

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142001/LE/2025

Date registered valid: 19 March 2025

Proposal: Use of property as a children's home for up to two children with carer accommodation (Use Class C2).

Address: 23 Wellfield Road, Manchester, M23 1BG

Ward(s): Baguley Ward

Applicant: Mr Vincent Cawley Oakfield Psychological Services

Agent (if any):

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 25 June 2025

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: Not Required

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

Not applicable

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of lawful development for the existing use of the property as a children's home for up to two children with carer accommodation (Use Class C2).

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties, including neighbours. Any views expressed by third parties regarding the planning merits of the case, or whether the applicant has private rights to carry out the proposed operation, use, or activity, are irrelevant when determining the application.

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicant’s version of events or make them less then probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose.

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - "If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?" In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any existing use or operations would be lawful for planning purposes.

The Town and Country Planning (Use Classes) Order 1987 (as amended) 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). The word “Care” equally applies to that of Class C2 which is defined as follows:

Use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwellinghouses)),

Use as a hospital or nursing home,

Use as a residential school, college or training centre.

The applicant is seeking a certificate of lawfulness for the existing use of the property as a children's home for up to two children with carer accommodation (Use Class C2).

The application form confirms that the use began on 1 July 2020 and has continued to the date of the application. As such, the relevant assessment is whether that change of use was a material change that required planning permission.

The supporting documentation describes the day-to-day operations at the property and states that it is run by a national provider of psychological services. The property was purchased by the provider specifically to provide accommodation for two young individuals, aged between 13 and 18 years, who present with a range of emotional, behavioural, and/or learning needs. These may include autism, attachment disorder, sensory processing difficulties, learning disabilities, and social communication challenges. The property is staffed 24 hours a day by up to four care professionals. Overnight, staffing consists of one member of staff sleeping on-site and another remaining awake to provide continuous supervision.

The property is described as two-bedroom house, that includes a living room, a bedroom, kitchen and a toilet fitted with a shower on the ground floor. At first floor is a living room, kitchen and a bedroom. This allows the two young persons to have their own living space bedroom

There is a maximum of two residents and up to four members of staff providing 24-hour care, a typical day has been provided by the applicant and, based on the information provided, the property functions similarly to a family house.

Lastly, the applicant has provided a certificate of registration provided by the Care Quality Commission dated 31 March 2021 and confirms that Oakfield Psychological Services Limited is registered in respect of regulated activity: Accommodation for persons who require nursing or personal care and Treatment of disease, disorder or injury. The certificate lists the application site as one of the sites where these activities are regulated.

Until 1 July 2020, the property was in use as a dwellinghouse (Class C3a) and under normal circumstances, there would be no permitted change to Use Class C2. Therefore, an assessment based on 'fact and degree' is necessary to determine whether there was a material change of use on 1 July 2020.

The question as to whether a semi-detached 3 bedroom dwellinghouse fell within Use Class C2 or C3 was considered in the High Court in *North Devon District Council v First Secretary of State* [2003]. In the judgement of Mr. Justice 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 existing use here is C2 and it is considered that the nature of the use, with a maximum of two children living there with a maximum of four carers at any single time, is not materially different to the preceding C3 use of the property.

There is no outward sign that the property is being used as a children's care home and it is considered that the comings and goings of carers, social workers, etc. are not – and have not

been – materially different to what would usually be expected at a dwellinghouse occupied by a single household. It is also noted that OFSTED requires that children's homes are operated as closely as possible to a typical family household; to provide a "home away from home".

Lastly there are no known conditions attached to any previous planning permission which would have restricted the use in such a way as to prevent any such change being made.

Other Legislative Requirements

Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

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

- 1) The change of use of the property from a dwellinghouse (Use Class C3) to a children's home for up to two children with carer accommodation (Use Class C2) was not development consisting of a material change of use, as set out in Section 55 of the Act, and therefore did not require planning permission, and there has not been a change of use requiring planning permission in the last 10 years.

Appendix 1 – List of consultees & neighbours notified

N/A

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Area Team Boundary - Name: SOUTH AREA