Planning

Delegated Officer Report

Summary of application details

Application reference:	PLA-2026-000310
Application type:	Lawful development: Proposed use
Proposal:	Change of use from residential (Class C3(a)) to residential institution (Class C2)
Site address:	83 Clarence Road Manchester M13 0ZE
Ward(s):	Rusholme
Date application valid:	12 May 2026
Applicant name:	Mr Furkan Mohammed
Agent (if any):	Sheila Wright
Case officer:	Robert Tyrer
Recommendation:	Refuse
Date of recommendation:	08/07/2026

Description of site, building and/or area

Application site relates to a two storey semi-detached dwellinghouse.

The surrounding area is predominantly residential in nature.

Description of development

The applicant is seeking a certificate of lawful development for a change of use from residential (Class C3(a)) to residential institution (Class C2)

Consultation, notification and publicity 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.

Assessment

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 existing or last use falls under: “C3 - Dwellinghouses” and the proposed use relates to "C2 - Residential institutions". In response to the question

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."*

Change of Use?

The applicant is seeking a lawful development certificate (LDC) to allow for a change of use from residential (Class C3(a)) to residential institution (Class C2).

Use

The applicant has confirmed that the existing or last known 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.

Assessment of the Proposal

The application site relates to a two-storey semi-detached dwellinghouse, which contains both front and rear gardens. The submitted floor plan shows that there is a reception room, living room and kitchen on the ground floor, with three bedrooms, a bathroom and toilet on the first floor.

The front garden contains a driveway.

A Planning Statement (PS) accompanies the application and sets out that the dwellinghouse will be used to accommodate two children, aged between 6 and 18 years of age.

The applicant describes that the aim of the property is to provide a ‘home from home’ for them.

The children would be cared for by two staff members, including overnight. The two carers would work on 48-hour shifts, with a staff change over occurring daily at 09:30. In addition to the two carers a manager would arrive each weekday morning at 09:00 and work until 17:00.

The PS explains that the children’s home model is to create a warm and nurturing family style environment for the medium to long term care of a small number of children. Furthermore, this type of provision is said to be operated in the same manner as a regular family home with two primary carers, to provide consistency and stability to the children who live there (similar to a fostering model).

No physical alterations to the property are proposed and each of the children will have their own bedroom and the third bedroom will be used by carers on overnight shifts.

The applicant acknowledges that the proposed use falls within C2 Use Class rather than C3(b), but has set out that the proposed use would not be materially different to that of a family dwellinghouse and should not result in development requiring planning permission.

To determine whether a what is proposed would constitute a material change, it is necessary to compare the existing use with the proposed use. In this regard the onus to provide suitable information so that a genuine comparison can be made is firmly on the applicant; details of the actual use or last known use was, and how the property operated.

In addition, the PS notes that the associated comings and goings, nature and scale of the use will be indistinguishable from a conventional family home, however, in this case no information has been provided on the current or previous number of residents or if they were an elderly couple or a family for example, so that an appropriate comparison can be made.

Furthermore, no information has been provided on visitors to the property such as professionals including social workers, nor if family members would visit the property and how this would be managed.

Therefore, the evidence provided is insufficient and imprecise to conclude that the proposed use would not be materially different from that of the dwellinghouse in Class C3.

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.

Conclusion

Based on the assessment above, the Certificate should be refused.

Recommendation: Refuse

Reasons for refusal

1 The applicant has failed to demonstrate, with sufficient and precise evidence, that a change of use from residential (Class C3(a)) to residential institution (Class C2), does not amount to a material change of use requiring planning permission.