction of Class C4 – although the same changes were introduced in England in 2010 and where accompanied by an updated Circular: CLG Circular 05/20-10: Changes to planning regulations for dwelling houses and houses in multiple occupation (came into force on 6th April 2010) it states the following:

C3(b) continues to make provision for supported housing schemes, such as those for people with disabilities or mental health problems.

From the information supplied by the applicant the property has moved within Class C3 from a C3(a) use to a C3(b) use "not more than six residents living together as a single household where care is provided for residents".

It is therefore considered that the use of this property for a supported living home for up to five residents does not require planning permission. It is therefore recommended that the Certificate of Lawful Development applied for is issued.

**RECOMMENDATION:** Approve unconditionally

Mrs Helen Smith
AUTHORISED BY: ...................................................
HEAD OF DEVELOPMENT MANAGEMENT
DEVELOPMENT MANAGEMENT

DATE: .............................................................