

Planning

Growth & Development

Delegated officer report for planning application

Application no. 143089/LP/2025

Date registered valid: 30 May 2025

Proposal: Use of dwelling (Use Class C3) as childrens home for up to 4 children with carer accommodation (Use Class C2)

Address: 56 Bankside Road, Manchester, M20 5GD

Ward(s): Didsbury East Ward

Applicant: Land and Securities Ltd

Agent (if any): Mrs Caroline Tamworth Caroline Tamworth Planning

Case officer: Matthew Kilsby
Tel: 0161 234 4591
Email: matthew.kilsby@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 25 June 2025

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: Not applicable

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

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of proposal

The application seeks a lawful development certificate for the use of the dwelling (currently planning use class C3) as a small children's home (planning use class C2). The home will accommodate up to four children and provide single occupation bedrooms for each child, shared living facilities and sleep in carer accommodation. The proposed use will be staffed on a rota system, rather than carers living at the home permanently, with two members of staff on site overnight and a maximum of three during the day.

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, 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 applicants 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 of 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 proposed 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.

This application seeks a Certificate of Lawful proposed Development for the use of the property as Use Class C2. 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 necessary to make an assessment based on a 'fact and degree' as to whether there will be a material change of use.

In this case, as described above the proposal seeks to house four children, whilst the home will be staffed by a small team of carers who will work on a rota system. However, not all the staff will be present on site at the same time. According to the planning statement submitted in support of the application, there will be two or three caring staff at the home during the day to provide meals and care for the children. Two members of staff will be on-site overnight.

In addition, visitors to the site will be limited with occasional visits from social services – usually every four to six weeks – with an independent monitoring/Regulation 44 visit each month in compliance with the Children's Homes (England) Regulations 2015. It is usual for one social worker to visit all the children at the home but there may be occasional visits by other social workers to cater for an individual child's needs. Healthcare professionals such as therapists or support workers may visit as and when required.

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 proposed use here is C2 and it is considered that the nature of the use, with a maximum of four children living there with a maximum of three carers at any single time, would not be materially different to the existing C3 use of the property. There will be 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. would not be 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 restrict 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 use of the dwelling (Use Class C3) as a children's care home for up to 4 children with carer accommodation (Use Class C2) would not be development consisting of a material change of use, as set out in Section 55 of the Act, and would therefore not require planning permission.

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

Flood Zones Type 2 (low to medium risk) -

Flood Zones Type 3 (high risk) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA