MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	144679/LP/2025
Date registered valid:	14 January 2026
Proposal:	Use of dwellinghouse (Use Class C3) as a Children's Care Home (Use Class C2) providing care for 1 or 2 children with staff working on a rota basis, with a carer sleeping overnight.
Address:	53 Portway, Manchester, M22 1XA
Ward(s):	Woodhouse Park Ward
Applicant:	Mr Dave Wood Arborvitae Care Services Ltd
Agent (if any):	
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse

Date of recommendation: 19 February 2026

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, located in a predominantly residential area.

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 C3a) as a Children's Care Home (Use Class C2) providing care for 1 or 2 children with staff working on a rota basis, with a carer sleeping overnight.

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties, including neighbours. Any views expressed by third parties regarding the planning merits of the case, or whether the applicant has private rights to carry out the proposed operation, use, or activity, are irrelevant when determining the application.

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 applicant’s 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.

Planning History

There have been no previous applications at this address.

The Application

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use of buildings or other land (s192(1)(a) or operations proposed to be carried out in, on, over or under land, (s192(1)(b) would be lawful for planning purposes.

The application form includes a section titled “Ground For Application” which asks the applicant why they considered that a lawful development certificate should be granted for this proposal, the applicant has responded with the following:

“We need to change the use from (Class C3) to (Class C2) and although we know that we do not require planning permission from a planning perspective (as it falls under lawful development) but we do need a certificate of lawfulness to fulfil OFSTED regulations. The house will be used as a Children's Care Home providing care for 1 or 2 children with staff working on a rota basis, with a carer sleeping overnight and would not be materially different to that of a dwelling house. We already run two children's care homes that we applied successfully to change the use of from (Class C3) to (Class C2) and this new home will not be materially different to that of a dwelling house.”.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

Section 192(2), makes it clear that for an application submitted under section 192, *“the local planning authority are provided 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.”*

The Proposal

The application property is a two-storey end-terraced dwellinghouse situated within a predominantly residential street.

The submitted drawings show that the property comprises of a lounge, dining room, kitchen and hallway at ground-floor level. The first floor contains three bedrooms and a shower room.

In terms of the proposed use, the evidence provides states that one or two children would live at the property. Care would be provided by staff working on a rota basis, with a carer sleeping overnight.

Change of Use?

Use

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 households 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), which includes homes that provide 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. Therefore, 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.

Planning permission is usually required to change from a family Dwellinghouse (Use Class C3) to a Children’s Home (Use Class C2). However, where applicants have demonstrated that the use of a property as a children’s home would not be materially different to that of a family dwelling house, lawful development certificates have been granted.

One notable case that addresses the conversion from Use Class C3 to C2 is North Devon District Council v First Secretary of State (2003). In this case, the court considered whether a dwellinghouse used to provide residential care for two children fell within Class C2 or C3(b).

The case made clear that children need to be looked after and cannot run a house or deal with all the matters involved in running a home. Children require full-time care from an adult to manage the household and ensure it operates properly. The term "household" implies that its members are capable of functioning as a unit, which includes the ability to manage and run the household.

The judgment clarified that carers who provide continuous 24-hour care but do not live at the premises cannot be regarded as living together with the children, thus falling under Class C2.

However, Class C3 does require at least one residential carer, living together with those who are being cared for.

The question nevertheless arose as to whether there had, as a matter of fact and degree, been a material change of use. On the special facts of this case, the High Court ruled that the use of the premises for up to two children, with care provided by non-resident staff, did not constitute a material change of use from its C3 classification. overall that the proposed use would not result in a definable change in the character of the use of the property compared to the current C3(a) residential use. As such there would be no material change of use.

This case is important for the general principle that it establishes.

Another relevant case is the Appeal Decision for 316 Westrow Drive, Barking. The inspector considered whether the property was being used as a single household (C3 use class) or as a residential care home (C2 use class). The enforcement notice alleged the unauthorised material change of use from a single-family dwelling house (C3 use class) to a residential care home (C2 use class).

The key issue was whether the residents formed a single household and received care, which would classify the use under C3(b) rather than C2. In this case the occupants were young adults and not children. The inspector concluded that the property was being used as a single household where care was provided, fitting within the C3(b) use class. Therefore, the appeal was allowed, and the enforcement notice was quashed.

The onus in this respect is firmly on the appellant as details of its actual use or last known use was and what is needed to compare with what is proposed.

The applicant contends that the proposed use would not be materially different to the current use of the property as a family dwelling.

However, the evidence provided does not enable an evaluation to be undertaken of whether the proposed use would or would not be materially different from how the property was last used.

Conclusion

The current use of the property is considered to fall within Class C3(a), as a private dwellinghouse and contains three bedrooms and is capable of accommodating a family, however, the applicant has not provided sufficient and precise evidence to undertake a comparison between the existing and proposed use as a children care home (Class C2) and therefore planning permission would be required.

The certificate is recommended for refusal.

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

The applicant has failed to demonstrate, with sufficient and precise evidence, that the proposed change of use from a dwellinghouse (Use Class C3) to a children's care home (Use Class C2), is not a material change and that it does not therefore require 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
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: SOUTH AREA