

Planning

Growth & Development

Delegated officer report for planning application

Application no. 132520/LP/2021

Date registered valid: 16 December 2021

Proposal: Certificate of lawful proposed use of the property as a children's home (C2 Use) for a maximum of 3 resident children with non-resident care staff

Address: 92 Wilbraham Road, Manchester, M14 7DR

Ward(s): Fallowfield Ward

Applicant: Mr Luqmaan X, 382 Slade Lane, Manchester, M19 2BU

Agent (if any): Mr Tim Perkins, TMP Planning Ltd, Unit 3-5, The Workshed Carriage Works, London Street, Swindon, SN1 5DG

Case officer: Janet Lawless
Tel: 0161 234 4535
Email: janet.lawless@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 9 February 2022

Application details

Type of application: Certificate Of Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: Non required for this type of application.

Standard consultations:

Printed: 21 December 2021

Expired: 11 January 2022

Neighbour notifications

No neighbour notifications have been printed and sent.

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

The property that is the subject of this Lawful Development Certificate is a 2- storey brick built semi-detached dwellinghouse on the northern side of Wilbraham Road. It is identified as number 92 Wilbraham Road. It has garden to the front and rear, with the front garden being laid to hardstanding with a low brick boundary wall to the front, and the rear garden is laid to lawn. The entrance to the property is on the side. The driveway is a shared driveway with number 90 Wilbraham Road. There is parking for three vehicles within the front garden and to the side.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is predominantly residential in nature with properties of the same style and size to the application site, many of which have created hard standings to the property frontage. The property is located on a good public transport network into Manchester and surrounding areas and can be travelled around by alternative modes of transport to the car.

Description of development

The application is for a Certificate of Lawful Development for the use of a dwellinghouse as children's care home (Class C2). The proposed layout comprises:

Ground floor - Office, sitting room, kitchen/ diner, entrance hall and WC.

First Floor 3 bedrooms and a family bathroom with a 4th bedroom with en-suite.

The area within which the property is located is predominantly residential in nature, with properties of a similar footprint and design to the proposal property.

Significant changes to the existing layout of the houses are not proposed. The proposals would provide accommodation for a maximum of 3 children with care provided on the following basis:

- i. 2 care worker would be on-site each day operating over 3 shifts; between the hours of 7:30 am to 08:00 am the 30- minute handover between shifts.
- ii. up to 2 staff members would be present over night; 1 sleeping, 1 awake. The pool of staff would be limited to enable familiarity of carers for the children.
- iii. A care manager would also be office based on a daily basis.

There would also be additional scheduled visits from social workers, medical staff, and if required home school tutors.

Consultations & Notification Responses

None required for this type of application.

Childrens' Services- no comments received

Housing monitoring group- no comments received.

Issues

The Applicant intends to use the property to accommodate up to three young people in social care who will reside on a permanent basis at the property, administered by 2 care workers attending in shifts, with three 'hand over' periods.

The dwelling will be used for long term placements only and will be 'home' to the young people concerned (i.e. not for respite or emergency care orders). The Applicant seeks to provide a normal domestic environment for children who are unable to live with their families. Typically, children are placed with them by a local authority Children's Services department. Each home is carefully selected to ensure that the host community and the environment are nurturing and welcoming to young people.

The carers will be engaged with them in the same domestic routines, tasks and social activities which you would expect in a single-family dwelling house. The bathroom, kitchen and living areas will be communal and each child will have their own bedroom. Food will be prepared in the kitchen and eaten together in a communal environment.

The property does not require significant adaptation because it is the intention to provide a normal home environment. There would be no features associated with an institutionalised care home, with the children living a normal family life as a single household; they go to school, play out and take part in activities outside the home in the same way as children living in a domestic household. As such, it is improbable that any 'material' change in the character of the use would arise, such as from comings and goings generated by the proposed use. Similarly, it is unlikely that there would be any 'material' change in the appearance of the property or its surroundings.

With three 'hand over' periods, two carers would be present during the day to prepare meals, assist children getting to school, etc as well as in the evening.

The degree of care therefore is not considered to be excessive. A staff member (2 in total) are present during the night, and a manager will visit the property between office hours daily. The number of people resident at the property therefore will be only be five.

The amount of activity associated with the proposed use will not differ notably from a normal family dwelling; the activity generated by the staff handover period and the school run would be no more than expected for a house with children of school age and parents who travel to work daily and may have a cleaner or a gardener visiting their property during the day. Likewise, an

elderly person still residing at home would expect to be visited regularly by a carer or other family members.

In terms of the care standards Act 2000, residential childrens' homes and registered home managers are required to register with OFSTED as a social care provider before they can operate, and it is an offence not to do so.

The GDPO provides that, where no more than six residents will live together as a single household where care is provided, the lawful use is Use Class C3 (b). However, this application seeks a Certificate of Lawful proposed Development for the use of the property as Use Class C2.

This is due to the fact that whilst there is an element of care, it is not assigned carers that would reside there permanently, however, in all other ways the premises would operate as a family home. As the existing lawful use is Class 3 (a), under normal circumstances there would be no permitted change to Use Class C2. Therefore, it is a matter of Fact and Degree. Case Law has been provided specifically in the case of the following High Court judgement:

There is some case law which establishes that if the carers work on a rota basis and that it is not their permanent residence, the use must be regarded as C2 and not C3b. In the judgement of Mr. Justice Collins in *North Devon District Council v First Secretary of State* [2003]. J. Collins was clear on the facts of that particular case, that carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care cannot be regarded as living together and that, whilst there would be less than 6 residents, the children, without at least one adult living with them at the premises, would not be capable of being regarded in the true sense as a household. In his judgement, Mr. Justice Collins went on to reason that in the case before him, where three children would reside and be cared for by non-resident staff in a three-bedroom semi-detached property, the use would seem to clearly fall within Class C2 of the 'UCO 1987' as a 'residential institution' which includes a home that provides care for children. As such it is accepted that the proposed use here is C2.

Given that there is no permitted change from Use Class C3 to Use Class C2 a planning judgement has to be made taking into account the following material considerations:

Principle of use- the principle of the use of the residential property as a C2 use is considered acceptable, however that is a judgement that is based on the specific running, management and operation of this property. Having the use operate as a single family dwellinghouse would operate, thereby, integrating into the residential character and grain of this established residential area is considered acceptable. However, the acceptance of the principle is not a blanket acceptance. It is therefore considered that the attachment of a condition restricting the movement of the use of the property to other uses within Class C2 be required to apply for planning permission before such changes could take place. A condition to that effect would be attached to any consent granted.

Visual Amenity- There are no aesthetic changes required for the operation of the premises as a C2 use. As such the proposed use would not result in a detrimental impact upon the visual amenity of either the property itself, or, the area within which it is located, still retaining the appearance of a single family dwellinghouse.

Residential Amenity- The proposed running of the premises as a C2 residential care home is not considered to give rise to unacceptable impacts upon the residential amenity currently enjoyed by the neighbouring properties. However this again is based upon such factors as ratio of staff to children, operational practices put in place through the submitted management

procedures, and 24 hour carers on site to deal with any issues at an early stage, much as would be expected of a single family dwellinghouse. The controlled operation of the property is particularly pertinent given the fact that the property is one half of a pair of semi-detached properties, and as such there is the potential for noise transfer as a result of the increase in noise that could be compounded by behavioural issues.

The level of residential amenity could not be controlled if another use within the C2 Use Class was to be introduced within the property without first being fully assessed as to its impact. Again this is why the attachment of a condition restricting the movement within the use Class C2 would be attached to any consent granted.

Parking/ Vehicular movements- The front garden has previously been given over to hardstanding, and as such, there would be parking provision for 3 vehicles. It is likely that there would be vehicle movements created by the carers coming and going on a daily basis as they start and leave their shifts and with journeys undertaken with the children. Nevertheless, it is not considered that the number of such movements is likely to be significantly more than those undertaken by a family and would not result in the intensification of the use of the property when compared to the movements of a family dwellinghouse.

Waste Management- Given that the property is to be used as a single family dwellinghouse, the existing waste management procedures will remain unaffected.

Character of the Area- there are no physical external changes to the building, and the parking arrangement already exists, as such the proposal should not result in a detrimental impact upon the character of the property nor the area in which it is located. This is so long as the property is managed in accordance with the planning statement submitted as supporting information. The condition requiring prior consent for any other change within the Use Class C2 would be intended to protect that character and would be attached to any consent granted.

To conclude, based on fact and degree, the use of the property in these respects, as a children's care home, would not result in a use materially different in character to the lawful use of the property as a C3 dwelling house, however due to the shift changes of the carers would sit more comfortably within Use Class C2. It is considered that this approach could be supported but only with the attachment of a bespoke condition relating to the specific management and operation of this property, and, that planning permission would be required for any other subsequent use which falls within the Use Class C2. This approach would be similar to attaching a personalised consent.

This approach would enable the integration of young people within the community, promoting a 'small care home within normal residential areas living as typical families, whilst protecting the amenities of the people living within the area from potential intensification of use through moving within the Use Class C2 without the benefit of first securing planning permission. It is considered necessary to attach the condition to enable issue of the Certificate as applied for as, other uses within use Class C2 would have the potential to result in demonstrable harm upon those amenities currently enjoyed by the neighbouring properties, and upon the character of the property itself and the area within which it is located.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Approve

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) Approved on the basis that the proposed occupation of 92 Wilbraham Road as detailed on the submitted document and drawings stamped as received by the City Council on 16th December 2021 and referenced:

Forms relating to an application for a Lawful Development Certificate
Location Plan
Existing and Proposed Ground Floor Plan
Existing and Proposed First floor plan
TMP Planning Statement
Block Plan of the Site.
All received 16th December 2021.

constitutes a Class C2 use for occupation by up to six people living together as a single household and receiving care as defined by Town and Country Planning (Use Classes) Order 1987 (as amended).

2) The permitted lawful use of the property is solely as described in the description of development on the application form submitted 16th December 2021 and the planning statement received from TMP Planning on the 16th December 2021. Any change in the use of the property from the described development to any alternative use within Use Class C2 would require a separate application for planning permission.

Appendix 1 – List of consultees & neighbours notified

MCC Supported Housing Monitoring Group
Childrens' Services

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH