MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	132962/LE/2022
Date registered valid:	17 February 2022
Proposal:	Certificate of Existing Lawful Development for use of the property as a House in Multiple Occupation (Class C4)
Address:	6 Braemar Road, Manchester, M14 6PS
Ward(s):	Fallowfield Ward
Applicant:	Mr James Adams EM14 Ltd 65 Roman Way, Bristol, BS9 1SP
Agent (if any):	
Case officer:	Carl Glennon Tel: 0161 234 4530 Email: carl.glennon@manchester.gov.uk
Recommendation:	Approve
Date of recommendation:	7 April 2022

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 4 April 2022

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

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.

Fig. 1 - 6 Braemar Road

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 – Although not required, local residents were consulted and no resulting comments were received.

Issues

Evidence

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.

The submitted information takes the form of a series of annual tenancy agreements between the following dates:

1 July 2011 – 30 June 2012 (3 tenants)
1 July 2012 – 30 June 2013 (3 tenants)
1 July 2013 – 30 June 2014 (3 tenants)
29 November 2014 – 28 August 2015 (3 tenants)
1 September 2015 – 30 June 2016 (3 tenants)
1 July 2016 – 30 June 2017 (3 tenants)
1 July 2017 – 30 June 2018 (3 tenants)
1 July 2018 – 30 June 2019 (3 tenants)
27 September 2019 – 26 June 2020 (3 tenants)
25 September 2021 – 7 November 2021 (4 tenants)

The applicant has confirmed (in an email dated 10 March 2022) that the property was fully vacated in December 2021 and has remained so since the property was acquired in February 2022. During the site visit it was observed that refurbishment work to the property are on-going.

On the balance of probabilities, the Class C4 HMO use appears to have been continuously undertaken for more than 10 years with no evidence that shared occupation has been interrupted by the reinstatement of a Class C3 use.

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.

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

8 Braemar Road, Manchester, M14 6PS
3 Braemar Road, Manchester, M14 6PR
2 Braemar Road, Manchester, M14 6PS
5 Braemar Road, Manchester, M14 6PR
4 Braemar Road, Manchester, M14 6PS
3 Brailsford Road, Manchester, M14 6PT
5 Brailsford Road, Manchester, M14 6PT

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