

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141998/LP/2025

Date registered valid: 29 January 2025

Proposal: Use of Dwellinghouse (Use Class C3) as a Children's Home for up to 3 Children with Carer Accommodation (Use Class C2).

Address: 260 Manley Road, Manchester, M21 0RD

Ward(s): Chorlton Ward

Applicant: Mr Hussain Orchid Care Ltd

Agent (if any): Rebecca Thompson

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

Recommendation: Grant

Date of recommendation: 26 March 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

Description of site/building and area

260 Manley Road is located in the Chorlton ward of Manchester. This property is a two-storey, three-bedroom semi-detached house, which is a common type of housing in this neighbourhood. Planning permission (092365/FH/2010/S1) was granted to erect a single storey rear extension and allow the conversion of the garage into a fourth bedroom. The area is primarily residential, featuring mostly semi-detached houses.

The property has both front and rear gardens. The front garden is partial paved include the side of the property to provide off road car parking, in addition there are no parking restrictions on Manley Road. The area is well-connected by public transport, with regular bus services and a nearby Metrolink stops (within a 5-minute drive or a 30-minute walk) providing easy access to Manchester city centre and other parts of Greater Manchester.

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 dwellinghouse (Use Class C3) as a Children's Home for up to 3 Children with Carer Accommodation (Use Class C2).

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.

Issues

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 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 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

The proposal involves housing three children/young persons aged between 7 and 18 years with 24-hour supervision. The staffing structure includes:

- A Registered Manager on site Monday to Friday, 09:00 to 17:30, responsible for overall management and operation. The statement says that their visits would avoid the 'Peak' times.
- A small team of support workers (total of six) on a rota basis (maximum 12 hour shifts), with three staff (two carers and the registered manager) on site at any one time or a maximum of four at handover times.
- Maximum amount of persons in the property would be 6 (3 children and 3 adults).
- One carer is required to sleep at the property overnight, performing duties such as cooking meals, assisting with schoolwork, transporting to school and appointments, and providing emotional and physical support.
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Visitor and Regulatory Oversight

Visitors to the site will be limited, specifically by Social Services. Typically, this results in:

- A Social Services team member
- No planned medical staff attendances to the home because the home would not cater for young people with physical disabilities.
- An Ofsted visit every 12 months
- Family and Friends of the children, where permitted and appropriate.

Parking and Transport

- There are provisions for off-road car parking at the property in the form of a driveway that extends down the side of the property to the converted garage. The area benefits from good public transport provision and no restrictions on street parking on Manley Road. The statement provided with the application states that staff will be encouraged to use public transport.

- Vehicular Movements will be similar to a typical residential property, with adults leaving for work, children leaving for school/college anywhere between the hours of 07:00 to 09:00 and then returning between 16:00 and 20:00.

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 three children aged 7-18 years 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, and the fact that the number of people in the property at any one time would not exceed six persons. The 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) Whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), the use of the dwellinghouse (Use Class C3) as a children's home for up to 3 Children with carer accommodation would not represent a material change from the existing use as a Class C3 dwellinghouse. As such the change would not amount to development as set out in Section 55 of the 1990 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

Flood Zones Type 2 (low to medium risk) -

Area Team Boundary - Name: SOUTH AREA