

Planning

Growth & Development

Delegated officer report for planning application

Application no. 126949/LE/2020

Date registered valid: 20 May 2020

Proposal: Certificate of lawful existing use of the property as a small House in Multiple Occupation (C4 use class)

Address: 4 Lancing Avenue, Manchester, M20 6ET

Ward(s): Didsbury East 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: Linda Marciniak
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Recommendation: Approve

Date of recommendation: 8 July 2020

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: None

Standard consultations: No consultations have been printed and sent.

Neighbour notifications Printed: 26 May 2020 Expired: 16 June 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

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of site/building

The application site is a turn of the century semi-detached house situated on the south side of Lancing Avenue, south of Fog Lane in the Didsbury east ward. It is understood to be a 3 bedroom house with 1 bathroom and 2 living rooms.

Description of area

The area is residential comprising houses of a similar typology on streets south of Fog Lane, with inter-war semi's along Parrswood Road to the west and Kingsway to the east. There are a range of local shops and services on Fog Lane and Fog Lane Park situated a short distance to the north-west.

Description of development

The application seeks the determination of the local planning authority for assessment of the evidence in support of a Certificate of Existing Lawful Use to confirm use of the property as a House in Multiple Occupancy within Class C4.

The application is accompanied by a 40-page document trail with email exchanges between the applicant and 4 student tenants, copies of Tenant Deposit Scheme certificates and HM Land Registry Title documents. There is also a sworn affidavit. All documents have been stamped as seen by solicitors acting for the applicant.

Consultations & Notification Responses

None for Lawful Development Certificate.

Issues

Policy

Core Strategy Development Plan Document Adopted 11th July 2012

Policy H11 - Houses in Multiple Occupation

9.43 It is recognised that the universities and their students make an important contribution to the economy of the City. In order to prevent residential disamenity and to maintain the sustainability of neighbourhoods, the Council will manage the future location of Houses in Multiple Occupation (HMOs), including student house shares which fall within Use Class C4.

9.44 From 1st October 2010 change of use from a Class C3 dwellinghouse to a Class C4 House in Multiple Occupation (HMO) became permitted development, therefore planning permission is no longer needed. The Council made an Article 4 Direction on 7th October 2010 which means that planning permission will be needed for this type of development. The

direction was confirmed by the Council in January 2011 and came into force on 8th October 2011. The Council will use the policy below to control further changes of use from a C3 to a C4. The policy also controls change of use to HMOs which are 'sui generis'.

9.51 Residential properties that would meet the C4 test from the 8th October 2011 but which existed in this format previously without being defined as such will not necessarily be known to the Council. Where planning permission is given for a change of use to a C4 HMO this will be recorded in the future to build up a clearer picture.

9.52 A change of use to a HMO which is lived in by more than six people is classified as 'sui generis', i.e. it is not classified by the Use Classes Order. This could be an extension to an existing C4 dwelling, or a change of use from C3.

9.53 The impacts of Policy H11 will be monitored to ensure that any risk of blight on properties in areas where there are high concentrations of HMOs is minimised; and the policy revised if necessary. The policy allows for change of use from C3 to C4 (in areas where HMO concentrations are low) in areas where specific regeneration initiatives to increase family housing have taken place, only where it can be demonstrated that there is no reasonable demand for the property as a C3 dwellinghouse.

9.54 Currently the amount of purpose built student accommodation in the planning pipeline exceeds the demand from both the projected growth in student numbers and latent demand from students living in the general rented sector, meaning that there is a future oversupply of bed spaces. This means that purpose built student accommodation will be able to meet any increase in overall demand for student accommodation in Manchester, whilst broadening housing choice in a way which reflects evidence of current demand. If a need for further purpose built accommodation arises the Council will encourage this where it satisfies the criteria set out in Policy Approach H12.

Policy H11 - Change of use from a C3 dwelling house to a C4 HMO will not be permitted where there is a high concentration of residential properties within a short distance of the application site falling within one or more of the following categories:

- o Exempt from paying Council tax because they are entirely occupied by full time students.
- o Recorded on Private Sector Housing's database as a licensed HMO.
- o Any other property which can be demonstrated to fall within the C4 or sui generis HMO use class.

In cases where the concentration of such properties is significant but less high, the Council will examine property type and resident mix in more detail when considering an application for a change of use.

In areas of high concentration, extensions to HMOs (as defined in the Housing Act 2004) would not be permitted where this could reasonably be expected to lead to an increase in the level of occupation.

In parts of Manchester which do not have a high concentration of HMO/student housing but where the lack of family housing has threatened the sustainability of the community to the extent that regeneration activity with the specific intention of increasing the amount of family housing has taken place, there will be a presumption against changes of use which would result in the loss of a dwelling which is suitable for a family. Changes to alternative uses, including C4 and HMOs with more than six occupants, will only be acceptable where it can be demonstrated that there is no reasonable demand for the existing use.

The approach above will also be used for change of use to a HMO which is classified as 'sui generis'.

Notwithstanding the policy requirements set out above, all proposals for change of use of existing properties into houses in multiple occupation, and all proposals for conversion of existing properties into flats (which might not necessarily fall within Class C4), would be permitted only where the accommodation to be provided is of a high standard and where it will not materially harm the character of the area, having particular regard to the criteria in policy DM1.

Assessment

On the balance of the evidence provided it has been shown that the premises have been used continually as a HMO prior to October 2011.

Supporting information comprises of:

- Application form.
- Sworn affidavit made by the applicant in front of the witnessing solicitor.
- HM Land Registry Title documents showing ownership and date purchased.
- Copies of email correspondence between the applicant landlord and 4 tenants (with reference made in one email to two others), concerning moving in dates, deposits and exchange of contracts covering the following dates:
 - 13 July 2011 – 20 October 2012 - Tenant 1
 - 28 August 2011- 3 May 2012 - Tenant 2
 - 27 June 2011 – 2 July 2012 – Tenant 3
 - 24 December 2010 – 31 July 2012 – Tenant 4

The affidavit swears that since the last date of occupancy by the last tenant noted in the email evidence provided, and aside from a short period in 2019 when the property was being refurbished, No.4 Lancing Avenue has been used continuously as a small HMO.

Conclusion

From the information provided above, it is considered, that on the balance of probabilities, the rooms comprising the property have been let to individual tenants, with access to shared facilities.

It is therefore considered that the premises were in use, for Class C4 purposes, prior to the time the Article 4 Direction was introduced and this use has subsequently continued accommodating up to four (4) people.

The applicant has confirmed that the house was purchased in 2004 and used as a small HMO from thereon until the time of the application, with the above exception, in which case it has not reverted to a Class C3 use.

The use of the premises as a HMO (Class C4) is considered to be the lawful use of the house.

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

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

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 carried out continuously since before 8th October 2011 to the date of this application.

Appendix 1 – List of consultees & neighbours notified

6 Lancing Avenue, Manchester, M20 6ET
3 Scarisbrick Avenue, Manchester, M20 6EU
5 Scarisbrick Avenue, Manchester, M20 6EU
1 Scarisbrick Avenue, Manchester, M20 6EU
2 Lancing Avenue, Manchester, M20 6ET

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
Area Team Boundary - Name: SOUTH