

Planning

Growth & Development

Delegated officer report for planning application

Application no. 139839/LP/2024

Date registered valid: 22 April 2024

Proposal: Use of a house in multiple occupation (Use Class C4), as a children's home for up to three children, with up to three carers and a manager, two sleeping overnight working on a rota basis (Use class C2)

Address: 44 Lombard Grove, Manchester, M14 6AN

Ward(s): Old Moat Ward

Applicant: Nasser Saleem Coppice Childrens Home Ltd

Agent (if any): Adrian Rose Rose Consulting

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

Recommendation: Grant

Date of recommendation: 26 September 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 large semi-detached turn of 20th Century Villa that faces onto Lombard Grove in Fallowfield. The property has a two storey and single storey outrigger at the rear. The gardens have been either covered in a hard standing such as tarmac or covered with gravel.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area is predominantly residential, however this a high school and commercial units in the area.

Description of development

The applicant is seeking a certificate of lawful development for the use of a C4 a House in Multiple Occupation as a children's home for up to three children, with up to three carers and a manager, two sleeping overnight working on a rota basis (Use class C2)

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 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.

The Town and Country Planning (General Permitted Development) Order provides that, where no more than six residents will live together as a single household where care is provided, the lawful use is Use Class C3 (b). The word "Care" equally applies that of Class C2 which is 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. However, the existing property is in use as House in Multiple Occupation Use Class C4 which is defined as follows:

Small, shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

In the cases of a Class C3 (a) as with Class C4, under normal circumstances there would be no permitted change to Use Class C2. Therefore, it is necessary to make an assessment based on a 'fact and degree' as to whether there is a material change of use.

Under the requirements of OFSTED, such care homes must be run as closely as possible to a typical family household, while accepting staff are employed on a rota basis to provide the parental support to the children so many have missed in their early years.

The only physical requirements specified by OFSTED are emergency lighting (no external visual distinction from normal lighting) and locks on bedroom doors for the privacy of each child (not a material issue for planning).

In this case as described above the proposal seeks to house up to three children, with emotional or behavioural difficulties (EBD) or learning disability (LD) who would live at the house, with two carers working on a rota basis sleeping overnight. Six carers would operate on a shift pattern of 48 hours on, 60 hours off. Except at changeover times, which last around ten minutes, there will no more than three carers in the premises at any one time.

In addition, there would be one visit from OFSTED per year, one social worker per month and a Regulation 44 visit per month otherwise known as an independent inspector.

The Children would be taken to and brought home from school each day, residents would eat together and carryout domestic chores (cleaning, cooking and gardening).

In terms of family visits these take place away from the home to avoid upsetting the other children within the property, however, visits from friends would be allowed provided that it was deemed appropriate in accordance with their care plan.

The question as to whether a semi-detached 3 bedroom dwellinghouse fell within Use Class C2 or C3 was considered in the High Court in *North Devon District Council v First Secretary of State* [2003]. In the judgement of Mr. Justice Collins was clear on the facts of that particular case, that carers who do not live but who provide, not necessarily through the same person, a continuous 24-hour care cannot be regarded as living together and that, whilst there would be less than 6 residents, the children, without at least one adult living with them at the premises, would not be capable of being regarded in the true sense as a household.

In his judgement, Mr. Justice Collins went on to reason that in the case before him, where three children would reside and be cared for by non-resident staff in a three-bedroom semi-detached property, the use would seem to clearly fall within Class C2 of the 'UCO 1987' as a 'residential institution' which includes a home that provides care for children.

The property is in current use as a House in Multiple Occupation (HMO), however it is unclear as to when the property became a HMO and whether this was after or prior to the Article 4 direction coming into force in 2011.

The application site has good access to a wide range of local services and facilities, as it is located between both Fallowfield and Withington District Centres, connected via Wilmslow Road which is a short walk from the property and provided direct links in and out of the district and city centre.

There are at least 5 primary schools and one secondary school in the immediate area with further secondary schools within 2-3 miles of the property.

An obvious concern with the number of cars present on site is the availability of car parking, whilst there are no restrictions outside the property, the applicant has said that there is off – street parking available on site for up to six cars. However, if the staff were to make use of the public transport in the area the demand for parking at the address would therefore be reduced.

Staff would be on-site through the day and night to care for and manage the behaviour of the small number of children who would reside at the property on a long term basis. There would not be a high volume of turnover of children living at the property.

Furthermore, in common with that which would ordinarily be expected within a typical family, children would only be permitted to be unsupervised when their carers deem that they are ready.

For these reasons, the development would not result in levels of noise or activity that would be materially different from some other residential properties in the area that are occupied by families. Nor, for the same reasons, would it cause harm to the living conditions of the occupiers of nearby properties in respect of these matters.

As such it is accepted that the proposed use here is C2 as the proposed use would not be materially different to that of a dwelling house or an HMO. Comings and goings would be no greater occurrence than what is currently experienced. It is likely that due to few occupiers the numbers of comings and goings would decrease and therefore would not result in a development requiring planning permission.

Lastly there are no known conditions attached to any previous planning permission which would the use in such a way as to prevent any such change being made.

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 children's home for 3 Children, with a maximum of 3 carers and a manager during the day and a maximum of 2 carers during the night working on a rota basis, is defined as Use Class C2 by the Town and Country Planning (Use Classes) Order 1987 (as amended). The use of the property as proposed would not be materially different to the established preceding use and would not result in development requiring 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

Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M

Flood Zones Type 2 (low to medium risk) -

Flood Zones Type 3 (high risk) -

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Wilmslow Road/Wellington Road)

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: SOUTH AREA