



Company Number 11979026

Planning Statement

20 January 2025

6 LEES HALL CRESCENT, MANCHESTER, M14 6YA

APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE FOR PROPOSED USE OR DEVELOPMENT

PROPOSED CHANGE OF USE OF DWELLING (USE CLASS C3) TO CHILDREN'S HOME FOR UP TO THREE CHILDREN WITH UP TO THREE CARERS/MANAGER, TWO OF WHOM WILL STAY OVERNIGHT, WORKING ON A ROTA BASIS (C2)

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1. The Site

1.1 This application is being submitted on behalf of Myalo Ltd

1.2 The application relates to a 4-bedroom brick dwelling split over 3 floors on Lees Hall Crescent in the Fallowfield area of Manchester.

1.3 Living accommodation comprises a kitchen and 2 living rooms to the ground floor. Three bedrooms and a bathroom to the first floor. One bedroom and bathroom to the second floor. The dwelling is a semi-detached property with a driveway and amenity space to the front and rear which is enclosed by a mix of hedging, brick wall and timber fencing.

1.4 The surrounding area is residential in character with a pleasant mix of families, students and young professionals.

1.5 A site location plan is attached with this application.

2. Submissions

- 2.1 This planning statement is being submitted in support of the application seeking planning permission to use 6 Lees Hall Crescent, Manchester, M14 6YA, a C3 dwelling, as a small specialist Ofsted-registered care home for up to three children, which falls within use class C2 of the Use Classes Order.
- 2.2 The current established use of the site is that of a private residential, which is planning use Class C3. The dwelling could at present accommodate various household types such as a family, a couple or a group of co-habiting adults. It is submitted that the nature of intended use is not materially different from the current use as a family dwelling.
- 2.3 To ensure a smooth integration into the home and local community, each child will undergo an impact risk assessment prior to placement. This evaluation considers the home environment, community dynamics, peer groups, and the unique needs of each child.
- 2.4 The children are expected to reside at the property on a medium to long-term basis. The intended purpose of the dwelling is not as a halfway house or emergency housing rather a stable and supportive home.
- 2.5 If a children's home is run as stated above, with children being looked after by a permanent occupant of the dwelling, then planning permission would not be required.
- 2.6 However, at this site the care providers will work shifts and not reside permanently at the property. In the North Devon District Council vs. The First Secretary of State [2003] Judgment, Lord Justice Collins made the point that children *"need to be looked after. They cannot run a house. They cannot be expected to deal with all the matters that go to running a home ... children are regarded as needing fulltime care from an adult, someone to look after them, someone to run their lives for them and someone to make sure that the household operates as it should."*
- 2.7 The judgment confirms that children are incapable of forming a 'household' for the purpose of Use Class C3 and also clarified that carers who provided 24-hour care but were not resident could not be regarded as forming part of a household. Where the care providers do not live on site the use cannot be considered to fall within planning use class C3(b) and is a C2 use. An Inspector's decision in 2010 in Stockport stated that the use of premises as a children's home will generally be considered to fall within planning use class C2.
- 2.8 The change of use from C3 does not qualify as an automatic permitted change. However, it is submitted that there is minimal material difference between the existing and proposed use, suggesting that planning permission may not be necessary.
- 2.9 Section 192 (1) of the Town and Country Planning Act 1990 ('TCPA'). allows any person wishing to ascertain whether a proposed use of land or buildings or operational development would be lawful to submit an application to the Local Planning Authority (LPA). S192(2) allows a LPA to grant a Certificate of Lawfulness if it is satisfied with the evidence submitted in support of the application.
- 2.10 Section 55(1) of The Act defines "development" as including any material change in the use of a building. However, Section 55(2)(f) specifies that when a building is used for purposes within

a class designated by the Secretary of State, changing its use to another purpose within the same class does not constitute development under The Act.

2.11 Section 57(1) states that planning permission is required for any development of land, with "land" defined in Section 336(1) to include buildings. Furthermore, Section 192 of The Act (as amended) allows for applications to be submitted to the local planning authority to determine whether a proposed use of a building is lawful, which is the purpose of this application.

2.12 In a ministerial statement from Rachel Maclean, Former Minister of State for Housing and Planning in May 2023 stated:

"I, with the support of my Rt Hon colleague the Secretary of State for Education, wish to set out the Government's commitment to support the development of accommodation for looked after children, and its delivery through the planning system.

'The planning system should not be a barrier to providing homes for the most vulnerable children in society. When care is the best choice for a child, it is important that the care system provides stable, loving homes close to children's communities. These need to be the right homes, in the right places with access to good schools and community support. It is not acceptable that some children are living far from where they would call home (without a clear child protection reason for this), separated from the people they know and love'.

Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country. It is important that prospective applicants talk to local planning authorities about whether their service is needed in that locality, using the location assessment (a regulatory requirement and part of the Ofsted registration process set out in paragraph 15.1 of the Guide to the Children's Homes Regulations) to demonstrate this.

Planning permission will not be required in all cases of development of children's homes, including for changes of use from dwelling houses in Class C3 of the Use Classes Order 1987 where the children's home remains within Class C3 or there is no material change of use to Class C2. An application to the local planning authority can be made for a lawful development certificate to confirm whether, on the facts of the case, the specific use is or would be lawful. Where a Certificate is issued, a planning application would not be required for the matters specified in the certificate.

2.13 In assessing this application for a lawful development certificate as a children's care home it is understood that the local planning authority will consider the nature of the proposed use and whether this is 'materially' different to the use of the property as a typical C3(a) dwelling.

2.14 Case law where an Inspector granted a lawful development certificate for the use of a house in Leicestershire as a children's home (Ref. APP/K2420/X/11/2155849) found that although the proposal would involve a change of use from use class C3 to use class C2, no material change of use was involved. The case related to a modern house on a residential estate which was proposed to operate as a care home for children between the ages of 9 and 17. The home was proposed to provide care for up to three children by non-resident care staff working in shifts. The Inspector noted that the North Devon judgment referred to above provided the authority with the view that use as a care home for children, where carers were non-resident, fell within Use

Class C2. He then considered whether the change of use was material. In refusing a lawful development certificate staff numbers were cited by the Council as the sole cause for concern in this judgment. However, having looked at the numbers involved; the Inspector concluded that they were not materially different from what might be expected of a family house. On this basis it was concluded that the proposed use would not, as a use within planning use class C2, amount to a material change of use from planning use class C3 as a dwelling house. The Inspector found that the change of use would not require planning permission and allowed the appeal. Other subsequent appeal decisions for similar care homes, and decisions made by neighbouring local authorities on applications, have reaffirmed this approach including application 137956/LP/2023 which was granted by the Council in November 2023.

3. Proposal

- 3.1 The primary purpose of the home is to support children in building confidence, developing essential life skills, and preparing for independent living. The home will provide high-quality residential care, offering a structured period of support and intervention to help them feel secure whilst achieving consistency and stability in their lives.
- 3.2 The proposed children's home aims to closely replicate a typical family environment creating a warm and nurturing atmosphere and providing consistency and stability to the children who live there (similar to a fostering model). This approach aligns with government policy, which encourages creating nurturing settings for children who, through no fault of their own, have not experienced effective parenting during their early years. Without such homes and positive interventions, these children when they leave the controlled environment of care homes will often end up in adult institutions, suffering from long term mental health problems. It is important to note that these children do not have special needs that would fall under Use Class C2a.
- 3.3 The provider will collaborate closely with the local authority to deliver tailored support for each child, aiming for a smooth transition and eventual reintegration into a family environment, whether with their own families or foster families. The home will provide personalised care packages designed to meet the diverse backgrounds and needs of the children it serves. It will primarily focus on medium to long-term placements, prioritising the well-being of each child while aligning with the requirements of the local authority.
- 3.4 During the day it is expected that the children would engage in various activities, plus attend a mainstream or special school. Each individual child's circumstances will be assessed on a case-by-case basis with steps taken to provide the necessary support required. Where a child has missed an extensive proportion of their education or are affected in a way that they could not work effectively in a classroom environment, they could be tutored from home for a period. This would be achieved online without any tutors having to come to the house. They may then progress to a specialist unit (smaller class sizes) then hopefully onto mainstream. In cases where children may have a home tutor, this is no different from an ordinary family who chooses to have their children educated at home. It makes no difference to the planning status of the use.
- 3.5 Before a care home can commence operations, it must secure approval from OFSTED, which holds regulatory powers beyond standard planning controls. OFSTED mandates a local risk assessment as part of its approval process to ensure the property is suitable as a care home. Consequently, planning is not the sole mechanism governing the appropriateness of the location.

A fundamental principle in evaluating a planning application is determining whether other legislation is better suited to regulate the proposed development. For children's care homes, the relevant regulatory framework is established under the following legislation:

- Care Standards Act 2000
- The Care Standards Act 2000 (Registration) (England) Regulations 2010
- The Children's Homes (England) Regulations 2015
- Children's Homes and Looked After Children (Miscellaneous Amendments) (England) Regulations 2013

- 3.6 The OFSTED Guide to Children's Homes mandates that all such homes must provide a children's guide. It emphasises respecting a child's personal space, advising that their bedroom should generally not be entered without their permission. Additionally, children should have access to appropriate, lockable furniture to secure their personal belongings and private information. The guide also addresses the use of CCTV and other monitoring equipment within the home. It outlines detailed requirements for record-keeping, information management, and operational procedures. According to OFSTED requirements, care homes for children must operate as closely as possible to a typical family household.
- 3.7 The physical adjustments required by OFSTED are minimal these including emergency lighting and locks on bedroom doors to ensure each child's privacy, neither of which are material planning considerations.
- 3.8 Regarding fire regulations for care homes, the sole physical requirement is the installation of fire doors on doors leading to escape corridors. These fire doors are visually similar to standard doors and do not have any material impact on the character or appearance of the property.
- 3.9 There will be no external modifications to the building or its surroundings. The appearance and character of the dwelling will remain unchanged from the outside ensuring no disruption to neighbouring residents and no material impact on the character or appearance of the property.
- 3.10 OFSTED inspects children's homes every six months, and an independent observer is required to assess the home every six weeks. In addition to OFSTED's one visit per year, there will be visits by local social services circa every four to six weeks and one Regulation 44 each month. Usually, one social worker would visit all the children, although it may be more than one if the children are from different local authority areas.
- 3.11 Depending on the needs of the individual children, there may be occasional visits by other social workers. In addition, there may be visits by family members and friends, although these are carefully managed in advance, subject to child's individual care plan. These visits are no more frequent than those to a typical family by friends or relatives.
- 3.12 This home would be registered with, regulated by, and regularly inspected by, Ofsted. Having the appropriate planning consent will not of itself enable a residential children's home to open at the property if it does not also meet the strict regulatory requirements set out by Ofsted. Indeed, Ofsted's regulatory powers would also extend to it having the option to close the home if it subsequently failed to meet all of the regulatory requirements.
- 3.13 Before OFSTED will give their approval, they require a Location Risk Assessment to be carried out to determine the suitability of the area for a children's care home. This involves consultation with local police and social services departments. There will also be an impact risk assessment for each child where a referral has been made. This impact assessment considers all the child's needs and looks at the compatibility with the children already within the home.
- 3.14 Unless approved by the local authority's social services department, children will not be placed in the home. The local authority's social services department are also able to confirm the urgent demand for this type of facility.
- 3.15 Under Section 22G of the Children Act 1989, local authorities have a statutory responsibility to take steps, as reasonably practicable, that ensure children in care are provided with accommodation that '(a) is within the authority's area; and (b) meets the needs of those

children.’ Three reports were published in 2020 by the Children’s Commissioner: ‘The Children who no-one knows what to do with’; ‘Private provision in children’s social care’ and ‘Stability index 2020’, which point out the failings of local government to meet this responsibility.

- 3.16 The papers summarise the findings of three years of work by the Children’s Commissioner’s Office and explain the failure of both national and local government to adequately meet the needs of these children. The report (page 15) states: *‘Local authorities are highly reliant on the independent sector, particularly for children’s residential care..... Given this reliance, it is imperative the market works well and that commissioning and procurement are improved to ensure no child is placed in unsuitable care settings. Recommendations: The Government should consider the barriers to creating more residential care placements to increase supply’.*
- 3.17 At capacity up to three children would live at the house, with three carers/manager working on a rota basis. The carers would operate on a shift pattern of 12 hours. Changeover times will last around ten minutes. The changeover of the care staff will occur at 09.30 am and pm each day. A manager would be at the premises most days between 9.30 am to 5.30pm.
- 3.18 The proposed dwelling is situated in Fallowfield. The area has exceptional transport links with arguably one of the busiest bus routes in Europe, with an estimated bus travelling past every minute and accessible cycle lanes. It is therefore company policy to require staff to use public transport (by offering free bus passes and subsidising taxi fares) or cycle to work and not to allow on street parking. A vehicle will be available to transport the children when necessary to school or for other visits which will be kept on the property’s driveway, which can accommodate up to 3 vehicles.

4. Planning

- 4.1 It is acknowledged that where care is provided in a setting that is not the main residence of the carers, the use falls under Class C2 rather than Class C3.
- 4.2 Case law has established that if carers work on a rota basis and the property is not their permanent residence, the use must be classified as Class C2 rather than Class C3. In the judgement of Mr Justice Collins in *North Devon District Council v First Secretary of State* [2003], Justice Collins made it clear on the facts of that 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 six 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.
- 4.3 Whether a change of use would be deemed material has also been clearly established by the courts. Regardless of whether the use falls within Class C2 or Class C3, planning permission is not required if the change does not constitute a 'material change' of use. Therefore, it is necessary to assess whether the change would be considered 'material'. This depends on the facts and circumstances of each individual case and requires an evaluation of whether the change of use will be 'material'. As a general guide, differences which might be considered 'material' are those which are measurable or quantifiable as resulting in a significant or substantial change or step up in the character or impact of a use.
- 4.4 In considering the existing use with what is proposed, in so many respects the use would operate in a way that is very similar to a normal family home. The property would provide the children with their sole and main residence, with free and shared access to living, dining, and kitchen facilities, an ability to take shared meals prepared for them or make their own food or drink. Alongside their carers, they would interact with the property in much the same way as a parent, guardian, or adult resident would. The residents would share meals and undertake domestic chores. The aim of the home would be to foster lifestyles akin to those of children living in a family environment.
- 4.5 The level of comings and goings is not expected to differ significantly from the current use as a family home. The home manager, who is also a carer, would typically arrive each weekday morning and leave in the evening, resulting in two vehicle movements. The other staff members would usually work on 12-hour shifts, leading to just two shift change per day.
- 4.6 The children would be transported to and from school/college each day as would be the case in any family environment. All household chores such as cleaning, cooking and gardening involve the children and no additional staff would be employed at the premises. The in and out movement based on experiences of other similar homes is in line with what the movement is expected from the proposed children's home in a typical week. Therefore, regarding comings and goings, there would be minimal difference from the current use as a family dwelling, meaning its character would not be significantly influenced.

4.7 The current use as a family house could typically have two parents with their own cars and possibly children with their own cars. This would generate potentially more movements than that being proposed.

4.8 It is submitted that the proposed use, as outlined in this supporting statement, would not differ significantly from a typical household. This is supported by the Egerton Appeal (Appeal Ref. 3161037) where the Inspector concluded a similar use would not result in significantly more movements to give rise to planning concerns.

4.9 A similar conclusion is drawn in the Dale Road appeal (Appeal ref. 3263178) : *'The number of these movements is unlikely to be significantly more than the number that would be undertaken by a family and certainly not enough to result in a level of intensification in the use of the site that gives rise to concerns from a planning point of view. There is insufficient evidence before me to show that the use would be likely to result in greater levels of noise and disturbance than the existing authorised residential use.'*

4.10 Appeal (Ref. 32993519) also provides a useful assessment of a similar care home. In paragraph 12 it states: *'Whilst there will be some additional comings and goings associated with the use as a residential care home, there is no evidence before me to dispute the appellant's case that the use will not give rise to a greater level of disturbance than could be generated by the lawful use as a C3 dwellinghouse. The additional comings and goings identified by the appellant and Council are at a sufficiently low level so as to remain within the parameters of what could be usually expected of a family home and not therefore materially different so as to change the character of the property. Similarly the number of people who will be typically present at the property, and therefore the associated waste generated, is not significantly higher than could be expected with its current lawful use'.*

4.11 Visually, the property would appear identical to the neighbouring houses. During the day, up to three staff members may be present at the property, but this would not affect the area's amenity. The current use, with a family of children and parents working from home, could have a similar impact.

4.12 In terms of the nature of the proposed use, paragraph 25 of Circular 05/2010 is relevant. It states that the criteria for determining whether the use of particular premises should be classified within the C3 use class (or similar) includes both the manner of the use and the physical condition of the premises. The circular states that the premises can properly be regarded as being used as a single dwelling house where they are:

- *a single, self-contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them.*
- *designed or adapted for residential purposes containing the normal facilities for cooking, eating and sleeping associated with use as a dwelling house.*

4.13 In an appeal in Stockport (Appeal ref. 2162636) an Inspector noted that although the building would be fitted with an office [and fire alarm], this was not uncommon in many dwelling houses around the country and would not materially alter its basic character as a dwelling house. There are no major modifications required to this property.

4.14 The concern about crime and anti-social behaviour is a relevant planning consideration that could influence the decision on planning permission. However, this application is not for planning permission. Since this is a matter of planning merit, and there is no evidence to suggest that crime or anti-social behaviour are inherent to the proposed use, such concerns are not pertinent to the determination of this application for a Lawful Development Certificate.

4.15 There can be concern that the use would result in more noise and possibly anti-social behaviour due to the background of the children. A useful answer to this concern is contained in appeal decision (Appeal Ref.2162636-):

11. The fear of crime is a material consideration in the determination of the appeal. However, the weight that can be attributed to it depends on whether or not the evidence shows that the potential risk of crime is shown or expected to be high and the consequences for the community and individuals are serious. Whilst it is acknowledged that the incidents cited by the local residents would cause upset, they are not altogether unusual occurrences in modern society. Some of the incidents raised issues relating to the running of the home which have the potential to be overcome by changes to the management of the site. None of the evidence suggests that the potential risk from crime is shown or expected to be high or that the consequences for local residents are serious.

12. The evidence therefore leads me to conclude that the effect of the development on the living conditions of the occupiers of neighbouring dwellings regarding risk of crime would be low and carries insufficient weight to warrant dismissing the appeal on these grounds.

4.16 The nature of the children is not therefore material to the determination of this application.

5. Conclusion

- 5.1 In conclusion, the proposed use will offer high-quality specialist housing for children in an optimal location that promotes integration with the local community. It will also provide excellent access to local transport, outdoor sports and recreation, schools, local shops and services.
- 5.2 It is further submitted that there is no significant difference in planning terms between the proposed use and the existing use as a dwelling. The carers, working on a rota basis, would essentially reside in the dwelling to provide 24-hour care, functioning as a single household. Shared facilities, such as the bathroom, kitchen, and living rooms, would be used communally. The level of activity associated with the proposed use would not significantly differ from that of a family dwelling. Therefore, the proposed change of use would result in minimal alteration to the site's overall function and activities.
- 5.3 The intended use is to provide a stable home environment for the occupants, serving as their primary and permanent residence, with stays typically lasting medium to long term periods rather than temporary or passing. The courts have provided some assistance in determining the significance of there being a commercial factor to a residential use or an arrangement where the occupants have generally only a limited period of stay.
- 5.4 Following *Gravesham BC v Secretary of State for the Environment* [1982], the court accepted that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day-day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons, or if it was under commercial management.
- 5.5 The lawful use of a dwelling house, as defined in Class C3 of the Town and Country Planning (Use Classes) Order 1987, is broad in scope and may involve significant activity, associated uses, and vehicular movement. The nature of the proposed use would resemble that of a family home, with a small group of children living together and supervised by adult guardians. While there may be minor differences between the proposed and existing uses, these differences would not be "material" or easily measurable in comparison to the flexible characteristics and impacts of a lawful dwelling house.
- 5.6 It is submitted that the nature of the proposed use is not materially different from the current use as a family dwelling. The level of comings and goings would not exceed what currently occurs, meaning there would be no undue disturbance to neighbours. For the reasons outlined above, planning permission for a change of use from C3 to C2 is not necessary. Therefore, the local authority is respectfully requested to support the application for lawful development to establish this much-needed facility.