

Planning

Growth & Development

Delegated officer report for planning application

Application no. 129262/LE/2021

Date registered valid: 25 March 2021

Proposal: Certificate of Existing Lawful Development for use of Property as a 12 bedroom House in Multiple Occupation

Address: 209 Slade Lane, Manchester, M19 2AE

Ward(s): Levenshulme Ward

Applicant: Madj Ltd C/o Agent

Agent (if any): Mr Jamie Pyper Nineteen47 Limited 106 Micklegate, York, YO1 6JX

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

Recommendation: Refuse

Date of recommendation: 22 September 2021

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 26 February 2021

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 30 March 2021 Expired: 20 April 2021

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 application relates to a 2-storey property situated at the junction of Slade Lane and Albert Road. As shown in Fig.1.



Fig. 1 – 209 Slade Lane.

Description of development

The application seeks to demonstrate that the property has been in use as a 12 bedroom HMO for more than 10 years and that this sui generis use has been lawfully established.

The submitted evidence comprises:

- i. Statutory declaration from:
 - The owner;
 - A neighbour;
 - A former resident of 209 Slade Lane.
- ii. Zoopla property history review dated 2 October 2009;
- iii. 192 Property Report dated 7 December 2020;
- iv. HMO licensing email (undated) confirming the issue of HMO licences in 2007, 2012 and 2017.

Consultations & Notification Responses

Local residents – No comments received.

Issues

Evidence - The application has been submitted by the property owner, who has provided a supporting statement referencing s. 91 of the Town and Country Planning Act 1990 (TCPA 1990), which is relevant to an application for a certificate of existing lawful development and sets out the related assessment criteria.

Planning Practice Guidance (PPG) relating to lawful development certificates references in sections 191-193 of the Town and Country Planning Act 1990 ("the Act") as the key statutory framework for related applications and their determination. Informed by the above the PPG states:

'The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.'

The application has been assessed with reference to the above criteria. The following history of the use of the property has been established:

2007 HMO Licence issued

July 2008 - July 2010: Occupied by 7 people (Council Tax)

July 2010 - April 2012: Occupied by 12 people (Council Tax)

2011 (information from 192.com shown number of people on the electoral register) - 3 people

2012 HMO Licence issued

2012 (information from 192.com shown number of people on the electoral register) - 4 people

April 2012 - February 2013: Property vacant (Council Tax)

February 2013 - unknown: Occupied by 7 people (Council Tax)
2013 (information from 192.com shown number or people on the electoral register) - 6 people
2014 (information from 192.com shown number or people on the electoral register) - 2 people
2015 (information from 192.com shown number or people on the electoral register) - 2 people
November 2016: Property bought by applicant and major renovation works took place so that a six month CT exemption was applied for; the property was empty whilst this work was ongoing. There was an Initial Notice submitted to BC for 13 en-suites to existing bedrooms and removal of a chimney stack (IN/16/01149)
2017 (information from 192.com shown number or people on the electoral register) - 0 people
2017 HMO Licence issued
April 2017 onwards: Property occupied again but no details of tenants or number of occupants (Council Tax)
2018 (information from 192.com shown number or people on the electoral register) - 0 people
2020 (information from 192.com shown number or people on the electoral register) - 1 person

A statutory declaration from a neighbour states that the property was in use as an HMO from 2003 or 2004 and that her friend was in residence between 2003 to 2007. The neighbour entered the property but did not enter any individual rooms. The statement does not confirm the number of rooms in the property at that time. Furthermore, whilst a continually change of occupants is discussed, the number of residents has not been confirmed.

A statutory declaration from a former resident confirms the existence of 12 bedrooms over 3 storeys between 2004 to 2006. The statement also confirms occupation by 7 people during that time. However, it does not provide further evidence regarding the total number of people in residence after 2006.

A statutory declaration from the owner, confirms that a 12 bedroom HMO was in place on 20 November 2016. Furthermore, 12 bedroom HMO has been continuously operated since the completion of refurbishment works around 2017. However, the evidence regarding the use of the property before 2016 is more ambiguous. Point 3 (of the statement made by Mr Mustafa Al-Hussainy) states that the previous owner 'understood' that the HMO use was in place prior to 2016 but there is not conclusive evidence to support this.

The supporting property report contains photographs of the interior of the property and indicates shared occupation. However, it does not confirm continuous use or occupation of 12 bedrooms at any one time. Moreover, the report references the property as having 10 bedrooms.

The evidence submitted with the CLEUD application has been cross referenced with information available to the Council, which has not confirmed that the property has been continuously or consistently occupied by 12 people for 10 years. Furthermore, there also appears to have been periods when the property was occupied by less than 7 people thereby failing to meet the threshold for continuous occupation as a large-scale HMO.

In the absence of conclusive evidence, the local planning authority is not satisfied that the property has a lawfully established HMO (sui generis) use. As it appears unlikely that any further evidence can be provided to demonstrate an established use, 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: Refuse

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 in use/occupation as a large scale HMO property (sui generis use) of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), for a continual period of 10 years (up to the date of the receipt of the CLEUD application on 1 February 2021).

Appendix 1 – List of consultees & neighbours notified

209 Slade Lane, Manchester, M19 2AE
92 Albert Road, Manchester, M19 2FU
Levenshulme Cricket And Lawn Tennis Club, Slade Lane, Manchester, M13 0QE
326 Slade Lane, Manchester, M19 2BY
269 Moseley Road, Manchester, M19 2LJ
267 Moseley Road, Manchester, M19 2LJ
332 Slade Lane, Manchester, M19 2BY
Flat 3, 330 Slade Lane, Manchester, M19 2BY
Flat 2, 330 Slade Lane, Manchester, M19 2BY
Flat 1, 330 Slade Lane, Manchester, M19 2BY
Flat 2, 320A Moseley Road, Manchester, M19 2LH
265A Moseley Road, Manchester, M19 2LJ
Flat 1, 320A Moseley Road, Manchester, M19 2LH
320 - 322 Moseley Road, Manchester, M19 2LH
265 Moseley Road, Manchester, M19 2LJ
Flat 1, 90 Albert Road, Manchester, M19 2AD
320A Moseley Road, Manchester, M19 2LH
Flat 4, 90 Albert Road, Manchester, M19 2AD
Flat 3, 90 Albert Road, Manchester, M19 2AD
Flat 2, 90 Albert Road, Manchester, M19 2AD
207 Slade Lane, Manchester, M19 2AE
205 Slade Lane, Manchester, M19 2AE
90A Albert Road, Manchester, M19 2AD
328 Slade Lane, Manchester, M19 2BY

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 - Surface Coal Resources - Name: Coal bearing strata at surface

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Less) -

Susceptible to Surf Water Flood (Middle) -

Area Team Boundary - Name: NORTH2