

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142303/LP/2025

Date registered valid: 18 March 2025

Proposal: Use of dwelling (Use Class C3) as a Children's Care Home (Use Class C2), providing care for 1 or 2 children, with staff working on a rota basis and a carer sleeping overnight.

Address: 9 Dunnisher Road, Manchester, M23 2YF

Ward(s): Baguley Ward

Applicant: Mr Dave Wood Arborvitae Care Services Ltd

Agent (if any):

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

Recommendation: Grant

Date of recommendation: 15 May 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

N/A

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 use of dwelling (Use Class C3) as a Children's Care Home (Use Class C2), providing care for 1 or 2 children, with staff working on a rota basis and a carer sleeping overnight.

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.

Planning History

There have been two previous planning applications at this address.

Application Reference: 093167/FH/2010/S2

Proposal: Erection of single storey side and part single storey, part two storey rear extension with detached garage to side

Status: Approved 14.07.2010

Application Reference: 097519/NMC/2011/S2

Proposal: Non-Material Amendment to planning consent 093167/FH/2010/S2 to carry out amendments to the front elevation

Status: Approved 19.10.2011

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.

Material Change of Use?

The Town and Country Planning (General Permitted Development) Order states that where no more than six residents live together as a single household where care is provided, the lawful use is Use Class C3(b). The term "Care" also applies to Class C2, 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. The existing lawful use is Class 3(a), 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 is a material change of use.

Proposal /Staff

The proposal involves housing two young persons (aged between 8 and 17 years) with 24-hour supervision. The staff ratio will be two care staff per child, with a further carer/manager visiting during the day. Two of the staff sleep in the home. (16hrs awake and 8hrs sleep) working on a 2 on 2 off or 3 on 3 off pattern.

In terms of the manager the property will be dual registered (with Ofsted) with another property around the corner and the manager is based out of the other larger property but visits the home frequently (administratively) and a senior shift lead/deputy will always be part of the 2:1 ratio.

Daily routines are tailored to each young person's individual needs and care plan, including education provision—typically from 9:00 AM to 3:00 PM—either in a school setting or through virtual learning with carer support.

Meal times are structured, with breakfast from 7:30 to 8:00 AM, lunch from 12:30 to 1:15 PM (usually at school), and dinner between 5:30 and 7:30 PM.

Weekday activities often take place in the evenings, such as youth, sports, dance, or drama clubs, usually lasting about an hour. For those not in full-time education, daytime leisure activities with an educational focus are provided.

Weekend activities vary and are typically held during the day, including outings like Laser Quest, golf, horse riding, or fun fairs.

During school holidays, activities are more varied in both timing and duration, and annual holidays or short breaks usually last up to one week.

Based on the information provided, the property will function similarly to a family house.

Visitor and Regulatory Oversight

Whilst not specifically outline, the applicant confirms that the priority of all professionals is to ensure the home feels like a home and many meetings can and often take place outside of the

home setting, such as in school or via teams meetings. Visitors to the property will depend on the needs of the applicant.

Visitors such as Social Workers attend once every six weeks for about an hour, while other care professionals visit by appointment, also typically for no more than an hour.

All deliveries are directed to the head office in Warrington, while regular mail is delivered daily in line with other homes on the street.

Parking and Transport

The property features a driveway that can accommodate up to two vehicles.

Where appropriate, children are encouraged to use local transport. All deliveries are directed to the head office in Warrington, while regular mail is delivered daily in line with other homes on the street.

Legal Precedent

The case **North Devon District Council v First Secretary of State [2003]** involved a legal dispute over whether the use of a property for residential care of children fell within Use Class C2 (residential institutions) or Use Class C3 (dwelling houses).

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.

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.

This precedent is significant for determining the classification of properties used for residential care.

Conclusion

In this case, it is accepted that the proposed use falls under Class C2. However, as discussed, its use to care for up to two children would not be materially different from that of a dwelling house (Class C3). This is due to the way the property will be operated and managed. The number of people may exceed six persons for a brief period of 10 minutes during changeovers or when there are visitors to the property, as discussed above. However, this would be similar to a large family hosting friends or relatives at the property for a short duration.

Overall, it is considered that the proposal's impact would be similar to that of a family home. Therefore, the proposed use would not result in a development requiring planning permission.

There are no known conditions attached to any previous planning permission that would restrict the use in such a way as to prevent any such change.

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: Grant

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

1. The use of the dwellinghouse as a children's care home (Use Class C2) for up to two children with carer accommodation 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

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