

Planning

Growth & Development

Delegated officer report for planning application

Application no. 132182/LE/2021

Date registered valid: 22 November 2021

Proposal: Certificate of Existing Lawful Development for use of the property as a House in Multiple Occupation (Class C4)

Address: 37 East Grove, Manchester, M13 0AX

Ward(s): Ardwick Ward

Applicant: Mr Rafal Kupis Kupis Developments Ltd Craven House, 40-44 Uxbridge Road, London, W5 2BX

Agent (if any): Farhan Rama Archirama Ltd 3 Parkgate Avenue, Manchester, M20 3BZ

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

Recommendation: Approve

Date of recommendation: 22 December 2021

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: N/A

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 30 November 2021

Expired: 21 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: No

Tree Preservation Order: No

Description of area

This CLEUD application relates to a 2-storey back of pavement terraced house located in a residential area with a high proportion of HMO (Class C4) occupation by students.

Description of development

The applicant seeks to demonstrate continuous Class C4 occupation from the period pre-dating the introduction of an Article 4 Direction (on 8 October 2011) requiring planning permission for a use of use from Class C3 to Class C4 occupation, with evidence submitted for assessment from July 2010, to demonstrate occupation predominantly by 4 tenants and that the use has been subsequently and continuously undertaken.

Consultations & Notification Responses

Local residents – One email has been received from a nearby resident who has no objection subject the property continuing to be appropriately managed. There are no significant issue identified in respect of the current HMO use.

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 assessment criteria. Case law relating to Section 191 TCPA 1990 states that the burden of proof lies with the applicant who 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, 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 1 July and 30 June) 2011 and 2016. In response to change in the tenancy agreements and amended tenant details, two agreements have been submitted for the period 1 July 2017 - 30 June 2018 and 1 February 2018 – 30 June 2018. Further tenancy agreements have been received covering the period between 30 November 2019 and 30 June 2022.

The submitted evidence demonstrates occupation by between 3 and 4 people.

The submitted information has been supplemented with information obtained from Council Tax records that confirms:

- i. Four tenants were in residence between 1 July 2016 and 30 June 2017;
- ii. Three tenants were in residence from 1 July 2018 until June 2019 when a further two tenants moved in.

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 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

Article 35 Declaration

N/A

Condition(s) to be attached to decision for approval

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

37 East Grove, Manchester, M13 0AX
29 East Grove, Manchester, M13 0AX
St Chrysostoms CE Primary School, Lincoln Grove, Manchester, M13 0DX
28 East Grove, Manchester, M13 0BA
30 East Grove, Manchester, M13 0BA
41 East Grove, Manchester, M13 0AX
39 East Grove, Manchester, M13 0AX
35 East Grove, Manchester, M13 0AX
33 East Grove, Manchester, M13 0AX
31 East Grove, Manchester, M13 0AX
27 East Grove, Manchester, M13 0AX

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 - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Area Team Boundary - Name: NORTH2