MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	138420/LP/2023
Date registered valid:	27 October 2023
Proposal:	Use of dwellinghouse (Use Class C3a) to provide residential care accommodation (Use Class C2) for 3 young persons.
Address:	5 Hall Grove, Manchester, M14 5HU
Ward(s):	Rusholme Ward
Applicant:	Mr Daniel Parker Parkwood Care Limited
Agent (if any):	
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Grant
Date of recommendation:	25 January 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

The application relates to two storey brick built end terraced dwellinghouse with a two storey outrigger located at the end of a cul-de-sac named Hall Grove.

Listed building: Not applicable.

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Located in close proximity to Rusholme District Centre also described as the Curry Mile, the application site is located within an area of mostly terraced housing arranged in grid iron patterns.

Description of development

The applicant is seeking a certificate of lawful development for the proposed use of dwellinghouse (Use Class C3a) to provide residential care accommodation (Use Class C2) for 3 young persons.

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

No planning application have been submitted at this address prior to the current certificate.

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.

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.

The applicant originally sought a Certificate of Lawful proposed Development for the use of the property as Use Class C3b. However, for the property to fall within the C3(b) Use Class it would need at least one residential carer, living together with those who are being cared for; the children could not be regarded as constituting a household by themselves as they could not run a house or be expected to deal with all the matters that go to the running of the home. Carers who do not live on the premises but provide (between them) continuous 24 hour care could not be regarded as living together, and this has been established by the High Court.

Therefore following discussions with the applicant the description of the proposal was changed and the applicant is now seeking 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.

In this case as described above the proposal seeks to house up to three children aged 11 to 17 years with who will require a small team of carers, working on a rota basis including sleeping overnight. Six carers in total would operate on a shift pattern of 12 hours, on and 4 days off, . The planning statement submitted with the application indicates that there will be two carers at the home during the day and one at night, in order to provide continuity with the children and create a family environment and bond with the children.

Therefore, in all other ways, the property would operate as a family home.

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.

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 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 restrict 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 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) Grant on the basis that the proposed occupation of 5 Hall Grove, M14 5HU as detailed on the submitted application form, documents and drawings constitutes a Class C2 use for occupation by up to six people living together as a single household and receiving care as defined by Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Area Team Boundary - Name: SOUTH AREA