

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141770/LP/2024

Date registered valid: 18 December 2024

Proposal: Use of the property for up to three residents living together with care provided (Class C3b)

Address: 9 Gordon Street, Manchester, M18 8SL

Ward(s): Gorton & Abbey Hey Ward

Applicant: Mr Adrian Ball Manchester Settlement

Agent (if any):

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

Recommendation: Grant

Date of recommendation: 29 January 2025

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit:

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

Application site relates to a traditional mid-terraced two storey dwellinghouse with a single storey outrigger at the rear. The property has no front garden but does benefit from a rear garden that can also be accessed from the rear alleyway.

There is no off-road car parking available at the property due to the site constraints, however there are no restrictions on car parking on adjacent the adopted highway.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is a primary a residential area comprising of dwellinghouse organised in rows of terraced properties to the south of the Manchester to Glossop railway line and to the north of Gorton Reservoir. The surrounding area contains Wright Robinson College and formal recreational green space known as Delamere Park and Godfrey Ermen Playing Fields.

Description of development

The applicant is seeking a certificate of proposed lawful development for the use of property for up to three residents living together with care provided (Class C3b).

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

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.

The applicant is seeking a certificate of proposed lawful development for the use of property by up to 3 residents living together with care provided (Class C3b).

The Use

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.

The application site is 9 Gordon Street, a 3 - bedroom, two storey mid terraced house that falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987 ("the 1987 Order"). Class C3, entitled *Dwelling Houses*, encompasses:

"Use as a dwelling house (whether or not as a sole or main residence) -

(a) by a single person or by people living together as a family, or

(b) by not more than six residents living together as a single household (including a household where care is provided for residents)."

The Town and Country Planning (Use Classes) Order 1987 defines "Care" as:

"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;

In this case, an assessment must be made as to whether the property would meet the definition of C3b as stated above. The applicant "Manchester Settlement Charity" seek to provide accommodation for 3 care leavers (17-25 years old) for an average stay of 12 months, each resident will be provided with a "light touch" support package that involves a visit from a support worker, on average 3 times per week and residents of the property will have access to further support from their community centre, which is a 5 mins walk from the property.

Residents will not be allowed to own a car and live at the address and staff in the majority of cases will walk to the property, therefore it is not anticipated that there would be a high demand for on street car parking associated with the use. The rear garden will provide space for the storage of bicycles for residents.

Therefore, this would apply to this case as it would be Manchester Settlement Charity who would organise the tenants and their "care". In the High Court Case *Hossack v Kettering* BC 25/06/2002, it was judged that although the residents were not a "preformed group" and were brought together by mutual need, this did not mean that they were not living as a single household.

Therefore, as the existing use would meet the definition of Class C3(a) and that proposed use would meet the definition of Class C3 (b) this would not constitute a change of use and therefore is excluded from the definition of development and no planning permission would be required.

Section 55(1) of the Town and Country Planning Act 1990 defines the term 'development' which includes the change of use of a building. Section 55(2)(f) explains that in the case of buildings used for a purpose of any class specified in an order made by the Secretary of State, the use of that building for any purpose within the same class shall not be taken, for the purpose of the Act, as amounting to 'development'.

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 proposed use for occupation as a dwellinghouse for a maximum of three residents living as a single household and receiving care, is defined as Use Class C3b by the Town and Country Planning (Use Classes) Order 1987 (as amended). Therefore, the use of the property as proposed would fall in the same class as the preceding use, and would not result in development for which planning permission is required.

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

Historic Landfill Site 250m Buffer -

Area Team Boundary - Name: NORTH AREA