

Planning

Growth & Development

Delegated officer report for planning application

Application no. 141044/LE/2024

Date registered valid: 17 September 2024

Proposal: Use of property as 2no. Self Contained Apartments (1 bedroom and 2 bedroom).

Address: 32 College Road, Manchester, M16 8FH

Ward(s): Whalley Range Ward

Applicant: Dr Qasim Abbasali Property Newco NW Limited

Agent (if any): Mr Ronald Gonshaw Gonshaw Associates

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

Recommendation: Grant

Date of recommendation: 12 November 2024

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: 1 October 2024 Expired: 22 October 2024

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 site relates to a two storey end terraced property

Listed building: Not applicable

Conservation area: Whalley Range Conservation Area 1992

Tree Preservation Order: Not applicable

Description of area

The application site is located within Whalley Range Conservation Area and is predominantly residential in nature.

Description of development

Certificate Lawful Development to confirm the existing use of property as two self-contained flats (Use Class C3)

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 loss of a family house and to the creation of poorly sized flats with no amenity or waste storage details provided.

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 three previous planning applications at this address, details are provided below:

121584/LE/2018

Certificate for Lawful use of the property as two self contained flats
Refused 13.12.2018

082235/FO/2007/S1

Change of use from dwellinghouse to 2 self-contained flats and alterations to elevations
Withdrawn 18.04.2007

083250/FO/2007/S1

Change of use from dwellinghouse into 2 self-contained flats

Refused - 26.07.2007

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. Section 171B of the Town and Country Planning Act 1990 (as amended), specifies the time limits as to when enforcement action can no longer be taken. For applications submitted from 25 April 2024 onwards, the evidence must show the use commenced prior to this date to benefit from a 4-year immunity period, and that the use remains operational between that date and the date of the application. Alternatively, the evidence must show a period of 10 years prior to the date of the application.

Class C3 is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as "Use as a dwellinghouse (whether or not as a sole or main residence) by -."

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents; or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)."

For the purposes of Class C3(a) "single household" shall be construed in accordance with S.258 of the Housing Act 2004.

The floor plan provide shows that the property has been subdivided into two units. The ground floor is a one bedroom flat consisting of a combined living and dining room, a kitchen and a bathroom. The ground floor flat also appears to have access to the basement.

The first floor flat has two bedrooms (one in the loft), a combined living and dining room, bathroom and kitchen.

A range of information has been provided for both flats ranging from 2011 to 2024.

Taking each apartment in turn, the following information has been submitted for the ground floor apartment, apartment 1:

- Gas Safety Records Dated:
 - o 11 April 2020
 - o 30 April 2020
 - o 7th May 2021
 - o 12th April 2022* – *Incorrect Address
 - o 6th May 2022
 - o 6th April 2023
 - o 14th June 2024
- Energy Performance Certificate Dated 14th December 2022
- Electrical Report 23rd March 2023
- Tenancy Agreement Dated 25th March 2016

- Tenancy Agreement Dated 12th July 2024.

Apartment 2:

- Gas Safety Record Dated:
 - o 8th May 2020
 - o 3rd June 2021
 - o 27th July 2022
 - o 7th June 2024
- Energy Performance Certificate 14th December 2022

The VOA Website shows that the property has been two flats since 1st December 2011 and the assessments on the Energy Performance Certificate (EPC) website describe the property as a ground floor flat and a first floor flat. The original EPCs dating from 9th December 2012 also describe the property as being two flats.

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Property information for
**FLAT GND FLR 32, COLLEGE ROAD,
MANCHESTER, M16 8FH**

Local Authority	Manchester
Local authority reference number	4021935
Council Tax band	A
Improvement indicator	No
With effect from	1 December 2011
Mixed-use property	No
Court code	None

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Property information for
**FLAT 1ST FLR 32, COLLEGE ROAD,
MANCHESTER, M16 8FH**

Local Authority	Manchester
Local authority reference number	4021936
Council Tax band	A
Improvement indicator	No
With effect from	1 December 2011
Mixed-use property	No
Court code	None

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Images 1 and 2 Property Information on the VOA website.

<https://www.tax.service.gov.uk/check-council-tax-band/property/11378023000>

<https://www.tax.service.gov.uk/check-council-tax-band/property/11378026000>

Both accessed 11.11.2024

Energy performance certificate (EPC)

Certificate contents

- Rules on letting this property
- Energy rating and score
- Breakdown of property's energy performance
- How this affects your energy bills
- Impact on the environment
- Steps you could take to save energy
- Who to contact about this certificate
- Other certificates for this property

Share this certificate

Email

Copy link to clipboard

Print

Ground Floor Flat 32 College Road MANCHESTER M16 8FH		Energy rating C
Valid until 13 December 2032	Certificate number 5702-0622-7099-0584-6296	
Property type	Ground-floor flat	
Total floor area	66 square metres	

Rules on letting this property

Properties can be let if they have an energy rating from A to E.

You can read [guidance for landlords on the regulations and exemptions](#).

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Print

First Floor Flat 32 College Road MANCHESTER M16 8FH		Energy rating C
Valid until 13 December 2032	Certificate number 6902-0622-7099-0584-6292	
Property type	Top-floor flat	
Total floor area	66 square metres	

Rules on letting this property

Properties can be let if they have an energy rating from A to E.

You can read [guidance for landlords on the regulations and exemptions](#).

Images 3 and 4 Property Information on the EPC website.

<https://find-energy-certificate.service.gov.uk/energy-certificate/5702-0622-7099-0584-6296>

<https://find-energy-certificate.service.gov.uk/energy-certificate/6902-0622-7099-0584-6292>

Both accessed 11.11.2024

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.

From the information provided it appears 1 or 2 persons have rented the flats on an initial 6 month period and continued to rent the flats on a rolling basis.

The applicant does not have to “demonstrated beyond all reasonable doubt”, as that that is the standard of proof required for criminal cases and would be wrong test to apply.

Therefore, on balance of probability and without any evidence to the contrary the properties have been in use 2 self contained apartments and the certificate should be granted.

Comments by the neighbouring resident are noted, however they appear to be related to a proposed change of use rather than existing change of use, there is no information within the comments received to place doubt on the claims of the applicant.

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: GRANT

Article 35 Declaration

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

1) From the evidence available, and with reference to the relevant planning legislation, Manchester City Council is satisfied that the use of the property as 2no. self-contained apartments is lawful, up to the date of the application.

Appendix 1 – List of consultees & neighbours notified

7 Whalley Grove, Manchester, M16 8DN
First Floor Flat, 32 College Road, Manchester, M16 8FH
Ground Floor Flat, 32 College Road, Manchester, M16 8FH
Flat 2, 11 Whalley Grove, Manchester, M16 8DN
Flat 1, 11 Whalley Grove, Manchester, M16 8DN
5 Whalley Grove, Manchester, M16 8DN
11 Whalley Grove, Manchester, M16 8DN
Flat 2, 34 College Road, Manchester, M16 8FH
Flat 1, 34 College Road, Manchester, M16 8FH
9 Whalley Grove, Manchester, M16 8DN
30 College Road, Manchester, M16 8FH

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Conservation Area - Whalley Range Conservation Area 1992
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA