**Planning**

**Growth & Development**

**Delegated officer report for planning application**

| | |
|---|---|
| **Application no.** | 143511/LE/2025 |
| **Date registered valid:** | 10 August 2025 |
| **Proposal:** | Use of property as a house in multiple occupation (Use Class C4). |
| **Address:** | 55 Furness Road, Manchester, M14 6LX |
| **Ward(s):** | Fallowfield Ward |
| **Applicant:** | Mr Paul Marsden |
| **Agent (if any):** | |
| **Case officer:** | Robert Tyrer<br>Tel: 0161 234 4068<br>Email: robert.tyrer@manchester.gov.uk |
| **Recommendation:** | Refuse |

**Date of recommendation:** 29 September 2025

**Application details**

**Type of application:** Certificate Lawful Development Existing

**Development type:** Certificates of lawfulness

**Date of site visit:** Not Required

**Standard consultations:**
No consultations have been printed and sent.

**Neighbour notifications**
Printed: 13 August 2025 Expired: 4 September 2025

**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**

Application site relates to a two storey mid-terraced dwellinghouse, located in a predominantly residential area comprising of housing of similar size and design.

**Listed building:** Not applicable

**Conservation area:** Not applicable

**Tree Preservation Order:** Not applicable

**Description of development**

**Local residents/public opinion** – One representation was received objecting to the application however, other than objecting the concerns raised relate to a planning decision at a neighbouring address, rather than the application site itself.

The objection also raises concerns that they were not notified of a loft extension at the this address.

**Legislative Issues**

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

> 1. in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

2. in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicant’s version of events or make them less then probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose.

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - "If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?" In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

**The Application**

This application is pursued under subsection (1) of section 191 which provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land is lawful for planning purposes.

In a case of this type, the onus is on the applicant to substantiate his or her case, on the balance of probability. The applicant needs to demonstrate that the use of property as a small House in Multiple Occupation (Use Class C4) commenced more than ten years prior to the date of the application (i.e. by **21 July 2015**) and continued without a significant break for ten years.

Class C4 is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as “Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.” This latter term is as defined in S.254 of the Housing Act 2004.

The application form states that from 7th January 2005 the property became a HMO use.

The Planning Practice Guidance points to the need for evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The relevant test, established by the court in Thrasyvoulou v SSE [1984], is the balance of probabilities – whether something is more likely than not.

**Assessment of Evidence**

*Planning history*

Planning history for the site shows that have been one previous planning applications at this address.

Application Reference: 122957/FH/2019
Proposal: “Erection of first-floor rear extension to form enlarged bedroom to existing Class C4 HMO”
Decision: Approved 1st May 2019.

Clearly the application proposal description refers to the use of the property a House in Multiple Occupation (Use Class C4).

*Applicants Evidence*

The application states that the property has been in continuous use as a small House in Multiple Occupation (HMO) (Use Class C4) since 7 January 2005. This is supported by a statutory declaration signed by the applicant, a floor plan of the property, and tenancy agreements and deposit protection certificates covering the period from 2016 to 2025. These documents show that most tenancies housed five occupants, except in 2019/20 when there were four.

A floor plan shows that the two-storey dwellinghouse contains two bedrooms on the ground floor, along with a lounge, kitchen, and shower room. The first floor contains a further three bedrooms and a shower room.

However, the tenancy agreements and deposit protection certificates do not cover the full 10-year period. Specifically, there appears to be no information provided for 2014/15 and 2015/16.

A statutory declaration has been provided and signed by the applicant, stating that he and his wife purchased the property on 7 January 2005. The declaration includes the following points:

> *“2. From the date of my purchase the Property has been occupied by 4 or more tenants continuously other than during rental voids*
>
> *3. At no point during the ownership has the Property been occupied by less than 4 tenants or used for any purpose other than residential”*

However, the declaration lacks specific details regarding tenants, dates of occupation, and other relevant information about how the property was let and occupied. The phrase "*4 or more tenants*" could equally apply to a Use Class C3 dwellinghouse.

As such, the evidence does not provide a sufficient basis to conclude, on the balance of probability, that the property has been in continuous use as a house in multiple occupation over the 10-year period from 21 July 2015.

Planning Practice Guidance emphasizes that evidence must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

It is therefore recommended that the Certificate of Lawfulness be refused.

**Other Legislative Requirements**
**Equality Act 2010**

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

**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 polices 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:** Refuse

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

The applicant has failed to demonstrate that the use as a house of multiple occupation (Class C4) as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended), has continued for a 10-year period up to the date of the application.

**Appendix 1 – List of consultees & neighbours notified**

60 Landcross Road, Manchester, M14 6NB
56 Landcross Road, Manchester, M14 6NB
56 Furness Road, Manchester, M14 6LX
57 Furness Road, Manchester, M14 6LX
58 Furness Road, Manchester, M14 6LX
53 Furness Road, Manchester, M14 6LX
58 Landcross Road, Manchester, M14 6NB
54 Furness Road, Manchester, M14 6LX

**Appendix 2 – Planning constraints**

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Regulation 7 Direction (Control Advert) - Control Of To Let Boards (Fallowfield Central)
Area Team Boundary - Name: SOUTH AREA