

Planning

Growth & Development

Delegated officer report for planning application

Application no. 132736/LP/2022

Date registered valid: 14 February 2022

Proposal: Certificate of Lawful Proposed Use - Use of basement and ground floor as a Dentists (use class E (e))

Address: 397 Wilmslow Road, Manchester, M20 4WA

Ward(s): Withington Ward

Applicant: M Luai Alkhatib, 356 Wilmslow Road, Manchester, M14 6AB

Agent (if any): Mr Daniel Llado, TDM Architectural Ltd, 538 Rochdale Road, Oldham, OL2 6SF

Case officer: Dave Morris
Tel: 0161 600 7924
Email: dave.morris@manchester.gov.uk

Recommendation: Refuse

Date of recommendation: 24.04.2022

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

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

This application relates to the ground and basement floors of a large semi detached villa. The property has extensive grounds with a block of lock up garages at the rear. In August 1993 planning permission was granted for the change of use of lower ground floor and upper ground floor from hotel annex to children's day nursery with ancillary residential accommodation, 1st & 2nd floors to sealed off & remain vacant. In February 2003 planning permission was granted, reference 066874/FO/SOUTH1/02 for the conversion of garages into additional staff accommodation and associated elevational alteration.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

This is a predominantly residential area comprising in the main flatted accommodation in either conversions or more modern purpose built development.

Description of development

Confirmation is sought that planning permission is not required to change the use of the premises from a day nursery Class E to a Dental Practice Class E.

Consultations & Notification Responses

None required.

Issues

In the normal; course of events the existing use as a day nursery and the proposed use a dental practice fall within Class E of the Use Classes Order and therefore planning permission is not required. However, the original planning permission for the use of the ground and basement levels as a day nursery reference 043255/FU/SOUTH1/93 was subject to the following condition

"The premises shall be used as a day nursery for a maximum of 40 children only and for no other purposes, including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987."

Article 3(4) of the GPDO states that:

(4) Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.

On this basis it is considered that planning permission is required for the proposed change of use.

The applicant has been made aware of this issue and asked if he needed to apply for planning permission or could get the condition removed.

Conclusion

The proposed development requires planning permission by virtue of the condition 9 attached to planning permission reference 043255/FU/SOUTH1/93 and the Certificate cannot therefore be granted.

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: Refuse

Article 35 Declaration

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

1) Refuse on the basis that the proposed change of use would be in breach of condition 9 attached to planning permission reference 043255/FU/SOUTH1/93, which says "The premises shall be used as a day nursery for a maximum of 40 children only and for no other purposes, including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987." The proposed development would therefore be contrary to the provisions of Article 3(4) of the Town and Country Planning (General Permitted Development) Order 2015 (As amended) which states that: "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order."

Appendix 1 – List of consultees & neighbours notified

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

Flood Zones Type 2 (low to medium risk) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Middle) -

Susceptible to Surf Water Flood (Middle) -

Area Team Boundary - Name: SOUTH