

Planning

Growth & Development

Delegated officer report for planning application

Application no. 137292/LP/2023

Date registered valid: 14 June 2023

Proposal: Use of the property for up to six residents living together with care provided (Class C3(b))

Address: 123 Lees Street, Manchester, M11 1NX

Ward(s): Clayton & Openshaw Ward

Applicant: Mrs Farzana Shafiq

Agent (if any): Mr R Anwar RA Design & Project Management Ltd

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

Recommendation: Grant

Date of recommendation: 4 August 2023

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 property with no front garden and a rear yard.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Residential

Description of development

Certificates of lawfulness for the use of the property for up to six residents living together with care provided (Class C3(b)).

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

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 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.

Planning History

There have been no previous planning permissions at this site.

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 supporting information that accompanies the application describes that the applicant Manchester Future Care Ltd will use property as a family home and to use it as a home for up to 3 children aged 11-17 for a minimum 6-12 months. 3 members of staff who have special training to support children living in their own home will care for the children.

No external physical alterations are proposed on the property.

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).

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'.

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 change of use falls within the same class and therefore is excluded from the definition of development and no planning permission would be required.

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) Grant on the basis that section 55(2)(f) of the Town and Country Planning Act 1990 explains that the use of a building for any purpose within the same class shall not be taken, for the purpose of the Act, as amounting to 'development'.

The existing use of the property falls within Class C3(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended), and the proposed use as detailed on the submitted application form, documents and drawings constitutes a Class C3(b), a use for occupation by up to six people living together as a single household and receiving care; accordingly this change of use falls within the same class and is therefore excluded from the definition of development and no planning permission would be 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

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

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Historic Landfill Site 250m Buffer -

Historic Landfill Site 250m Buffer -

Area Team Boundary - Name: NORTH AREA