



Planning statement to support the submission of a
Lawful Development Certificate

for

Use of dwellinghouse (Use Class C3(a) to provide a
residential care accommodation (use class C2) for 2 young
people (with no material change of use taking place)

at

38 Rathbourne Avenue, Manchester, M9 6PN

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1.0 Introduction

- 1.1 The applicant intends to use the application site, 38 Rathbourne Avenue, (the Property) as a residential home for 2 looked after children aged 7-18 years old. The application therefore seeks a Certificate of Lawfulness of Proposed Use ("CLOPUD") confirming that the proposed use is lawful because:
- i. it falls with Class C2 of the Use Classes Order 1987, but the C2 use is not materially different to a C3 use and is therefore lawful without further planning permission;
- 1.2 This application follows the refusal of a Certificate of Lawfulness of Proposed Use for the use of the dwelling for up to 3 children falling within Class C2/C3(b) **140751/LP/2024**.
- 1.3 The property would operate as follows –
- Care Staff and would be limited to the 1:2 care of the children (one member of staff for 2 children); only in specific circumstance would this increase to 2 members of staff to 2 children and would be time limited. One staff member will be present overnight.
 - The children and care staff would eat breakfast, lunch and dinner in the house, meaning there are no requirements for any specialist catering;
 - The children would attend Education/Training/Employment as part of their care;
 - Sleeping arrangements would be in the bedrooms as per the proposed floor plans;
 - There would be no business activities on site or any commercial activities that would change the character of the dwelling house.
 - Car borne journeys would be limited to care staff only;
 - The use of the garden area would remain incidental to the enjoyment of the property and;
 - There would be no more than 4 people living together as a single household and receiving care at any one time.
 - A Social Worker will visit the property once every 6 weeks
 - No other statutory visits are planned
- 1.4 If the Council require any more specific details on the operation of the property then we would welcome a discussion.

2.0 Site and History

- 2.1 The application site is a traditional semi detached house that is situated at the northern end of a cul de sac. The surrounding area is primarily residential area within Higher Blackley.
- 2.2 The property benefits from a lounge, a dining room, and a kitchen on the ground floor. At first floor level, the property benefits from a bathroom and three bedrooms, one of the bedrooms is an ensuite. Externally, there is a substantial rear garden area along with parking for 3 cars at the side of the property.



Figure 1 - Location of Site

- 2.3 The application site is located in a Primarily Residential Area, as denoted on the Manchester Core Strategy and extant Unitary Development Plan Proposals Map. There are no other planning constraints relevant to this application.
- 2.4 A previous application (**140751/LP/2024**) was refused for **Use of dwellinghouse (Use Class C3(a) to provide a residential care accommodation (use class C2) for 3 young people.**
- 2.5 The Council's reason for refusal stated –

“The application form submitted relates to the proposed use being one that falls in Class C2; however, the supporting planning statement only sets out the case for the property to be in C3(b) use. 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. There is no justification within the supporting planning statement regarding

a C2 use or how it is similar to C3 where care is provided. The applicants evidence is not sufficiently precise in order to demonstrate, on the balance of probabilities, that the use of the site as a home for the care of up to three young people aged (aged 7 to 18), with 24 hour care provided by not more than two carers on a shift basis would not be a material change of use in this case.”

- 2.6 It is the aim of this statement to demonstrate more precise evidence to demonstrate to the Council that a material change of use has not taken place. It is still our contention that the use is similar enough to a C3(b) use that a material change of use has not taken place.

3.0 Statement of Case

- 3.1 The relevant law for determining a CLOPUD application is contained in section 192 TCPA 1990. Section 192(2) provides that:

“If, on an application under this section, the local planning authority are provided 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.”

- 3.2 Planning permission is required for the "carrying out of any development on land" (section 57(1), TCPA 1990). The definition of development includes the "making of any material change in the use of any buildings or other land" (section 55(1), TCPA 1990).

- 3.3 The Town and Country Planning (Use Classes) Order 1987 (as amended) defines a C2, C3 and C4 use as follows:

Class C2: 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)). Use as a hospital or nursing home. Use as a residential school, college or training centre.

Class C3. Dwellinghouses Use - as a dwellinghouse (whether or not as a sole or main residence) by— (a) A single person or by people to be regarded as forming a single household; (b) Not more than six residents living together as a single household where care is provided for residents; or (c) Not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).

- 3.4 Art. 3 (1A) Use Classes Order 1987 (as amended) provides that where there is a change within a use class that is not to be taken as development of land and therefore does not require planning permission.

- 3.5 Appeal decisions have confirmed that a change between use classes is not necessarily a material change of use - appeal decision APP/P4605/X/21/3280997 states:

“a change from C3 (a) to C2 will not always be material. It will be a matter of fact and degree, depending upon the circumstances of the case in question.”

- 3.6 The term “care” is defined in Art 2 Town and Country Planning (Use Classes) Order 1987 (as amended) as follows –

“care” means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present

mental disorder, and in class C2 also includes the personal care of children and medical care and treatment.”

- 3.7 What constitutes ‘Personal Care’ is discussed in the case of *Harrison v Cornwall CC* [1991] 7 WLUK 320. In that case the court considered the true meaning of ‘personal care’ within the Registered Homes Act 1984 (“1984 Act”). Section 20(1) of the 1984 Act, defines ‘Personal Care’ as “care which includes assistance with bodily functions where such assistance is required.” The court held that the definition does not purport to be exhaustive and “*embraces care in many forms, emotional or psychiatric as well as physical*”. Some of the support to be given to these young persons who will reside in the application Property, will be emotional support as they make the transition to independent living. It is only to that extent that this support could fall within the definition of ‘Personal Care’. No psychiatric or physical support will be provided.
- 3.8 Being young persons at an age of transition from being cared for to caring for themselves independently, they will still require support workers to monitor them and guide them in that transition. In terms of which use class the proposed use will fall, this is determined in part by whether they form a ‘household’ on their own (given no one support worker will reside permanently at the Property, it is generally considered that the support workers working there on a shift basis cannot form part of the household (*North Devon DC v First Secretary of State*– see below para 5.10)). This was the contention of the Council when refusing the original certificate application.
- 3.9 Section 57 of the TCPA 1990 informs us of when planning permission is required, namely for the carrying out of any development of land. Section 55(1) of the TCPA 1990 provides that the making of any **material change** in the use of any buildings or other land amounts to development and requires planning permission subject to certain exceptions.
- 3.10 The question of whether there has been a material change of use is a question of fact and degree as confirmed by the case of *Moore v SOS* (*Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1202).
- 3.11 Caselaw has held that whether or not there has been a material change of use should be determined by reference to the test of whether there has been a change in the character of the use (*Hertfordshire ~County Council v Secretary of State for Communities and Local Government* [2012] EWHC 277 (Admin)). Environmental impacts can be relevant as evidence that a material change has occurred because a use of the new character may be capable of yielding environmental impacts; however, they are not the sole determiner of whether the character has changed (*Ricki Sage v Secretary of State for Housing, Local Government and Communities and LBB* [2021] EWHC 2885).
- 3.12 Therefore, the particular characteristics of this Property are required to be taken into account when considering whether the proposed use will lead to a change in the character of the use. In particular, it is relevant whether such things as noise emanating from the house as perceived by neighbours and nos. of cars parked on

the nearby roads would change. Given it is a relatively spacious semi-detached property at the end of a cul-de-sac, which benefits from a large garden, with its own driveway for at least 3no. cars, any changes to the character caused by the proposed use will be de minimis.

- 3.13 There have been a number of appeals that have considered the boundaries between classes C2 and C3 and what would constitute a material change of use. Some key appeal decisions are cited below. Copies of these appeal decisions can be forwarded to the Planning Officer if required.
- 3.14 In the case of *Kartikeya Solutions v Waltham Forest* [2012] PAD 15, the court considered the issue of whether even if the use had changed from class C3 (b) to C2, was such a change material. In that case there were up to 6 children (mostly teenagers) who were cared for by carers on a shift basis. The change of use from C3(b) to C2 was found to be material, because the emotional and behavioural difficulties encountered by the children meant that unpredictable outbursts were common and would go beyond what could be expected of a usual family household with teenagers. In addition, it was also likely there would be more comings and goings from various regulatory agencies, including the police, than would usually occur for a class C3 household. In addition, the presence of the fire alarms, reinforced fire doors and locks to the rooms were key to finding that the class C2 use was materially different to C3.
- 3.14 The *Kartikeya* case (above) differs from the proposed use at the application Property that is the subject of this certificate, as the young persons will not have any regular visits at the Property from third party professionals and the level of activity at the Property will be no different to what would occur in a class C3 use. In a standard C3 use, residents make trips to and from the Property on a daily basis, whether it is from school or work or visiting friends and family. The level of activity with the limited shift changes and the residents going to school or work would be similar to the comings/goings of a family who could lawfully reside in this three bedroom house. The numbers of comings/goings would in this case be no different to the proposed use. The fact that the proposed young persons will all be 7-18 yrs. (and not younger) is therefore an important factor. The amount of activity that will arise therefore will be no different to that of any of the lawful class C3 uses that could take place at the Property.
- 3.15 In the appeal decision APP/K2420/X/11/21558499 (15 Crownhill Road, Burbage, Hinckley, Leicestershire LE10 2LD), where the facts were similar to this current application, the inspector found that whilst the use would be within C2 it would not be materially different to C3, and therefore granted the Certificate of Lawfulness. The pattern of activity at the house was decided to be no different to that of a large family. The appeal was in relation to the council's decision to refuse to grant a lawful development certificate of proposed use. It proposed to operate a care home for three children/young persons between the ages of 9-17 yrs. with learning difficulties. The pre-existing lawful use of the property was a C3 dwelling. It is important to note in that case the limitations on the proposed use which were key to the decision that the proposed use was not materially different to C3. There were as follows:

1. no more than three children are receiving care at any one time;
2. the children in care are aged from 9 to 17 years' old with an age range of no more than three years at any one time;
3. the home at no time provides care for children with emotional and/or behavioural difficulties;
4. there are no more than (a) two staff on duty between 07.00 and 08.00 to prepare the children for school or between 14.30 and 22.30, unless exceptionally a further member of staff is required to meet individual needs (b) no more than three staff on duty at weekends and during school holidays, and (c) normally no more than one waking staff at night to provide support to the children with a further member of staff sleeping in who would be available should further assistance be required;
5. no parental visits to children normally take place;
6. no room is used as an office and no business meetings of any kind take place;
7. no more than three vehicles are parked at or around the home at any one time
8. no activity in relation to staff vehicle movements takes place before 07.30 or after 22.00.

3.16 Similarly, in the appeal decision APP/P9502/X/13/220539410 (Ty Rhos Bach, Heol Senni, Breacon, Powys), the Inspector allowed a lawful development certificate on the basis that whilst the use was within class C2 there was no material change use from class C3 because the use would display features associated with a family dwelling. There were up to five children between 11-17 years old plus two staff sleeping in (on a rota) plus additional carers in the day (on a rota). The coming and goings of staff would not materially impact the surrounding area and therefore there was no material change of use. This is similar to the proposed use that is subject to this application, whereby the Property is of a reasonable size, and the limited coming and goings are unlikely to affect the surrounding area over and above what would reasonably expected at a residential dwelling. The Inspector stated that in this case, and given the ages of the children, they could not look after themselves and form a "household" on their own and could not fall within class C3 (b), but there was no material change of use between C3 and C2 given the limited changes to the character of the site.

4.0 Conclusion

- 4.1 In conclusion, it is our opinion that any change from C3 to C2 use will not be a material change of use. The Property and its curtilage would retain the look and character of the neighbouring houses and a normal residential dwelling. The use and associated activity, including comings and goings of support workers would be unlikely to cause a greater level of disturbance or amenity harm than could be expected by a C3 use of the family home. Given the 3 bedrooms in the Property, it could be expected that a family of two parents and up to 3 children would live there. Therefore 2 young persons plus the number of support staff indicated would have a similar level of activity.
- 4.2 For the reasons given above it is our opinion that the Proposed Use of the Property is lawful because it falls within use class C2 and will not be materially different to a C3(b) use because there will be no change in the character of the use from one that would be lawful within C3.
- 4.3 We respectfully request that the certificate is therefore granted. However, if the Council requires additional information or clarification then we would welcome a discussion.