MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	140883/LP/2024
Date registered valid:	16 September 2024
Proposal:	Use of the property for up to four residents living together with care provided (Class C3b).
Address:	144 Abbey Hey Lane, Manchester, M18 8TH
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:	8 November 2024

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

Application site relates to a two storey mid-terraced dwellinghouse with a ground floor bay window. At the front is an enclosed garden with a gate at the rear is a two storey outrigger and an enclosed rear garden

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 by up to 4 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 144 Abbey Hey Lane, a 5 - 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 4 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 (New Roundhouse,1328-1330, Ashton Old Rd, Openshaw, Manchester M11 1JG).

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 polices 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 four 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
Area Team Boundary - Name: NORTH AREA