

Planning

Growth & Development

Delegated officer report for planning application

Application no. 131712/LE/2021

Date registered valid: 21 September 2021

Proposal: Certificate of Existing Lawful Development for use of dwellinghouse as 6 bedroom house in multiple occupation (Class C4)

Address: 45 Brailsford Road, Manchester, M14 6PT

Ward(s): Fallowfield Ward

Applicant: Mr A Kelso 26 Cleveland Road, Lytham, FY8 5JH

Agent (if any): stephen lamb Steve Lamb 11 Princes Road, Stockport, SK4 3NQ

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

Recommendation: Approve

Date of recommendation: 19 October 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 September 2021 Expired: 21 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

Listed building: Not applicable

Conservation area: No

Tree Preservation Order: No

Description of area

The application site lies in a residential area comprising of red-brick 2-storey terraced houses incorporating 2-storey outriggers as part of the original building. The application house is constructed to the back of pavement with ground floor bay. To the rear is a yard enclosed by brick walls. The application property is typical of housing in the surrounding area.

Description of development

This Certificate of Existing Lawful Development (CLEUD) application seeks to demonstrate that the Class C4 use was in place when an Article 4 Direction requiring planning permission for a change of use from Class C3 (dwellinghouse) to Class C4 (HMO) was in place, i.e., 8 October 2011. Therefore, a Class C4 use was therefore established at that time and has been continuously undertaken thereafter.

Consultations & Notification Responses

Local residents – One letter of objection has been received that contest that evidence has been submitted to demonstrate that the Class C4 HMO use has been in place for a period exceeding 10 years. It is argued that the house should be returned to Class C3 use and made available for

family occupation. The applicant has provided satisfactory evidence and the objector has not presented any information to context the submission.

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 to assessment criteria. Case law relating to Section 191 TCPA 1990 states that the burden of proof lies with the applicant who is required 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.

In this case, the application has been accompanied by a series of assured tenancy agreements. Somewhat unusually for this location, some of the tenancies have been agreed for short periods and over the summer when there is commonly period of vacancy that corresponds to student vacations. The submitted information is set out below:

1. Tenancy agreements – The tenancy contracts have been divided into a series time periods. These periods are set out below:

- Period 1 – July 2011 to January 2012 – 4 tenants
- Period 2 - January to May / June 2012 – 2 tenants
February to May / June 2012 – 2 tenants
May to June 2012 – 1 tenant
- Period 3 – July 2012 to 30 June 2013 – 4 tenants
- Period 4 – 1 July 2013 to 12 Sept 2013 - Maintenance and repair
- Period 5 – Sept 2013 to Dec 2013 – 1 tenant
Sept 2013 to Mar 2014 -1 tenant
Sept 2013 to Jun 2014 -1 tenant
Dec 2013 to Mar 2014 – 1 tenant
Feb 2014 to May 2014 - 1 tenant
Apr 2014 to June 2014 - 1 tenant
May 2014 to July 2014 - 1 tenant
(7 tenants overall but maximum occupancy of 6)
- Period 6 – June 2014 – Aug 2014 – 1 tenant
July to July 2014 – 2 tenants
July to August 2014 – 4 tenants
(Maximum occupation of 6)
Sept 2014 to Dec 2014 – 2 tenants
Sept 2014 to Jan 2015 - 2 tenants
Jan 2015 to May 2015 – 2 tenants
Feb 2015 to May 2015 – 2 tenants
(Minimum of 3 tenants)
Jun 2015 to Jun 2015 – 1 tenant
Jun 2015 to July 2015 – 1 tenant
- Period 7 – Jul 2015 to Jun 2016 – 4 tenants
- Period 8 - Jul 2016 to Jun 2017 – 4 tenants
- Period 9 - Jul 2017 to Jun 2018 – 4 tenants

- Period 10 – Jul to Aug 2018 - 4 tenants
 Sept to Dec 2018 – 4 tenants
 Jan to Dec 2019 – 1 tenant
 Jan to Nov 2019 - 1 tenant
 Feb to May 2019 - 1 tenant
 Jun to Jul 2019 - 1 tenant
 Jun to Aug 2019 – 1 tenant
 Aug to Oct 2019 - 1 tenant
 Oct to Dec 2019 – 1 tenant
 (During January 2019 and December 2019 only 2 residents occupied the property)
- Period 11 – Dec 2019 to Feb 2021 – Unoccupied due to building work
- Period 12 – Feb 2021 to 30 Jun 2021 – 6 tenants
- Period 13 – Jul 2021 – on-going 6 tenants

2. Invoices - In addition, copies of invoices that correspond to dates for undertaking maintenance and building works associated with the related temporary cessation of occupation.

3. Photographic evidence of shared occupation.

The provision of short-term tenancies has resulted in periods of under occupation as one tenant leaves and another takes residence. This is particularly apparent during the summer periods when local HMOs are often vacant by residents' students during academic holidays and between January 2019 and December 2019. There is no evidence that the Class C4 use has been interrupted by the re-introduction of a Class C3 use.

Conclusion - As the LPA has no evidence to contradict the applicant's statutory declaration, it is considered, on the balance of probabilities, that the lawful use of 45 Brailsford Road, Manchester, M14 6PT is as a Class C4 house in multiple occupation accommodating between 3 and 6 unrelated people. On this basis, Certificate of existing lawful development is approved.

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

1) 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

45 Brailsford Road, Manchester, M14 6PT
43 Brailsford Road, Manchester, M14 6PT
47 Brailsford Road, Manchester, M14 6PT

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