

Planning

Growth & Development

Delegated officer report for planning application

Application no. 128159/LE/2020

Date registered valid: 30 September 2020

Proposal: Certificate of existing lawful development relating to use of property as a small HMO (Class C4)

Address: 54 Kingsway, Manchester, M19 2DD

Ward(s): Rusholme Ward

Applicant: Mr Andrew Blair 12 Priory Avenue, Manchester , M21 8BP

Agent (if any): Kuit Steinart Levy LLP 3 St Marys Parsonage, Manchester, M3 2RD

Case officer: Carl Glennon
Tel: 0161 234 4530
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Recommendation: Approve

Date of recommendation: 18 November 2020

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 15 October 2020

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 6 October 2020 Expired: 27 October 2020

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 seeks approval of a Certificate of existing lawful development relating to use of property as a small HMO (Class C4). It relates to a traditional 1930' style semi-detached dwellinghouse with single storey rear extension situated at the northern junction of Kingsway and culs-de-sac formed by Kingsmere Avenue and Peaceville Avenue. The front and side gardens are hard surfaced to facilitate car parking with a rear garden bounded by Kingsmere Avenue. The application property is shown in Fig. 1.



Fig 1 – 54 Kingsway

Description of development

The application seeks to demonstrate that 54 Kingsway has been used as a small-scale house in multiple occupation (Class C4 HMO) from 2006 onwards.

The submission also seeks to demonstrate that:

- i. 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). In such circumstances a lawful Class C4 use was established from that time;
- ii. The Class C4 use has been continuously undertaken thereafter.

Consultations & Notification Responses

None required as the application seeks to establish an existing lawful use. Notwithstanding the above, neighbouring residents have been notified. No comments have been received and therefore no evidence relating to the use of the property has been forthcoming.

Issues

Evidence

The applicant owns the application property and has provided a supporting statement references 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.

The burden of proof in relation to the lawful Section 191 TCPA 1990 case law has shown that the applicant 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 also requires that the local planning authority (LPA) presents its own evidence if it wishes to contradict the evidence provided by an applicant, including a statutory declaration. In the absence of contradictory information, the LPA is required to approve the certificate.

In this case, the application has been accompanied by:

- i. A planning statement detailing how the property has been used since 2006;
- ii. A statutory declaration witnessed by a solicitor that confirms that 5 unrelated individuals were in residence when the related Article 4 Direction came into effect on 8 October 2011. The statutory declaration also confirms that the Class C4 use has been undertaken continuously thereafter.

Council Tax records confirm that the property has been registered as a small-scale HMO since 2007 and there is no evidence to indicate that this use has been interrupted.

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 54 Kingsway is 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

From the information that has been provided it is considered that, on the balance of probabilities, the lawful use of 54 Kingsway, Manchester, M19 2DD as small scale house in multiple occupation (Class C4) for occupation by up to 6 unrelated people and this is considered to be the lawful use of the property, which has been continuously undertaken for a period exceeding 14 years. It has also been demonstrate that the Class C4 use had been established at the time of the introduction of the Article 4 Direction (requiring planning permission for a change of use from dwellinghouse (Class C3) to a house in multiple occupation (Class C4)) and that this [Class C4] use has been undertaken thereafter.

Appendix 1 – List of consultees & neighbours notified

6 Peaceville Road, Manchester, M19 2DQ
58 Kingsway, Manchester, M19 2DA
2 Peaceville Road, Manchester, M19 2DQ
52 Kingsway, Manchester, M19 2DD
50 Kingsway, Manchester, M19 2DD
41 Kingsway, Manchester, M19 2BZ
2 Kingsmere Avenue, Manchester, M19 2DB
1 Kingsmere Avenue, Manchester, M19 2DB
4 Peaceville Road, Manchester, M19 2DQ
56 Kingsway, Manchester, M19 2DA
43 Kingsway, Manchester, M19 2BZ
3 Kingsmere Avenue, Manchester, M19 2DB

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 - Surface Coal Resources - Name: Coal bearing strata at surface
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH2