

Planning

Growth & Development

Delegated officer report for planning application

Application no. 130549/LP/2021

Date registered valid: 20 July 2021

Proposal: Certificate of Lawful Proposed Development - Use of a dwellinghouse as children's care home (Class C2)

Address: 143 Whitchurch Road, Manchester, M20 1FY

Ward(s): Old Moat Ward

Applicant: Miss Phillippa Davidson 143 Whitchurch Road, Manchester , M20 1FY

Agent (if any):

Case officer: Dave Morris
Tel: 0161 600 7924
Email: dave.morris@manchester.gov.uk

Recommendation: APPROVE

Date of recommendation: 14.09.2021

Application details

Type of application: Certificate Lawful Developmnt Proposed

Development type: Certificates of lawfulness

Date of site visit: None undertaken for this type of application

Standard consultations:

No consultations have been printed and sent.

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

This application relates to a semi detached house on the south side of Whitchurch Road. There is a large extension on the rear. There is a large front garden used for parking and a large garden to the rear. The property is in use as a family dwelling within class C3. There is no planning history.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

This is a predominantly residential area and there are residential properties to either side, facing the site and to the rear.

Description of development

Confirmation is sought that planning permission is not required to change from Class C3 to class C2

Consultations & Notification Responses

No representations received

Issues

The Applicant intends to use the property to accommodate up to two young people in social care who will reside on a permanent basis at the property. The young people can be any age between 11 and 18 years old and can either be a boy or a girl. The care would be administered by 2 care workers attending in shifts .

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 applications 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.

It is recognised that there is case law 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 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 a layby within the highway for car parking.

Waste Management- Given that the property is to be used in a similar manner to 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 143 Whitchurch Road as detailed on the submitted document

Forms relating to an application for a Lawful Development Certificate received 26 May 2021

Proposed ground floor plan received 26 May 2021

Proposed first floor plan received 26 May 2021

Location Plan received 20 July 2021

Statement of Purpose by Fresh Start received 26 May 2021

Shift Patterns and Staff Numbers received 20 July 2021

constitutes a Class C2 use for occupation of 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 26th May 2021 and the supporting statement received on the 26th May 2021 and shift patterns information received on the 20th July 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

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) -

Area Team Boundary - Name: SOUTH