

Steven Abbott Associates LLP
Chartered Town Planners

PLANNING SUPPORTING STATEMENT

AJ Marshall

Certificate of Lawfulness – Use of Property as HMO

66 Davenport Avenue, Withington, Manchester, M20 3ET

April 2022



REPORT DETAILS

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Date: April 2022



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1. INTRODUCTION

- 1.1. We are instructed by our client, Mrs Amanda Marshall, to apply for a certificate of lawfulness in relation to 66 Davenport Avenue, Withington, Manchester, M20 3ET.
- 1.2. This application seeks a certificate of lawfulness of an existing use of the property as a house in multiple occupation (HMO).
- 1.3. At the time the change of use to a HMO took place, it was permitted development, as it occurred before the Article 4 Direction came into force.
- 1.4. In addition, the use of the property as an HMO has now continued for more than the requisite 10-year period as defined by Section 171B (3) of the Town and Country Planning Act 1990 (as amended).
- 1.5. Accordingly, the use of the property as an HMO is lawful and immune from any enforcement action.
- 1.6. As per section 191 (5) of the 1990 Act, the Council should issue the certificate describing the use and give reasons why the Council considers the use and give reasons why the Council considers the use to be lawful.

2. BACKGROUND

The Application Property

- 2.1. The current use of the building is as a 5-bedroom HMO which falls within Use Class C4 (house in multiple occupation). This property has been in this continual use since September 2011.
- 2.2. The property was purchased by the applicant in February 2011 and work took place on the property for the alterations and part loft conversion. This was completed in August 2011 (Appendix 1). The property has been in use as an HMO since September 2011 with the first tenant moving into the address on the 14th September 2011.
- 2.3. A House in Multiple Occupation Licence (Appendix 2) was granted for the property on the 11th May 2012 and was valid until the 10th May 2017. This license was renewed and a new one was granted on the 10th May 2017 (Appendix 3) which is valid until the 9th May 2022.

Details of the Permitted Development Change (Use Class C3 to C4)

- 2.4. The proposed change of use of the building is permitted under Schedule 2, Part 3, Class L (referred to as "Class L" hereafter) of the Town and Country Planning Act (General Permitted Development Order) (England) Order 2015 (as amended) (referred to as "the GDPO" hereafter). This permits the development consisting of a change of use of a building from a use class falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation).

Article 4 Direction

- 2.5. Manchester City Council made an Article 4 (1) Direction on the 7th October 2010, under Article (1) of the Town and Country Planning (General Permitted Development) Order 1995, as amended. The Direction relates to development comprising the change of use falling within Class C3 (dwellinghouses) of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that order.
- 2.6. This Direction removes permitted development rights for this type of development from the date when the direction comes into force and applies to the whole of the Manchester City Council area. The direction came into force on the 8th October 2011. From this date, planning permission was required for a change of use from Class C3 to Class C4.
- 2.7. The first tenant moved into the property on the 14th September 2011 and the property has been within the use class C4 since this date. The Article 4 Direction came into force on the 8th October 2011, which was after the change of use from class C3 to Class C4 took place. As a result, the Article 4 Direction did not apply to the property at the time use began as the Article 4 Direction had not come into force.

3. LEGISLATIVE CONTEXT

3.1. Section 191 (2) of the Act provides that use and operations are lawful at any time of:

- (a) No enforcement action may be taken in respect of them; and
- (b) They do contravene any requirement of any enforcement notice then in force.

Section 191 (4) indicates that the new relevant time for determining the lawfulness is at the time of that application which in this case is April 2022.

3.2. In order for a certificate of lawfulness to be granted under Section 191 of the 1990 Act, the burden of proving relevant facts rests on the applicant, and the test of the evidence is the balance of probabilities. The 10-year rule applies for this use of the property as an HMO.

Ten Year Rule

3.3. Section 171B of Act sets out time limits for taking enforcement action against any breach of planning control. Section 171B(3) states that where there has been a breach of planning control consisting in the change of use, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

3.4. It is the responsibility of the applicant to demonstrate that the development is lawful – in this case by virtue of the building being in use as an HMO in excess of 10 years before the date of the application for a certificate of lawfulness. The Applicant will demonstrate that the building has been used as an HMO for a period of at least 10 years without material interruption so as to be immune from enforcement action.

- 3.5. The National Planning Practice Guidance advises that in the cases relating to an application for an existing use, the Local Planning Authority has no reason to refuse the application if they have no evidence that contradicts or makes the applicant's versions of events less probable. As a result, as long as the applicant's evidence is sufficiently precise and unambiguous, the LPA should grant the certificate on the balance of probability.

4. TIMELINE OF EVENTS

- 4.1. Work to upgrade the property took place in 2011. A building regulations application (Ref: FP/11/00396) was submitted on the 4th April 2011 for the “Alterations and part loft conversion to dwelling”. The date of the completion inspection was the 17th August 2011 where it was found that the works described in the application are in compliance with the requirements of the building regulations (Appendix 1). This confirms that the works had been completed at the date the completion certificate was issued.
- 4.2. The use of the property as a HMO began on 14th September 2011 and continues to be the use. The Applicant has operated a deposit scheme since September 2011 where fee is payable at registration. A deposits receipt (Appendix 4) shows the deposits that are protected for the tenants at 66 Davenport Avenue. This document shows that the deposits have been protected since September 2011.
- 4.3. A House in Multiple Occupation Licence (Appendix 2) was granted for the property on the 11th May 2012 and was valid until the 10th May 2017. This licence was renewed and a new one was granted on the 10th May 2017 (Appendix 3) which is valid until the 9th May 2022. These licences confirm that the Council are satisfied that the licensed premises are reasonably suitable for occupation by not more than 5 occupants.

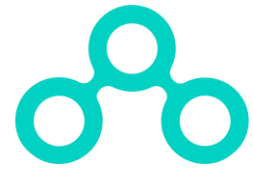
5. EVIDENCE BASE

5.1. In support of the Certificate of Lawfulness, the following documents have been submitted:

- **Appendix 1** – Completion of building regulation work for building regulations application no: FP/11/00396;
- **Appendix 2** – House in multiple occupation licence for 11th of May 2012 – 10th May 2017;
- **Appendix 3** – House in multiple occupation licence for 10th of May 2017 – 9th May 2022; and
- **Appendix 4** – Deposits receipt.

6. CONCLUSION

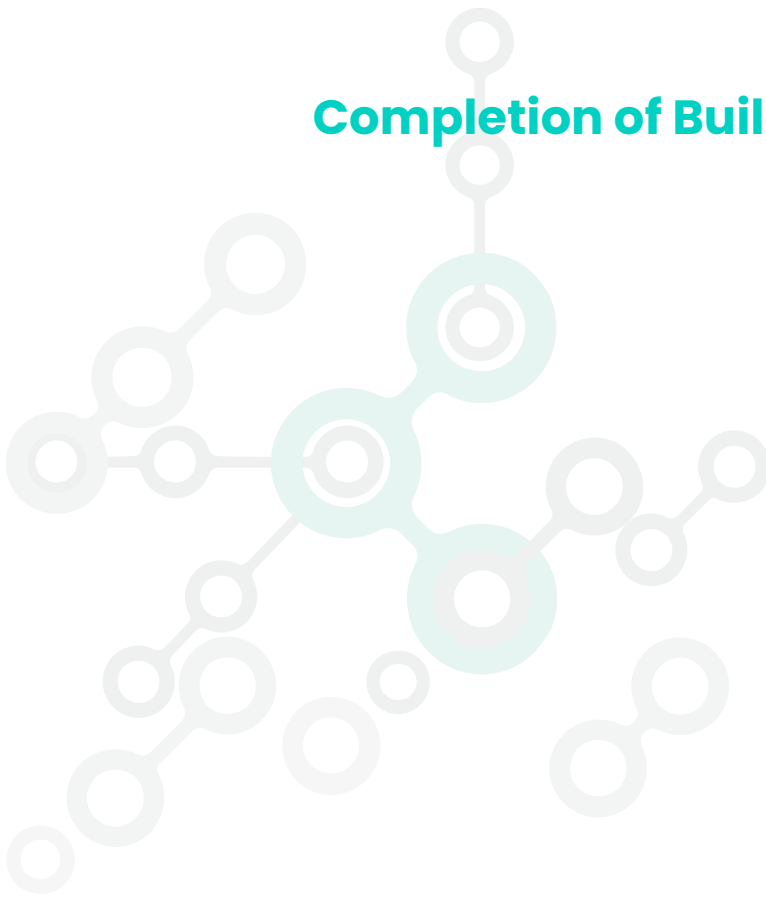
- 6.1. The applicant seeks a certificate of lawfulness under Section 191 of the 1990 Act to confirm that the use of the property as a house in multiple occupation is lawful.
- 6.2. The change of use from Use Class C3 to C4 took place before the Article 4 Direction came into force on the 8th October 2011. The change of use of the property was permitted development under Class L of Part 3 of the GPDO.
- 6.3. The evidence submitted with this application demonstrates that this use has taken place at the property since September 2011.
- 6.4. In addition to the use being permitted development, it has also taken place for a period in excess of 10 years. Therefore, even if planning permission had been required, it would now be immune from any enforcement action under the provisions of Section 171B of the 1990 Act.
- 6.5. The applicant is entitled to a Certificate of Lawfulness on the above terms and respectfully requests that a certificate is duly approved and issued.



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Appendix 1

Completion of Building Regulations Work





**MANCHESTER
CITY COUNCIL**

Building Control

PO Box 532
Town Hall
Manchester
M60 2LA

To reply please contact:

Mrs M Marshall
Field Barn
Far Sawrey
Ambleside
Cumbria
LA22

Brendan Dowling
Tel: 0161 234 4490
Fax: 0161 274 0030
Textphone: 0161 234 4330
Date: 17 August 2011

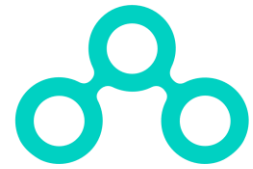
Completion of Building Regulation Work

1. Description of Work.
Alterations and part loft conversion to dwelling
2. Location - Plot Number 1
66 Davenport Avenue, Old Moat, Manchester, M20 3ET
3. Building Regulations Application No. FP/11/00396

The above mentioned work has been inspected by the Building Surveyors' Division of Manchester City Council and as far as can be ascertained the work has been carried out in accordance with the Building Regulations.

This document does not convey approval under any other legislation other than the Building Regulations and associated legislation.

B.C.S. Signature



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Appendix 2

House of Multiple Occupancy License May 2012 – May 2017





House in Multiple Occupation Licence

Licence Ref Number: 138193/OL2

Address of licensed premises:-

66 Davenport Avenue Manchester M20 3ET

Licence holder:-

Name: Mrs Amanda Jane Marshall

Address: Castle Cottage Near Sawrey Cumbria LA22 0LF

Person / company managing this property:-

Name: Mrs Amanda Jane Marshall

Address: Castle Cottage Near Sawrey Cumbria LA22 0LF

The licence was granted on:- 11 May 2012

and is valid until:- 10 May 2017

This licence is not transferable and is issued subject to the conditions in the attached schedules.

The council is satisfied that the licensed premises are reasonably suitable for occupation by not more than 5 occupants.

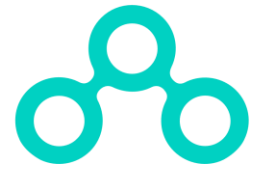
Dated this day: 11 May 2012

Signature:

Sean McGonigle
Assistant Chief Executive
Neighbourhood Strategy and Delivery



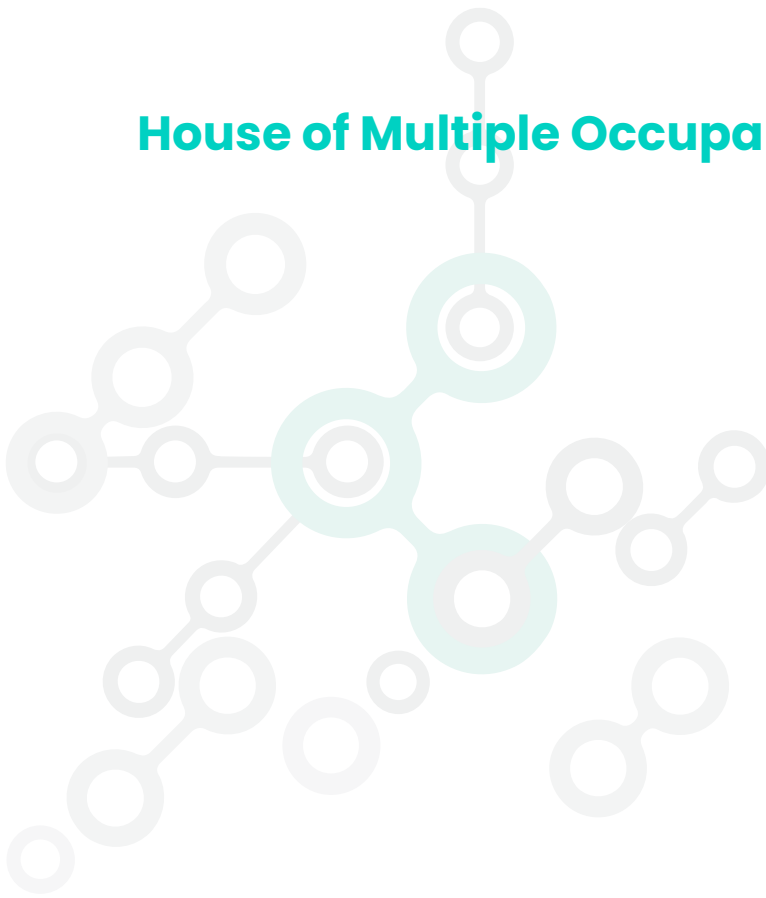
MANCHESTER
CITY COUNCIL



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Appendix 3

House of Multiple Occupancy License May 2017 – May 2022





MANCHESTER CITY COUNCIL

Licence Ref Number: 138193/OL2

Address of licensed premises:-

66 Davenport Avenue
Manchester
M20 3ET

Licence holder:-

Name: Amanda Jane Marshall
Address: Castle Cottage
Near Sawrey
Cumbria
LA22 0LF

Person / company managing this property:-

Name: Glenn Potts
Address: 2 Corrie Close
Denton
Manchester
M34 6PP

The licence was granted on:- 10th May 2017

and is valid until:- 9th May 2022

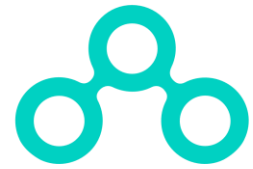
This licence is not transferable and is issued subject to the conditions in the attached schedules.

The council is satisfied that the licensed premises are reasonably suitable for occupation by not more than 5 occupants.

Dated this day: 10th May 2017

Signature

**On behalf of, and in the name of, Fiona Worrall
Director of Neighbourhoods**



Steven Abbott Associates LLP
Chartered Town Planners

Appendix 4

Deposits Receipt



INVOICE

REGISTERED NUMBER: 05861648 VAT NUMBER: 893 9729 49

INVOICE TO:-

Mrs Amanda Marshall Barn House Silver Bank Coniston LA21 8HW	
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Date of Invoice:	29 Sep 2011
Membership Number:	10428181
Invoice Number:	524022



mydeposits
1st Floor, Premiere House
Elstree Way
Borehamwood
WD6 1JH

info@mydeposits.co.uk
T: 0333 321 9401
F: 0845 634 3403

Deposits Protected				
Transaction Date	Description	Unit Cost	VAT	Amount Due
29 Sep 2011	DPC01307323 for Miss Fildaty Ardley renting 66 Davenport Avenue, Manchester, Lancashire, M20 3ET	£25.00	£5.00	£30.00
29 Sep 2011	DPC01307324 for Mr Matthew Langan renting 66 Davenport Avenue, Manchester, Lancashire, M20 3ET	£25.00	£5.00	£30.00
29 Sep 2011	DPC01307325 for Miss Julie Keane renting 66 Davenport Avenue, Manchester, Lancashire, M20 3ET	£25.00	£5.00	£30.00
29 Sep 2011	DPC01307326 for Mr Ben Covacale renting 66 Davenport Avenue, Manchester, Lancashire, M20 3ET	£25.00	£5.00	£30.00
29 Sep 2011	DPC01307327 for Miss Melanie Hole renting 66 Davenport Avenue, Manchester, Lancashire, M20 3ET	£25.00	£5.00	£30.00
Total Number of Deposits Protected: 5		Total Amount Now Due:	£125.00	£150.00

Invoice Total		
Deposits		Amount Due
Payments		£150.00
Total Amount Now Due:		£0.00

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