

Planning

Growth & Development

Delegated officer report for planning application

Application no.	131409/LE/2021
Date registered valid:	15 September 2021
Proposal:	Certificate of lawful use of the property as a House in Multiple Occupation (Sui Generis)
Address:	10 Arnfield Road, Manchester, M20 4AX
Ward(s):	Withington Ward
Applicant:	Mr Dermot McKenna, Unit 3 , Boundary Court, Crossley Road, Stockport, SK4 5GA
Agent (if any):	
Case officer:	Janet Lawless Tel: 0161 234 4535 Email: janet.lawless@manchester.gov.uk
Recommendation:	Approve
Date of recommendation:	5 November 2021





Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: non required for this type of application.

Standard consultations:
No consultations have been printed and sent.

Neighbour notifications
Printed: 22 September 2021 Expired: 13 October 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

The property that is the subject of this Certificate of Existing Lawful Use application is a red brick semi-detached bay fronted property that is located at the junction of Ferngate Drive and Arnfield Road. It has a long single storey side extension and a 2 -storey rear extension added over the years. It has space for one off road parking space in a detached garage that sits partially within the rear garden and partially behind a fence and is accessed from Ferngate Drive. It has a small walled garden to the frontage and the side boundary is wall with timber fence above. The gate to the side of the property leads through to the rear garden. The property is identified as 10 Arnfield Road and is located within the Withington Ward of Manchester.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The remainder of the area is predominantly residential in nature, the properties are of a similar age, size and style as the proposal site.

Description of development

The application relates to a certificate of lawful development for the existing use of the property as a 7 bedroom, house in multiple occupation (sui generis).

It is claimed that the property has been in used as a 7- bedroom house in multiple occupation (Sui Generis) for an uninterrupted period of 10 years or more. Notably, since July 2011.

Consultations & Notification Responses

Local residents were informed- one representation has been received with the main points of objection being as follows:

The present owner has been letting out this property in a Multiple Occupancy capacity to university students for the last 20 years and a number of the neighbours in the cul-de-sac have had to contact the landlord and the police to shut down many all- night parties. This retrospective certificate will I presume allow a new owner to have a similar attitude.

Consultations are carried out to corroborate the claims that the property has been used as per the applicants' submission. If that is proven, and it is classed as a Lawful Use, other factors cannot be influenced by the process, with other mechanisms in place for such issues as licensing and anti-social behaviour.

Issues

Lawfulness

The applicant owns the application property and has provided a supporting statement references 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.

The burden of proof in relation to the lawful Section 191 TCPA 1990 case law has shown that the applicant is required to show that on the balance of probabilities the use described in the application should be certified as lawful. The test of balance of probabilities also requires that the local planning authority (LPA) presents its own evidence if it wishes to contradict the evidence provided by an applicant, including a statutory declaration. In the absence of contradictory information, the LPA is required to approve the certificate.

In this case, the application has been accompanied by:

Evidence in the form of copies of signed tenancy agreements dating back to July 2011. These indicate that the property has been occupied as a house in multiple occupation (sui generis) for multiple, unrelated people, including up to 7 occupiers. The submitted evidence covers every year on July to following June basis from 2011 to present date. It is therefore evidenced as an HMO for up to 7 people for a period of greater than 10 years.

Given the above, based on the balance of probability it is considered that the property subject to this application has been in use as a 7- bedroom house in multiple occupation for at least 10 years. The Certificate of Lawful Use should therefore be granted in accordance with relevant legislative provisions.

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: Approve

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

0) From the evidence available and with reference to the relevant planning legislation, Manchester City Council is satisfied that in relation to the property referred to in the Second Schedule hereto, the use described in the First Schedule, is lawful by reason of the said use having been in existence for a period of 10 years up to the date of this application.

Appendix 1 – List of consultees & neighbours notified

3 Arnfield Road, Manchester, M20 4AQ
8 Arnfield Road, Manchester, M20 4AX
1 Ferngate Drive, Manchester, M20 4AH
12 Arnfield Road, Manchester, M20 4AX
7 Arnfield Road, Manchester, M20 4AQ
5 Arnfield Road, Manchester, M20 4AQ

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
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: SOUTH