

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141875/LP/2025

Date registered valid: 9 January 2025

Proposal: Use of dwellinghouse (Use Class C3) as a children's care home (Use Class C3b) for two children with one overnight carer.

Address: 1 Langdale Road, Manchester, M14 5PQ

Ward(s): Rusholme Ward

Applicant: Mr N Chowdery

Agent (if any): Mr V Alyas Architek

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

Recommendation: Refuse

Date of recommendation: 18 February 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

1 Langdale Road is an end terraced two storey dwellinghouse located on the corner of Langdale Road and Scarsdale Road. The existing floor plan shows a three-bedroom property.

The property has both enclosed front and rear gardens with no off-road car parking available.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The surrounding area is residential in nature located between the district centres of Rusholme and Longsight.

Description of development

The applicant is seeking a certificate of lawful development to allow use of a dwellinghouse (Class C3a) for a residential children's home (Class C3b) for 3 Children and 1 Carer

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.

Issues

Planning History

There have been one previous planning applications at this address.

Application no. 140964/LP/2024

Proposal: Use of a dwellinghouse (Class C3a) for a residential children's home (Class C3b) for 3 Children and 1 Carer

Decision: Refused 08.11.2024

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 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.

Section 57(1) of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Section 55(1) of the Act provides that “development” includes the making of any material change in the use of any buildings or other land.

The Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) specifies use classes for the purposes of section 55(2)(f) of the 1990 Act. Section 55(2)(f) provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class.

This application seeks a Certificate of Lawful proposed Development for the use of the property as Use Class C3(b). Thereby seeking confirmation that using the property to house two children living full time, along with a single carer on a 24 hour shift rota, would fall within the use class C3(b) and there would be no material change of use from the existing C3(a) use.

1 Langdale Road is a two-storey end-terraced dwellinghouse with a two-storey outrigger. It benefits from both front and rear gardens and is located on the corner of Langdale Road and Scarsdale Road. The surrounding area of Rusholme is residential and close to the district centres of Rusholme and Longsight.

According to the information submitted by the applicant, the floor plans show that the property has three floors: a basement, ground floor, and first floor. The current layout includes three bedrooms, all on the first floor. The ground floor contains a lounge, a sitting room, a W/C, and a kitchen. There is no indication of the existing or intended use for the basement/cellar.

The application provides very little detail. It states that the proposal seeks to house a maximum of two children, who will require one overnight carer.

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 a household 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 (dwelling houses), which includes a home that provides 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), so that 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.

In the simplest of terms, the applicant supporting information is not sufficiently precise and unambiguous and has therefore failed to demonstrate, on the balance of probabilities, that the use of the site as a home for the care of up to three children, with 24 hour care provided by not more than one carer would not be a material change of use.

The certificate 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

- 1) The proposal involves providing residential accommodation and care for two children, a use that would fall in Class C2 and not Class C3(b).

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 of up to three children, with 24-hour care provided by not more than one carer would satisfy Class C3(b) and not be a material change of use falling in Class C2.

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

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: NORTH AREA