

Planning

Growth & Development

Delegated officer report for planning application

Application no. 143448/LE/2025

Date registered valid: 17 July 2025

Proposal: Operation of use in breach of Condition 5 (Opening Hours) attached to planning permission reference 049872/FU/CENTL2/96 for a continuous period of time in excess of ten years.

Address: 45 - 49 Anson Road, Manchester, M14 5DE

Ward(s): Rusholme Ward

Applicant: Venus Foods Supermarket

Agent (if any): Amanda Olley Summit Planning Associates Ltd

Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Grant

Date of recommendation: 17 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: 31 July 2025 Expired: 21 August 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

The application site relates to shop premises on the corner of Kinross Road and Anson Road that is in use as a food retail supermarket (Class E).

The surrounding in area is predominantly residential with commercial activity centred on the junction of Anson Road/Birchfields Road with Dickenson Road.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

Application for a Certificate of Lawfulness for an existing use or development, specifically relating to the continued operation of a use in breach of Condition 5 attached to planning permission reference 049872/FU/CENTL2/96.

Consultations & Notification Responses

Local residents/public opinion – One representation was received seeking clarification on condition 5 attached to planning permission 049872/FU/CENTL2/96. No further comments or representations received.

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 applicants version of events or make them less than 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.

The applicant is seeking a Certificate of Lawfulness for an existing use or development, specifically relating to the continued operation of a use in breach of Condition 5 attached to planning permission reference 049872/FU/CENTL2/96.

Approved planning application reference 049872/FU/CENTL2/96 relates to a change of use of the premises at 45–49 Anson Road from a club to a warehouse/retail unit.

Condition 5 of the approval restricts the opening hours to:

Monday to Saturday: 08:00 to 19:00

Sundays and Bank Holidays: 08:00 to 17:00

Section 191(3) of the Town and Country Planning Act 1990 says that any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if the time for taking enforcement action in respect of the failure has then expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

The applicant must demonstrate that the use was lawful within the meaning of section 191(3) of the 1990 Act. Which in this case, the applicant claims that the existing premises has been trading until 22:00 each day for a period in excess of 10 years (i.e since **15 July 2015**).

To demonstrate this claim, the applicant has provided the following:

- Receipts of transactions generated between 21:45 and 22:00, dating from January 2015 to March 2025, have been provided to evidence the building's operational use during late evening hours.
- Copies of statements provided by regular customers of the supermarket.
- A photographic schedule showing the external view of the building between October 2012 and March 2025 has been provided to demonstrate that the building's use consistently falls within Class E of the Town and Country Planning (Use Classes) Order

The photographic evidence clearly shows that the premises has operated as Venus Supermarket, falling within Class E, since at least October 2012, with the property's name clearly shown on the images provided. The planning history and Google Street View imagery show that the use had commenced even earlier than the images provided.

The receipts provided include transaction records for every month from 19 January 2015 to 13 March 2025, reinforcing the claim of continuous late-evening trading until 22:00.

In addition to the above, four signed statements have been submitted by individuals identifying themselves as regular customers together with four statutory declarations. These statements and declarations support the assertion that Venus Supermarket has consistently traded until 22:00, seven days a week, for over ten years.

All statements are signed and dated March 2025, with the exception of one dated 10 August 1920, which appears to be an error on the signee's part, likely confusing the date of birth with the signature date as each statement includes the signatory's date of birth, further supporting this interpretation.

Whilst the applicant has not provided evidence from March 2025 up to the date the application was submitted, and while the Lawful Development Certificate (LDC) could have been further supported by additional documentation, it is nevertheless considered on the balance of probability

that the Opening Hours Conditions (No.5) attached to planning permission 049872/FU/CENTL2/96 has been breached with the supermarket open past *19:00 Monday to Friday and 17:00 on Sundays and Bank Holidays*.

Furthermore, the Council, as the local planning authority, has no evidence of its own, nor any submitted by third parties, to contradict or otherwise render the applicant's version of events less than probable.

The applicant does not have to demonstrate beyond all reasonable doubt, as that is the standard of proof required for criminal cases and would be the wrong test to apply.

The applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Lastly, it should be noted that the said condition is not removed by the granting of a lawful development certificate and it could be revived if the requirements of the opening hours condition are satisfied.

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 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: Grant

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

- 1) Based on the available evidence, the food retail supermarket (Use Class E) at 45–49 Anson Road has operated in breach of Condition 5 (opening hours) of planning permission

reference 049872/FU/CENTL2/96. The breach has occurred continuously over a period of 10 years prior to the date of this application, with trading taking place beyond the permitted hours of 17:00 on Sundays and Bank Holidays, and 19:00 from Monday to Saturday

Appendix 1 – List of consultees & neighbours notified

163A Dickenson Road, Manchester, M13 0YN
169 Dickenson Road, Manchester, M13 0YN
Flat 2, 169A Dickenson Road, Manchester, M13 0YN
Flat 1, 169A Dickenson Road, Manchester, M13 0YN
161A Dickenson Road, Manchester, M14 5HZ
Flat 1, 49A Anson Road, Manchester, M14 5DE
Ground Floor, 163 - 165 Dickenson Road, Manchester, M13 0YN
34 Anson Road, Manchester, M14 5BQ
Flat Above, 171 Dickenson Road, Manchester, M13 0YN
Ground Floor, 167 Dickenson Road, Manchester, M13 0YN
Ground Floor, 173 Dickenson Road, Manchester, M13 0YN
173A Dickenson Road, Manchester, M13 0YN
163 - 165 Dickenson Road, Manchester, M13 0YN
Flat 2, 161 Dickenson Road, Manchester, M14 5HZ
Flat Above, 49 Anson Road, Manchester, M14 5DE
Flat 2, 175A Dickenson Road, Manchester, M13 0YN
Flat 1, 175A Dickenson Road, Manchester, M13 0YN
45A Anson Road, Manchester, M14 5DE
Flat 1, 161 Dickenson Road, Manchester, M14 5HZ
Flat 2, 167A Dickenson Road, Manchester, M13 0YN
Flat 19, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 16, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 14, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 12, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 8, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 6, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 3, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 1, David Navin Court, 32 Anson Road, Manchester, M14 5BP
175 Dickenson Road, Manchester, M13 0YN
167 Dickenson Road, Manchester, M13 0YN
1 Taplow Walk, Manchester, M14 5DR
9 Binstead Close, Manchester, M14 5DS
3 Binstead Close, Manchester, M14 5DS
23 Binstead Close, Manchester, M14 5DS
17 Binstead Close, Manchester, M14 5DS
11 Binstead Close, Manchester, M14 5DS
49A Anson Road, Manchester, M14 5DE
Flat 1, 167A Dickenson Road, Manchester, M13 0YN
Flat 2, 49A Anson Road, Manchester, M14 5DE
Basement And Ground Floor, 185 Dickenson Road, Manchester, M13 0YN
Flat 20, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 18, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 17, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 15, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 13, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 11, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 10, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 9, David Navin Court, 32 Anson Road, Manchester, M14 5BP

Flat 7, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 5, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 4, David Navin Court, 32 Anson Road, Manchester, M14 5BP
Flat 2, David Navin Court, 32 Anson Road, Manchester, M14 5BP
177 Dickenson Road, Manchester, M13 0YN
4 Kinross Road, Manchester, M14 5DT
3 Taplow Walk, Manchester, M14 5DR
7 Binstead Close, Manchester, M14 5DS
5 Binstead Close, Manchester, M14 5DS
27 Binstead Close, Manchester, M14 5DS
25 Binstead Close, Manchester, M14 5DS
21 Binstead Close, Manchester, M14 5DS
19 Binstead Close, Manchester, M14 5DS
15 Binstead Close, Manchester, M14 5DS
13 Binstead Close, Manchester, M14 5DS
1 Binstead Close, Manchester, M14 5DS
161 Dickenson Road, Manchester, M14 5HZ
171 Dickenson Road, Manchester, M13 0YN

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Less) -
Susceptible to Surf Water Flood (Middle) -
Susceptible to Surf Water Flood (Middle) -
Susceptible to Surf Water Flood (Middle) -
Susceptible to Surf Water Flood (Middle) -
Area Team Boundary - Name: NORTH AREA