

## Planning

## Growth & Development

### Delegated officer report for planning application

**Application no.** 133215/LP/2022

**Date registered valid:** 15 March 2022

**Proposal:** Certificate of Lawful Proposed Development for Use of a C3a dwelling for a children's home for one child, with two carers sleeping overnight, working on a rota basis (C2)

**Address:** 41 Stephens Road, Manchester, M20 4XB

**Ward(s):** Withington Ward

**Applicant:** Irfan Munir Fledgling Child Care Ltd Colonnade House, 163 Kingsway, Manchester, M19 2ND

**Agent (if any):** Adrian Rose, Rose Consulting 16 Rhodesia Avenue, Halifax, HX3 0PB

**Case officer:** Janet Lawless  
Tel: 0161 234 4535  
Email: [janet.lawless@manchester.gov.uk](mailto:janet.lawless@manchester.gov.uk)

**Recommendation:** Approve

**Date of recommendation:** 9<sup>th</sup> May 2022

## **Application details**

**Type of application:** Certificate Lawful Development Proposed

**Development type:** Certificates of lawfulness

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

### **Standard consultations:**

Printed: 22 March 2022      Expired: 12 April 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 certificate of Lawful Development application is identified as 41 Stephens Road in the Fallowfield ward of the City. It is a red brick bay fronted semi-detached property that is located at the junction of Stephens Road and Brookleigh Road. It has garden area to the front side and rear with pedestrian access being taken off the Stephens Road frontage and vehicular access leading to a detached garage on Brookleigh Road. The boundary treatment comprises of concrete post and panel fence, low brick wall with hedging above.

**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

## **Description of area**

The area is predominantly residential in nature comprising of properties of a similar age and style to the proposal site.

## **Description of development**

The proposal is for a Certificate of Lawful Development to enable the use of the C3 dwellinghouse to be used as a C2 childrens home with a maximum of one child aged 10-17 with 2 members of staff sleeping overnight on a rota basis.

Significant changes to the existing layout of the house are not proposed.

- i. 2 care workers would be on-site each day operating over 2 shifts; with a changeover every 48 hours.
- ii. up to 2 staff members would be present overnight;

iii. A further home manager/carer would visit during the day.

The young resident would attend a DFE registered or mainstream school and would partake in recreational activities at the weekends similar to any other pass time enjoyed by children within that age range. The property would have to be approved under Ofsted regulations and secure a license, and this type of care home would operate as a typical family household.

### **Consultations & Notification Responses**

There are no local resident consultations required for this type of application.

Childrens Commissioning Services- no comments received.

Supported Housing- no comments received.

### **Issues**

The Applicant intends to use the property to accommodate a maximum of 1 young person between the ages of 10 - 17 in social care who will reside on a permanent basis at the property, administered by 2 care workers attending in shifts, with two 'hand over' periods. The dwelling will be used for permanent 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. The organisation is committed to a small homes care philosophy. 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 the resident 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 child 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/ young adults would 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 two 'hand over' periods every 48/60 hours, two carers would be present during the day to prepare meals, assist children getting to school, placements 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 09.00- 17.00 daily. The number of people resident at the property therefore will be only be three.

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 / social outings 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.

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 and as such it would not be their primary residence, 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 nor the area within which it is located.

**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 property has sufficient space to provide areas of quiet should they be required, it is hoped that these would be used to their best effect to ensure that noise levels are kept to a level that would be reasonably expected through the normal day to day activity of a single family dwellinghouse.

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-** There is dedicated parking for 2 spaces with the property, and in addition there are no restrictions with regards to on street parking should an additional space be required during staff changeover times or for such additional visits by professional staff such as OFSTED inspectors, this type of visit would take place approximately twice a year. Based upon the number of vehicle movements proposed over a weekly period this should be sufficient for staff and occasional visitor to the property. The need for parking spaces would be similar to that of a 3- bed family home dependent upon the age range of the family members. The property is well served by alternative modes of transport to the motor car, and it is possible to cycle around the area and to local service provision. The driveway that runs alongside the property has the capacity for one vehicle and there is the free-standing garage accessed off Brookleigh Road to park within the curtilage of the site.

**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 this respect, 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 dwellinghouse, 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 both 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 41 Stephens Road as detailed on the submitted document and drawings stamped as received by the City Council on 15th March and by email from Adrian Rose Consultants on 9th May 2022 respectively and referenced:

Forms relating to an application for a Lawful Development Certificate 15th March 2022

Existing and proposed floor plans and elevations 9th May 2022

Planning Statement prepared by Rose Consulting received 15th March 2022

Location Plan received 15th March 2022

Constitutes a Class C2 use for occupation by up to three 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 and Supporting Statement by Rose Consulting all received 15th March 2022 and Existing and Proposed Floor Plans received by email from Adrian Rose consultant 9th May 2022 respectively. 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**

Sarah Austin, Childrens Commissioning  
MCC Supported Housing Monitoring Group

## **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