

Planning

Growth & Development

Delegated officer report for planning application

Application no. 142097/LE/2025
Date registered valid: 14 April 2025
Proposal: Use of property as a house in multiple occupation (Use Class C4).
Address: 93 Lloyd Street South, Manchester, M14 7LF
Ward(s): Moss Side Ward

Applicant: Mrs Jemma Dean
Agent (if any):
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 9 June 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: 24 April 2025 Expired: 16 May 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 and area

The application site comprises a brick built mid-terraced, two-storey, three-bedroom dwelling with an enclosed front garden bordered by a low boundary wall. To the rear, the property features a private garden enclosed by a brick wall, which also provides access to a rear alleyway.

The surrounding area is predominantly residential, characterised by traditional two-storey terraced houses arranged in a grid-iron street pattern.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of development

The applicant is seeking a Certificate of Lawful Existing Use (CLEU) for the use of the property as a house in multiple occupation (Use Class C4).

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties).

Local residents/public opinion – No objections, comments or representations in support of the application have been 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 applicant's 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.

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 **30 January 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 April 2009 the property became an 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 there have been no previous planning applications at this address.

Applicants Evidence

The evidence provided by the applicant to demonstrate at least ten years includes the following:

Deposit Protection Certificates

To organise the Deposit Protection Certificates (DPCs) into a coherent dataset for analysis, they have been grouped by academic year (1st July to 31st August of the following year). This grouping is intended solely to support analytical purposes and does not imply any distinction regarding the type of occupants in a House in Multiple Occupation (HMO), whether professionals, academics, or students. However, as the majority of certificate applications are typically associated with student-occupied properties, the data has been grouped in this manner for consistency.

Each DPC represents a single tenant, providing insight into both the number of tenants within a property and the duration of their tenancies.

Academic Year	Start Date	End Date	Tenancy Duration (days)
2008/2009	13/02/2009	Not Specified	Unknown
2008/2009	14/05/2009	Not Specified	Unknown
2008/2009	23/06/2009	Not Specified	Unknown
2008/2009	22/01/2009	Not Specified	Unknown
2009/2010	15/09/2009	30/11/2009	76
2009/2010	01/04/2010	30/08/2010	151
2009/2010	26/01/2010	30/08/2010	216
2009/2010	27/09/2009	26/06/2010	272
2011/2012	03/05/2012	02/11/2012	183
2012/2013	05/10/2012	30/06/2013	268
2012/2013	10/08/2012	09/10/2012	60
2013/2014	01/09/2013	31/03/2014	211
2013/2014	02/07/2013	02/03/2014	243

2013/2014	10/10/2013	09/04/2014	181
2013/2014	01/02/2014	31/08/2014	211
2013/2014	02/06/2014	01/11/2014	152
2014/2015	13/01/2015	12/04/2015	89
2014/2015	03/02/2015	02/02/2016	364
2014/2015	10/04/2015	09/07/2015	90
2014/2015	01/06/2015	01/09/2015	92
2014/2015	19/11/2014	18/02/2015	91
2015/2016	04/05/2016	03/10/2016	152
2016/2017	03/02/2017	02/10/2017	241
2017/2018	01/10/2017	31/07/2018	303
2017/2018	30/04/2018	29/09/2018	152
2017/2018	01/04/2017	31/03/2018	364
2018/2019	02/08/2018	01/02/2019	183
2018/2019	05/09/2018	04/03/2019	180
2019/2020	28/04/2019	27/04/2020	365
2020/2021	28/03/2021	27/09/2021	183

Very little information was provided other than the DPCs, which show that that the average tenancy duration is 195 days or approximately just over 6 months (excluding unknowns) and spans 12 years from 2008/2009 to 2020/2021.

In cases of this nature, the onus is on the applicant to substantiate their claim on the balance of probabilities. Specifically, the applicant must demonstrate that the use of the 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 30 January 2015) and that this use continued without significant interruption for the entire ten-year period. Therefore, the relevant timeframe is from 30 January 2015 to 30 January 2025. While some evidence has been provided indicating the property in uses as a HMO prior to this period, the continuity of use within the critical ten-year window is undermined by a lack of supporting information for the years 2022, 2023, 2024, and 2025.

In this regard, the Planning Practice Guidance advises that:

“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.” Paragraph: 006 Reference ID: 17c-006-20140306

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.

Conclusion

The evidence provided lacks in some case exact details, dates of occupation, it is also unclear how many tenants were in the property at anyone time and other relevant details of how the property was let and occupied. However, crucially there is no information for years between 2022 and 2025 to prove continuous use. As such, it does not provide a basis to conclude with sufficient confidence that the property has been in continuous use as a house in multiple occupation over the 10 years from 30th January 2015.

Therefore, based on the information provided, the Certificate should 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 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: Refuse

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

- 1) 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

95 Lloyd Street South, Manchester, M14 7LF
9 Dorset Avenue, Manchester, M14 7WR
88 Lloyd Street South, Manchester, M14 7LH
91 Lloyd Street South, Manchester, M14 7LF
13 Dorset Avenue, Manchester, M14 7WR
11 Dorset Avenue, Manchester, M14 7WR

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Area Team Boundary - Name: SOUTH AREA