MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	142549/LE/2025
Date registered valid:	27 March 2025
Proposal:	Use of property as a house in multiple occupation (Class C4)
Address:	1147 Oldham Road, Manchester, M40 2FU
Ward(s):	Miles Platting & Newton Heath Ward
Applicant:	Ms Gichungwa Bright Prospects Ltd
Agent (if any):	Mr Belal Rashid BRTA Limited
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse

Date of recommendation: 24 June 2025

Application details

Type of application: Certificate Lawful Development Existing

Development type: Notifications

Date of site visit: Not Required

Standard consultations:
Printed: 9 April 2025 Expired: 2 May 2025

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

Application relates to a semi-detached two storey building that fronts Oldham Road.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

A mixture of commercial and residential properties centred around Oldham Road.

Description of development
The applicant is seeking a Certificate of Lawful Existing Use (CLEU) for the use of property as Small 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 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.

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 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

The applicant has stated that planning permission for the use of the property as a small House in Multiple Occupation (HMO) should be granted on the basis that it has been in continuous use as such for four years.

However, on 25 April 2024, the immunity period for breaches of planning control including unauthorised development and changes of use to single dwellings was extended from four years to ten years. This change was introduced by section 115 of the Levelling-up and Regeneration Act 2023, which amended section 171B of the Town and Country Planning Act 1990.

This raises the following question, should the application be assessed against the new ten-year immunity period, or does the previous four-year period still apply? The answer depends on when the material change of use occurred.

If the change of use to form a dwellinghouse, either one in use Class C3 or Class C4 took place before 25 April 2024, the four-year rule may still apply under, providing that the change is not from an existing dwellinghouse, i.e. if no new dwellinghouse is created. If the change occurred on or after that date, the applicant must demonstrate ten years of continuous use to benefit from immunity.

According to the application form, the use of the property as an HMO began on 22 September 2020; this suggests that the applicant believes that the four-year period is applicable. However, a key detail missing from the application is the property's prior use. If the property was not previously in residential use, the change to Class C4 HMO would fall under the former four-year rule, this because a new dwellinghouse would be created. Conversely, if the property was already a dwellinghouse (C3), the change to a HMO (C4) would now require ten years of continuous use to qualify for immunity, as there would be no new dwellinghouse created, only a change in use Class.

Clarification of the property's use prior to 22 September 2020 is therefore essential to determine which immunity period applies. Clarification was sought from the applicant regarding the previous use, however the response did not clarify the use.

Information that is publicly available to the Council include Council Tax records that indicate that the property has been rated Band C since 1 May 2000, additionally an Energy Performance Certificate dated 11 June 2021 describes the property as a semi-detached house, although this does not describe the nature of the occupation. A response was provided by the EPC assessor to explain that EPC only provide a basic description of the property to essential distinguish between commercial and residential. The planning history fails to shed light on the previous use other than permission was granted in 1981 under planning permission F16423 for a change of use of first floor residential accommodation into offices. It is difficult to tell if this was implemented or not.

Google Street View images (1 and 2) from August 2016, just over four years prior to the claimed change to the HMO use, shows that the property was up for sale and text under the for-sale sign states “FANTASTIC INTERIOR 5 BEDS GARDEN & PARKING”

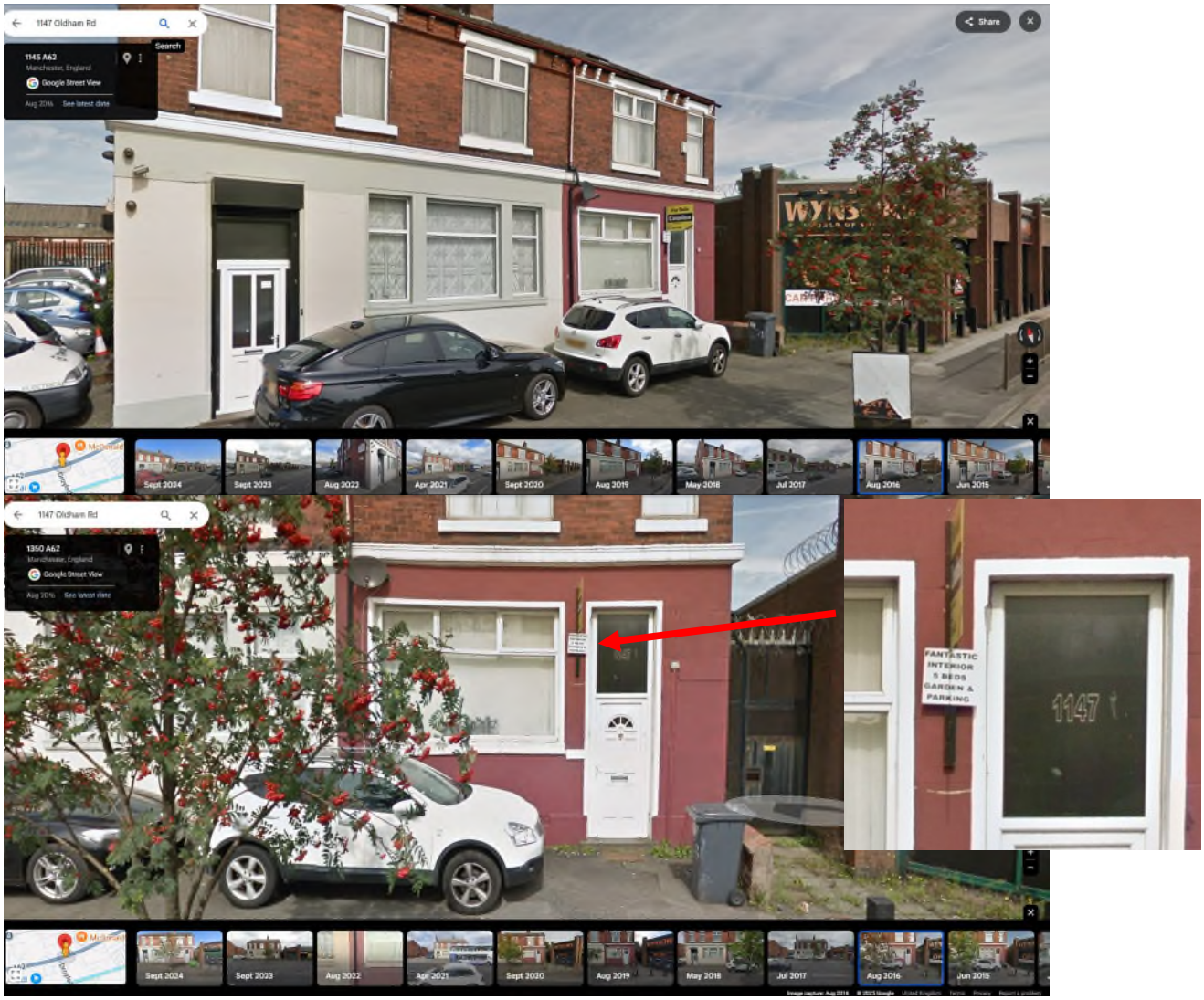


Image 1 and 2 Google Street View of 1147 Oldham Road in August 2016.

Furthermore, Council records show that the property has never had business rates and that it has been registered for Council tax for at least the past ten years.

Drawing all this together, and based on the evidence available, on a balance of probability it appears that the previous use was a dwellinghouse (Class C3) and therefore the applicant would need to demonstrate that the use of property as a HMO (Class C4) commenced more than ten years prior to the date of the application (i.e. by 27th March 2015) and continued without a significant break for ten years for a certificate to be granted.

The covering letter provides a brief description of the use of the property by the leaseholder who says that there have always been three or more tenants at the property since September 2020 up to the present day.

The evidence provided by the applicant comprises a tenancy agreement dated 20th April 2023 which like the license agreement for accommodation (22nd September 2020 and 14th October 2020), refer to flats rather than bedrooms as shown on the submitted existing floor plan. However, all three documents list the property as 1147 Oldham Road.

There are two payment instruction confirmations provided dated 20 August 2021 and 28 June 2024, which reference 1147 Oldham Rent but it is unclear if these are one off payments or regular ones. The covering letter says that these have been provided to demonstrate a consistent relationship between the leaseholder and the property owner over the years.

Lastly, the covering letter provides a timeline outlining the residents in each bedroom and for how long they stayed at the property, but not all of the tenants have been evidence by the applicant in the form of tenancy agreements or other documents to confirm their occupation of the property. A request was made querying whether additional information was accidentally omitted, however further information has not been forthcoming.

As such, it does not provide a sound 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 27 March 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 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

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

Manchester Cathedral

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
Historic Landfill Site 250m Buffer -
Manchester Cathedral Ownership - Manchester Cathedral Newton Heath Manor
Area Team Boundary - Name: NORTH AREA