

Planning

Growth & Development

Delegated officer report for planning application

Application no. 140316/LP/2024

Date registered valid: 22 July 2024

Proposal: Use of part of dwellinghouse for ancillary homeworking in connection with single private hire operator.

Address: 1 Neenton Square, Manchester, M12 5PT

Ward(s): Gorton & Abbey Hey Ward

Applicant: Mr Aetizaz Ahsan Aetizaz Ahsan

Agent (if any):

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

Recommendation: Grant

Date of recommendation: 13 September 2024

Application details

Type of application: Certificate Lawful Development Proposed

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

Application site relates to a two storey semi-detached dwellinghouse. Located on the corner of Neenton Square and Kimbolton Close

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

Located in a predominantly residential area.

Description of development

The applicant is seeking a certificate of lawful development to use dwellinghouse in connection with private hire operator.

Consultations & Notification Responses

None Required - There is no statutory requirement to consult third parties including neighbours; views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.

Legislative Issues/Requirements

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.

The Application

This application is pursued under subsection (1) of section 192, which provides for an application to determine whether any proposed use or operations would be lawful for planning purposes.

The applicant is seeking a certificate of lawful development to use dwellinghouse in connection with private hire operator.

Taxi businesses have historically fallen under the Sui Generis use class. Planning is usually required to set up a new Private Hire Operating Centre, Minicab or Taxi Office, or for change of use from another type of business. In this case the applicant seeks to operate a booking office from their dwellinghouse.

Paragraph 14 of Planning Practice Guidance advises the following on home working or running a business from home:

“Planning permission will not normally be required to home work or run a business from home, provided that home working or a business use is incidental to the use as a dwellinghouse. The local planning authority must consider whether any purposes to which it is put are reasonably incidental to its use as a dwellinghouse. Where such uses result in a material change of use of a dwellinghouse, planning permission will be required. Whether a material change of use has taken place, or will take place, is a matter of fact and degree and this will be determined on the individual merits of a case.

When determining whether a material change of use has occurred, or will occur, a local planning authority must consider whether home working or a business has led, or will lead, to a notable change in the character of the property’s use. Environmental impacts may be used to indicate a notable change of character of the property, for example: increase in traffic and parking, disturbance to neighbours caused by regular or the number or timing of, visitors or deliveries, abnormal noise or smells, or the need for any major structural changes or major renovations.”

Therefore, in considering whether home working or a business will lead to a notable change in the character of the property’s use.

In the application submitted in support of the certificate describes how the applicant intends to use the property in connection with the private hire business. The applicant describes that they are currently applying for an individual operator licence and intends to use their property as a base to work from. The applicant states that only one vehicle involved that there will be no staff or customers at the property.

Customers will be collected at pre-arranged pick up and drop off locations and will be made online. This reflects the more recent transition from booking taxis via a central call centre to bookings made by using smartphone apps. According to Ibisworld.com

“The four largest tax companies in the UK only account for an estimated 5.3% of industry revenue in 2023-24. This is due to a significant proportion of the industry being self-employed due to a surge in demand and access to smartphone app platforms....”

Source: <https://www.ibisworld.com/united-kingdom/market-research-reports/taxi-operationindustry/#IndustryStatisticsAndTrends> accessed 06.09.2024

As only one vehicle will be used and drive by the applicant it won’t lead to an increase in roadside parking and thus cause disturbance to the amenity enjoyed by the neighbouring property.

In this case it is considered that whilst a business would be based at the property, its impacts would be de-minimis and the dwellinghouse, in all other ways, would still continue to operate as a family home with potentially part of a room being used for the taxi business.

Taking into consideration all matters discussed, the certificate should be granted.

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

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

1) The use of part of a dwellinghouse for business purposes by a single private hire operator with one vehicle, owned and driven by the property owner, with no additional staff or visiting members of the public and all bookings taken online or by telephone, does not change the overall character of the property's use as a single private dwelling, and would not therefore constitute development as defined in Section 55 of the Town and Country Planning Act 1990 (as amended).

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

Coal Authority - Development Low Risk - Name: DEVELOPMENT_LOW_RISK_AREA

Coal Authority - Surface Coal Resources - Name: Coal bearing strata at surface

Area Team Boundary - Name: NORTH AREA