

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142024/LP/2025

Date registered valid: 7 February 2025

Proposal: Change of use from domestic dwelling (Use Class C3) to children's home (Use Class C3b)

Address: 3 Courtfield Avenue, Manchester, M9 6RT

Ward(s): Higher Blackley Ward

Applicant: Mr Kyle Warner Devon Developments N/W Ltd (12885573)

Agent (if any): Mr Joe Jennings ExtensionsNW Ltd

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

Recommendation: Refuse

Date of recommendation: 02 April 2025

Application details

Type of application: Certificate Lawful Development Proposed

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 and area

3 Courtfield Avenue is located in the Higher Blackley Ward of Manchester. This property is a two-storey, three-bedroom end terraced house, situated at the corner of Courtfield Avenue and Valentia Road. Terraced properties are the most common type of housing in this neighbourhood.

The property features both front and rear gardens. Although there is no parking provision at the property, there are no parking restrictions on either Courtfield Avenue or Valentia Road. The area is not particularly well-connected by public transport, with only a regular bus services providing access to Manchester city centre and other parts of Greater Manchester. The appears to be a mixture of primary and secondary schools in the area within a short distance of the application site.

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 to allow the change of use from domestic dwelling (Use Class C3) to children's home (Use Class C3b).

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.

Planning History - There have been no previous planning applications at this address.

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 than 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 Proposal

The applicant is seeking a certificate of lawful development to allow the change of use from a domestic dwelling (Use Class C3) to a children's home (Use Class C3b).

The proposal involves housing two children between the ages of 5 and 17 years old, who will receive care on a 1:1 child-to-adult ratio at any given time. The applicant considers that the

property should be classified under Use Class C3(b), as the children and adults will live together as a family unit, similar to two parents and up to two children, although they will be unrelated.

The proposed floor plan includes two children's bedrooms, a staff member's bedroom, and a separate office/store for staff, in addition to the bathroom on the first floor. On the ground floor, there will be a separate sitting room, lounge, and kitchen.

While it is clear from the information submitted that the children will not reside at the home alone, two members of staff from “Brighter Beginnings (North West) LTD” will reside at the property. However, it is unclear if this will be their permanent homes. The submitted statement under the key findings heading indicates that each staff member will complete a 48-hour shift, meaning staff will be less frequent in their comings and goings.

In terms of visitors and associated traffic generated by the use, the applicant considers that there will be no more comings and goings than an everyday family home. The two residential care staff will share one vehicle when leaving the property with the children. The applicant states that there will only be a few visits per week by external parties such as social workers, and any staff changeovers will occur outside of peak hours to reduce any impact on traffic in the area. The submitted statements mention that there is a relevant parking permit for a parking space at the front of the property.

If the lawful development certificate is granted, the home and operations will be subject to an Ofsted inspection and certification to ensure that the care home is adequately and appropriately run and is suitable for use.

Material Change of Use?

The use classes order provides the following definitions:

Use Class C3(b): Covers use as a dwellinghouse (whether or not as a sole or main residence) by not more than six residents living together as a single household, including households where care is provided for residents.

Use Class C2: Covers residential institutions - use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3), which includes homes that provide care for children.

It follows that a care home with no more than six residents falls into Class C3(b), unless it involves personal care of children or medical care and treatment. Therefore, only those care homes accommodating more than six adult residents, or which involve personal care of children or medical care and treatment, fall within Class C2.

Clearly, there is meant to be no overlap between the Use Classes.

Planning permission is usually required to change from a family Dwellinghouse (Use Class C3) to a Children's Home (Use Class C2). However, where applicants have demonstrated that the use of a property as a children's home would not be materially different to that of a family dwelling house, lawful development certificates have been granted.

One notable case that addresses the conversion from Use Class C3 to C2 is **North Devon District Council v First Secretary of State [2003]**. In this case, the court considered whether a dwellinghouse used to provide residential care for two children fell within Class C2 or C3(b).

The case made clear that children need to be looked after and cannot run a house or deal with all the matters involved in running a home. Children require full-time care from an adult to manage the household and ensure it operates properly. The term "household" implies that its members are capable of functioning as a unit, which includes the ability to manage and run the household.

The judgment clarified that carers who provide continuous 24-hour care but do not live at the premises cannot be regarded as living together with the children, thus falling under Class C2.

However, Class C3 does require at least one residential carer, living together with those who are being cared for.

The question nevertheless arose as to whether there had, as a matter of fact and degree, been a material change of use. On the special facts of this case, the High Court ruled that the use of the premises for up to two children, with care provided by non-resident staff, did not constitute a material change of use from its C3 classification. Overall that the proposed use would not result in a definable change in the character of the use of the property compared to the current C3(a) residential use. As such there would be no material change of use.

This case is important for the general principle that it establishes.

Another relevant case is the **Appeal Decision for 316 Westrow Drive, Barking**. The inspector considered whether the property was being used as a single household (C3 use class) or as a residential care home (C2 use class). The enforcement notice alleged the unauthorised material change of use from a single-family dwelling house (C3 use class) to a residential care home (C2 use class).

The key issue was whether the residents formed a single household and received care, which would classify the use under C3(b) rather than C2. In this case the occupants were young adults and not children. The inspector concluded that the property was being used as a single household where care was provided, fitting within the C3(b) use class. Therefore, the appeal was allowed, and the enforcement notice was quashed.

Conclusion

The certificate of lawful development should be refused because the proposed use of the property as a children's home falls under Use Class C2, not Use Class C3(b). The proposal involves continuous care for children, which aligns with the definition of a residential institution (Class C2). Relevant case law, including **North Devon District Council v First Secretary of State [2003]** and the **Appeal Decision for 316 Westrow Drive, Barking**, supports this interpretation.

Given these considerations, the proposal does not meet the criteria for Use Class C3(b) and should be classified under Use Class C2. Therefore, the certificate of lawful development should be refused.

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: Refuse

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

The applicants' supporting information has failed to demonstrate, on the balance of probabilities, that the use of the site as a home for the care for two children would satisfy Class C3(b) and would not be a material change of use. The proposal involves providing residential accommodation and care for two children, a use that would fall in Class C2 and not Class C3(b).

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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Area Team Boundary - Name: NORTH AREA