MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	140751/LP/2024
Date registered valid:	12 August 2024
Proposal:	Use of dwellinghouse (Use Class C3(a) to provide a residential care accommodation (use class C2) for 3 young people
Address:	38 Rathbourne Avenue, Manchester, M9 6PN
Ward(s):	Higher Blackley Ward
Applicant:	Ms S Koser
Agent (if any):	Mr D King NK Architectural
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse
Date of recommendation:	11 October 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 and area

The application site relates to a two storey post second world war semi-detached, three bedroom dwellinghouse. The property has an enclosed front garden with a driveway for off road car parking and a large enclosed rear garden for private amenity space.

The property is located in an elevated location within a residential area off Rochdale Road.

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 the dwellinghouse (Use Class C3(a) to provide a residential care accommodation (use class C2) for 3 young people

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

Planning History

There have been two previous planning applications at this address and one appeal

Appeal Reference: APP/B4215/W/24/3336374
Proposal: Change of use of dwellinghouse (Class C3a) to provide short term supported living accommodation (Class C2). Application Reference: 137251/FO/2023
Status: – Dismissed 05.04.2024

Application Reference: 137251/FO/2023
Proposal: Change of use of dwellinghouse (Class C3a) to provide short term supported living accommodation (Class C2).
Status: Refused 16.11.2023

Application Reference: F11697
Proposal: Extension at 1st floor level rear of dwellinghouse to form bedrooms.
Status: Approved 16.10.1979

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 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.

Section 57(1) of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Section 55(1) of the Act provides that “development” includes the making of any material change in the use of any buildings or other land.

The Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) specifies use classes for the purposes of section 55(2)(f) of the 1990 Act. Section 55(2)(f) provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class.

This application seeks a Certificate of Lawful proposed Development for the use of the property as Use Class C2. As the existing lawful use is Class 3 (a), 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.

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.

38 Rathbourne Avenue is a two storey semi-detached dwellinghouse, with a front and back garden located at the head of a cul-de-sac within predominantly residential area Higher Blackley of similar properties. There is a public footpath that runs past the side of the house from Rathbourne Avenue to Hilldale Avenue. There is a dropped kerb at the front of the property which previously lead to a small garage (now demolished) and would allow for three cars to be parked in a linear fashion bumper to bumper. At the front car parking is likely to be limited due to the circular nature of the highway and that all properties facing the turning area have driveways.

From the information submitted by the applicant, the floor plans of the dwelling show that there are 2 double bedrooms and 1 single bedroom with an en-suite and a bathroom at first floor. On the ground floor there is an office in the front room, a WC under the stairs and a combined kitchen living and dining room.

In this case the proposal seeks to house a maximum of three children (aged 7 to 18) who will require a total of one to two staff members during the day (depending on the child needs) and one at night working on a shift basis with 6 weekly statutory visits being undertaken by a social worker.

However, despite the application form stating that the proposed use would be C2, the supporting planning statement only set out the case for the property to be in C3(b) use. The opening introduction paragraph states the following

"This planning statement has been prepared to support a Lawful Development Certificate application that proposes a non-material change in the use of 38 Rathbourne Avenue, from its current use as a C3(a) single dwelling house, to a use falling under Use Class C3(b), so as to allow for the care of 3 No. children"

The use classes order provides the following definitions:

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*.*

It follows that a care home with no more than six residents falls into Class C3(b) (unless it **involves personal care of children** or medical care and treatment), so that only those care homes accommodating more than six adult residents, or which involve personal care of children or medical care and treatment, fall within Class C2.

Clearly there is meant to be no overlap between the Use Classes.

There is no discussion or justification within the statement regarding a C2 use or how it is similar to C3. In the simplest of terms, the appellant's evidence is not sufficiently precise and unambiguous and has therefore failed to demonstrate, on the balance of probabilities, that the use of the site has a home for the care of up to three children, with 24 hour care provided by not more than two careers would not be a material change of use.

The certificate should be refused.

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: Refuse

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) 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.

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