

Planning

Growth & Development

Delegated officer report for planning application

Application no. 144616/LP/2025

Date registered valid: 26 November 2025

Proposal: Use of dwellinghouse (Use Class C3) as a children's care home (Use Class C2) for three children.

Address: 22 Brendon Avenue, Manchester, M40 9DN

Ward(s): Moston Ward

Applicant: Eckstein Newstone Care Ltd

Agent (if any): Mr Sam Golding Gold Sketch Studios Ltd

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

Recommendation: **Grant**

Date of recommendation: 20 January 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

The application site relates to a two storey semi-detached dwellinghouse that has previously been extended with a single storey rear extension. The property is 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 for the proposed use of dwellinghouse (Use Class C3) as a children's care home (Use Class C2) for three children.

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 one previous planning applications at this address.

041376 - Planning permission was **granted** on the 25 June 1992 for a single storey rear extension to form an enlarged dining room and utility room.

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 applicant states that the existing use falls under: *“C3 – Dwellinghouses”* and that the proposed use is *“C2 – Residential institutions”*.

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 Assessment

The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories. As noted, the existing use as stated on the application form falls within Class C3 (Dwellinghouses) which is split into three parts as follows:

- C3(a) a single person or by people to be regarded as forming a single household;
- C3(b) not more than six residents living together as a single household where care is provided for residents: or
- C3(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Use Class C2 (Residential Institutions) 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 (dwelling houses)).

- Use as a hospital or nursing home.
- Use as a residential school, college or training centre.

The applicant seeks a lawful development certificate to the use of the property as children's care home providing emergency accommodation (Use Class C2), is not development requiring planning permission.

Under normal circumstances, there would be no permitted change to Use Class C2. However, as established in the *North Devon District Council v First Secretary of State and Southern Childcare [2003]* case, a change from C3(a) to C2 is not always considered material; it is a matter of fact and degree, depending on the specific circumstances of the case.

Therefore, an assessment based on 'fact and degree' is necessary to determine whether there is a material change of use.

The application property is a two-storey, semi-detached dwellinghouse situated within a predominantly residential street and areas of large green open spaces.

The submitted drawings show that the property comprises a living, utility room, a dining room, and kitchen at ground-floor level. The first floor contains three bedrooms and a bathroom. Externally, the property benefits from front and rear gardens.

The front garden also contains a drive and there are no parking restrictions on the adjoining public highway.

In terms of the proposed use, the applicant confirms that there will be no external changes to the dwelling or site, only minor internal modifications. It is proposed that three children aged between 8 and 17 years old. Care would be provided by up to two full time carers on site and a general manager would visit the property up to three times a week. Staff would work on a rotational basis, working 48-72 hours shifts with staff handovers every two to three days. These shift changes would take place at 08:00 or 20:00.

The proposal would provide sleeping arrangements for both children and carers, using all of the existing three bedrooms. The statement outlines that carers would sleep in a double bedroom suitable for two adults. Two children would sleep in a further double bedroom and one child would sleep in the single bedroom.

The living room would be used for both recreation and will have a table/desk for the staff members to use as a home office.

As noted, there is a driveway at the property and there appears to be no parking restriction outside of the property. The applicant states that car journeys will be limited to care staff only, with staff arriving on foot or by public transport and a cycle store is also to be provided to encourage staff to cycle.

In terms of visits other than the general manager visiting the property up to three times a week, the applicant says that there are no other visitors that they anticipate will visit the property. The home will be managed and operated by a registered care provider, who will operate a centralised software system for the cares to use, with all notes uploaded online, this mitigating the number of visits needed by the General Manager or external quality control bodies. Therapies and Social Worker Appointments will be taking place at the children's place of education.

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

No details have been provided about the current or previous occupiers, other than the property is a dwellinghouse that falls within Use Class C3 and contains three bedrooms.

The applicant argues that the proposed use of the property as a children's residential home would not constitute a material change of use, as it would involve a small-scale operation accommodating up to three children within a standard residential property. It is suggested that the use would be similar in character to that of a large family household, with traffic, noise, and activity levels comparable to those of a typical dwellinghouse.

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,

The applicant says that the dwelling's operation will closely mirror a conventional family home. The three children and support staff will function as a single household unit, engaging in a typical day-to-day routine, including education, home-cooked meals, and leisure activities.

The dwelling can accommodate one vehicle off road and there are no restrictions on the public highway.

In this case, it is accepted that the proposed use falls under Class C2, however, its use to care for three children would not be materially different from that of a dwelling house (Class C3). This is due to the way the property will be operated and managed. The impact would be similar to that of a family home. Therefore, the proposed use would not result in a development requiring planning permission.

There are no known conditions attached to any previous planning permission that would restrict the use in such a way as to prevent any such change.

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

The change of use of the dwellinghouse (Use Class C3) to a children's care home (Use Class C2) for three children would not represent a material change of use and would not 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

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Area Team Boundary - Name: NORTH AREA