

JP/n1516

Chief Planning Officer
Planning
Manchester City Council
P O Box 532
MANCHESTER
M60 2LA

1st February 2021

Dear Sir/Madam

Section 191 Town and Country Planning Act 1990 (as amended)
Application for Certificate of Lawfulness of Existing Use or Development
209 Slade Lane Manchester

nineteen47 Ltd have been instructed by Madj Ltd (the 'Applicant') to submit an application under the provisions of Section 191 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawfulness for Existing Use or Development in respect of the use of 209 Slade Lane, Manchester, as a 12 bedroom House in Multiple Occupation (HMO) (sui generis use).

The Site

The Site comprises a large 2 storey detached property located on the junction of Slade Lane and Albert Road.

The property has vehicular accesses off both Slade Lane and Albert Road and has parking/hardstanding areas to the south, west and north of the property.

The property has been in use as a 12 bedroom HMO since at least 2004; previously by the former owner Muhammad Irshad and most recently by the Applicants, Madj Ltd, who purchased the property in November 2016

The Site is located within the Manchester's Article 4 area which restricts the change of use of properties from C3 (dwellinghouse) use to an HMO use.

Reasons for the Application

The property, 209 Slade Lane, has operated for many years a 12 bedroom HMO. On 8th October 2011, Manchester City Council brought in to effect an Article 4 Direction restricting C3 uses to HMO uses (C4 use and sui generis). If it were not for the Article 4 Direction, a change from C3 to C4 use would be deemed to be a permitted change.

However a change of use to a HMO comprising more than 6 people (sui generis use) would require planning permission.

As the property was in use as an HMO prior to the Article 4 Direction coming into effect in 2011 and has been used continually for these purposes for a period in excess of 10 years, this application for a Certificate of Lawfulness seeks to regularise the use of this property as a 12 bedroom HMO.

Case in Support of the Application

An application under Section 191(1)(a) of the Town and Country Planning Act 1990 ('the Act') enables a person to seek a decision that any existing use of buildings or other land is lawful. Section 191(1)(b) of the same Act allows a person to ascertain whether any operations which have been carried out, in, on, over or under land are lawful. In both instances:

"He may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter."

By virtue of Section 191(2) uses and operations are lawful if no enforcement action may be taken against them because the time for enforcement action has expired and they are not in contravention of any enforcement notice which is in force.

The statutory definition of 'development' is set out in Section 55 of the Act which states that development means:

"the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."

In the appeal case, *Parkes vs Secretary of State for the Environment* (1978), Lord Denning considered that "operation" comprises physical alterations to the land which have some degree of permanence in relation to the land itself, whereas "use" refers to activities carried out on the land but which do not interfere with the actual physical characteristics of the land.

As detailed above, the property was in use as an HMO before the Article 4 Direction came into effect in October 2011 and has been operated as a HMO continuously since at least 2004 i.e. for a period well in excess of 10 years.

Section 171(B) of the Town and Country Planning Act confirms the time limits in which where there has been a breach of planning control, enforcement action cannot be taken. Para 3 of this section states;

"In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

The onus of proving the lawfulness of an existing use rests with the applicant. The Courts have held in *Gabbitts v Secretary of State for the Environment* [1985] that the relevant test of the evidence on such matters is 'the balance of probability'. Moreover the Courts have held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. The applicant's evidence needs to be sufficiently precise and unambiguous to justify the grant of the certificate on the balance of probability.

Accompanying this submission are two statutory declarations made under the provisions of the Statutory Declaration Act 1835 and which are provided as evidence to support the Application:

- Statutory Declaration from Mr. Mustafa Al-Hussainy; the husband of one of the directors of Madj Ltd
- Statutory Declaration from Melanie Nolan, who resides in the neighbouring property 207 Slade Lane and has done so since 2001.

Statutory Declaration from Mr. Mustafa Al-Hussainy

Mr. Al-Hussainy first was aware of this property in 2013 when he was office manager of Easy Homes (Mcr) Ltd and he was instructed by the former owner of the property Muhammad Irshad to market the property for sale as a 12 bedroom HMO. Mr. Muhammad Irshad had owned the property for over 10 years.

Mr. Al-Hussainy visited the property at this time in order to prepare the sales particulars and recalled it being fully let out. A copy of these particulars are included as Exhibit MAH2.

In 2016, Madj Ltd purchased the property from Mr. Irshad and Mr. Al-Hussainy's wife Mrs. Jian Al-Jaf is one of the Directors of Madj Ltd.

Statutory Declaration from Melanie Nolan

Melanie Nolan has lived at 207 Slade Lane since 2001, this being the neighbouring property to 209 Slade Lane. Ms. Nolan confirms that 2 to 3 years after she moved to Slade Lane, that she recalls the property being sold and that individual rooms were let out to students and factory workers.

One of the first tenants into the property following its sale, was Ms Nolan's friend David Chapman who rented a room in the property between approximately 2003 and 2004. Ms. Nolan confirms that on a few occasions she met Mr. Chapman at the property but did not go into any of the letting rooms.

Ms. Nolan confirms that as long as she can recall, the property has had a continual change of tenants and often there are 2 or 3 cars parked on the drive at any one time.

Other Supporting Evidence

In addition to the statutory declarations outlined above, further evidence to support the fact that the property has been used as a 12 bedroom HMO for a period in excess of 10 years has been found.

Enclosed are sales particulars from Zoopla from when the property was being marketed back in October 2009. These particulars confirm that the property comprised 12 bedrooms and was available for rent to students and professionals.

Also included is a Property Report from 192.com which was purchased in December 2020. This corroborated various other evidence and statements that are included within this submission, including;

- That Madj Ltd have owned the property since November 2016
- That there have been multiple residents of this property, many residing in the property concurrently (note this is not an exhaustive list)
- That Melanie Nolan resides at 207 Slade Lane. (note this states since 2003 but in fact Ms. Molan has lived in this property since 2001)

Summary Conclusions

This application is made under the terms of Section 191 of the Town and Country Planning Act 1990 and seeks a Certificate of Lawfulness in respect of 209 Slade Lane, Manchester.

The Certificate being sought relates to the use of the property as a 12 bedroom HMO sui generis use.

It has been shown within the evidence presented as part of this submission that on the "balance of probability" the property in question was in use as a HMO for a period in excess of 10 years and in accordance with Section 171B of the Act, is therefore lawful.

In support of this application, the following information is provided;

- Completed application forms;
- Site Location Plan;
- Statutory Declaration from Mr Mustafa Al-Hussainy
- Statutory Declaration from Ms. Melanie Nolan
- Zoopla Sales Particulars dated October 2009
- Property Report from 192.com

The statutory application fee of £462 is to follow under separate cover.

On the basis of the above, it is respectfully requested that a Certificate of Lawfulness be requested.

Yours faithfully



Jamie Pyper
Director

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