MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	143719/LP/2025
Date registered valid:	1 September 2025
Proposal:	Use of existing unit as a restaurant with commercial kitchen and internal dining facilities (Use Class E(b))
Address:	486 Cheetham Hill Road, Manchester, M8 9JW
Ward(s):	Crumpsall Ward
Applicant:	Mr Zac Nabi
Agent (if any):	Mr Oliver Meads Meads Architecture
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Grant
Date of recommendation:	20 October 2025

Application details

Type of application: Certificate Lawful Development Proposed

Development type: Certificates of lawfulness

Date of site visit: Not Required

Standard consultations:
No consultations have been printed and sent.

Neighbour notifications
No neighbour notifications have been printed and sent.

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 and area

Application site relates to a part two, part three storey former public house with basement, located within Cheetham Hill District Centre.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a certificate of lawfulness of proposed use or development for use of existing unit as a restaurant with commercial kitchen and internal dining facilities (Use Class E(b))

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Planning History

A total of five planning applications have been submitted for the site, including approvals, a refusal, a withdrawal, and advertisement consent.

142235/FO/2025 – Planning permission was **refused** on 9th June 2025 to change the use of upper two floors from 4 x 2 bed flats to 10 bed house in multiple occupation (sui generis).

118722/FO/2017 – Planning permission was **granted** on the 22nd February 2018 to allow elevational alterations to creation two new shop fronts and entrance with associated internal roller shutters.

117220/FO/2017 – Application was **withdrawn** on 19th September 2017 for elevational alterations to create two new shop fronts and entrance with associated external roller shutters.

082612/FO/2007/N1 – Planning permission was **granted** on the 23rd August 2007 to allow the Conversion of first and second floor of residential hotel to 4 no two bedroom self-contained apartments with associated extension to form new staircase with retention of ground floor retail use and parking at rear.

046001/AO/NORTH1/94 – Advertisement consent was **granted** on the 5th August 1994 to allow Various illuminated signs to public house including double sided projecting pictorial sign

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 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 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The Assessment

The applicant is seeking a certificate of lawful development for the proposed use of the ground floor as a restaurant and basement for storage and private dining (Use Class E(b)).

The Government published the Town and County Planning (Use Classes) (Amendment) (England) Regulations 2020 in July 2020 which came into force on the 1st September 2020. The changes included revisions of the classification of uses of property. Former Classes A, B1 and D, applicable to retail, office and non-residential institutions and assembly and leisure uses were removed and a new use class introduced in their place.

The new Class E includes commercial, business and service and brings together the former A1 (shops), A2 (financial and professional services), A3 (restaurants and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use without the need of planning permission.

The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) defines the classes of use for the purposes of section 55(2)(f) of the 1990 Act. Class E(b) in Schedule 2 Part A is defined as:

> ***"(b) For the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises."***

Section 55(1) of the Town and Country Planning Act 1990 defines the term 'development' which includes the change of use of a building. Section 55(2)(f) explains that in the case of buildings used for a purpose of any class specified in an order made by the Secretary of State, the use of that building for any purpose within the same class shall not be taken, for the purpose of the Act, as amounting to 'development'.

In a case of this type, the onus is on the appellant to substantiate his or her case, on the balance of probability. The application form submitted with the application states that the existing use under Class E(a), the same as the proposed restaurant use E(b). To demonstrate that the lawful use of the premises has been Class E, the applicant references that approved planning application **082612/FO/2007/N1** granted the retention of the ground floor as retail, which would fall under Class E(a) of the UCO.

The applicant has also provided a planning statement, which details how the restaurant will be operated and managed. However, other than stating the proposed use falls within Class E(b) of the UCO, the document does not go into detail as to how the existing use falls under Class E(a).

Google streetview images as viewed from Cheetham Hill Road shows the shop in use from year 2009 until 2018, then it appears the property became vacant until 2021 when a café use occupies the unit to the last streetview dated July 2025.

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.

Conclusion

Therefore, the current/previous use of the of the property would now meet the definition of Class E(a) or E(b) and that the proposed use would meet the definition of Class E (b), based on the information provided. This would not constitute a change of use and therefore would be excluded from the definition of development and no planning permission would be required, the Certificate should be granted.

Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states:

"(4) Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order."

As the use described above does not constitute development by the Use Classes Order and that the change of use is not reliant on the GPDO to change, article 3(4) does not apply here. Therefore, no conditions apply from previous planning applications are a change of used allowed by the GPDO.

Other matters/Opening Hours – The applicant also seeks to confirm the opening hours. However, as the proposed use falls within the same use class as the previously approved use under application **082612/FO/2007/N1**, the existing hours remain applicable. To change these hours, the applicant would need to submit a Section 73 application to vary or remove the approved conditions. A lawful development certificate cannot be used to alter or agree new opening hours.

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: Grant

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

The applicant has demonstrated that the proposed use as a restaurant falls within Class E(b) - For the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises As the change is within the same use class as the existing class E use, it is excluded from the definition of development.

Appendix 1 – List of consultees & neighbours notified

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Article 4 Direction - North Manchester PD Restriction - Class B1(a) To C3
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Area Team Boundary - Name: NORTH AREA