

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141409/LE/2024

Date registered valid: 26 November 2024

Proposal: Use of site Tyre retailing and fitting place with associated storage (sui generis)

Address: 198B Barlow Road, Manchester, M19 3HF

Ward(s): Levenshulme Ward

Applicant: Mr Vakase Sameer Barlow Rd Tyres Ltd.

Agent (if any):

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

Recommendation: Refuse

Date of recommendation: 21 January 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

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

The application relates to a triangular piece of land located between The Blue Bell Inn, public house and a mixed use bungalow known as 198a Barlow Road (previously it was two bungalows that were known as 198a and 198b Barlow Road).

Access is provided via gated entrance off Barlow Road between two advertisement hoardings.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

A residential area located just outside of Levenshulme District Centre, residential properties tend to be either traditional terracing or semi-detached dwellings. The area also benefits from two areas of green open space in the form of designated parks.

Description of development

The applicant is seeking CLEUD for the use of the site as a tyre retailing and fitting place with associated storage (sui generis).

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.

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.

Planning History – There have been twelve previous planning applications at this site. Details of the applications with relevance to this certificate of lawful development are provided below:

Application Status	Details	/	Proposal
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127015/FO/2020 Recv: 16.06.2020 Application Withdrawn - 10.08.2020	Change of use of builder's yard (Sui generis) to retail timber yard (Class A1) together with associated parking and the erection of single storey retail unit (Class A1)
116685/FO/2017 Recv: 21.06.2017 Application Withdrawn - 07.08.2017	Erection of two semi-detached dwellinghouses with associated car parking and boundary treatment
117907/FO/2017 Recv: 05.12.2017 Application Withdrawn - 29.01.2018	Proposed erection of single storey detached building to form car tyre and auto repair garage (Class B2) and creation of new vehicular access from Barlow Road following demolition of existing building
113790/FO/2016 Recv: 12.12.2016 Application Withdrawn - 31.01.2017	Erection of single storey building to form car repair garage following demolition of existing building and creation of new vehicular access from Barlow Road

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 site as tyre retailing and fitting place commenced more than ten years prior to the date of the application (i.e. by 30th October 2014) and continued without a significant break for ten years.

In the case of Sui generis' this is a Latin term that, in this context, means 'in a class of its own'.

Certain uses are specifically defined and excluded from classification by legislation, and therefore become 'sui generis'.

In cases for tyre retailing and fitting places they are considered to be sui generis use.

Assessment of Evidence

The site location plan designates the application site as a triangular piece of land situated between The Blue Bell Inn, public house and a mixed use bungalow known as 198a Barlow Road.

The applicant has submitted a supporting statement detailing the business operation over the past 11 years. According to the document, the business commenced operations from 198b Barlow Road on the 15th May 2013 and has remained at this location since then. The business utilises the site for the retail of new and part worn tyres, offers tyre fitting and serves as a storage area for stock.

The information provided between October 2014 and November 2022 is very sparse in detail and relates to Gumtree, Facebook, Email and eBay correspondence. Notably, these communications do not specifically reference the site as 198b Barlow Road, although it is evidence that they pertain to tyre sales and fittings.

The invoices provided do contain the address as either 198 or 198B Barlow Road, however these only range from 17th November 2022 to 30th September 2024, covering a period of less than two years.

There are statutory declarations from the land and property owner of 198B Barlow Road, the current Directors of Barlow Rd Tyres Ltd and the owner and operator of Mannis Mobile Tyres and all confirm that the site has been used for tyre storage and fitting since May 2013. The landowners statutory declaration states that he and his tenant used to share gate access until the tenant fitted their own gates in 2016.

In addition to the statutory declaration there are also supporting letters from mainly customers stating the existence of the company for the last 10 years but there is also a letter from the person who installed the gate and built the wall.

Images 1 and 2 show Google Earth Street View images of the site in July 2015 and July 2016, the images, which clearly show that the site was subdivided during that period. Unfortunately, image 3 from April 2013 is somewhat unclear but it does show that the site was not subdivided at that time. Conversely image 4 from March 2016 clearly depicts the site as a new planning unit.

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.

Whilst the statutory declarations generally agree that business operations at the site commenced in May 2013, the lack of supporting evidence raises some uncertainty regarding the exact start date of the business on site. The most compelling evidence appears to be the Google Street View images, which add doubt to when this business began. The clearest evidence appears to be Google Street View which, as described, clearly shows a subdivision of the site that formed somewhere between July 2015 and March to July 2016.

By November 2020, signs relating to the business (image 5) appear to be shown on the site and as discussed above, earliest invoices provided which state the address as 198b Barlow Road was for the 17th November 2022.

As such, it does not provide a basis to conclude with sufficient confidence that the site has been in continuous use as tyre retailing and fitting place and continued without a significant break for ten years over the 10 years from 30 October 2014.

It is therefore recommended that the certificate be refused.

Images are provided below.

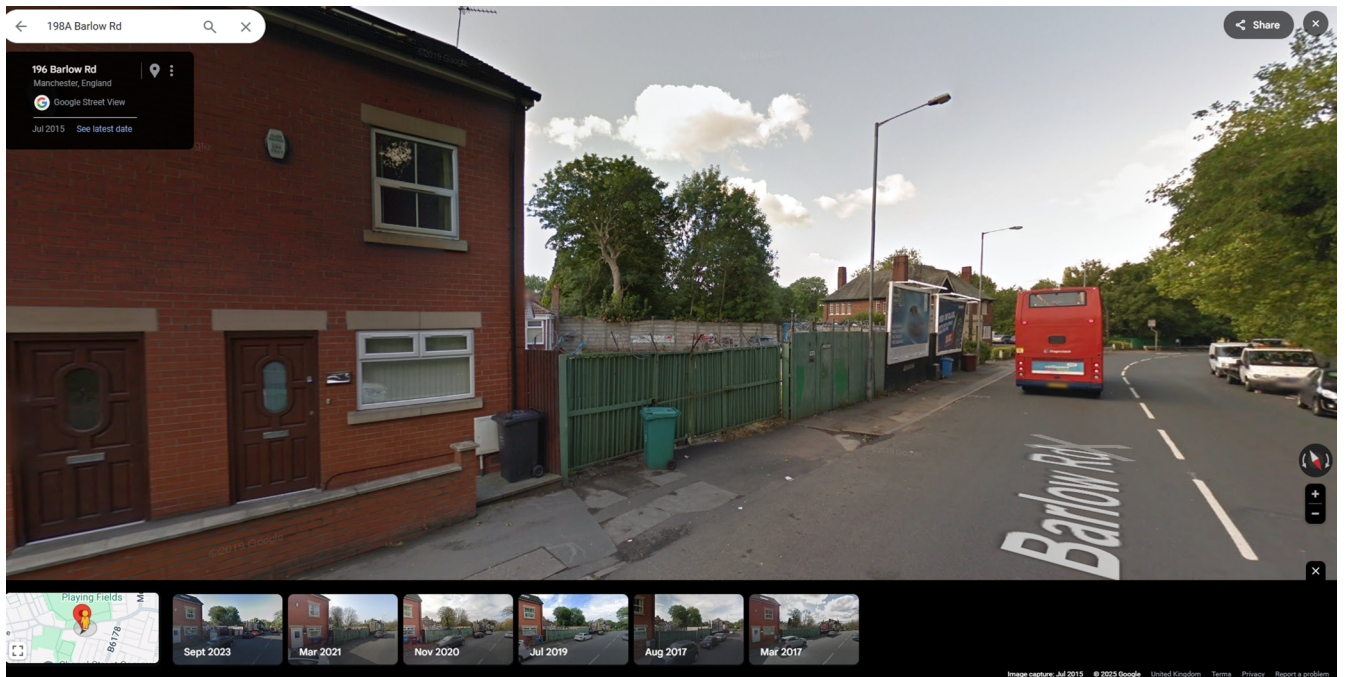


Image 1 Google Street View July 2015 of application site, prior to erection of the wall

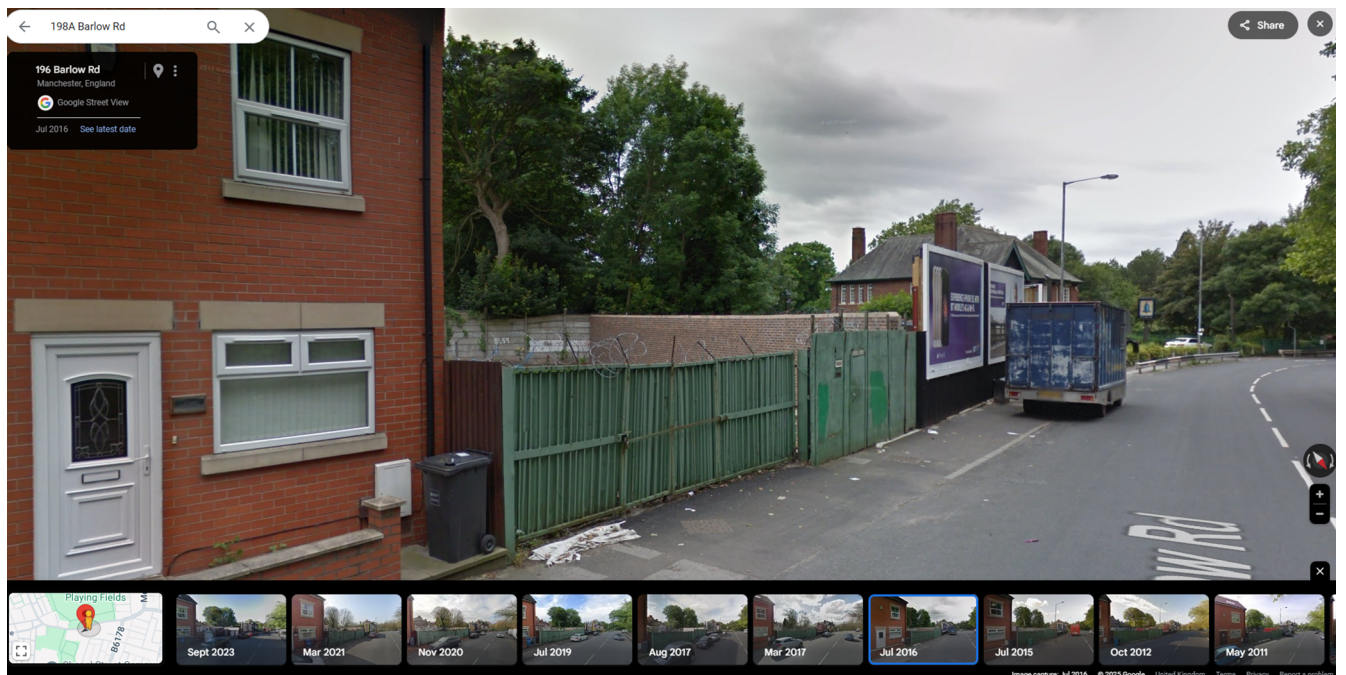


Image 2 Google Street View July 2016 of application site, after the erection of the wall



Image 3 Google Earth Aerial Image April 2013

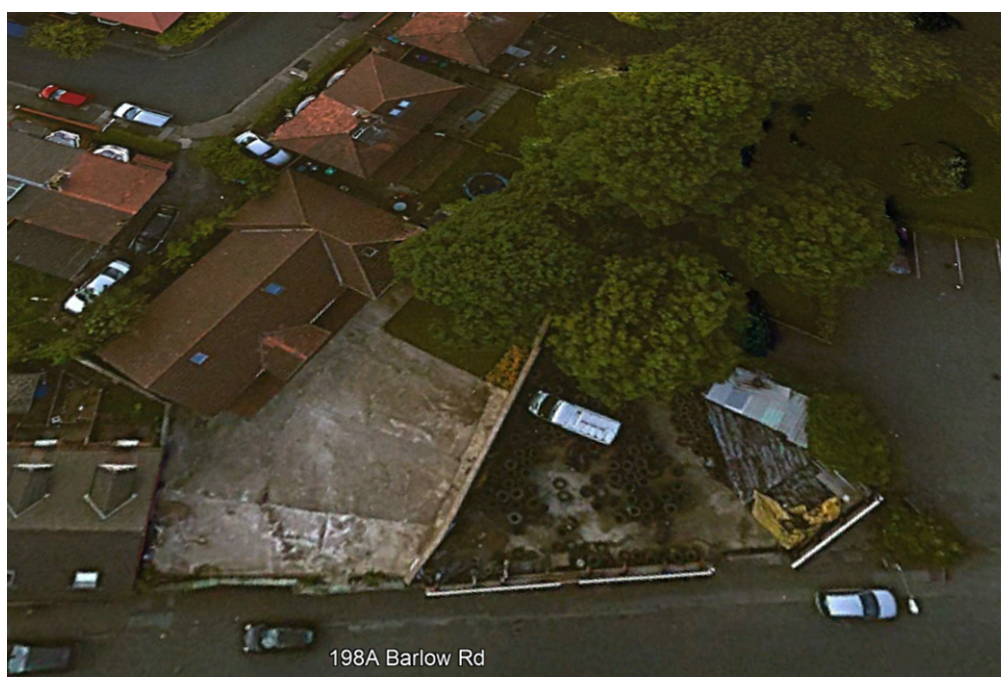


Image 4 Google Earth Aerial Image March 2016



Image 5 Google Street View November 2020, first sign relating to Tyres shown on the site entrance.

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 site has been tyre retailing and fitting place with associated storage a sui generis use of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) for a continual 10 year period up to the date of the application.

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
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: NORTH AREA