

Planning

Growth & Development

Delegated officer report for planning application

Application no. 128541/LE/2020

Date registered valid: 10 January 2022

Proposal: Application for a Certificate of Existing Lawful Development relating to use of property as: one, self-contained basement flat, landlords residential accommodation, four rented bedrooms with shared facilities and ground floor pharmacy / homeopathy business for a period exceeding 4 and 10 years

Address: 321 Dickenson Road, Manchester, M13 0NR

Ward(s): Rusholme Ward

Applicant: Mr Mahboob Butt 321 Dickenson Road, Manchester, M13 0NR

Agent (if any): Mr Frank Summerfield Torplan Ltd 216 Heaton Moor Road, Stockport, SK4 4DU

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

Recommendation: **Refuse**

Date of recommendation: 11 April 2022

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: N/A

Standard consultations:

Printed: 11 January 2022 Expired: 1 February 2022

Neighbour notifications

Printed: 11 January 2022 Expired: 1 February 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

This CLEUD relates to a 3-storey terraced building constructed over a semi exposed basement. The property is located an area with a mix of commercial and is approximately 16 metres from Longsight District Centre.

Consultations & Notification Responses

None required but local residents were advised of the CLEUD application. No comments have been received.

Evidence

This CLEUD 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.

The submitted evidence includes:

1. Residential tenancy agreements between:
 - i. 2006 - 2009;
 - ii. 2012 – 2021;
2. Two sworn declarations from the property owner / applicant and a former homeopathy business operator;
3. Business rates bills relating to the homeopathy business;
4. Tax receipts without any information pertaining to the use of the property;
5. Business rates email confirming the duration of the occupation of the ground floor by homeopathy businesses, i.e., Homeopathic Healthy Herbs 31 July 2008 to 31 October 2015 and Homeopathic Medicine Ltd 1 November 2015 to the present time.
6. Internal layout drawings.

The information described in points 1, 2, 5 and 6 is relevant to the CLEUD application.

The submitted information has been cross referenced with the information obtained from Companies House and Bing Street images.

Assessment

The pharmacy referenced in the application appears to be part of and ancillary to the operation of the homeopathy business. The submitted evidence has been cross referenced with information obtained from Companies House. It is considered that the homeopathy use has been in place for a period exceeding 10 years and has therefore been lawfully established.

However, the submitted evidence does not demonstrate that the various residential uses have been lawfully established. The residential uses relate to a basement flat (Class C3). Landlord's non- residential accommodation comprising a lounge, diner and kitchen at ground floor level. As the landlord's accommodation does not include an identified bedroom or bathroom it has not be considered as a flat (Class C3). The application also identified four lettable rooms (Class C4 – small scale house in multiple occupation (HMO)) over the first and second floor.

The applicant is required to demonstrate the basement flat has been in continuous Class C3 use for 4 years. The sworn declaration from Mr ME Butt (applicant) states that after 2007, the basement was used for his own purposes until 2011 but the nature of the use is not specified. The submitted tenancy agreements reference the occupation of 321 and 321A Dickenson Road. The submitted layout drawing does not differentiate between 321 and 321A Dickenson Road. Council Tax records have confirmed that the basement was registered as a separate dwelling in January 2019. The submitted tenancy agreements have been reviewed and the following periods of residential occupancy in the basement have been established:

1 June 2012 to 31 May 2013
1 June 2013 to 31 May 2014
9 Oct 2014 to 8 Apr 2014 [2015]

11 Jan 2019 to 10 Jul 2019
26 Jan 2019 to 25 Jul 2019
3 Apr 2019 to 2 Jul 2019
6 Apr 2019 to 5 Jul 2019

3 Jul 2019 to 20 Oct 2019
5 Jul 2019 to 4 Oct 2019
5 Oct 2019 to 4 Jan 2019 [2020]
15 Jan 2020 to 14 Apr 2020
5 March 2020 to 4 Jun 2020
14 Nov 2021 to 13 Feb 2020 [2021]

There is a clear break in the available evidence relating to the occupation of the basement between April 2014 and January 2019. The required 4 years of continuous occupancy has not been demonstrated and the lawful use of the basement as flat has therefore not been established.

The use of the landlord's accommodation has not been assessed as a flat (Class C3) due to the absence of a bedroom and bathroom. The use of the related ground floor rooms have therefore been related to the 10 year rather than 4 year threshold for establishing lawful use. The sworn declaration from Mr ME Butt states that the room to the rear of the homeopathy pharmacy was used as an office. However, the submission indicates that this room forms part of the owner's accommodation, as shown on the submitted layout plan (referenced Existing plan Ref 01 Rev B). No information has been provided to confirm the date this office use commenced and ceased. There is ambiguity as to whether the rooms, identified on the layout drawing, have been used as the landlord's accommodation has been in place continuously for 10 years.



Fig.1 – Bing street image showing 321 Dickenson Road 23 November 2011

With regard to the upper floor HMO use, the applicant is required to demonstrate its continuous undertaking for 10 years. The sworn declaration by Mr ME Butt states that the upper floors of the property were rented out as lettable rooms and offices during an unspecified period. Further reference has been made to information held by Companies House, which confirms partial occupation of the property by Ahmad & Co (Accountants) until around February 2016. Street view images from November 2011 indicate the display of related business signage. The location of this business within the building during the period under consideration strongly indicates that the premises has not been used in the manner set out on the submitted layout drawings referenced 01 Rev B. Office uses do not form part of the CLEUD application and their existence casts significant doubt that the described Class C4 accommodation use has been lawfully established in the specified areas of the building.

The submitted tenancy agreements do not confirm the occupation of the Class C4 accommodation within the property during 2011 and 2012. This is significant as this CLEUD application was received in 2021 and the evidence should have been related to partial Class C4 occupation within the property throughout the period between 2011 to 2021. Furthermore, additional evidence has not been provided to demonstrate continued residential use within the property beyond 2021 period and up to the current time. The applicant has therefore failed to demonstrate continuous residential occupation over 10 years. The distribution of HMO occupation based on tenancy agreements between 2011 and 2021 is illustrated in Fig.2.

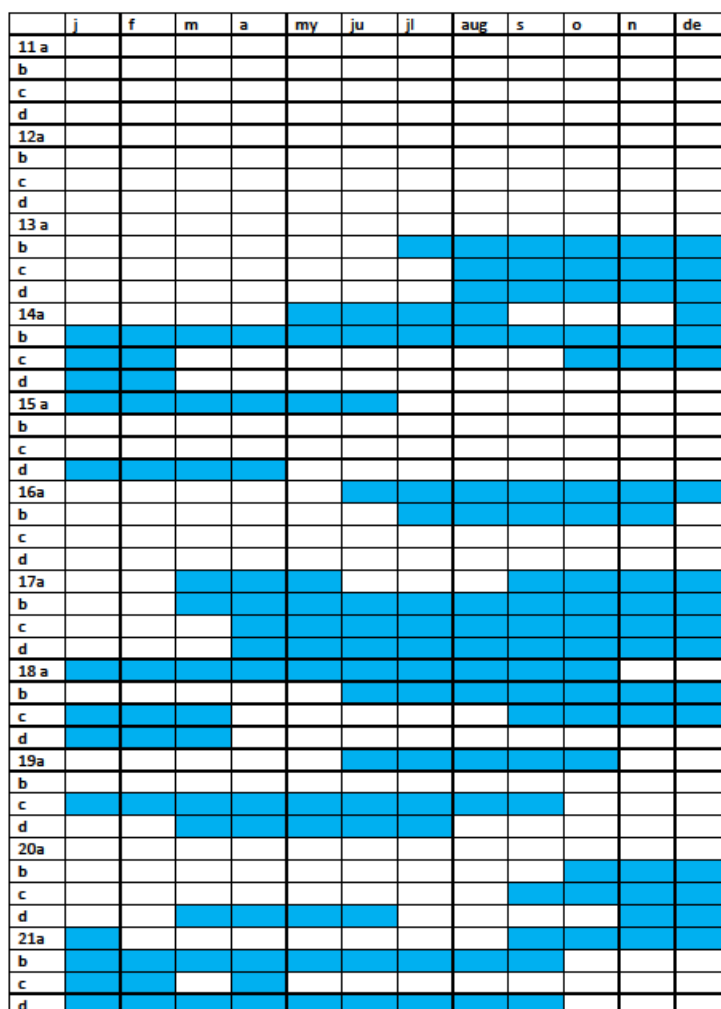


Fig. 2 - Distribution of HMO occupation based on tenancy agreements between 2011 and 2021

The submitted evidence has not demonstrated that the specified residential uses have been lawfully established. In these circumstances, it will be necessary for the CLEUD application to be refused with specific reference to residential accommodation.

A separate CLEUD application in relation to the homoeopathy pharmacy may be pursued if the applicant wishes to do so.

Conclusion

In the absence of conclusive evidence, the local planning authority is not satisfied that the described residential use, i.e. one, self contained basement flat, landlord's residential accommodation, four rented bedrooms with shared facilities has a lawfully established. The

refusal of the application for a certificate of existing lawful development is considered to be necessary and appropriate.

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: Refused

Article 35 Declaration

N/A

Reasons for recommendation to refuse

1) The applicant has failed to demonstrate on the balance of probability that the property was partially in use/occupation one, self-contained basement flat (Class C3), landlord's residential accommodation (sui generis) and four rented bedrooms with shared facilities comprising a (Class C4) under the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), for a continual period of 4 years (for Class C3 use) and 10 years (for the Class C4 and sui generis use) (up to the date of the receipt of the CLEUD application on 10 January 2022).

Appendix 1 – List of consultees & neighbours notified

Highway Services
Environmental Health
Greater Manchester Police

317 Dickenson Road, Manchester, M13 0NR
18 Honor Street, Manchester, M13 0WY
16 Honor Street, Manchester, M13 0WY
12 Honor Street, Manchester, M13 0WY
10 Honor Street, Manchester, M13 0WY
8 Honor Street, Manchester, M13 0WY
332 Dickenson Road, Manchester, M13 0NG
330 Dickenson Road, Manchester, M13 0NG
328 Dickenson Road, Manchester, M13 0NG
Room 3 First Floor, 319 Dickenson Road, Manchester, M13 0NR

Room 2 First Floor, 319 Dickenson Road, Manchester, M13 0NR
Room 1 Ground Floor, 319 Dickenson Road, Manchester, M13 0NR
Room 1A, 317 Dickenson Road, Manchester, M13 0NR
Second Floor, 321 Dickenson Road, Manchester, M13 0NR
321A Dickenson Road, Manchester, M13 0NR
First Floor, 321 Dickenson Road, Manchester, M13 0NR
Room 4, 317 Dickenson Road, Manchester, M13 0NR
Room 2, 317 Dickenson Road, Manchester, M13 0NR
Room 1, 317 Dickenson Road, Manchester, M13 0NR
Ground Floor Rear, 321 Dickenson Road, Manchester, M13 0NR
Ground Floor Front, 321 Dickenson Road, Manchester, M13 0NR
14 Honor Street, Manchester, M13 0WY
323 Dickenson Road, Manchester, M13 0NR
319 Dickenson Road, Manchester, M13 0NR
326 Dickenson Road, Manchester, M13 0NG

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
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH2