

Planning

Growth & Development

Delegated officer report for planning application

Application no. 145434/LP/2026

Date registered valid: 13 March 2026

Proposal: Use of dwellinghouse (Use Class C3) as a Children's Care Home (Use Class C2) providing care for one child 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: Grant

Date of recommendation: 5 May 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 end-terraced dwellinghouse, located within 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 dwellinghouse (Use Class C3) as a Children's Care Home (Use Class C2) providing care for one child 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 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 has been one previous planning applications at this address.

144679/LP/2025– A lawful development certificate was refused on the 10 March 2026 for the proposed use of the 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 for the following reason:

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.

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 “Information About the Proposed Use,” which asks the applicant for the use class that the proposal falls under, as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended).

The applicant states that the use falls under: *“Use Class C3 – Dwellinghouses”* and in response to the question *“Why do you consider that a Lawful Development Certificate should be granted for this proposal?”*, the applicant has responded as follow:

“Use of dwellinghouse (Use Class C3) as a Children's Care Home (Use Class C2) providing care for one child with staff working on a rota basis, with a carer sleeping overnight. My Statement of Operation has been emailed to Robert Tyrer (Planning Officer) and also to Manchester Planning. That document fully explains how we will run the home and why the proposed use would not be materially different from the property's previous use. This document explains why I consider that a Lawful Development Certificate should be granted for this proposal.”

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 Assessment

Change of Use?

The applicant is seeking a certificate of lawful development to allow the use of dwellinghouse (Use Class C3) as a Children's Care Home (Use Class C2) providing care for one child with staff working on a rota basis, with a carer sleeping overnight.

Use

The applicant has confirmed that the existing use of the property is a dwellinghouse in use class C3. This is considered to be the current lawful use of the property.

The use classes order provides the following definitions:

Use Class C3: Use as a dwelling house (whether or not as a sole or main residence) by —

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(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: 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 is firmly on the applicant to provide as much detail as possible in relation to its actual use or last known use so that an appropriate comparison can be made with what is now being proposed.

The Proposal

The application property is a two storey end-terraced dwellinghouse situated within at the end of a cul-de-sac which has a residential parking area access from Portway. The property contains both rear and front gardens.

The submitted drawings show that the property comprises of a kitchen, hallway, and an open plan lounge and dining room on the ground floor. On the first floor, the property contains three bedrooms, and a shower room.

In terms of the proposed use, one child aged between 7 and 17 years would live at the property. The applicant explains that the children placed need care and are subject to interim care orders, full care orders, or voluntary arrangements under Section 20. Each child has a local authority care plan and an internal placement plan that sets out how their welfare is safeguarded and promoted on a day-to-day basis.

For children with emotional and behavioural difficulties, developmental trauma, attachment needs, or experiences of exploitation the applicant explains that a nurturing, stable and family-style environment is required.

The applicant also confirms that this is not a mental health provision, and no clinical services are delivered on site. When the child receives support from community-based services, the supporting statement makes clear that this would be occasional and in line with the type of support that would occur in many family households.

Care would be provided by two full-time carers on site working 24-hour shifts and that includes sleeping. Staff arrive once, remain in the home for a full 24-hour period, and leave the following day or after their 2 day shift run. The applicant explains that there are no multiple daily handovers, no repeated comings and goings, and no shift-based activity that would distinguish the home from a typical family household.

A manager or senior staff member visit the property during the day for oversight and administrative tasks; the applicant states that this comparable to that of a parent working from home and does not alter the domestic character of the property.

Daily routines would follow those of a typical family life; the applicant confirms that the nature of the care provided is comparable to that of a foster family or a domestic household supporting children with additional needs.

In terms of visitors to the property, the applicant has confirmed that visits by social workers would be infrequent, by appointment only and typically once every six weeks. Their visits are said to be short and non-disruptive.

Deliveries are limited to normal household mail, as all other deliveries are directed to the organisation's head office.

The property does not benefit from any in curtilage car parking such as a driveway, but there does appear to be a residential parking area which is accessed from Portway. There are no parking restrictions on Portway nor for the parking area within the cul-de-sac. This would be the same for

a typical family living at the property and therefore there would be no material differences in this regard.

Conclusion

The applicant contends that the proposed use is small-scale, domestic, and non-institutional; that the children will live as a single household; that staffing levels are equivalent to parental supervision; and that activity levels are no greater than those of a typical family home.

In this case, it is accepted that the proposed use falls under Class C2, however, its use to care for one child (aged between 7 and 17 years old) 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

Whilst falling within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), the use of a dwellinghouse (Class C3) as a Children's Care Home (Class C2) for one

child with staff working on a rota basis, with a carer sleeping overnight, would not, in this instance, represent a material change from the existing use as a Class C3 dwellinghouse.

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 (Middle) -

Area Team Boundary - Name: SOUTH AREA