

Planning

Growth & Development

Delegated officer report for planning application

Application no. 132786/LE/2022

Date registered valid: 10 February 2022

Proposal: Certificate of Existing Lawful Development for use of the property as a House in Multiple Occupation (Class C4)

Address: 21 Brailsford Road, Manchester, M14 6PT

Ward(s): Fallowfield Ward

Applicant: Mr Marc Larsen 4B Hastings Mount, Sheffield, S7 2GX

Agent (if any): Mr Brian Ratcliffe Building Design Consultant 89 Summerseat Lane, Holcombe Brook, Bury, BL0 9RQ

Case officer: Carl Glennon
Tel: 0161 234 4530
Email: carl.glennon@manchester.gov.uk

Recommendation: Approve

Date of recommendation: 17 March 2022

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: N/A

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 10 February 2022 Expired: 3 March 2022

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

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of area

The application site lies in a residential area comprising of red-brick 2-storey terraced houses incorporating 2-storey outriggers as part of the original building. The application property is constructed to the back of pavement with ground floor bay. To the rear is a yard enclosed by brick walls. The application property is typical of housing in the surrounding area.

Description of development

This Certificate of Existing Lawful Development (CLEUD) application seeks to demonstrate that the Class C4 use was in place when an Article 4 Direction requiring planning permission for a change of use from Class C3 (dwellinghouse) to Class C4 (HMO) was in place, i.e., 8 October 2011. Therefore, a Class C4 use was therefore established at that time and has been continuously undertaken thereafter.

Consultations & Notification Responses

Local residents - None required as the application seeks to establish an existing lawful use. Notwithstanding the above, neighbouring residents have been notified. As no comments have been received, no evidence relating to the use of the property has been forthcoming.

Issues

This CLUED application has been assessed with reference to Section 191 of the Town and Country Planning Act 1990 (TCPA 1990), which sets out the relevant to assessment criteria.

Case law relating to Section 191 TCPA 1990 states that the burden of proof lies with the applicant who is required show that on the balance of probabilities the use described in the application should be certified as lawful. The test of balance of probabilities, the local planning authority (LPA) would need to present its own evidence. if it wishes to contradict the evidence provided by an applicant. In the absence of contradictory information, the LPA is required to approve the certificate.

In this case, the application has been accompanied by a series of assured tenancy agreements. The submitted information is set out below:

Tenancy date	No of residents
1 July 2010 – 30 June 2011	6
1 July 2011 – 30 June 2012	6
1 July 2012 – 30 June 2013	6
1 July 2013 – 30 June 2014	6
1 July 2014 – 30 June 2015	6
1 July 2015 – 30 June 2016	6
1 July 2016 – 30 June 2017	6
1 Aug 2017 – 30 Jun 2018	2
1 Sept 2017 – 22 Jun 2018	2
22 Sept 2017 – 30 Jun 2018	2
July 2018 – Jun 2019	6
7 Oct 2019 – 30 June 2020	2
11 Oct 2019 – 30 June 2020	1
31 Oct 2019 – 31 Mar 2020	1
12 Oct 2020 – 11 Apr 2021	1
8 Jan 2021 – 7 Mar 2021	1
9 Jan 2021 – 8 Mar 2021	1
29 Mar 2021 – 30 Jun 2021	1
2 Apr 2021 – 30 Jun 2021	1
9 Apr 2021 - 8 May 2021	1
13 Apr 2021 – 30 Jun 2021	1
8 July 2021 – 30 Jun 2022	6

There is some overlap of tenancies between August 2017 and 2018 thereby ensuring continuous Class C4 occupation. The applicant has confirmed that occupancy by one person between July 2020 and January 2021 was a response to the circumstances surrounding the COVID-19 pandemic.

Conclusion - As the LPA has no evidence to contradict the applicant's statutory declaration, it is considered, on the balance of probabilities, that the lawful use of 21 Brailsford Road, Manchester, M14 6PT is as a Class C4 house in multiple occupation accommodating between 3 and 6 unrelated people. On this basis, Certificate of existing lawful development is approved.

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: Approve

Article 35 Declaration

N/A

Condition(s) to be attached to decision for approval

1) From the evidence available and the planning law applicable to the property, Manchester City Council is satisfied that in relation to the property referred to in the Second Schedule hereto, the use of the premises as a House in Multiple Occupation within Class C4 of the Town and Country Planning (Use Classes) Order (as amended), described in the First Schedule, is lawful by reason of the said use having been in existence prior to the introduction of the City Council's Article 4 Direction, introduced on 8th October 2011, relating to Houses in Multiple Occupation, and which has been continuously in use as a Class C4 use, for a period exceeding 10 years.

Appendix 1 – List of consultees & neighbours notified

19 Brailsford Road, Manchester, M14 6PT
24 Braemar Road, Manchester, M14 6PS
22 Braemar Road, Manchester, M14 6PS
24 Brailsford Road, Manchester, M14 6PU
20 Brailsford Road, Manchester, M14 6PU
22 Brailsford Road, Manchester, M14 6PU
23 Brailsford Road, Manchester, M14 6PT
20 Braemar Road, Manchester, M14 6PS

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

Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Moseley Road/Ladybarn Lane)

Area Team Boundary - Name: NORTH2