

CLEUD Application for 14 Chilworth Street

Historical Context

1. 14 Chilworth Street (the Property) is shown on the attached extract of the 1922 ordnance survey map Lancashire CXI.3 (Manchester revised 1916 published 1922) (Document X).
2. The Town and Country Planning Act 1947 came into force on 1 July 1948. Prior to that time planning permission for development was not required. 14 Chilworth Street was constructed prior to this and it can be seen that it was a residential dwelling.

Changes in Legislation

3. On 6 April 2010 the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 came into effect. This created a new use class C4 for houses in multiple occupation (HMO). This is described as the use of a dwelling house by not more than six residents. Prior to this a small HMO and a dwelling house were in the same use class (C3).
4. On 1 October 2010 a Permitted Development (PD) right to change from C3 to C4 and back again came into effect. This was class I of part 3 of the Town and Country Planning General Permitted Development Order 1995.

Article 4 Direction

5. On 8 October 2011 an Article 4 Direction came into force for the whole of Manchester. This Article 4 Direction prevented changes from C3 to C4 without express planning consent.

Ownership

6. A lease to 2 to 22 (even) Chilworth Street was granted on 22 January 1907 for a term of 999 years from 25 March 1907. This lease is currently owned by Tapestart Ltd and is registered at Her Majesty's Land Registry under title MAN104868.
7. A sub-lease to 14 Chilworth Street was granted for a term of 999 years less 10 days from 25 March 1907. This lease is registered at Her Majesty's Land Registry under title number GM105536. This lease has been owned by Andrew Nicholas Blair since 15 June 2006.

Use as a House in Multiple Occupation

8. Four unrelated people currently reside at the Property. These tenants do not form a single household. This use is as a small HMO.
9. The Property has been used as a small HMO since being registered to Mr Blair in 2006. This is stated in Mr Blair's Statutory Declaration.
10. Mr Blair's Statutory Declaration contains sections showing that Charlotte Gaidot, Chelsea Monks, Hayley McGovern, and Lucy Parrish had tenancies and were in occupation of the Property at the relevant time. These are four unrelated people who do not form a single household.

Statutory Declaration

11. Mr Blair has given a Statutory Declaration concerning the Property. This has been sworn in front of a solicitor and should be taken as conclusive proof of the matters within it unless there is strong and convincing evidence to the contrary.

Legal Position

12. Prior to 6 April 2010 there was no C4 use class. Use in what is now the C4 use class would have been within use class C3.
13. On 1 October 2010 a PD right to move from C3 to C4 and back again came into effect.
14. On 8 October 2011 the Article 4 Direction came into force.
15. This means that change of use from C3 to what is now C4 under PD rights was lawful until 8 October 2011.
16. Evidence has been provided which shows that the Property was used as a HMO within use class C4 on 7 October 2011. This was a lawful use which, from before and since that date, has been continuous and uninterrupted and is still ongoing.

Required Evidence of Use

17. Section 191 of the Town and Country Planning Act 1990 (TCPA 1990) covers an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD).
18. Section 191 (2) states:

*“(2) For the purposes of this Act uses and operations are lawful at any time if—
(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.”*

19. Section 191 (4) states:

“(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, ... they shall issue a certificate to that effect.”

20. Section 191 TCPA 1990 case law has shown that the burden of proof is on the applicant and the applicant has to show that “on the balance of probabilities” the use described in the application should be certified as lawful.

21. In order to refuse the application Manchester City Council would have to provide evidence (to counteract the evidence provided by the applicant including the sworn Statutory Declaration) which means that the circumstances/use claimed in the application is less likely to have happened than to have happened. If Manchester City Council do not have sufficient evidence (to counteract the evidence provided by the applicant) then the Statutory Declaration (and other) evidence provided by the applicant satisfies the ‘balance of probabilities’ test.

22. The use does not have to have been subsisting for a particular length of time to be lawful, it merely has to have been the lawful use subsisting on 7 October 2011.

23. The Planning Practice Guidance (PPG) at Paragraph: 006 Reference ID: 17c-006-20140306 states:

“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.”

Further Consultation with the Applicant

24. The PPG at Paragraph: 006 Reference ID: 17c-006-20140306 states:

“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.”

25. Thus if Manchester City Council obtain any evidence that they consider justifies refusal of the Certificate, the PPG makes it clear that they should consult with the applicant before any such refusal.

Conclusion

26. The evidence in Mr Blair’s sworn Statutory Declaration (together with exhibits attached to it) makes it clear that the Property was in use as a small HMO on 7 October 2011 and that such use has continued since.

27. The Statutory Declaration has been sworn in front of a solicitor as an officer of the court and is proof of the matters contained within it.

Kuit Steinart Levy LLP 30 September 2020

Document 1

Extract of the 1922 ordnance survey map Lancashire CXI.3 (Manchester revised 1916 published 1922)

