MANCHESTER CITY COUNCIL

Planning

Growth & Development

Delegated officer report for planning application

Application no.	140062/LE/2024
Date registered valid:	20 May 2024
Proposal:	Use of property as 3no. Apartments (2x 1no Bed and 1 x 2no. Bed)
Address:	25 Saddlecote Close, Manchester, M8 5QE
Ward(s):	Crumpsall Ward
Applicant:	Mr Faizul Isa
Agent (if any):	James Berggren EdgePlan Ltd
Case officer:	Robert Tyrer Tel: 0161 234 4068 Email: robert.tyrer@manchester.gov.uk
Recommendation:	Refuse
Date of recommendation:	28 October 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: 30 May 2024 Expired: 20 June 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

The application relates to mid-terraced, three storey dwellinghouse that appears to be relatively modern in its appearance and construction.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Residential in nature close to North Manchester General Hospital and various open green spaces.

Description of development

The applicant is seeking a Certificates of lawfulness Use of property as 3no. Apartments (2x 1no Bed and 1 x 2no. Bed)

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (appendix 1).

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

Planning History – There has been no previous planning applications at this address.

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 applicants version of events or make them less then probable, there is no good reason to refuse the issue of a certificate.

Regarding subsection (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

The applicant is seeking a certificate of lawfulness for the use of property as 3no. Apartments (2x 1no Bed and 1 x 2no. Bed).

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.

The Town and Country Planning Act 1990 (TCPA 1990) provides that planning permission is required for the carrying out of any development of land (section 57(1), TCPA 1990).

The definition of development includes “making any material change in the use of any buildings or other land” (section 55(1), TCPA 1990). This means that the requirement to obtain express planning permission generally applies to any “material change of use” unless the following circumstances apply:

- Where a change of use is permitted development by virtue of Part 3, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO 2015);

- Where the developer obtains a “certificate of lawfulness” from the local planning authority (LPA) (section 191 TCPA 1990);

- If the time limit for enforcement has expired (section 171B TCPA 1990).

The Town and Country Planning (General Permitted Development) Order Class C3. Dwellinghouses is defined as a 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).

Interpretation of Class C3

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

This use class makes no distinction between whether the dwellinghouse is used as a sole or main home, for personal or commercial use, or its tenure (rental or home ownership). Use classes apply nationally. Therefore, a self-contained flat and short-term holiday accommodation would both fall within the definition of a C3 Use.

The Assessment of the Evidence

In a case of this type, the onus is on the applicant to substantiate their case, on the balance of probability. The applicant needs to demonstrate that the use as two flats commenced more than 4 years prior to the date of the application (i.e. by 3rd August 2020) and continued without a significant break for 4 years.

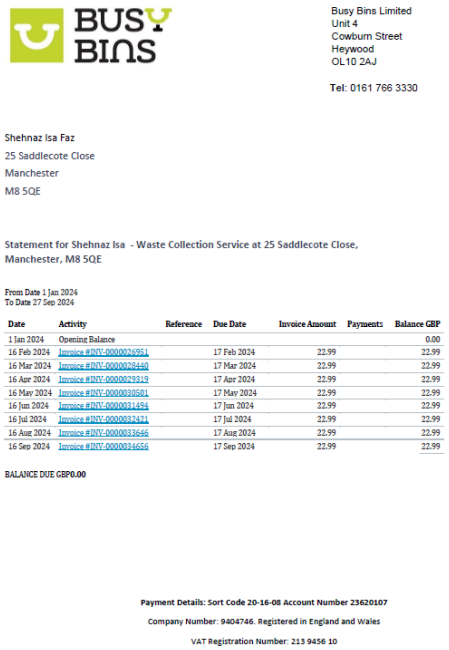
The standard of proof required on the part of the applicant is no more than “the balance of probability”. An LPA would have no excuse for refusing an LDC because the applicant has failed to discharge the stricter, criminal burden of proof (“beyond reasonable doubt”).

If the LPA has no evidence of its own, or 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 is sufficiently precise and unambiguous to justify the grant of a certificate “on the balance of probability”.

To substantiate their case, the applicant has provided tenancy agreements, an invoice from Sheta Construction, dated 01 June 2013, noting a deposit paid by the applicant on the same day for renovation works to the property which appear to be works to create three flats. Statements from Nextmove Estates Ltd and Inap Accommodation Ltd to state that they have managed the property as 3 flats from 15/03/2017 until present.

Invoices for the period 31/05/2023 until 13/11/2023 (although one of the invoices is for a flat (10/11/2023) listed at a different address) have been provided from Nextmove Estates that show the rent received, utilities and council tax payments (Flats B and C) and management fees.

An invoice from Busy Bins has also been provided dated 17/01/2024 for "One Months Waste Management" and what appears to be a screenshot of payments to Busy Bins on the 18th August 2020, 18th September 2020, 18th October 2020 and an unknown date. Further information was provided by the applicant revealed that Busy Bins have been contracted to service the property every month in 2024 starting 1st January up and until 27th September 2024 (image 1).



BUSY BINS

Busy Bins Limited
Unit 4
Cowburn Street
Heywood
OL10 2AJ

Tel: 0161 766 3330

Shehnaz Isa Faz
25 Saddlecote Close
Manchester
M8 5QE

Statement for Shehnaz Isa - Waste Collection Service at 25 Saddlecote Close, Manchester, M8 5QE

From Date 1 Jan 2024
To Date 27 Sep 2024

Date	Activity	Reference	Due Date	Invoice Amount	Payments	Balance GBP
1 Jan 2024	Opening Balance					0.00
16 Feb 2024	Invoice #INV-0000026951		17 Feb 2024	22.99		22.99
16 Mar 2024	Invoice #INV-0000028440		17 Mar 2024	22.99		22.99
16 Apr 2024	Invoice #INV-0000029319		17 Apr 2024	22.99		22.99
16 May 2024	Invoice #INV-0000030501		17 May 2024	22.99		22.99
16 Jun 2024	Invoice #INV-0000031494		17 Jun 2024	22.99		22.99
16 Jul 2024	Invoice #INV-0000032421		17 Jul 2024	22.99		22.99
16 Aug 2024	Invoice #INV-0000033646		17 Aug 2024	22.99		22.99
16 Sep 2024	Invoice #INV-0000034656		17 Sep 2024	22.99		22.99

BALANCE DUE GBP0.00

Payment Details: Sort Code 20-16-08 Account Number 23620107

Company Number: 9404746. Registered in England and Wales

VAT Registration Number: 213 9456 10

Image 1 Waste Collection Statement – 25 Saddlecote Close

The submitted floor plan provided by the applicant (image 2) shows that the property has been subdivided into three units (Flats A, B and C) over three floors (ground, first and second). The ground floor consists of a combined living and kitchen for flats A and B with an internal spiral staircase that provides access to the first floor where the one bedroom and shower room for flats A and B can be found.

The original central staircase provides access to all three flats with the third flat (Flat C)

Flat C is located on the second floor and has a combined living room and kitchen, a "bathroom" although it appears no larger than the shower rooms for flats A and B and has two bedrooms.



Image 2 Existing and Proposed Floor Plan as submitted by the applicant.

The Case Officer visited the site on 27th September 2024 and saw that the property was laid out as the submitted plans show. However, none of the flats were identified in this way on site with door signage both external and internal. Image 3, a google streetview shows the property in June 2023 and there no obvious external signage.

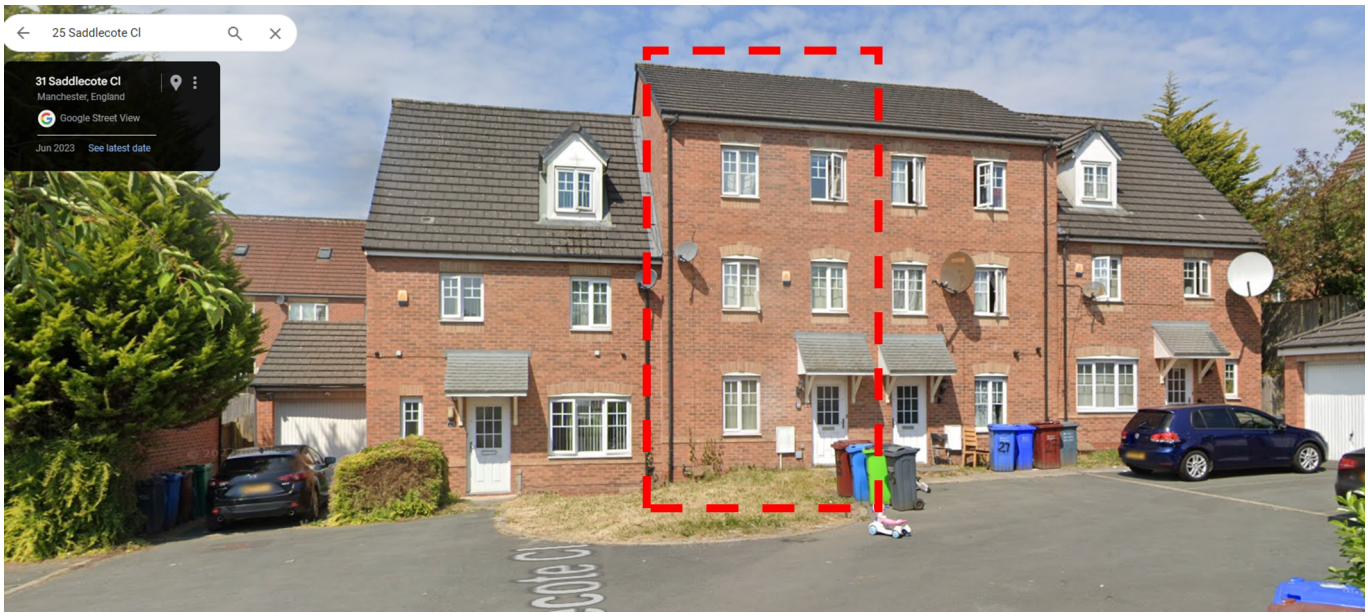


Image 3 Google Street View Image (September 2023) shows no external signage of individual flats

The evidence provided indicates that the property has been rented out to persons as flats A, B and C and were managed by two companies for the last 7 years.

The tenancy agreements show that the flats have been rented out to mostly a single person per flat on an initial 6-month contract (see table below), with the odd exception that at times Flats B and C have been rented to two persons. The tables also reveal a gap (highlighted in orange) in the tenancies for 3 years between 2017 and 2020 which falls just outside of the 4 years required. The terms of the tenancies appear to be fixed terms and there is no information on rolling terms after the initial 6 month period.

The supporting statement explains that Inap Accommodation Ltd sublet the property from 15th March 2017 until 01/02/2020 at an agreed monthly rent and that Nextmove estates managed the property from January 2020 to present.

An email from a tenant has been provided to state that they were resident in Flat A from 17/3/2022 and the pictures provided in the email were taken on the 16/03/2022 and details of the tenants DPS Certificate of what appears to be a refund of the tenants deposit.

FLAT A

Tenancy Dates	Tenants
15 August 2013 - 15th August 2014	1 Person
15th August 2014 - 15th August 2015	1 Person
15 August 2016 - 5 February 2017	1 Person
23 March 2020 - 23rd September 2020 (6 months)	1 Person
30th December 2020 - 30th June 2021 (6 months)	1 Person

FLAT B

Tenancy Dates	Tenants
05th October 2014 - 5th October 2015	1 Person
5th October 2015 - 5th October 2016	1 Person
5th October 2016 - 5th April 2017	1 Person
21st December 2020 - 20th June 2021	2 Persons
12th March 2021 - 12 September 2021	1 Person
12th September 2021 - 12th March 2022	1 Person
12th June 2022 - 12th December 2022	1 Person
12th December 2022 - 12th June 2023	1 Person
12th June 2023 - 12th December 2023	1 Person
11th December 2023 - 11th June 2024	1 Person

FLAT C

Tenancy Dates	Tenants
1st September 2013 - 1st September 2014	1 Person
1st September 2014 - 1st September 2015	1 Person
1st September 2015 - 1st September 2016	1 Person
1st September 2016 - 1 March 2017	1 Person
21 December 2020 - 20 June 2021	2 Persons
20th August 2023 - 20 February 2024	2 Persons

It is clear from the management fees invoices that, Council Tax and Utilities are charged to the tenants for Flats B and C by the management company, but there is no reference for the same in respect of Flat A; these invoices cover periods in 2023.

In addition, the supplied 2022 and 2023 tenancy agreements at paragraph 3.2, state that it is the tenant's responsibility *"To pay promptly to the authorities to whom they are due, council tax, water and sewerage charges…"*. Earlier agreements (2013, 2014, 2015 etc) set out a similar statement at paragraph 17, that *"The tenant shall pay directly to suppliers all charges… council tax…"*

However, public information on Valuation Office Agency (VOA) website, shows that only one property is registered for Council Tax (image 1), had there been flats within the property registered for Council Tax purposes then these would have been shown on the VOA website.

The Electoral Register show no persons registered to vote at the property from February 2020 to the current register which began on the 1st December 2023. Although there are limitations to this information as it should be noted that tenants must register if they asked to do so and meet the conditions for registering, for example 16 and over and either British or a national of an EU or Commonwealth Country.

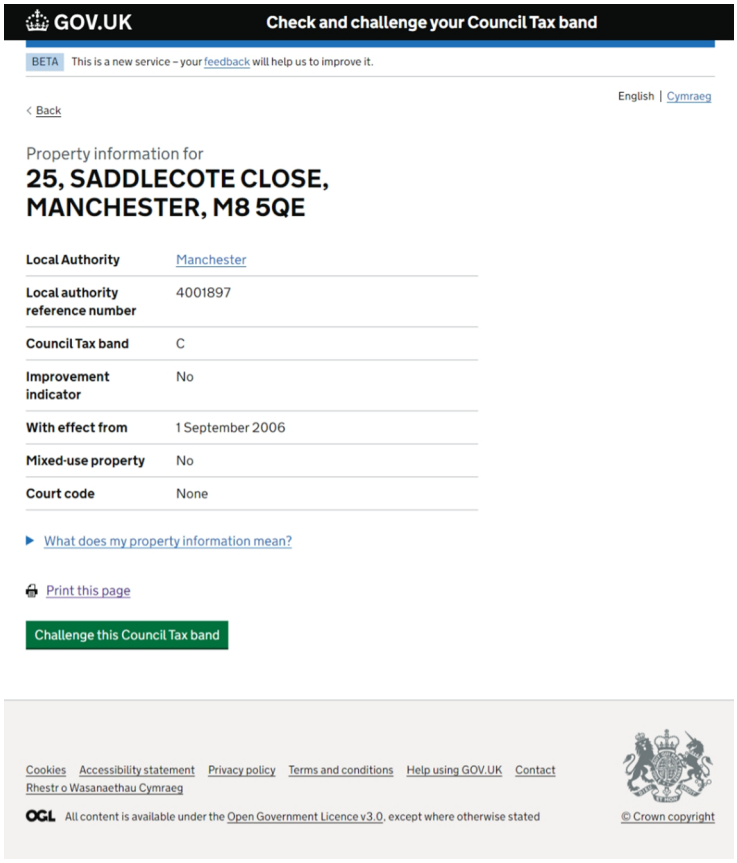


Image 4 Property Information on the VOA website. Source: [Property information for 25, SADDLECOTE CLOSE, MANCHESTER, M8 5QE - Check and challenge your Council Tax band - GOV.UK]

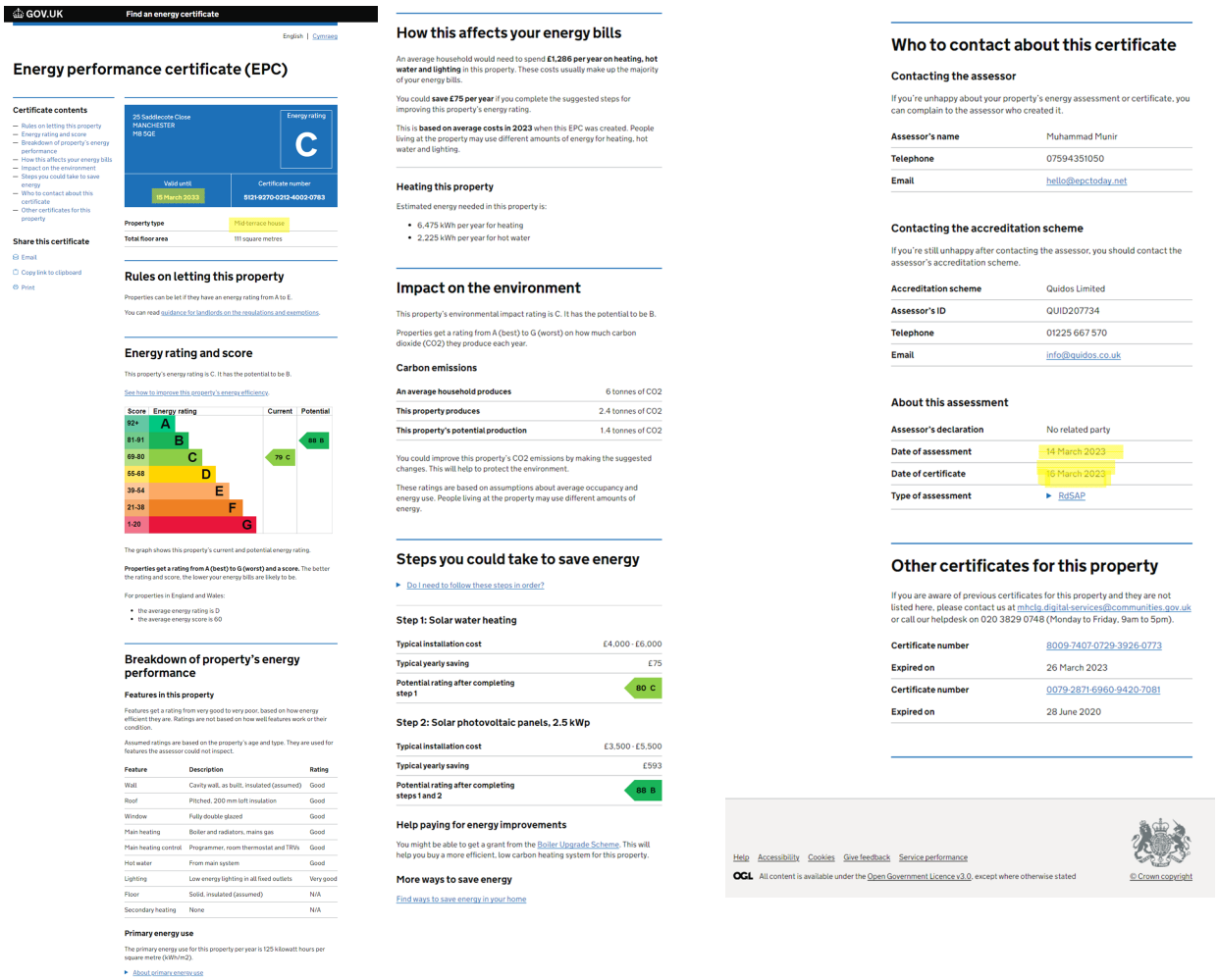


Image 3 Property Information on the Energy performance certificate (EPC) website. Source: [Energy performance certificate (EPC) – Find an energy certificate – GOV.UK (find-energy-certificate.service.gov.uk)]

There have been two energy performance certificates (EPC) at this address, the first was assessed and issued on the 29th June 2010 and showed that the property was a mid-terraced house. (Source: Energy performance certificate (EPC) – Find an energy certificate – GOV.UK (find-energy-certificate.service.gov.uk)).

The second certificate at this address was assessed on the 14th March 2023 and a certificate was issued on the 16th March 2023 (as detailed on image 3). As with the first certificate the property was described as a mid-terraced house. The type of assessment is listed as Reduced data Standard Assessment Procedure or RdSAP and according to the EPC website

> *"is a method used to assess and compare the energy and environmental performance of properties in the UK. It uses a site visit and survey of the property to calculate energy performance." (emphasis added by officer)*

Therefore, the assessor has undertaken a site visit and survey of the property. The assessor of the current EPC was contacted and confirmed that whilst no photographs were taken from the inside, only the outside walls, radiators, boiler, led lights etc, the assessor recalls that it was one dwelling with one meter.

The EPC was raised, and the Council understand that the applicant has disputed the findings with the accredited assessor. However, the agent acknowledges that the EPC has raised an element of doubt, the substantive evidence submitted in support of the application shows that the use has been 3no.flats and given the ambiguity of the inspection noted above, limited weight should be

afforded to this. Significant weight should be afforded to the evidence (tenancy agreements etc) provided with the application.

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.

However, in this case the information available to the Council, places doubt on the claimed use, together with the gaps in the tenancy agreements, as such, it does not provide a basis to conclude with sufficient confidence that the property has been in use as 3 self-contained flats for the last four years.

Concealment/positive deception

A series of acts, omissions, or a combination of both, can amount to deliberate concealment.

In this case the property is still registered as one property for Council tax purposes (image 3) and the EAP certificate assessment recalls that it was only one property on the 14th March 2023.

The lodger agreement for Flat C dated as being entered into on 20 December 2020, but also is dated August 2023, and refers to a period of 20 August 2023 for the commencement of the tenancy and the agreement for Flat B dated as being entered into December 2023, state under section 4 "Responsibilities", sets out clearly that the "Landlords responsibilities" are:

> *i.Provide a furnished room in good condition as describe during the viewing.*
> *ii.Ensure the common areas of the property are maintained in a clean and safe condition.*
> ***iii.Pay for utility bills, council tax, and any other charges associated with the property.***

The highlighted section 4.a.iii shows that the Landlord is responsible for paying utility bills, council tax and any other charges associated with the property.

Interestingly this is not the case for the other tenancy agreements provided which clear show that the tenant is responsible for paying Council tax and other bills at the property.

However, if the tenant had attempted to pay Council Tax, it is more likely the use of the building as three flats would have been discovered by the Council. Therefore, the inclusion of this Council Tax clause is evidence of a deliberate attempt to conceal the breach of planning control.

Furthermore, as viewed by the case officer on site whilst the flats have been laid out as per the submitted drawings, none of the flats were identified in this way on site with door signage both external and internal as shown in images 3 and 5. In the case of image 5 the property has been blurred in its entirety. A review of Googles terms and conditions on privacy states that:

> *"If Google is the photo owner, you can report a photo or request it to be blurred if it contains:*
>
> - *Your face, home, or other identifying information.*
> - *Anything that violates the Google-contributed Street View privacy policies."*

Source:https://support.google.com/maps/answer/7011973?hl=en-GB&co=GENIE.Platform%3DDesktop#:~:text=Street%2Dlevel%20collections%20and%20Photo,blurred%20to%20respect%20others'%20privacy. Accessed 28.10.2024

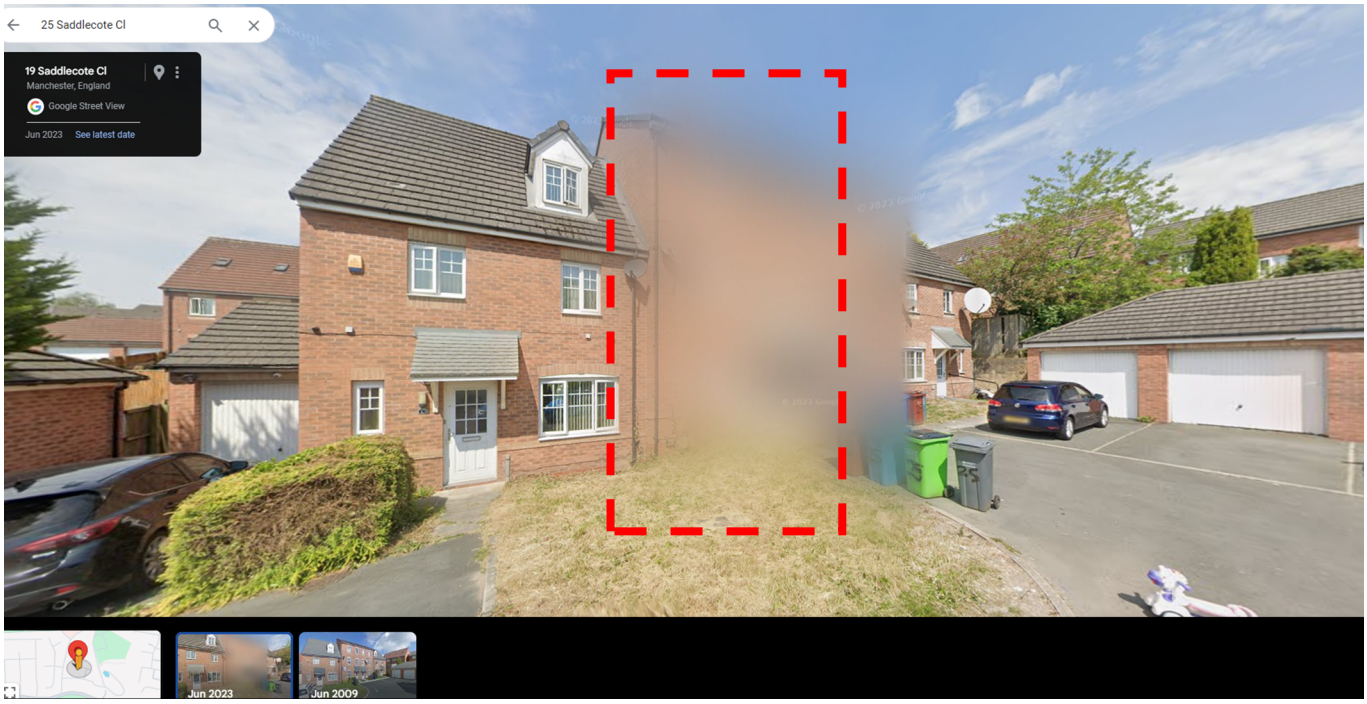


Image 5 Google Street View Image (September 2023) shows no external signage of individual flats and the property has been blurred



Image 6 Refuse Storage including Busy Bins.

The refuse arrangements for example, by using a private contractor the applicant has not had to contact the council regarding additional bins, furthermore the bins only refer to number 25 and not flats A, B or C (image 6).

When the evidence about the external appearance of the property is considered in combination with the single Council Tax, EPC's for a single dwelling and absence of Electoral Register information, any reasonable person, in possession of the material facts, would arrive at the conclusion that the that the property was in use as a single dwellinghouse; its use therefore must have been concealed to some extent, if indeed the property was in use as three separate flats.

Lastly, in terms of building regulations, it is considered to be a material change of use where there is a change in the purposes for which or the circumstances in which a building is used, so that after that change, the building, which contains at least one dwelling, contains a greater or lesser number of dwellings than it did previously.

In this case there is no record of any building regulation application for this address for such a change.

Therefore, on balance of probability and the evidence available to the Council, there is doubt that the property has lawfully been used in the manner claimed and 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 25 Saddlecote Close, Manchester, M8 5QE has been used as 3no. Apartments (2x 1no Bed and 1 x 2no. Bed), for a continual 4 year period up to the date of the application.

2) Following the receipt of the application it appears to the council that there may have been a breach of planning control involving deliberate concealment.

In such circumstances the council may apply for an order under section 171BA(1) of the Town and Country Planning Act 1990 (the Act) (a "planning enforcement order") in relation to that apparent breach of planning control.

Where the time for applying for a planning enforcement order in relation to such a matter has not expired, the time limits under s.171B of the Act for taking enforcement action are to be taken not to have expired (s.191(3A)(a) of the Act).

Consequently, the creation of 3no. Apartments (2x 1no Bed and 1 x 2no. Bed) are not lawful within the meaning of s.191 of the Act.

Appendix 1 – List of consultees & neighbours notified

20 Charminster Drive, Manchester, M8 5QA
16 Charminster Drive, Manchester, M8 5QA
14 Charminster Drive, Manchester, M8 5QA
29 Saddlecote Close, Manchester, M8 5QE
21 Saddlecote Close, Manchester, M8 5QE
22 Charminster Drive, Manchester, M8 5QA
18 Charminster Drive, Manchester, M8 5QA
27 Saddlecote Close, Manchester, M8 5QE
31 Saddlecote Close, Manchester, M8 5QE
23 Saddlecote Close, Manchester, M8 5QE

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding - Not Affected
Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA
Historic Landfill Site 250m Buffer -
Area Team Boundary - Name: NORTH AREA