

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141976/LE/2025
Date registered valid: 23 January 2025
Proposal: Use of property as a house of multiple occupation (Use Class C4)
Address: 764 Hyde Road, Manchester, M18 7EF
Ward(s): Gorton & Abbey Hey Ward

Applicant: Mr Alexander Lyons
Agent (if any): Mr Ralph Taylor Paul Butler Associates
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 18 March 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: 29 January 2025 Expired: 19 February 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

764 Hyde Road is a two-storey end-terraced dwelling located at the junction of Hyde Road and Willow Grove. The property has limited outdoor amenity space, consisting of small front and rear gardens.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The application site is in the Gorton ward of Manchester. It's a residential neighbourhood with local shops, cafes, and restaurants. Nearby, you'll find Debdale Park for outdoor activities. The area has good public transport links and community facilities like schools and healthcare centres.

Description of development

The certificate of lawful existing use or development (CLEUD) that is the subject of this application relates to the use of the property as a House in Multiple Occupation (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 – One representation was received objecting to the proposal. A summary of their comments is provided below:

The objection to the granting of an HMO license for 764 Hyde Road, M18 7EF, highlights several issues experienced by the family living near the application site due to existing HMOs on either side of their home.

These issues include:

- Frequent late-night parties causing excessive noise.
- Unpleasant odours from occupants smoking substances.
- Police visits looking for unknown individuals.
- Bins being taken and left out, obstructing parking and access.
- Accumulation of rubbish, posing safety hazards and attracting pests, leading to a mice problem.

The family strongly opposes another HMO license, fearing further disruption to their living conditions. They urge the council to consider these concerns before making a decision.

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.

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.

Property Description: 764 Hyde Road is a six-bedroom, two-storey end-terraced dwelling located at the junction of Hyde Road and Willow Grove. The property has limited outdoor amenity space, consisting of small front and rear gardens. Although it lacks off-road parking, there are no parking restrictions within Willow Grove.

Evidence Provided:

- Two statutory declarations from the applicant and the other owner of the property. Both state that the property was purchased in August 2004 and has been rented out as a small HMO (use class C4) without interruption to 3-6 individuals/households.
- A Property Auction catalogue dated 7th May 2003 describes the property as a tenanted six-bedroom property trading as a bed & breakfast hostel, although it mentions only five bed spaces. The use at that time (Use Class C1) aligns with an approved planning application (reference: 040014, approved 12th December 1991) for a change of use from a dwellinghouse to a bed and breakfast hostel with a single-storey rear kitchen extension. This permission was limited to a period expiring on 30th November 1993, after which the property was to revert to its former condition.
- An individual tenancy agreement dated 6th November 2017 for the occupancy of room 1 and a notice seeking possession dated 12th February 2019 for the tenant of room 2.
- HMO database entries stating that the property was first granted an HMO licence on 20th April 2007 for 6 tenants, with a subsequent licence granted on 19th March 2024, expiring on 19th March 2029.

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

Applicant's Burden of Proof: In this case, the onus is on the applicant to substantiate their case on the balance of probability. The applicant needs to 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 23rd January 2015) and continued without a significant break for ten years.

Conclusion: The evidence provided lacks exact details of tenants, dates of occupation, and other relevant details of how the property was let and occupied. 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 23rd 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

The applicant has failed to demonstrate that the use as a residential home 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

2 Willow Grove, Manchester, M18 7FG
15 Willow Grove, Manchester, M18 7FG
3 Willow Grove, Manchester, M18 7FG
13 Willow Grove, Manchester, M18 7FG
762 Hyde Road, Manchester, M18 7EF
1 Willow Grove, Manchester, M18 7FG

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 -
Area Team Boundary - Name: NORTH AREA