

Planning

Growth & Development

Delegated officer report for planning application

Application no. 132301/LE/2021

Date registered valid: 23 November 2021

Proposal: Certificate of Lawful Development for use of property as a Class C4 small scale HMO providing shared accommodation for 3 to 6 people

Address: 64 Braemar Road, Manchester, M14 6PS

Ward(s): Fallowfield Ward

Applicant: Mr James Adams Fairholm Estates Ltd 65 Roman Way, Bristol, BS9 1SP

Agent (if any):

Case officer: Ian Jarvis
Tel: 0161 234 4079
Email: ian.jarvis@manchester.gov.uk

Recommendation: APPROVE

Date of recommendation: 18 January 2022

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit:

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 26 November 2021

Expired: 17 December 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:

Tree Preservation Order:

The application property is a two storey mid terraced property. It fronts directly onto the street and has a rear garden/yard area. The building is principally brick built with a dual pitched tiled roof.

The site lies in a predominantly residential area where there are some other properties in C4 use.

The application relates to a certificate of lawful use of 64 Braemar Road as a small scale Class C4 HMO at ground and first floor levels. It is claimed that the premises have been used as a small scale HMO for at least 10 years

The applicant states that the premises have been used as a small scale HMO since before the Council's Article 4 Direction came into force on 8 October 2011. It is therefore contended that the property was being used as a house in multiple occupation (C4) whilst it was still a permitted change of use and prior to the Article 4 direction taking effect on 8th October 2011. At that time the property had already been rented to 4 unrelated persons on the above date meaning it would have met the definition for C4 and would not require a change of use application. Evidence has been provided by way of tenancy agreements and an affidavit.

Consultations & Notification Responses

Local residents - No comments received.

Compliance Team - Have investigated the Council Tax records and have confirmed that this is an historic HMO that has been occupied by at least three students since before the Article 4 Direction came into effect.

Issues

The applicant has submitted the following evidence:

Affidavit, from the owner of the property, which confirms the following:

- They have owned the property since June 2002
- From July 2009 to July 2019 the property has been let as an HMO to 3 or 4 students per year
- They have been unable to locate the tenancy agreement for the year July 2010 to July 2011. The property was let to 3 students at this time.
- There were two month periods in July/August 2013 and 2014 when the property was empty. During this time it was marketed to let for three or more people.

Unsigned Tenancy Agreement from 1 September 2009 to 30 June 2010, on which 4 tenants are indicated

Unsigned Tenancy Agreement from 1 July 2011 to 30 June 2012, on which 4 tenants are indicated

Unsigned Tenancy Agreement from 1 July 2012 to 30 June 2013, on which 4 tenants are indicated

Unsigned Tenancy Agreement from 1 September 2013 to 30 June 2014, on which 3 tenants are indicated

Unsigned Tenancy Agreement from 1 September 2014 to 30 June 2015, on which 3 tenants are indicated

Unsigned Tenancy Agreement from 1 July 2015 to 30 June 2016, on which 4 tenants are indicated

Unsigned Tenancy Agreement from 1 July 2016 to 30 June 2017, on which 4 tenants are indicated

Unsigned Tenancy Agreement from 1 July 2017 to 30 June 2018, on which 4 tenants are indicated

Unsigned Tenancy Agreement from 1 July 2018 to 30 June 2019, on which 4 tenants are indicated

Tenancy Agreement from 1 July 2020 to 30 June 2021 signed by 1 resident

Tenancy Agreement from 8 July 2020 to 30 June 2021 signed by 1 resident

Tenancy Agreement from 1 August 2020 to 30 June 2021 signed by 1 resident

Tenancy Agreement from 19 August 2020 to 30 June 2021 signed by 1 resident

Tenancy Agreement from 28 August 2020 to 30 June 2021 signed by 1 resident

Tenancy Agreement from 29 August 2020 to 30 June 2021 signed by 1 resident

Tenancy Agreement from 8 July 2021 to 30 June 2022 signed by 6 residents

The applicant has also provided the following commentary:

The property was bought by them in January 2020 and was empty, during the period of July 2019 to June 2020, as the previous owner wanted to sell with vacant possession. It was in a poor state of repair and needed a period of refurbishment when they purchased the property.

The vendors supplied the top page of each tenancy agreement only and they believe this is what was kept in their records. This is why the vendor also completed a Statutory Declaration attesting to how the property had been used during their ownership.

Together with the information provided by the Planning Compliance unit, It is accepted that the submitted information demonstrate a continuous 10 year use, as a Class C4 HMO, with the only breaks being two short 2 month breaks and a longer one year break when the property was being sold and refurbished. It is not considered that any of these breaks represent a discontinuance of the use.

It is therefore considered that it has been proven that the use has been in place, since September 2009, and that it has been continually occupied by at least 3 unrelated people, since that date. Therefore, it is considered that, on balance, the statement of facts and accompanying evidence supplied demonstrates that the property has been used as a house in Multiple use (C4) since prior to October 2011 and has remained in a generally continuous use since, to the current time. On the balance of evidence provided, it is considered that a positive certificate for the use of the property as a small scale HMO can be issued.

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

1) From the submitted 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 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 relating to houses in multiple occupation on the 8th October 2011, and has been in no other use in accordance with the evidence and information provided in the submitted supporting information, as received on 23 November 2021 by the City Council as the Local Planning Authority.

Appendix 1 – List of consultees & neighbours notified

66 Braemar Road, Manchester, M14 6PS
62 Braemar Road, Manchester, M14 6PS
63 Brailsford Road, Manchester, M14 6PT
61 Brailsford Road, Manchester, M14 6PT
65 Brailsford Road, Manchester, M14 6PT
61 Braemar Road, Manchester, M14 6PR
65 Braemar Road, Manchester, M14 6PR
63 Braemar Road, Manchester, M14 6PR

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)
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH2