

Planning

Growth & Development

Delegated officer report for planning application

Application no. 131458/LE/2021

Date registered valid: 23 August 2021

Proposal: Certificate of Existing Lawful Development for use of premises use as a small house in multiple occupation (Class C4)

Address: 156 Moseley Road, Manchester, M14 6PA

Ward(s): Fallowfield Ward

Applicant: Mr Roy Featherstone 2 Tudor Road, SK9 2HB

Agent (if any):

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

Recommendation: Approve

Date of recommendation: 28 September 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: 1 September 2021

Expired: 22 September 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 terraced house located on the southern side of Moseley Road and opposite the University of Manchester sport grounds (Armitage Centre). The surrounding area is predominantly residential and has a high concentration of shared housing, including student occupancies.

Description of the application

This 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), 8 October 2011, and that a Class C4 use was therefore established at that time and has been continuously undertaken thereafter.

Consultations & Notification Responses

Local residents – Although consultation is not required for this for of application, neighbouring residents were advised of the proposals. No comments have been 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.'

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.'

The submitted evidence includes:

1. Assured Tenancy Agreements
 - i. Confirming occupation by 6 tenants between 2011 and 2017. In each case the tenancy agreement facilitated occupation between 1 July and 30 June;
 - ii. Confirming occupation by 6 tenants between 2017 and 2022. In each the tenancy agreement facilitated occupation between 1 August and 30 June.
2. Secondary evidence
 - i. A statutory declaration from the previous owner confirming Class C4 use prior to 2011;
 - ii. A letter from a building maintenance contractor confirming Class C4 occupation in the 8 years prior to 23 April 2021;
 - iii. Letting agent letter confirming 6 bed multi occupancy student letting during academic years between 2012 and 2020;
 - iv. Email between letting agent and applicant concerning the occupation of 156 Moseley Road; dated 2 February 2010;
 - v. Council Tax email dated 3 July 2021 confirming student letting for several years.

The submitted evidence primarily takes the form of Assured Short-hold Tenancy Agreements that confirm the occupation of 156 Moseley Road by 6 residents between 2011 and 2022. In each case, the tenancies covered the period between 1 July to 30 June (in the subsequent year) between 2011 and 2017 and 1 August and 30 June between 2017 and 2022. Secondary evidence further demonstrates continuous Class C4 use since 2011. It is there considered that this evidence demonstrates that the Class C4 use was in place at the time of the introduction of the Article 4 Direction and is thereby lawful.

Conclusion - As the LPA has no evidence to contradict the applicant's statutory declaration and it is considered that, on the balance of probabilities, the lawful use of 156 Moseley Road is a Class C4 house in multiple occupation accommodating between 3 and 6 unrelated people. On this basis, the application for a 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

67 Braemar Road, Manchester, M14 6PR
158 Moseley Road, Manchester, M14 6PA
152 Moseley Road, Manchester, M14 6PA
61 Braemar Road, Manchester, M14 6PR
69 Braemar Road, Manchester, M14 6PR
65 Braemar Road, Manchester, M14 6PR
63 Braemar Road, Manchester, M14 6PR
160 Moseley Road, Manchester, M14 6PA
154 Moseley Road, Manchester, M14 6PA

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)

Area Team Boundary - Name: NORTH2